



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE

ESTIMATES

(Supplementary Budget Estimates)

MONDAY, 18 OCTOBER 2010

CANBERRA

BY AUTHORITY OF THE SENATE

THIS TRANSCRIPT HAS BEEN PREPARED BY AN EXTERNAL PROVIDER

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

<http://www.aph.gov.au/hansard>

To search the parliamentary database, go to:

<http://parlinfo.aph.gov.au>

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS**LEGISLATION COMMITTEE****Monday, 18 October 2010**

Members: Senator Crossin (*Chair*), Senator Barnett (*Deputy Chair*) and Senators Furner, Ludlam, Parry and Pratt

Participating members: Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Coonan, Cormann, Eggleston, Faulkner, Ferguson, Fierravanti-Wells, Fielding, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Macdonald, McEwen, McGauran, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance:

Senators Abetz, Barnett, Bilyk, Boswell, Brandis, Bushby, Cash, Coonan, Crossin, Fifield, Furner, Humphries, Ludlam, McGauran, Parry, Pratt, Ryan and Trood

Committee met at 9.01 am**ATTORNEY-GENERAL'S PORTFOLIO****In Attendance**

Senator Ludwig, Minister for Agriculture, Fisheries and Forestry

Senator Lundy, Parliamentary Secretary to the Prime Minister, Parliamentary Secretary for Immigration and Citizenship

Attorney-General's Department**Management and Accountability**

Mr Roger Wilkins AO, Secretary

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

Mr Iain Anderson, Acting Deputy Secretary, National Security and Criminal Justice Group

Dr James Popple, Acting Deputy Secretary, Civil Justice and Legal Services Group

Outcome 1—A just and secure society through the maintenance and improvement of Australia's law and justice framework and its national security and emergency management system

Program 1.1 Attorney-General's Department Operating Expenses—Civil Justice and Legal Services

Access to Justice Division

Ms Alison Playford, First Assistant Secretary, Access to Justice Division

Mr Matt Minogue, Assistant Secretary, Justice Policy Branch

Ms Janet Power, Assistant Secretary, Administrative Law Branch

Ms Catherine Fitch, Special Adviser, Family Law Branch

Ms Kim Farrant, Acting Assistant Secretary, Marriage and Intercountry Adoption Branch

Ms Toni Pirani, Assistant Secretary, Family Law Branch

Dr Susan Cochrane, Acting Assistant Secretary, Federal Courts Branch

Ms Catherine Rainsford, Director, Federal Courts Branch

Civil Law Division

Dr James Popple, First Assistant Secretary, Civil Justice Division

Ms Irene Ghobreal, Acting Assistant Secretary, Office of Legal Services Coordination

Mr David Bergman, Assistant Secretary, Personal Property Securities Branch

Ms Marjorie Todd, Assistant Secretary, National Legal Profession Reform

Ms Jane Fitzgerald, Assistant Secretary, Classification Branch

Ms Helen Daniels, Assistant Secretary, Business Law Branch

Constitutional Policy and Law Reform

Mr David Fredericks, First Assistant Secretary, Priorities and Coordination Division

Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

Mr Andrew Walter, Acting Assistant Secretary, Strategic Policy and Law Reform Branch

Office of International Law

Mr Greg Manning, Acting First Assistant Secretary, Office of International Law

Mr Bill Campbell QC, General Counsel, Office of International Law

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

Dr Annemarie Devereux, Assistant Secretary, International Security and Human Rights Branch

Social Inclusion Division

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

Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch

Ms Kathleen Denley, Assistant Secretary, Native Title Unit

Ms Christine Freudenstein, Acting Assistant Secretary, Indigenous Policy and Service Delivery Branch

Program 1.2 Attorney-General's Department Operating Expenses—National Security and Criminal Justice

Criminal Justice Division

Ms Sarah Chidgey, Acting First Assistant Secretary, Criminal Justice Division

Mr Jonathan Curtis, Acting Assistant Secretary, Border Management and Crime Prevention Branch

National Security Capability Development Division

Mr Kym Duggan, First Assistant Secretary, National Security Capability Development Division

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

Ms Raelene Thompson, Assistant Secretary, National Security Training, Education and Development Branch

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

Emergency Management Australia

Mr Campbell Darby, Director-General, Emergency Management Australia

Ms Diana Williams, Assistant Secretary, Security Coordination Branch

Mr Mark Carpenter, Assistant Secretary, Crisis Support Branch

Mr Jim Dance, Assistant Secretary, Crisis Coordination Branch

Mr Kevin Rheese, Director, Relief and Recovery Section

International Crime Cooperation Division

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

Ms Alex Hutton, Special Adviser, International Legal Assistance Unit

Ms Anna Harmer, Assistant Secretary, International Crime Cooperation Central Authority

National Security Resilience Policy Division

Mr Michael Jerks, Assistant Secretary, Critical Infrastructure Protection Branch

Mr Alex Webling, Acting Assistant Secretary, Protective Security Policy Branch

Ms Ayesha Perry, Assistant Secretary, Emergency Management Policy Branch

Ms Marcella Hawkes, Acting Assistant Secretary, Identity Security Branch

Ms Deborah Anton, Assistant Secretary, E-Security Policy and Coordination Branch

National Security Law and Policy Division

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

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

Ms Kelly Williams, Assistant Secretary, National Security Policy Branch

Ms Annette Willing, Assistant Secretary, Security Law Branch

Ms Tamsyn Harvey, Assistant Secretary, AusCheck Branch

Ms Jamie Lowe, Assistant Secretary, Countering Violent Extremism Unit

Ms Laura Munsie, Principal Legal Officer, Security Law Branch

Program 1.3 Justice services

Access to Justice Division

Ms Alison Playford, First Assistant Secretary, Access to Justice Division

Mr Matt Minogue, Assistant Secretary, Justice Policy Branch

Ms Catherine Fitch, Special Adviser, Family Law Branch

Ms Kim Farrant, Acting Assistant Secretary, Marriage and Intercountry Adoption Branch

Ms Toni Pirani, Assistant Secretary, Family Law Branch

Social Inclusion Division

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

Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch

Ms Kathleen Denley, Assistant Secretary, Native Title Unit

Ms Christine Freudenstein, Acting Assistant Secretary, Indigenous Policy and Service Delivery Branch

Civil Law Division

Dr James Pople, First Assistant Secretary, Civil Law Division

Ms Irene Ghobreal, Acting Assistant Secretary, Office of Legal Services Coordination

Mr David Bergman, Assistant Secretary, Personal Property Securities Branch

Office of Legislative Drafting and Publishing Division

Mr Noel Bugeia, Acting First Assistant Secretary, Office of Legislative Drafting and Publishing

Program 1.4 Family Relationship Services**Access to Justice Division**

Ms Alison Playford, First Assistant Secretary, Access to Justice Division

Mr Matt Minogue, Assistant Secretary, Justice Policy Branch

Ms Catherine Fitch, Special Adviser, Family Law Branch

Ms Toni Pirani, Assistant Secretary, Family Law Branch

Program 1.5 Indigenous Law and Justice**Social Inclusion Division**

Ms Katherine Jones, First Assistant Secretary, Social Inclusion Division

Dr Albin Smrdel, Assistant Secretary, Legal Assistance Branch

Mr Peter Arnaudo, Assistant Secretary, Indigenous and Community Legal Services Branch

Ms Kathleen Denley, Assistant Secretary, Native Title Unit

Ms Christine Freudenstein, Acting Assistant Secretary, Indigenous Policy and Service Delivery Branch

Program 1.6 National Security and Criminal Justice**Criminal Justice Division**

Ms Sarah Chidgey, Acting First Assistant Secretary, Criminal Justice Division

Mr Jonathan Curtis, Acting Assistant Secretary, Border Management and Crime Prevention Branch

National Security Capability Development Division

Mr Kym Duggan, First Assistant Secretary, National Security Capability Development Division

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

Ms Raelene Thompson, Assistant Secretary, National Security Training, Education and Development Branch

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

Emergency Management Australia

Mr Campbell Darby, Director-General, Emergency Management Australia

Ms Diana Williams, Assistant Secretary, Security Coordination Branch

Mr Mark Carpenter, Assistant Secretary, Crisis Support Branch

Mr Jim Dance, Assistant Secretary, Crisis Coordination Branch

Mr Kevin Rheese, Director, Relief and Recovery Section

International Crime Cooperation Division

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

Ms Alex Hutton, Special Adviser, International Legal Assistance Unit

Ms Anna Harmer, Assistant Secretary, International Crime Cooperation Central Authority

National Security Resilience Policy Division

Mr Michael Jerks, Assistant Secretary, Critical Infrastructure Protection Branch

Mr Alex Webling, Acting Assistant Secretary, Protective Security Policy Branch

Ms Ayesha Perry, Acting First Assistant Secretary, Emergency Management Policy Branch

Ms Marcella Hawkes, Acting Assistant Secretary, Identity Security Branch
Ms Deborah Anton, Assistant Secretary, E-Security Policy and Coordination Branch

National Security Law and Policy Division

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

Ms Tamsyn Harvey, Assistant Secretary, AusCheck Branch
Ms Jamie Lowe, Assistant Secretary, Countering Violent Extremism Unit

People, Information and Technology Division

Ms Hilary Russell, General Manager, People, Information and Technology Division

Strategic Policy and Coordination Group

Finance and Property Division

Mr Stephen Lutze, General Manager, Finance and Property Division
Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

Priorities and Coordination Division

Mr David Fredericks, First Assistant Secretary, Priorities and Coordination Division
Mr James Faulkner PSM, Assistant Secretary, Constitutional Policy Unit
Mr Craig Harris, Assistant Secretary, Public Affairs Branch
Mr Matt Hall, Assistant Secretary, Cabinet and Ministerial Coordination Branch
Mr Andrew Walter, Acting Assistant Secretary, Strategic Policy and Law Reform Branch

People, Information and Technology Division

Ms Hilary Russell, General Manager, People, Information and Technology Division
Ms Michele Kane, Assistant Secretary, People and Corporate Support Branch

Administrative Appeals Tribunal

Mr Philip Kellow, Registrar
Mr Chris Matthies, Acting Assistant Registrar
Mr Steve Wise, Chief Finance Officer

Australian Commission for Law Enforcement Integrity

Mr Philip Moss, Integrity Commissioner
Mr Stephen Hayward, Executive Director
Mr Nicholas Sellars, Director, Strategic Support

Australian Crime Commission

Mr John Lawler APM, Chief Executive Officer
Ms Jane Bailey, Executive Director, People and Business Support

Australian Customs and Border Protection Service

Mr Michael Carmody, Chief Executive Officer
Mr Michael Pezzullo, Chief Operating Officer
Ms Marion Grant, Deputy Chief Executive Officer
Mr Neil Mann, Deputy Chief Executive Officer
Mr Brad Clark, Acting Chief Financial Officer
Ms Raelene Vivian, National Director, Cargo
Ms Jan Dorrington, National Director, Passengers
Ms Sue Pitman, National Director, Trade and Compliance
Rear Adm. Tim Barrett, Commander, Border Protection Command
Ms Roxanne Kelley, National Director, Enforcement and Investigations

Mr Jeff Buckpitt, National Director, Intelligence and Targeting
Dr Ben Evans, National Director, Law Enforcement Strategy
Mr Terry Price, National Manager Maritime Operations Support

Australian Federal Police

Mr Tony Negus APM, Commissioner
Mr Peter Drennan APM, Deputy Commissioner, National Security
Mr Andrew Colvin, Deputy Commissioner, Operations
Mr Andrew Wood, Chief Operating Officer
Mr Michael Phelan, Deputy Commissioner, Close Operations Support

Australian Government Solicitor

Mr Ian Govey, Chief Executive Officer
Mr David Riggs, Chief Financial Officer
Mr Norm Holcroft, Corporate Secretary

Australian Human Rights Commission

Ms Padma Raman, Executive Director
Ms Elizabeth Broderick, Sex Discrimination Commissioner and Commissioner responsible
for Age Discrimination
Mr Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner
Mr David Richards, Manager, Finance and Services, Chief Financial Officer
Mr Darren Dick, Director, Policy and Programs

Australian Institute of Criminology/Criminology Research Council

Dr Adam Tomison, Director
Mr Brian Russell, Acting General Manager Corporate

Australian Law Reform Commission

Sabina Wynn, Executive Director

Australian Security Intelligence Organisation

Mr David Irvine AO, Director-General of Security
Mr David Fricker, Deputy Director-General

Australian Transaction Reports and Analysis Centre

Mr John Schmidt, Chief Executive Officer
Mr John Visser, Acting Executive General Manager, Intelligence
Mr Peter Clark, Executive General Manager, Supervision
Mr Alf Mazzitelli, General Manager, Corporate and Chief Finance Officer
Ms Amanda Wood, General Manager, Supervision, Central and North West

Classification Board

Mr Donald McDonald AC, Director
Mr Greg Scott, Deputy Director
Ms Jane Fitzgerald, Assistant Secretary, Classification Branch

Classification Review Board

Ms Victoria Rubensohn, Convenor
Ms Jane Fitzgerald, Assistant Secretary, Classification Branch

CrimTrac Agency

Mr Ben McDevitt AM APM, Chief Executive Officer
Mr Jeff Storer, Chief Operating Officer

Mr Darren Brumby, Chief Information Officer
Mr Bruce Kruttschnitt, Acting National Management, Law Enforcement Information Services

Mr Anthony Kitzelmann, Acting National Manager, Background Checking Services

Ms Yvette Whittaker, Manager, Finance

Ms Theresa Van Gessel, Manager, Policy and Legal

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 Peter Bowen, Chief Finance Officer

Mr Gordon Foster, Executive Director, Corporate Services

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

Mr Jeff Smart, Manager, Corporate Services

Insolvency and Trustee Services Australia

Ms Veronique Ingram, Chief Executive and Inspector-General in Bankruptcy

Mr Gavin McCosker, National Manager

Mr Jeff Hanley, National Manager, Regulation and Enforcement

Mr Bob Morison, Chief Finance Officer

Mr Matthew Osborne, Principal Legal Officer

National Native Title Tribunal

Ms Stephanie Fryer-Smith, Registrar

Mr Frank Russo, Director, Operations East

Mr Hardip Bhabra, Chief Financial Officer

Office of the Director of Public Prosecutions

Mr Christopher Craigie SC, Director of Public Prosecutions

Mr John Thornton, First Deputy Director

Ms Stela Walker, Deputy Director, Corporate Management

Office of Parliamentary Counsel

Mr Peter Quiggin PSM, First Parliamentary Counsel

Ms Susan McNeilly, General Manager and Chief Finance Officer

CHAIR (Senator Crossin)—Good morning and welcome everybody, including my colleagues at the table. I declare open this public hearing of the Legal and Constitutional Affairs Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2010-11 and related documents for the Attorney-General's and Immigration and Citizenship portfolios. The hearing today is, of course, supplementary to the

budget estimates hearings, and the committee has before it a list of agencies and outcomes relating to matters about which senators have given notice.

We have set 3 December 2010 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, the secretariat has copies of these rules.

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

The extract read as follows—

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).

(Extract, Senate Standing Orders, pp 124-125)

I want to make a comment about the committee room. It is much, much smaller than the room we generally have. Unfortunately the main committee room has been taken over by Defence today, but I promise we will try to rectify that for the next estimates hearings. I think we are going to be a little bit squashed in this room. Perhaps if we are a bit squashed and we take some photos that might be good evidence for pressing our case for moving back to the main committee room. My apologies for that.

We will start with the examination of the Attorney-General's portfolio and the Classification Board and Classification Review Board. We have a program that we will follow. Departmental officers should note that at 1.30 pm we will move to those particular agencies and at 8.00 pm to the Family Court. If we finish agencies called at 1.30 pm well before 8.00 pm, we will go back to where we left off on the agenda prior to that. I hope that makes sense. I think that is the best way to get through this comprehensive list.

[9.04 am]

CHAIR—I welcome the minister, Senator the Hon. Joseph Ludwig. Senator Ludwig is the Minister for Agriculture, Fisheries and Forestry, but he is at this estimates hearing representing the Attorney-General and the Minister for Home Affairs and Justice. I also welcome officers from the Attorney-General's Department and the Classification Board and the Classification Review Board. Before we get to specific questions, Minister, do you have an opening statement that you want to provide to us?

Senator Ludwig—No, thank you, Chair. Good morning.

CHAIR—Thank you. Mr Wilkins, do you have an opening statement?

Mr Wilkins—No, thank you, Chair.

CHAIR—Then let us proceed.

Senator BARNETT—Chair, I was not sure whether Mr Wilkins or the Minister intended to make opening statements but, if they did, at the conclusion I was going to put them on notice with regard to a couple of reports. I want to give the department a heads up on a couple of reports that I intend to request. I wonder if I can list those reports to make it easier later in the day. Could I proceed to nominate those reports?

CHAIR—Yes, I think that will make it easier.

Senator BARNETT—Under the consultancies there were three reports: firstly, the Acil Tasman Pty Ltd report into the final regulation impact statement of the proposals of the National Legal Professional Reform Taskforce; secondly, the Colmar Brunton Pty Ltd evaluation of Australia's arrangements for bushfire advice and alerts; and, thirdly, the KPMG review of the management of grants administration; and, in relation to the answer to question 99, ongoing reviews: the review of the legislative arrangements for regulating the construction of offshore installations and the application of Australian laws to such installations—a copy of that report.

Senator Ludwig—We will have a look at that and get back to you during the course of the day.

Senator BARNETT—Thank you.

CHAIR—Mr McDonald, Ms Rubensohn and Mr Scott, welcome and good morning. Do any of you have an opening statement?

Mr D McDonald—I do, Madam Chair.

CHAIR—I invite you to make it.

Mr D McDonald—Thank you for the opportunity to make such a statement. The 2009-10 reporting year has been one of continuing growth and consolidation for the Classification Board. The board has continued to fulfil its statutory role in the national classification scheme, working efficiently to classify films, computer games and publications. As has been the case in previous years, the board has been required to make classification decisions that have been the subject of some public debate. In these instances, as is the case with all decisions, the board tries to capture and to reflect the diversity of opinion found in our community as required by the legislation. As you would be aware, the board's fundamental role is to make classification decisions. Enforcement is primarily the responsibility of the states and territories. The Australian Customs and Border Protection Service regulates what can and cannot be imported into Australia.

The board is facing a time of renewal, with seven board members having moved on this year. These have included the deputy director, Olya Booyar, the acting deputy director, Jeremy Fenton, and six other board members. They were mostly at the end of their terms, but some resigned. When appointing new members of the board it is a requirement of the act that consideration be given to ensuring that the board is comprised of members who are broadly representative of the Australian community. Progress in recruiting new board members is certainly well advanced. Interviews for the vacant deputy director position were conducted in March, senior classifier position interviews were conducted in May and board member position interviews were conducted in June. Members are appointed by the Governor-General on the recommendation of the Minister for Home Affairs after consultation with state and territory censorship ministers. I look forward to welcoming our new members when they are appointed.

In the financial year just ended, the board made 6,468 classification decisions compared with 6,153 in the previous financial year. These decisions are mostly for DVD products, with computer games being the second largest volume. In addition, 284 decisions were made for publications, with 59 of these decisions being for serial classifications. The board has made

422 classification decisions for public exhibition films. The board continues to receive applications for the classification of 3D versions of films and arrangements are being made to have a 3D cinema facility in our office. In the meantime, the board must go offsite to classify 3D films. The board continues to make decisions within the statutory time frame of 20 business days, or five days for priority processing. In the last financial year, no decisions exceeded the statutory time limits.

The Australian International Movie Convention was held on the Gold Coast in August and was attended by my colleague the acting deputy director, Greg Scott. The focus of the board's message to industry was summarised by the poster developed for the event, 'Use consumer advice'. Further meetings with industry about consumer advice and other related issues are planned for later this year. Annual reports of the board—and, I might add, the Classification Review Board—for the past financial year have been tabled. I also understand that copies of the reports have been sent to all censorship officials. The reports are available on the Classification Board's website.

The board has continued its practice of auditing publications with serial declarations and calling in unclassified material which comes to its attention. The board also stepped up its monitoring of serial classification and will audit each and every title within the declaration period. I should make it clear that none of the call-in notices for adult publications has been complied with and the majority of films called in have not been complied with either. This does not constitute a system failure, but in fact establishes that a breach of classification legislation has occurred. In each and every instance, the Attorney-General's Department notifies the relevant law enforcement agency of this failure to comply. I will continue to use my call-in powers in circumstances where I believe it is warranted. Classification enforcement is an ongoing issue that the board is concerned about. I understand that the classification enforcement working party is developing recommendations to address issues with the classification of publications.

The board shares the widespread community concern about material readily available on the internet that would be refused classification. Although the ACMA refers material to us in response to complaints, there is a great deal of other material that does not come to the board as part of this process. An internet filter is being proposed as part of the government's cybersafety initiative. Details of this proposal and its operations, including enabling legislation, are still under consideration.

How online content is to be screened and selected by any proposed internet filter is not a matter for the Classification Board. The regulation and classification of online content services is provided under schedule 7 of the Broadcasting Services Act 1992. Internet content is regulated by ACMA. The department and the Classification Board have been working with the DBCDE and the ACMA on the policy and operational questions regarding the filter as described in Senator Conroy's media statement of December 2009. In regard to handling any additional workload from the filter, I am confident that the department will make adequate arrangements.

In December 2009, the Minister for Home Affairs released a discussion paper on whether an R18+ classification for computer games should be introduced into the National Classification Scheme. Ministers responsible for classification have not yet made a decision

on whether Australia should have an R18+ classification for computer games. The Classification Board classifies computer games RC if they exceed the standards acceptable for MA15+. RC games cannot be legally sold, hired, advertised, demonstrated or imported. Enforcement is again the responsibility of states and territories. Thank you, Senator.

Senator BARNETT—Thank you, Mr McDonald, for your opening statement. It confirms again the evidence we have received previously over many estimates hearings regarding the systemic failure of our classification system in this country. You have confirmed again on the record that you have called in a number of publications. I will be seeking information about the number of cases of noncompliance with respect to all of them. You have said that there was noncompliance with a majority of the films called in.

The evidence put to this committee previously raises serious concerns about the current effectiveness of the National Classification Scheme. The major concerns include the use of serial classification for category 1 and category 2 restricted publications; the lack of response to call-in notices, as I have just mentioned; the prevalence of publications that contain material that should be refused classification, including child pornography, for sale in petrol stations and general stores; the display for sale of restricted publications in areas that are accessible to children; and the lack of the follow-up information following referrals to state and territory law enforcement agencies by the Classification Board. I will be seeking responses specifically in regard to the latter issue.

When is enough enough? Must we put up with this systemic failure as a country and as a community? I know that you will say that many of these matters are outside of your control—that is, they are in the hands of the law enforcement agencies—and we have heard that before. I appreciate that that is not your concern; it is a system failure. I refer to other concerns like sexual and other inappropriate content on billboards that are visible to the general public, including children, the role of X18+ films in the sexual abuse of children, and the decision by the Classification Review Board in relation to *Salò*—and we will come to that later. My first question is specific and it relates to the SCAG Compliance and Enforcement Working Party. Has its work been completed yet? If not, what is its status? When will the report be published?

Mr D McDonald—I will refer that to the department. This is an area of their management.

Ms Fitzgerald—The working party has not concluded its work. It is anticipated that the matter will be considered at the next meeting of SCAG.

Senator BARNETT—Which is when?

Ms Fitzgerald—December.

Senator BARNETT—I understand there was a meeting of SCAG on 7 June this year and it came up with an outcome. Ministers were provided with an update on the work of the SCAG Compliance and Enforcement Working Party and related initiatives to improve compliance with and enforcement of classification laws. This issue comes up again and again and again. My question is directed to Mr Wilkins on behalf of the department. What progress has been made to fix the systemic failure of our system?

Mr Wilkins—Given the vagaries of federalism, quite a lot of progress is being made.

Senator BARNETT—What does that mean, more meetings?

Mr Wilkins—No. It means trying to cajole and to some extent frogmarch the states and territories into a position where they will support the cooperative scheme with people on the ground. Some of them are responding to that. I think we can confirm that we are getting a better take-up rate by the states and territories to the referrals that we are making. That is a mixed response. We are looking at trying to streamline some of the liaison work that we are doing with the states and territories. I am sure that you realise that all these complaints are sent to the states and territories for action.

As I flagged last time, there are wider issues that government is considering. We have convergence of technologies going on here and some large issues in terms of the interface between the internet and other forms of publications. You obviously have some questions about the ongoing viability of this cooperative scheme. It may well be that, if we do not make sufficient progress, government will consider actually looking at the thing rather holistically instead of trying to push and improve the system in its current form. However, in its current form we are getting better take-up because successive ministers have raised this issue with their colleagues.

It is fair to say that both the former Minister for Home Affairs and the current Minister for Home Affairs have made a point at all meetings of SCAG of explaining to attorneys and at police ministers' meetings the necessity for states and territories to respond more effectively to the complaints being forwarded to them. We are looking at various issues around the way in which penalties might be framed. We are creating, if you like, more leeway for the states and territories to get referrals back to the Classification Board in order to improve their intervention. A variety of things are being done.

Senator BARNETT—I appreciate your goodwill and understanding of the concerns expressed not only by me but also by others. However, I alert you to the minister's media release of 7 May 2010, which states:

Minister for Home Affairs, Brendan O'Connor, today welcomed continued cooperation between the Commonwealth and State and Territories and progress on initiatives to improve compliance with classification laws.

However, the release contains nothing specific about what is actually changing in terms of the system. The release actually states:

Ministers requested that officers report back with final recommendations at a future meeting.

We are having more talkfests and more meetings, and there appears to be little progress.

Mr Wilkins—I am not sure that that is a correct characterisation of what is happening. As I said, within the parameters of the current cooperative scheme we are trying to get it to work better. There is a bigger question about whether the scheme as such should be overhauled and reviewed. That is something to which consideration is being given.

Senator BARNETT—Let us go back to some specific questions. Mr McDonald, since 24 May 2010 how many periodicals with a serial declaration have been audited and how many failed the audit? Can you describe the process involved in the audit?

Mr D McDonald—Can I take that question on notice and provide accurate information?

Senator BARNETT—Yes. Perhaps you will have the answer to this question: since 24 May, how many items have been subject to a call-in notice? You referred to the publications and none of them have been complied with. How have these items come to the attention of the board? What has been the response from the distributors? Can you provide a detailed breakdown by type of item and supply the names of the distributors? We have had this question before. Hopefully, you will be armed with answers.

Mr D McDonald—We will provide those—

Senator BARNETT—Have you got the numbers?

Mr D McDonald—I do not.

Senator BARNETT—In your opening statement you said that there were a number—

Mr D McDonald—We do not have figures from the date of the last estimates hearing until now.

Senator BARNETT—What figures do you have? In your opening statement you referred to a number of publications, none of which complied with your call-in notice. You said the majority of films did not comply with the call-in notice. Can you advise what numbers you have with you at the moment?

Mr D McDonald—According to our annual report, for the year 2009-10, 49 publications and 444 films called in.

Senator BARNETT—What about compliance?

Mr D McDonald—No publications were compliant, just a handful of films.

Senator BARNETT—Do you have a number?

Mr D McDonald—That is not included in our annual report, but we will provide that figure.

Senator BARNETT—I have read the report. When was the annual report tabled?

Mr D McDonald—When was it tabled?

Senator BARNETT—Yes, and for what period? What period are we talking about for these numbers?

Mr D McDonald—It is 2009-10.

Senator BARNETT—To what date? Can you give me the dates?

Mr D McDonald—To 30 June 2010.

Senator BARNETT—So the numbers are relevant to 30 June 2010?

Mr D McDonald—Yes.

Senator BARNETT—The figure of 49 is a considerable reduction. Can you give us an update? More than 800 unclassified pornographic magazines, movies and books were called in by the Classification Board since 2008, and they were still on the shelves because the enforcement agencies had failed to act. How many is it now since 2008? Do you have those figures?

Mr D McDonald—We can provide that information.

Senator BARNETT—Do you have the figure for the previous year? Mr Scott is sitting next to you. Do you have the figure for 2008-09?

Mr Scott—I am looking it up.

Mr D McDonald—We do not have the 2008-09 figure with us.

Senator BARNETT—I am sorry to hear that. Has any action been taken by any enforcement agency in Australia against a distributor in relation to the 899 incidences of failure to respond to a call-in notice between 1 January 2008 and 24 May 2010? That is the number I have: 899.

Mr D McDonald—The department may have an answer to that.

Ms Fitzgerald—Once the referral is made to state and territory law enforcement agencies they are under no obligation under the scheme to provide us with any information about what they then do with that information. They do often contact us for assistance or advice, or, indeed, to get certificates or to get things classified. However, the Commonwealth does not have a repository of data about state and territory law enforcement.

Senator BARNETT—Are you telling us that you are not aware of the responses of the law enforcement agencies in each state and territory? I am fully aware, as this committee is aware, that you are not legally obliged to be provided with that information. But this issue has been brought up time and again in these Senate estimates hearings. We would be most surprised if you are advising us that you are not aware of the response of the law enforcement agencies. Can you advise us what you are aware of?

Mr Wilkins—I am not sure that is exactly what she said.

Ms Fitzgerald—No, I did not.

Senator BARNETT—I am asking the question in another way so that we actually get an answer.

Mr Wilkins—The actual answer is that there is some level of awareness. But under the cooperative scheme they are under no obligation to give us that information.

Senator BARNETT—I am aware of that, but I am asking what you are aware of.

Mr Wilkins—Then how are we to get the information from them?

Senator BARNETT—What are you aware of? You are sitting at the table, you can tell us what you are aware of.

Mr Wilkins—I think Ms Fitzgerald was explaining that on some occasions we cooperate with them when they are actually pursuing matters. So they come to us to get further information, to get matters classified, to get certificates, et cetera. So there is a level of cooperation and awareness, but there is no systematic requirement for them to actually tell us what they are doing on the ground in terms of law enforcement.

Senator BARNETT—I am aware of that. We do not have to go through the legal system. We know that the system is broken. I am just asking what you are aware of in terms of states

and territories and their responses to the call-in notices. Are you familiar with any of the numbers in any of the states and territories and any of the responses by those agencies?

Mr Wilkins—These are farmed out to a number of different agencies across Australia. If you understand the way in which state and territory police forces work, it is unlikely that there would be a classification division within, say, the NSW Police Force. It would presumably be done by different commands throughout New South Wales in different suburbs and different areas.

Senator BARNETT—If you are telling me you do not know, in my view that is an indictment on the department.

Mr Wilkins—I am not telling you—

Senator BARNETT—If you are saying that there is a legal requirement—that is, that you are not required to know—then I understand that. I accept that because I know that the system is broken. I am just asking you what you do actually know.

Mr Wilkins—I think we tried to say that it is a mixed bag of things that we actually know on this.

Senator BARNETT—Is there any follow-up answer to that?

Mr Wilkins—That is the answer, I think, Senator.

Senator BARNETT—How many call-in notices have been issued to the distributor Gordon and Gotch?

Mr Scott—Our figures are not divided up—

Mr D McDonald—We do not have them by individual distributor.

Senator BARNETT—You have previously provided that specifically to the committee. In an answer to a question on notice from me you listed every distributor and how many call-in notices were relevant to that distributor. You have provided those answers in the past.

Mr D McDonald—We can provide them, but we do not have them by distributor with us today.

Senator BARNETT—When you do provide the figures for the call-in notices, could you itemise the number of distributors affected, those that are relevant and how many call-in notices apply to each of the distributors, including Gordon and Gotch; to which publications those notices refer; and then how many of these notices the distributor has responded to. Can you advise us of that? Is it fair to say that you simply do not get a response from the distributors on the whole?

Mr D McDonald—We sometimes get responses that say, ‘We didn’t distribute this one.’ There is a ‘not guilty, your Honour’ sort of response. Of course, these are overwhelmingly, almost to the exclusion of any other source, imported publications and there are parallel imports. There is not simply one distributor of these items. You might suspect that it is easy for someone to say, ‘We did not distribute that issue,’ but that is a common response.

Senator BARNETT—Is it also common that there is no response from the distributors? How common a response is that to your requests?

Mr D McDonald—It is equally common.

Senator BARNETT—Equally, or would that be for the majority of requests when you communicate with the distributors? How would you characterise that?

Mr D McDonald—We will provide actual numbers on that. I would rather be factual about it.

Senator BARNETT—If you could.

Mr D McDonald—Lest it be misunderstood that the state and territory police are completely inactive in this regard, it might be worth noting that the South Australian—

Senator BARNETT—I am about to go to that issue. I will allow you to respond to that, but I want to be quite specific about it if I can.

Mr D McDonald—Yes.

Senator BARNETT—We will come to that. What responses, if any, have been received to the letters sent on 22 April by the Minister for Home Affairs and Justice to his counterparts and the then acting first secretary to the commissioners of police about question on notice No. 16 from the May 2010 estimates hearings? I am very keen—

Mr D McDonald—That would be a matter for Mr Wilkins.

Senator BARNETT—That would be most useful. Then we will come back to you, Mr McDonald.

Mr Wilkins—I will get James Popple to answer that question.

Dr Popple—We have provided the committee with a number of letters in response as we received them. More precisely, we have provided them when we have received permission from the relevant writers to provide them to the committee. I sent a letter, I think most recently about a fortnight ago, and that was the last of all the responses that we have received. The committee has now received all the responses that we have received.

Senator BARNETT—Let us be specific, Dr Popple. Thank you for your response. Would you like to summarise for the states and territories? I have some of the responses, but I do not have all of them.

Mr Wilkins—Do you want me to read them out?

Senator BARNETT—No, I do not. I want you to summarise which states and territories have responded and which have not, and then we will get to the detail.

Dr Popple—I am sorry, I do not have that information here. I will have to take that on notice. We provided a number of letters; I am aware of at least three or perhaps four that we have provided to the committee over the past several months.

Senator BARNETT—I think I have seen three and I have them here in my folder. You should have more folders full of them.

Mr Wilkins—You are better informed than us. Perhaps you can tell us which ones you have.

Senator BARNETT—I am happy to, but you must have all the answers.

Dr Popple—We do, Senator, but we just do not have them here. We do not have that file here.

Mr Wilkins—We can inform ourselves fairly quickly about that.

Senator BARNETT—Is it fair to say that some of the states and territories have not responded?

Dr Popple—I think that is right, but I could not tell you off the top of my head which ones.

Senator BARNETT—We are going to name and shame them when you get that information.

Dr Popple—We will take that on notice.

Senator BARNETT—We will go back to Mr McDonald.

Mr D McDonald—These are just a couple of examples. The South Australian police requested a training program by the department officers about publications. In July of this year, the New South Wales police seized 6,000 DVDs in a raid on a suburban store in Sydney. Perhaps most importantly of all, I mentioned that overwhelmingly these products are imported and there has been, if I can speak for them, a great deal of cooperation between the department and the Australian customs services. The Australian customs service recently seized a 40-foot container of adult magazines, and the community liaison service is working through those products with the Australian customs service.

Senator BARNETT—A 40-foot container—how many magazines would be in that?

Mr D McDonald—I cannot imagine, but I would think rather a lot.

Senator BARNETT—Rather a lot, indeed. When was that and where?

Mr D McDonald—Where was it seized?

Senator BARNETT—Yes.

Mr D McDonald—I cannot answer that.

Senator BARNETT—When was it seized?

Ms Fitzgerald—It was seized in Melbourne and I think it was August, but I will confirm that for you.

Senator BARNETT—That is advice you received through Customs?

Mr D McDonald—No, through the department.

Senator BARNETT—But the Victorian law enforcement agency advised you of that?

Ms Fitzgerald—No, Customs.

Senator BARNETT—Perhaps Mr McDonald or the department can outline the extent of the problem as you see it in terms of the importation of illegal content?

Mr Wilkins—We have talked about this in previous estimates hearings. As you will recall, we changed customs regulations to facilitate this. Customs have obviously taken up the challenge and they are clearly making use of the new regulatory requirements that we have put in place and obviously effectively increasing their activities in this area of apprehending

illegitimate literature, if you can call it that. I am not sure what further you would like to know about that.

Senator BARNETT—Are you able to provide your level of understanding of the extent of the problem—that is, whether it is increasing or decreasing? A whole container load of pornographic and illegal magazines entering the country through Melbourne in August is certainly concerning.

Mr Wilkins—The point is it did not enter.

Senator BARNETT—Well, it was apprehended.

Mr Wilkins—You should be happy about the apprehension.

Senator BARNETT—I am indeed most happy, but then I would like to know how many are not being apprehended. That would be good.

Mr Wilkins—By its very nature, you cannot answer that sort of question. Customs is clearly trying to protect the borders in that respect. It is not simply a matter of publications; we are talking about drugs and a whole range of things. It is a question that might be better posed to Customs when they appear later in the day.

Senator BARNETT—We will be getting to Customs for sure.

Mr Wilkins—It is fair to say that they actually are taking action on this and taking it seriously.

Senator BARNETT—That is encouraging. What we would like to know is the extent of the problem—whether it is getting worse or better. Mr McDonald has given us a bit of a feel for that.

Mr Wilkins—It is very difficult—

Senator BARNETT—But if you are not able to give an answer to that—

Mr Wilkins—No, I think it is very difficult to quantify. I do not know how you begin to measure that, actually.

Senator BARNETT—The Australian Crime Commission do an excellent job in their annual report. Whenever they report to this committee they provide an overview of the concerns as they see it, and they give their best estimates.

Mr Wilkins—They do.

Senator BARNETT—That is what I am asking of the department or Mr McDonald, and no doubt we will be asking the Customs the same question. Hopefully they can respond in the same way that the Australian Crime Commission do each time they come to estimates. To your knowledge, did they find anything else in the container or were there just pornographic and illegal magazines?

Ms Fitzgerald—Not to my knowledge.

Mr D McDonald—I would absolutely have no grounds for knowing what they find. That is not my responsibility.

Senator BARNETT—Is there anything else you can advise, Mr McDonald, regarding the importation of illegal magazines, films or CDs?

Mr D McDonald—I can only express the view—

Senator Ludwig—That might be better asked of Customs.

Senator BARNETT—It will be asked of Customs.

Senator Ludwig—In terms of the unlawful importation of refused classification or documents such as you have described, I am not sure that the Classification Board can deal with what has or has not come across our borders.

Senator BARNETT—I thank you for that, Minister. Of course that question will be asked of Customs. I am asking what is within the purview and the knowledge of Mr McDonald. As we are all aware, many of these publications and films are imported. Do you have anything else to add to what you have said, Mr McDonald?

Mr D McDonald—Nothing that I believe would be useful to the committee.

Senator BARNETT—Before I pass over to other senators, what developments resulted from the Classification Enforcement Contacts Forum held on 21 April 2010? There was an answer to question on notice 14. Can you provide advice about any further developments that have resulted from that forum?

Mr D McDonald—The department convened that forum, Senator. They might respond.

Ms Fitzgerald—Since April we have undertaken a number of additional measures to what we had been doing before. I should reiterate, as I said in May, that part of the importance of the first forum was actually establishing a network amongst the different law enforcement officials and Customs and ACMA and our department so that there was a level of familiarity about processes and procedures across the various jurisdictions. Since then we have provided additional and specialised training to certain law enforcement officers. I do not have the specific details of who they were, but I can provide those on notice if you wish.

Senator BARNETT—If you could, thank you.

Ms Fitzgerald—I have also recently written to police commissioners advising them of the services that the Classification Branch provides and offering to provide senior officials in law enforcement agencies with either training or a briefing about classification matters. Often the practitioners within the organisation will have a high level of detailed knowledge about the type of matters that we deal with but the senior command could perhaps do with some additional information.

We have also been looking at other issues. A number of jurisdictions have the capacity to classify material by consent. There has been some cross-pollination, if I can call it that, between different law enforcement officials looking at whether or not that would be beneficial for them. We are working on a number of other measures with the different jurisdictions and we are intending to have another forum next year. They are some of the key things that have happened since April.

Senator BARNETT—All right.

Mr Wilkins—Clearly, senators would be aware that the physical importation of the material is, if you like, very old-fashioned. Most of this stuff comes into Australia online. The big issue that we are confronting is classification online. This obsession with things coming in in cartons and stuff like that is probably not unimportant, but it is not the key question that we should be contemplating.

A lot of the discussions that we are having around classification are with the department of broadband, ACMA and people like that. I think that is the real question and the real issue that we should be concerning ourselves with and less with trying to ensure that state police are wandering around in petrol stations and things like that. As important as that may be, it is not the key issue.

Senator BARNETT—Finally, Mr McDonald, you mentioned the board appointments. Can you give us an update on the status of that? I understand there is a number of vacancies. Can you give us an update so that we know where things are at—perhaps either yourself or the minister?

Mr D McDonald—That is in the minister's hands; it is not a matter for the board itself.

Senator BARNETT—How many vacancies are there, how long have those positions been vacant and when are they likely to be filled?

Mr D McDonald—I certainly cannot answer the last part of that question. The vacancies to be filled are deputy director and senior classifier, and six members have left the board. It will be a matter for the minister and the government to determine how many people they appoint to fill those vacancies.

Senator BARNETT—Does the minister want to update the committee accordingly?

Senator Ludwig—No, I have nothing further to add. If you want, I can take the question on notice and see whether the Attorney-General wants to add anything to that.

Senator BARNETT—I think it is of interest to the public and to the committee. If you could check that, that would be useful. I know that Dr Popple and the department are coming back to me, so I am happy to conclude my questions.

Senator HUMPHRIES—I refer to the classification of films not for public exhibition. If I read the annual report correctly, last financial year 714 films were classified in the X category. Is that correct?

Mr D McDonald—Yes, that is correct.

Senator HUMPHRIES—How does that figure compare approximately with five years ago? I do not want an exact figure.

Mr D McDonald—I would have to take that question on notice, but I would be surprised if it varied greatly. It may be up a little on the previous year.

Senator HUMPHRIES—It has been put to me that the number of films in that category is declining as competition from the internet makes it less viable for such films to be submitted. Can you give me a figure for the past 10 years of the number of films classified in that category and the number of films submitted for classification?

Mr D McDonald—Yes. If I can just express a view in passing, I am surprised that the numbers are still as high as they are because of this very point. As you are clearly informed, all this material and much more is available on the internet.

Senator HUMPHRIES—Thank you.

Senator LUDLAM—I will refer briefly to two points you raised in your opening comments and then I have one other issue that I would like to raise. I refer to R18 classification of computer games. I believe that is still with SCAG. Is the board taking any active role in that debate behind the scenes or otherwise?

Mr D McDonald—We deliberately do not take an active role in debates around policy; policy is for legislators to determine and then we apply the legislation. It is my understanding that this matter is again on the agenda at the next SCAG meeting. These things move rather slowly because of the very particularity of our legislation, which as I am sure you are aware requires unanimous approval of all states and territories before there is any change.

Senator LUDLAM—So you just have to wait to see what falls out of that process?

Mr D McDonald—Yes.

Senator LUDLAM—I refer to the internet filter. Again, that is not with SCAG at the moment. Can you spell out for us whether you are playing any role in advising the government on its review of the refused classification category?

Mr D McDonald—There are ongoing consultations between the Department of Broadband, Communications and the Digital Economy, ACMA and ourselves. But they refer to us when they wish and not when they do not need to. The active pursuit of that is in the area for the Department of Broadband, Communications and the Digital Economy.

Senator LUDLAM—But I would have thought you folks would have quite specific expertise. What we are investigating is whether that classification is appropriate and whether it meets community expectations specifically with regard to an internet filter. Has your expertise been drawn on very much to date?

Mr D McDonald—It is routinely drawn on to the extent that when the ACMA has a complaint about a site it may, and generally does, refer that to us for a classification decision. That is an ongoing thing.

Senator LUDLAM—The issue I want to ask you about relates to the 100 free eligible documents that states and territories receive every year under the classification regulations. I hope you can set me straight on the way that the process works at the moment. I understand that law enforcement agencies in each state and territory can submit up to 100 applications a year at no cost to themselves. It would be good if you have this information with you, but if you do not I ask you to take the question on notice. I am looking for the number of free eligible document submissions made by states and territories for the past five years.

Mr D McDonald—We can provide that for the past five years. We could tell you today for the past year, but—

Senator LUDLAM—Can we start with that?

Mr D McDonald—We will provide the figures for the past five years on notice.

Senator LUDLAM—I would like the figure for the previous four years to be taken on notice. Can you provide the breakdown across the states and territories for this past year?

Mr D McDonald—For the past financial year: New South Wales police, a total of 79; the ACT Office of Fair Trading, nine; the Northern Territory police, one; the Queensland police and Office of Fair Trading, nil; Victoria police, 90; the South Australian police, five; the Tasmanian police, nil; and the Western Australian police, two.

Senator LUDLAM—It would be interesting to see once you have tabled the figures for the past five years whether that disproportionate number of applications from New South Wales and Victoria is repeated over the past few years. Why does each state receive an equal number of free applications given the highly disproportionate nature of the figures you have just provided?

Mr D McDonald—That would be a matter for the department to answer.

Senator LUDLAM—We have just discovered that in the past financial year New South Wales lodged 79 applications and Victoria lodged 90, and the balance of the states and territories lodged fewer than 10. The number of applications that can be lodged is 100 each. My understanding is that those two states occasionally breach that threshold.

Ms Fitzgerald—Yes.

Senator LUDLAM—Those charges then go back to the state and territory police departments when we have a huge number of potentially eligible applications not being lodged by other states and territories. Why is the cap 100 across the country? Why is it not, for example, proportional to population?

Ms Fitzgerald—I will add a couple of pieces of information before addressing the specific question. The figures can be a little bit misleading on their face, simply because a jurisdiction like South Australia have the capacity to classify by consent when they proceed with a prosecution. In practice that means that if they detect material that they think is RC material or has been inappropriately screened publicly—for instance, an x-rated film—they have the capacity to agree with the defendant what the classification of that material is. Therefore, the content, if I can call it that, never comes to the Classification Board to be classified. It may be better for us, on notice, to approach the states and territories and get this further information about matters that they have undertaken through that process. I think that will give you a more complete picture. It appears from the statistics that we have just provided to you that a jurisdiction like South Australia is not doing much at all.

Senator LUDLAM—There is nothing going on.

Ms Fitzgerald—In fact, from my own experience arising out of the Classification Enforcement Contacts Forum, there is a very active unit in South Australia. The South Australian police do a very good job in being proactive in this particular area. Perhaps we can provide you with that additional information.

Coming to the specifics of your question, we have only recently changed the quota system, effectively doubling it. I need to explain how it worked before so that you understand how it will work in the future. Two quota items were used up when something was classified because two different certificates are provided as part of the classification process. Effectively that

meant that when a jurisdiction like New South Wales put in one application it used up two of its quotas. Through the auspices of SCAG and the work being done on enforcement, it has been agreed and the regulations have since been changed.

I think it took effect from 1 July, but I can confirm that. Each application now uses up only one quota. This means that, effectively, the quota has been doubled. We did that in consultation with the high-volume jurisdictions like New South Wales and Victoria. We have undertaken that, if they breach what will become 200 applications for them, we will have another look at it to see what else we may be able to do to make the system work more flexibly.

I have had conversations with New South Wales Police. I do not know the status of this proposal, but I do know that it is being actively progressed. Consideration is being given to adopting the classification by consent provisions that I mentioned South Australia is using. I am sure the director would agree that often with this sort of material—for instance, x-rated material—almost classifies itself. That is the way the board describes it; it is pretty straightforward.

Senator LUDLAM—It is obvious.

Ms Fitzgerald—Yes.

Senator LUDLAM—But when you say you would have a look at it if they breached the threshold, and Victoria is very close to that, have the attorneys of either of those two states approached you, for example, to look at a reallocation of the quota or some other means of these costs not then being sheeted home either to the police departments that are running the arguments or, in the case that they are successful, to the proprietors of the stores that are holding this material?

Ms Fitzgerald—This matter has been under active discussion between the Commonwealth and the states for a very long time through the auspices of SCAG and what used to be the Australian Police Ministers' Council, now MCPEMP. It is my understanding that the state and territory governments are happy with the change that was made on 1 July. As to what other proposals have been put in the past, as I said, this matter has been under discussion for a very long time, so I would not want to say definitely one way or the other.

Senator LUDLAM—But you could contemplate a reallocation of the quota, given that it is so out of whack nationally?

Ms Fitzgerald—The current status is that the changes have only just taken effect from 1 July. I should also make it clear to you that the quota used to run on a calendar year basis. It has changed over to a financial year basis. This is a sort of changeover year, apart from anything else. I think the current status is that we are having a look to see if anyone breaches the quota, if I can put it in those terms. If it is still an issue then we will need to have another look at it.

Mr Wilkins—In the interests of law enforcement in this area—and we have heard a catalogue of areas where it is not working well—if this were a problem, we would take another look at it and try to sort it out. It would be in our interests to sort it out.

Senator LUDLAM—It looked to me, on the face of it, that that solution was fairly straightforward. Are the figures you gave me for the 2009-10 financial year or for the current calendar year?

Mr Wilkins—The financial year just gone.

Senator PARRY—I would like to follow up two questions. Ms Fitzgerald, where the parties do not agree to the classification of material, what happens, for example, in South Australia?

Ms Fitzgerald—Usually the South Australian police would submit an application for classification. The figure of five would have related to those types of instances. Obviously I do not have specific details.

Senator PARRY—What about the two jurisdictions—Tasmania and Queensland—with zero? Do they have their own internal way of doing things or do they still have to come through you?

Ms Fitzgerald—I will not answer that off the top of my head because I am not sure. Each enforcement act in each jurisdiction is slightly different. I can certainly have that checked and provide that information to you.

Senator PARRY—Thank you. I will follow up a question to Mr McDonald in relation to the vacancies on the board. I think you said there are six vacancies. Is there a reason for that number and is it a high number of vacancies at any one time? If so, is there a reason for that?

Mr D McDonald—Only one of those vacancies resulted from a resignation. The other members were at the end of their terms.

Senator PARRY—Their rotation?

Mr D McDonald—Yes. That vacancy was through a young married woman whose husband's work moved him back to the ACT and she moved with him. I will provide a little additional information in respect of Tasmania and its enforcement applications. In the current year to date—to 30 September—there have been 10 applications from Tasmania. There has been a flurry of activity there.

Senator PARRY—Does the board provide any advisory classifications for any published material?

Mr D McDonald—Advisory?

Senator PARRY—Does it provide non-regulatory advice? Would it advise that something would be deemed to be classified in a particular manner for different age groups for consumption?

Mr D McDonald—We do not give advice.

Senator PARRY—One of the recommendations of a 2008 Senate inquiry into the sexualisation of children canvassed the idea of publishers providing reader advice. Has the Classification Board considered that recommendation from the Senate committee?

Mr D McDonald—The only form in which advice would have been provided to publishers would be that a number of publishers have sort training by the department's training officers. They do a one-day course. But no advice is provided about specific issues.

Senator PARRY—Do you feel that the board could—resources permitting of course—take on the role of issuing advisory classifications, for example, with regard to magazines targeted at younger children?

Mr D McDonald—My concern about that is that it would make us a party to the publication. Publishers should know what the law is and what they are doing. If they are in breach of the statutory material then the law should take its course. Unless our legislation were changed to give us an advisory role, I do not think we should do that.

Senator PARRY—Where you have broadcasters, to a degree, currently self-regulating with their classifications further down the scale, do you see that as being a feasible aspect for publishers? If so, could the Classifications Board play a role in monitoring the classifications of those voluntary classifications?

Mr D McDonald—If I can express this view, publications are in a slightly half world in that regard, in that the only publications that are required to come to the Classification Board are those that are deemed to be submittable. In respect of all others the publishers themselves initially are deciding that a publication is not submittable. In a way that is a low-level form of self-regulation. If you are suggesting that that should be taken a step further and that publishers of a category 1 or category 2 publication should classify that themselves, that would be a matter for the legislators and not a matter for me.

Senator PARRY—If that was a legislative provision could the board play a role in supervising or randomly inspecting to ensure that classifications that were of a voluntary nature were within the classification guidelines?

Mr D McDonald—We would play whatever role the legislation required us to play, Senator.

Senator PARRY—It would be in the form of a policing role. Without looking at resources, would that be a feasible role for the board to play?

Mr D McDonald—Yes. If what you are envisaging is something similar to the Broadcasting Services Act where the Australian Communications and Media Authority acts only on complaints that could be a model.

Senator PARRY—Have you received written communication from concerned individuals or organisations in relation to the non-classification of published material, in particular, magazines aimed at teenage children?

Mr D McDonald—Have we been written to about it? Yes, we are written to frequently. Whenever my attention is drawn to a publication the department arranges for the Community Liaison Service to acquire a copy of that publication and we examine it.

Senator PARRY—Would you consider that you have a higher proportion of communication relating to magazines aimed at teenage children? Let me give you two examples—*Dolly* magazine and *Girlfriend* is another magazine. Do you get higher proportion of complaints or concerns about those magazines?

Mr D McDonald—No. A couple of years ago certain attention was given to them then, but not I would think in the last year or 18 months, no.

Senator PARRY—Does the board ever self-nominate issues of concern and pass them on either to the minister or to the Attorney-General?

Mr D McDonald—We respond in a very broad sense to such information as we get. That information may be correspondence, it may be an Internet complaint and it may be a report in the media. Any of those areas are regarded seriously by me as a source of information. We pursue them to see whether there is an issue that affects our jurisdiction.

Senator PARRY—Would you agree that you probably would be the most focal point for complaints relating to publications and to the content of publications?

Mr D McDonald—Which would be the most vocal?

Senator PARRY—Your organisation, the Classification Board?

Mr D McDonald—Could you restate your question?

Senator PARRY—Would you agree that you would be the most focal point?

Mr D McDonald—I thought we were the vocal point.

Senator PARRY—You could become vocal.

Mr D McDonald—I suppose we are a focal point, yes.

Senator PARRY—Does that not thereby increase the obligation that, if there is a higher level of complaint in a certain area, because you are that focal point you would need to pass on or at least advise about policy direction in regard to those issues?

Mr D McDonald—We consider ourselves to have a considerable responsibility within that area, Senator. Literally, when the board meets every week, as it does as a group, we look at the complaints and at the comments that have been received from the public or in the media in that week. We examine them on a weekly basis.

Senator PARRY—Do you have a top 10 list, or a top 5 list of more frequent complaints relating to published material? I am talking only about published material at this point.

Mr D McDonald—In fact, in our annual report, for instance, we publish the details of the most complained about films, et cetera. So far as publications are concerned I have some information here. Sixteen complaints were received about publications from members of the public in the reporting year to the end of June.

Senator PARRY—I am aware of the volume; I am just concerned about, or I am inquiring about, the content. What type of publications are they?

Mr D McDonald—I am not quite sure where your question is going. I am eager to answer it; I just do not know where it is going.

Senator PARRY—Are the publications related to Mills and Boons books, or are they related to magazines? If they are related to magazines, what types of magazines, what genre and what age group are the magazines marketed towards?

Mr D McDonald—Let me read from our annual report. Of the 16 complaints received about publications, 11 related to books. Seven of those complaints concerned descriptions of sexual or physical abuse of children in passages of the books. Two complained of other offensive content, and two expressed the view that all books should be classified. Five complaints were received about sexual or other inappropriate content in publicly displayed magazines. Three of these magazines were so-called adult publications and two were general interest or lifestyle magazines.

Senator PARRY—That is the total of the written communications concerning the publications that you have received in the last financial year?

Mr D McDonald—In the year to the end of June.

Senator PARRY—Is there any way that you would receive communication about those publications—I am referring mainly to magazines—that does not constitute a complaint but rather a letter of concern? Do you categorise your communications so that one is a formal complaint and one is not?

Mr D McDonald—A letter expressing concern would be treated in our complaints area. It is a public complaint. Perhaps the word ‘complaint’ is a rather negative word for information from the public.

Senator PARRY—That figure of 16 and the breakdown that you just indicated is the total amount in the previous financial year of complaints, concerns or issues relating to the publication of magazines?

Mr D McDonald—Yes, Senator.

Senator PARRY—Thank you.

CHAIR—Senator McGauran?

Senator McGAURAN—I would like to direct my questions to the convener of the Classification Review Board, Ms Victoria Rubensohn. The annual report just recently tabled states:

Films containing descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18 years, will be classified RC—

That is a restricted classification. It continues:

The majority of films that are classified RC are sexually explicit films containing these prohibited elements.

I take it that the majority of films contain the prohibited element of a person who is 18 years and under. In the cases that you have handled, when coming to that conclusion do you report how you came to that conclusion that there are children under the age of 18 in the movie? Do you set out that description in your report?

Ms Rubensohn—Senator, we address all the required criteria that are in the guidelines whenever we do a report. Where it is pertinent we would address that.

Senator McGAURAN—In relation to exactly why you think those persons in a film are under 18, you would give your reasoning or your methodology?

Ms Rubensohn—I am not sure about methodology, Senator. But if it was pertinent we would address the issue. How we address it I suppose might vary from time to time.

Senator McGAURAN—Tell me how you would address it if there is not a methodology or a reasoning behind it? How do you come to those conclusions?

Ms Rubensohn—Senator, do you have a specific example in mind?

Senator McGAURAN—No, I am looking at it fairly generally at the moment.

Ms Rubensohn—In my experience, since I have been the convener, it is an issue that has arisen only once.

Senator McGAURAN—What is that once?

Ms Rubensohn—That once was the film *Salo*.

Senator McGAURAN—Why does your annual report then state:

The majority of films that are classified RC are sexually explicit films containing these prohibited elements.

Ms Rubensohn—In my time there has been only one film.

Senator McGAURAN—Of course. I suppose I should go soon to Mr McDonald.

Ms Rubensohn—Yes. The Classification Review Board handles only reviews. We get only a small proportion of the number of films that are classified. Since I have been the convener of the board we have not had much experience of that particular issue.

Senator McGAURAN—But you would still go into the theatre with a set of criteria relating to those who are over 18 and those who are under 18. It would not just be seat of the pants stuff, would it?

Ms Rubensohn—We go in to the theatre with the guidelines, the act and all other related material. But no list in any of those documents sets out the criteria for making judgments about—

Senator McGAURAN—How do you make your judgments?

Ms Rubensohn—One does one's best, Senator, as a matter of common sense.

Senator McGAURAN—That is subjective.

Ms Rubensohn—That is about as much as I can say. I cannot speak for my panel; I can speak for the way I would approach that sort of issue.

Senator McGAURAN—There is no guideline at all. When you walk into the theatre it is all subjective as to what constitutes someone over 18 years and what constitutes someone under 18 years?

Ms Rubensohn—No. On that issue there are no set criteria in the legislation or the guidelines for making that judgment. Of course, we do not participate in the making of the legislation or in the making of the guidelines.

Senator McGAURAN—Then it is subjective. You raised the matter of *Salo*. What were your reasons for not refusing classification? You would know that one of the main controversies, if not the main controversy, of the movie *Salo* is the age of the victims.

Ms Rubensohn—Senator—

Senator Ludwig—As I understand it this matter is currently before the courts.

Ms Rubensohn—Senator—

Senator Ludwig—Let me finish. What I was going to suggest—

Senator McGAURAN—I was not interrupting.

Senator Ludwig—I was interrupted.

Ms Rubensohn—I did.

Senator Ludwig—Let me make this plain—

Senator McGAURAN—You said “Let me finish” but I was not interrupting.

CHAIR—Senator McGauran, Minister Ludwig is trying to clarify something for us.

Senator Ludwig—Thank you Madam Chair. I was going to say that I note we are now going to an issue. The *Salo* film, as I understand it, is currently before the courts. I ask the committee to take that into account in questioning in relation to that issue and that responses may be unable to be given as the matter is currently before the courts. We would not want to prejudice any of the proceedings before the courts.

Senator McGAURAN—Indeed, we would not and we will not. Please let me know, Madam Chair, if I transgress.

CHAIR—I am sure that the minister is advising you.

Senator McGAURAN—I assure the minister that I do not want to talk necessarily about *Salo*, although it seems to be the prime example raised by the convener herself. I want to keep it on the classification itself, the criteria, the rules, and even those that we appoint. What are they thinking when they walk into the theatre? How do they make their judgments of, ‘That person is 18 and that person is 17’? We have a right to know and the public have a right to know. So far we have heard from the convener but she cannot even tell me her own personal view about how she judges whether or not someone is 17 or 18. That is what I am trying to get at, Minister. I say to the convener that I am absolutely shocked: you cannot tell me whether you or anyone on that review board uses any methodology to determine who is aged over 18 years and who is aged under 18 years, according to the standards.

Ms Rubensohn—Senator, I reiterate that since I have been convener my only experience has been the film that is the subject of court process at the moment. In relating my personal view or experience I have nothing to refer to other than the one that I am unable to discuss.

Senator McGAURAN—Let me put it another way.

Ms Rubensohn—Could I just say—

CHAIR—Let Ms Rubensohn finish.

Ms Rubensohn—Insofar as the code, the guidelines or the legislation address this issue, under films and the RC classification are these words, ‘describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18.’ It then refers to some other things. However, as I said before and I reiterate my statement,

it says nothing about how one makes the judgment as to whether a person is or appears to be a person under the age of 18.

Senator McGAURAN—That is what I want to know from you. You tell me.

CHAIR—Senator McGauran, just let the witness finish her answer.

Ms Rubensohn—In which case, as I said before Senator, one can only apply common sense in approaching that question. I think all those who are appointed to positions like this have to proceed in that manner. There is no magic formula that we are given from any source, including the legislature, as to how to go about that task.

Senator McGAURAN—If it were a controversial movie and you thought the victims were over the age of 18 and one part of the board thought they were under the age of 18, I suggest you would be required to report. But would you report why you thought they were over the age of 18 if the rest of the board descriptively and in detail told you why they were under the age of 18. Do you not have a duty to report why you thought they were under the age of 18?

Ms Rubensohn—Unfortunately, Senator, you are referring again to *Salo*.

Senator McGAURAN—No, I am not.

Ms Rubensohn—I am sorry, in that case I do not know what you are referring to.

Senator McGAURAN—I am talking about your processes.

Ms Rubensohn—There has not been such a split on the board—

Senator McGAURAN—I know that there has been a split in the Classification Review Board. I know where your vote went and I know it was ghastly. I am asking about your processes.

Ms Rubensohn—Senator, we do not discuss on the board or publicly whose vote went where.

Senator McGAURAN—Why do you not?

Ms Rubensohn—For the obvious reason, Senator.

Senator McGAURAN—Well tell me. Put it on the record.

Ms Rubensohn—That my panel would be—

CHAIR—Senator McGauran, it is not very helpful to keep interjecting in the way in which you have. I understand that you are trying to make a point but it would be most useful if you could just let the witness complete her thought patterns in answering the question and then you can then ask subsequent questions. Ms Rubensohn?

Ms Rubensohn—Senator, may I say that I was not here in May but I note that there are 15 pages of *Hansard* from the May hearings of this Senate estimates committee in which you asked my deputy convenor the same questions about this issue—questions about why the names and the votes of the panel were not revealed. He quite properly said—and I can add nothing to it—that it is a protective measure to protect those members of the panel from being victimised and harassed by whoever might disagree with their vote. To my understanding, that is the way in which this body has always proceeded. I cannot imagine that it could proceed in any other way and have anyone willing to serve on it.

Senator McGAURAN—I am dealing only with process. I am asking you about process. Your own report states that most of the RCs are issued on the grounds that depictions are of persons under the age of 18 years. I am not sure whether I got an answer relating to process.

Ms Rubensohn—Senator, that is not our part of the report; that is a general statement in the report.

Senator McGAURAN—Well—

Ms Rubensohn—I could not make that judgment because we have had only the one case, as I have pointed out to you. Most of it is an expression that is not relevant when there is only one case.

Senator McGAURAN—But you would have to be prepared for more than one case coming to you.

Ms Rubensohn—Indeed.

Senator McGAURAN—In your role you would have to be prepared to make these judgments?

Ms Rubensohn—Indeed, but it has not occurred.

Senator McGAURAN—Albeit that they are rare you still have a job to do.

Ms Rubensohn—Yes.

Senator McGAURAN—Why is it that I have seen reports from the minority on your board that has a methodology, that has a reasoning and that states in excruciating detail I might add why it made a judgment that those victims, for want of a better word, were under the age of 18, and why the movie was depicting persons who were under the age of 18? Some of your minority reports go into methodology, reasoning, process and common sense as you would have it. It is not seat of the pants to them. Yet in your own majority report you do not even go there. You do not even mention it.

Ms Rubensohn—Senator, you are referring again to the film about which I cannot make a comment. It is the only example where there was a minority view on this matter. I am afraid that I am precluded from commenting on it while it is before the courts.

Senator McGAURAN—Generally speaking, if you believe that the depictions are of children over the age of 18, do you give a detailed report as to why you think that is so?

Ms Rubensohn—We have never had cause to do so while I have been on the board—except for the film about which I am not able to make a comment. So I have no “generally” to report to you on, I am afraid.

Senator McGAURAN—Then I would like to approach Mr McDonald on the same grounds. But before I do so, I put this question to you: is there any moral line that you would draw and would you stand by it in your role as the convener of the Classification Review Board? Is there any movie that would come to your table on which you would draw the line and you would resign?

Ms Rubensohn—I am afraid that I could not answer that question. It is an issue that has never occurred.

Senator McGAURAN—Where do you draw the line?

Ms Rubensohn—It is my job and my role to apply the legislation, the code and the guidelines. I am required to do that and that is what I do. I cannot make a hypothetical judgment based on your question. Until I address the issue applying the relevant legislation, code and guidelines, I am sorry; it is an impossible question for me to answer.

Senator McGAURAN—You cannot tell me whether, in your own mind, when you go into that theatre, at some point there is a line that you will draw and you will even resign from your position?

Ms Rubensohn—No, I cannot tell you whether that—

Senator McGAURAN—If the rest of—

Ms Rubensohn—I cannot tell you whether that situation might or would ever arise.

Senator McGAURAN—Let me put to you the case of paedophilia.

Senator PRATT—It is an inappropriate question.

Senator McGAURAN—If your review board happened to clear a movie that you thought was outrageously delving in paedophilia would you say, ‘I am resigning if that is the case’? Do you have any moral line?

Ms Rubensohn—I cannot imagine that that occurrence would eventuate, but if it did I would have to consider my position, as anybody would. We try very hard to have the relevant discussions around the table before we come to a judgment. It is there that we discuss our positions on various films. So far under my tenure at the review board there has never been an issue that brought things to that place.

Senator McGAURAN—Are you aware of any of the resignations that Mr McDonald was talking about? I suppose that you cannot speak for him but there have been one or two on the review board, have there not?

Ms Rubensohn—No. There have been no resignations. We had two people whose terms ended and we are one down on our complement.

Senator McGAURAN—Mr McDonald, you heard the questions to the convener. Do you and your fellow board members use a set of criteria, a methodology or a rationale when judging which persons are over the age of 18 and which persons are under the age of 18?

Mr D McDonald—I might ask Mr Scott to answer your question as he is involved with the details of these more frequently than I am.

Mr Scott—From time to time we have to make decisions and judge the age of participants in films. We are appointed as general representatives of the community and we bring our own personal experience into those matters. As the director of the review board said, we have to apply common sense. From time to time, in the majority of time in these films, we have to assess the ages of participants in the films, generally in films that are classified X-18 plus. So we ascertain whether people involved in these films and in the sexual activity in these films are aged 18 or otherwise.

We do not prove whether or not they are adults but quite often we discuss our reasoning as to why they are not adults. Some of the things that we use—which is not a checklist but which I guess is a more common sense approach that reasonable adults can use and apply in their day-to-day business—would be things such as props in a room or in a scenario; the physical development of a participant in the scenario; the costumes that the participant may be wearing; and the vocalisations that a participant may be making. Those things may contribute to the age of a participant in a film.

If a reasonable adult considers that those items contribute to such an extent that they cause an offence, the film will be refused classification. Our reasoning and our view of why a person or a participant is under 18 will be detailed clearly in a decision report when we make it.

Senator McGAURAN—Why was it not clearly detailed? In fact, it was not even mentioned in your reasoning in regard to *Salò*. You did not even mention the issue of persons aged 18 or over.

Senator Ludwig—I think we have gone there again, Senator McGauran. That matter is currently before the courts as I understand it.

Senator McGAURAN—Would the courts be discussing these sorts of things?

Mr Wilkins—Yes, that is the central issue before the court.

Senator McGAURAN—Is it?

Mr Wilkins—Basically it is a question of law.

Senator McGAURAN—But these hearings cannot be used by the court.

Mr Wilkins—Basically it is a question of law under the Administrative Decisions Judicial Review legislation, which goes to the nature of reasons given. The various grounds for appeal might be precisely the sorts of issues that you are canvassing.

Senator McGAURAN—Let me put the question another way. When reporting on such matters your report states:

The majority of films that are classified RC are sexually explicit films containing these prohibited elements.

In other words, descriptions and depictions of children under the age of 18. That is the reason you place an RC classification on these films. When making those reports do you report on such matters? Do you give descriptions as to why you believe a child may be under or over 18?

Mr Scott—Yes, we justify why we have gone RC1(b) under the national classification.

Senator McGAURAN—I suggest that you do not.

Mr Scott—I think you are referring to a film that was classified—

Senator McGAURAN—Can you give me an example of where you have?

Mr Scott—There is a raft of films. We could take that question on notice and give you the decision reports on films that were classified RC.

Senator McGAURAN—Thank you, I will take that.

Mr Scott—I think the film that you are referring to that was classified R18 was deemed not to contain any explicit sexual activity. It can be offensive to members of the public. If you read what the R18 classification allows you will find it contains a raft of themes that can be addressed in a number of ways, as long as they are contextually justified. We were referring to films that were classified X-18 plus and that contain sexually explicit material, which the majority of films that are classified R18 plus would not contain.

Senator McGAURAN—I am not talking about sexually explicit material; I have kept away from that. I am talking only about the age.

Mr Scott—You did mention it.

Senator McGAURAN—The age is enough to get it banned in itself.

Mr D McDonald—On a point of clarification I believe you were quoting from the section of the annual report on page 45 which is under the section headed X-18 plus.

Senator McGAURAN—That is right. Still, it holds true.

Mr Scott—For X-18 films.

Senator McGAURAN—Senator Boswell wanted me to ask three questions.

CHAIR—We will be going to morning tea in about 30 seconds.

Senator McGAURAN—Okay, I will leave it.

Senator PRATT—This year I believe there has been significant public debate regarding the airbrushing of photographs of women's bodies in order to meet classification guidelines—photoshopping of their genitalia et cetera. That has led also to debates about women being giving unrealistic expectations of what women look like. I would like to know how you are approaching these debates and responding to them.

Mr D McDonald—That is a very general question. Can you be more specific?

Senator Ludwig—We might take longer than 30 seconds with that response.

Senator PRATT—I could break down the question and be more explicit about it. Perhaps I could put that question on notice.

Senator Ludwig—Perhaps we could follow it up after morning tea and have it broken down into specific questions.

CHAIR—Unless you want to take that question on notice?

Mr D McDonald—Presumably this is going into technical detail and that sort of thing?

Senator PRATT—Yes.

Senator Ludwig—The difficulty, is that it would be a general response that might not meet the senator's question. Therefore it might be prudent either to put them on notice separately or, alternatively, to deal with them after morning tea.

Senator PRATT—I am interested in a general response but I am also in the hands of the committee as to how it wants to manage its time.

CHAIR—All right; we will reconvene in 15 minutes.

Proceedings suspended from 10.31 am until 10.45 am.

CHAIR—We will reconvene. Senator Pratt, we will finish with your questioning and then we are going back to the Coalition members.

Senator PRATT—I do not know whether I need to restate my question but there have been significant public debates about the manner in which airbrushing of genitalia takes place in order to meet classification guidelines. There have been debates also about how that is affecting women's perceptions of what is normal, including, as a result, an increasing demand for procedures such as labiaplasty.

Mr D McDonald—Senator, if I can just say, baldly, I think it is nonsense. I think I would need more specific questions to then take that view further.

Senator PRATT—What is nonsense in that sense? Airbrushing is taking place?

Mr D McDonald—The claim that legislation is leading people to behave in certain ways in their private lives.

Senator PRATT—Why is it then that we do not see protruding labia in certain pictures when normally we would expect to see that in a genetic proportion?

Mr D McDonald—I will ask Mr Scott to answer that question.

Mr Scott—I guess it is an unusual question. We have two classifications. The first classification is unrestricted and the higher classification is category 1 restricted. I refer to the guidelines for unrestricted and will read from the guidelines so that I am clear:

Realistic depictions of sexualised nudity should not be high in impact. Realistic depictions may contain discreet genital detail but there should be no genital emphasis. Prominent and/or frequent realistic depictions of sexualised nudity containing genitalia will not be permitted. Realistic depictions in which sexual excitement is apparent are not permitted.

Your question was about airbrushing vaginas—

Senator PRATT—No, I am not talking about vaginas. This is a different thing. Labia are quite different things to vaginas.

Mr Scott—Excuse my terminology. The reason for this to occur is a commercial decision. The applicants wish to have these more explicit images in an unrestricted magazine. We instruct applicants why a picture may breach the guidelines for a certain classification and they may take steps to ensure that it is within that classification. What can heighten an image that causes us to trigger a higher classification primarily is the pose of the woman involved in the photograph. Clearly if a woman's legs are splayed, the depictions are more explicit.

Senator PRATT—I am not thinking of those examples; I am thinking very much of those instances where the legs are closed and where protruding labia may be seen.

Mr Scott—The board does not instruct applicants to edit any of their material. We do not provide for films and we do not instruct magazines to airbrush things.

Senator PRATT—That is good. It is terrific to have that on the record because there has been significant community debate about that issue. Basically it is alleged that it is the classification that is causing this problem. In response you are saying that the industry is

setting this benchmark or standard, if you like, on what women's genitalia looks like. Really that is where that community debate should continue.

Mr Scott—I think it is important to remember that the magazines this content is in are sex magazines. This is not material from which you should be getting your anatomical information.

Senator PRATT—Except that persons may do so when there are so few pictures around. But clearly that is not the debate we are having at the moment. It is an industry issue in terms of community debate. If they want to argue that there are not enough real representations of women out there then that is a matter for the industry and not for the Classification Board.

Mr Scott—Yes, we can only apply the guidelines, the code and the act in accordance with—

Senator PRATT—But there is nothing in the guidelines at all?

Mr Scott—Nothing other than what I have just read out.

Senator PRATT—Referring to genital emphasis, protruding labia would not be quantified as genital emphasis in any way?

Mr Scott—Not necessarily as the only factor. So, no, that is not a factor.

Senator PRATT—It is not a factor at all?

Mr Scott—It is hard to argue over a picture that you have never seen. We take each image on a case-by-case basis, so it is a strange situation to be in. I guess that it is an unusual predicament.

Senator PRATT—I do not mean to ask hypothetical questions. I suppose that if you are thinking of a picture of a naked woman standing and looking at you, either she has protruding labia or she does not.

Mr Scott—No.

Senator PRATT—So that would not represent something that would breach classification guidelines for unrestricted content?

Mr Scott—They do not restrict it.

Senator PRATT—In that sense there are community concerns about this altering women's perceptions of themselves. This is really something for the community to take up with the publishers and with the industry, and it is not a matter for the Classification Board in your view?

Mr Scott—Definitely.

Senator PRATT—Thank you.

Senator McGAURAN—I have three questions on behalf of Senator Boswell but I show an interest in the area too. My questions are directed to the Classification Board. My first question is as follows. In June 2008 the Senate Standing Committee on Environment, Communications and the Arts recommended a review of the classification of music videos, specifically with regard to sexualising imagery. Have there been any steps taken towards such

a review? Perhaps that question should be addressed to the minister. Are any reviews coming up?

Senator Ludwig—I am not familiar with any. I will certainly see whether I can find out today from the Attorney-General whether there is any review in respect of that issue.

Senator McGAURAN—My second question is as follows. Many parents are concerned about sexualised imagery in the way performers dress, dance and interact in music videos aimed at children. Are these concerns addressed by the current guidelines which use the terms ‘sexual references’ and ‘sexual activity’? Are these terms understood to include sexualised imagery? Are music videos with such imagery being classified as G or PG? That is a rather general question that I direct to Mr McDonald. I am referring to music videos.

Mr D McDonald—I know it is about music videos, Senator. Could you focus the question for me?

Senator McGAURAN—I will put that question on notice.

Mr D McDonald—Thank you.

Senator McGAURAN—My third question is as follows. How many complaints or inquiries has the Classification Board received about music videos?

Mr D McDonald—I will take that question on notice, but there are very few. It would be a long time since we have had a complaint about a music video.

Senator Ludwig—Just on that issue, Madam Chair, it may be that the question relating to the review may go to the communications minister, Minister Conroy, rather than the Attorney-General. I will check both to ensure.

CHAIR—That is a good point.

Senator BARNETT—I am waiting on a response from Dr Popple. Are you able to provide that response?

Dr Popple—Senator, in relation to the question that you asked at the hearing on 8 February, that is question on notice No. 16, my colleague Mr Duggan wrote to the committee on 21 May with responses from the Victorian Minister for Police and the Victorian police force. On 30 July I wrote with responses from the Australian Federal Police and from the police forces of Western Australia, New South Wales, South Australia, Tasmania and the Northern Territory, and also with a response from the relevant department in the Australian Capital Territory. Again on 16 September I wrote to the committee attaching responses from the Queensland minister and the Queensland police force. Senator, by my reckoning, that means we have now provided responses from all the jurisdictions in relation to that matter.

Senator BARNETT—What about South Australia?

Dr Popple—Yes, South Australia was amongst the ones attached to my letter of 30 July. I am sorry if I did not mention that a moment ago. The letter from the South Australian police force was attached on 30 July.

Senator BARNETT—Thank you for that. I am now in possession of all those letters. Have you considered the letters and are you aware that most of the responses to the submission put by Minister Debus at the time note pretty clearly—and they are now on the public record

through those letters—an unwillingness to pursue this matter with considerable vigour, either an unwillingness or an inability based on resources within the purview of the relevant state and territory jurisdictions. That says to me that this is not a priority for those state and territory ministers, in the way that it should be a priority. I draw that to your attention and wonder whether the department or even the minister has expressed concern or disappointment at that level with the responses that have come in.

Mr Wilkins—Senator, the way you characterise those responses might have been truer a year or so ago. I think it is fair to say that the states and territories are trying to lift their game. Obviously there are a lot of issues that confront state and territory law enforcement. This is one of many many issues that state police have to deal with. Yes, there is disappointment I guess at the level of support; but it is getting better. I think I tried to say earlier that there are a variety of cooperative things happening through the SCAG process and more generally. I think it is fair to say that state and territory police are taking it more seriously than I might have been able to report, say, 18 months ago.

Senator BARNETT—As I indicated earlier, it seems confirmation again—based on the letters and based on the evidence that we have received; and no doubt Mr McDonald will respond to the questions on notice—that we have a systemic failure. The Classification Board refers it to the law enforcement agencies. And, based on their responses that have been tabled today, it seems to me that clearly there are gaps—a falling between the stools—and, as a result, the community standards and the values that are upheld in the community are not being meted out in terms of law enforcement and classification. I think that is a great disappointment to the public.

I simply note that with the call-in notices clearly the system is not working. As result, we are seeing filth, offensive material and pornographic material, in small stores and petrol stations. We are seeing films that should be classified and called in and they are not. We see the distributors simply having free range where they can pretty much do as they will. This calls for urgent action and reform. At the moment it does not appear as though it is happening. I wonder whether I can draw that to the attention of the minister so that the minister can take that on board based on the evidence received and the evidence put to this committee over many hearings. Would you be happy to do that, Minister?

Senator Ludwig—I will certainly raise it with the Attorney-General. I am sure that his office is familiar with the transcripts of estimates proceedings and takes the questions that are put quite seriously. I add that obviously the SCAG working group has been dealing with this. The Commonwealth is chairing an intergovernmental working party—the SCAG Compliance and Enforcement Working Party—which is developing proposals to improve compliance with the enforcement of classifications laws.

Of course, censorship ministers received an update and other initiatives from the working party to improve compliance with and enforcement of classifications laws. It is expected that they will progress this further and ensure that they can work in ways to improve compliance and enforcement at future meetings. I add that this has been an issue that has arisen both under the previous government and this government. I am sure that everyone is doing their level best to ensure that the Classification Board does its job and that the enforcement agencies do their job.

Senator BARNETT—Thank you for your response, Minister. I know we hear that at every estimates and I appreciate the fact that you are willing to restate the government's position. Thank you, Madam Chair.

CHAIR—There are no further questions for the Classification Board and the Classification Review Board. Thank you for your time this morning. Thank you, Mr McDonald.

[11.00 am]

Australian Law Reform Commission

CHAIR—Ms Wynn, I welcome you as the representative from the Australian Law Reform Commission. Do you have an opening statement that you want to provide to the committee this morning?

Ms Wynn—I just want to pass on the apologies of the president, Professor Rosalind Croucher, who currently is on annual leave overseas and who made arrangements for her leave before the sitting days were known. She sends her apologies. She would very much like to have been here today but she is unable to be present.

Senator BARNETT—I have a few brief questions. The ALRC review of family violence laws states that the review is ongoing. Can you provide us with the status of that review? Do you have a copy of the report if it is available?

Ms Wynn—The report has been completed and it was handed to the Attorney-General on 10 October. I have no report. Obviously it has not been tabled as yet.

Senator BARNETT—I wonder whether the minister might be able to advise the committee as to the availability of that report.

Senator Ludwig—I can check with the Attorney-General, but clearly it is a matter that is now with the Attorney-General. I will just check on the tabling rules. I am advised that the tabling rules are within 15 days, so it is at their discretion prior to that. Ultimately, within 15 sitting days it will be tabled.

Senator BARNETT—I note that it was due to be tabled on 31 July and we are now into October.

Senator Ludwig—I think there are reasons for that.

Senator BARNETT—We look forward to that report as soon as it is available. Will the family violence and Commonwealth laws inquiry begin immediately afterwards?

Ms Wynn—Yes.

Senator BARNETT—Has the discovery of documents in the Federal Court inquiry made much progress? I will come to that in a minute.

Ms Wynn—Yes, we have begun work on the Commonwealth laws and family violence inquiry.

Senator BARNETT—Can you outline the nature of that inquiry and how long it is expected to take? Are there any details that you can provide to the committee?

Ms Wynn—The reporting date for the inquiry is the end of November 2011. Until we had completed the family violence inquiry that we have just spoken about, we did not have a team

of people to commit to the new inquiry. But, now that that first inquiry has been completed, we have started the process of scoping the terms of reference and we are looking at forming an advisory committee. Obviously many of our staff members are taking some leave before starting the processes. So we are in the early planning stages of that inquiry. But we are expecting the full team to be working by the end of the month.

Senator BARNETT—I move to the review into discovery laws to improve access to justice. Can you provide us with the status of that report?

Ms Wynn—Yes. We have a team working on the discovery inquiry. We have also formed an advisory committee and we have had one meeting of the advisory committee. Currently we are putting together a consultation paper which we hope to release to the public in the first week of November. We are hoping that we will get submissions in just before Christmas and that we will then be working towards the final report, which is due at the end of March 2011.

Senator BARNETT—Thank you. I will now move to the other reports and I refer, first, to the copyright laws. I understand that the Australian government is asking the commission to inquire into those laws. What is the status of that inquiry?

Ms Wynn—I believe there was an article in the newspaper referring to a possible inquiry being referred to the ALRC. However, my understanding is that we certainly have not had any reference or referral of that inquiry. I believe it is still being considered by the department.

Senator BARNETT—I am in possession of an article in the *Australian Financial Review* dated 24 September 2010. The headline is: ‘Copyright law to be reviewed’. It then states:

The federal government will ask the Australian Law Reform Commission to examine whether copyright laws should be amended to adapt to technological developments, a move that experts say may be premature given the iiNet litigation is before the courts.

Perhaps the department or the minister might update the committee?

Mr Wilkins—Perhaps I can say a bit about that, Senator. It is being considered by the Attorney and the department. The question really is one of timing. As you would appreciate, litigation is going on at the moment in the iiNet case. I think the Attorney-General is considering the proper timing and the possible terms of reference relating to such an inquiry. It is very much on the agenda, but it is a question of timing.

Senator BARNETT—Let us move now to the budget cuts to the commission. Can you advise the level of the cuts and its impact on the working of the commission? Perhaps Ms Wynn could do that.

Ms Wynn—Yes. In this year the cut amounts to \$242,000 and, going forward in the next financial years, \$495,000.

Senator BARNETT—And what is its impact on the commission in relation to programs and staff? Can you advise the committee accordingly?

Ms Wynn—At the moment probably the biggest impact is that we now have only one full-time commissioner, who is also the president.

Senator BARNETT—Who is that?

Ms Wynn—Rosalind Croucher.

Senator BARNETT—It is still President Croucher?

Ms Wynn—Yes.

Senator BARNETT—What is his term by the way?

Ms Wynn—Her term is five years.

Senator BARNETT—You still do not have a deputy president?

Ms Wynn—No. We currently have 10 legal officers working and, with close communication with the department, we are able to manage our inquiries at the moment. As long as there are two we can manage the workload within the budget that we have at the moment. But we are taking steps towards carrying out consultations using online submissions and online inquiry tools so that we can make some productivity savings.

Senator BARNETT—I am sure. Let me be specific. Can you advise specifically which programs have been cut, or how many staff have been or will be cut or reduced as a result of the budget cuts?

Ms Wynn—Going forward, we only ever had two programs. One related to conducting inquiries and one related to educational outreach. We have cut the educational outreach program. Basically that has meant that we are no longer producing our law reform journal *Reform*.

Senator BARNETT—That has been cut. When does that finish, or has it already concluded?

Ms Wynn—It has concluded.

Senator BARNETT—When was the last edition of *Reform*?

Ms Wynn—Last November.

Senator BARNETT—November last year?

Ms Wynn—Yes.

Senator BARNETT—You are not producing one this November?

Ms Wynn—We used to do two issues a year. We are now focusing on our core program, which is conducting inquiries.

Senator BARNETT—Referring to educational outreach, apart from reform, how would you describe it and what is not happening now in the educational arm of your commission activities?

Ms Wynn—I would say that the most significant one was the law journal. What we are trying to do is still carry out some of those other activities but using online strategies that will reduce their cost.

Senator BARNETT—How much will you save as a result of those cuts to the educational outreach program?

Ms Wynn—Around \$240,000.

Senator BARNETT—A year?

Ms Wynn—Yes.

Senator BARNETT—What about the other \$255,000 that you will need to save next year? Where is that coming from?

Ms Wynn—At the moment, our activities are covered by some money that we have in reserves.

Senator BARNETT—How much do you have in reserve?

Ms Wynn—Around \$900,000.

Senator BARNETT—Is this an account that just sits there for a rainy day, or what is the nature of that reserve account? Obviously it cannot last forever, so you are on a limited budget.

Ms Wynn—Yes.

Senator BARNETT—Can you describe the nature of the reserve budget?

Ms Wynn—It is something that the commission, as a Commonwealth Authorities and Companies Act body and as a statutory authority, has had. It is made up of a lot of different sources—we were selling reports, et cetera. It has been built up over a number of years and, yes, it covers the shortfall. We are hoping in the future, going forward, that we can make some additional savings when we move our premises. We are not able to do that until 2012.

Senator BARNETT—Do you think that reserve will diminish over the coming years as you draw down on that? Have you had discussions with the government about your ongoing sustainability?

Ms Wynn—Yes. We have ongoing discussions with the department.

Senator BARNETT—How many full-time equivalents do you currently have? How many do you budget to have at the end of next year and at the end of the year after that?

Ms Wynn—At the end of June there were 19 full-time equivalents. We are hoping to have a similar number.

Senator BARNETT—So, this time next year, you hope to have the same number, notwithstanding the budget cuts.

Ms Wynn—Yes.

Senator BARNETT—Is that implausible? How is that feasible?

Ms Wynn—Because we are making some productivity savings in other areas, such as cutting down on travel et cetera and because we have significant reserves to call on and we need to have the people to work to do the inquiries.

Mr Wilkins—Senator, it might be useful just to explain something. Earlier you referred to a deputy president. There is no requirement in the legislation to have a number of sitting commissioners. The modus operandi that the government envisages for the ALRC is to concentrate, as you would understand, on reports. The family violence report is one such report. There is a capacity to streamline that and to have commissioners reported for purpose, to conduct particular inquiries. For example, you might get a particular person appointed with terms of reference to deal with copyright or the matter on violence. That would be relieving

them of the ongoing need to keep paying permanent members of the commission, other than the president.

Senator BARNETT—Thank you for the feedback, Mr Wilkins. Exactly how many commissioners are there at the moment?

Mr Wilkins—One.

Senator BARNETT—That is what I thought. That is the president, who is on a five-year term?

Mr Wilkins—There is a part-time commissioner for each of the references. What I am saying is that that is a different modus operandi. It is a little like the Productivity Commission, where they appoint particular people.

Senator BARNETT—Let us get a little clarity. We will come to the commissioners. How many inquiries are there currently?

Mr Wilkins—There are two at the moment.

Senator BARNETT—Which are the two we have covered?

Mr Wilkins—Yes.

Senator BARNETT—So you have two part-time commissioners—one on each of those inquiries?

Mr Wilkins—I think the president might be doing one of them.

Ms Wynn—The president oversees all the inquiries, but at present we have one other part-time commissioner, Justice Susan Kenny.

Senator BARNETT—You say it is not illegal, Mr Wilkins, so let us get some clarity about that. How many commissioners is the commission entitled to have at any one time? There must be a number you can give us.

Ms Wynn—I think it is six.

Senator BARNETT—And in past years—

Mr Wilkins—You could have any number, actually.

Senator BARNETT—It is up to six. Is that correct?

Mr Wilkins—No; I think you could have 50.

Senator BARNETT—Over the last five years, what is the average number of commissioners on the Australian Law Reform Commission? What is your usual practice?

Mr Wilkins—It is about three, is it not?

Ms Wynn—Usually there have been three full-time commissioners, one of whom would be the president, and three part-time commissioners.

Senator BARNETT—Is it fair to say that currently the commission is improperly constituted?

Mr Wilkins—No, senator, it is not.

Senator BARNETT—If not, why not?

Mr Wilkins—Because they are constituted in accordance with their statute.

Senator BARNETT—But it is out of ordinary practice.

Mr Wilkins—You might say that.

Senator BARNETT—And normal practice. Is that correct?

Mr Wilkins—You might say that it is out of practice heretofore, but it is not illegal.

Senator BARNETT—I will not say you are breaching normal practice, but you are not acting in accordance with normal practice. Is that a fair statement?

Mr Wilkins—Say that again.

Senator BARNETT—The commission is not acting in accordance with normal practice. It normally has three commissioners and you have one.

Mr Wilkins—I do not accept that proposition, either.

Senator BARNETT—Let me ask the question another way: does the government intend to appoint further commissioners to the commission?

Mr Wilkins—That is a matter for the government.

Senator BARNETT—You are sitting next to the minister. Perhaps the minister could respond?

Senator Ludwig—I was going to intervene at this point and say that I will pass on that request to the Attorney-General. I do not have anything before me that can assist. In terms of an earlier question in relation to the ALRC, I am advised by the Attorney-General that he is currently considering the report and it will be tabled within the statutory time frame.

Senator BARNETT—I am sorry; I did not hear that.

Senator Ludwig—In terms of the earlier question in relation to the ALRC report, the Attorney-General currently is considering that report and it will be tabled within the statutory time frame.

Senator BARNETT—What the committee would like to know is whether the government plans to or intends to appoint further commissioners to the Law Reform Commission.

Senator Ludwig—My answer to that first question is that I will take it on notice.

Senator BARNETT—Is it correct that over the next three years there will be a \$1.231 million cut to your budget?

Ms Wynn—Yes.

CHAIR—We were expecting Senator Ludlam to ask questions. I will check where he is. Apparently Senator Ludlam is on his way. He has questions of the Law Reform Commission, so we will give him a minute or a bit of leeway.

Senator PRATT—Perhaps I might briefly get an update on the Australian Law Reform Commission's Indigenous advisory committee and how that is progressing.

Ms Wynn—Thank you for the question. The committee was formed last year as part of our Reconciliation Action Plan. It has met twice. It was particularly useful in the family violence

inquiry to help us work through the consultations that we might do and the best way to approach consulting with Indigenous communities. For that inquiry we developed a consultation strategy for Indigenous communities and gained a lot of insight and input from the Indigenous advisory committee. So it has been very useful.

Senator PRATT—Terrific.

CHAIR—We have just been advised that Senator Ludlam is caught up in another committee so he will have to put his questions on notice to you. Ms Wynn, I thank you for your attendance here today.

[11.20 am]

Administrative Appeals Tribunal

CHAIR—Gentlemen, it appears that we do not have questions for the Administrative Appeals Tribunal. I am sorry, but there has been some confusion about which senators requested your attendance. If Senator Ludlam requested your attendance, he is not available. That is probably your fastest appearance at estimates ever. You did not even get to introduce yourselves. Thank you very much for attending. I hope you have not travelled hundreds of kilometres unnecessarily to be with us today. If you have, just enjoy Canberra coffee somewhere.

Senator Ludwig—Chair, I reiterate the difficulties sometimes faced by these agencies, particularly the smaller agencies, that are required to appear before the committee. I do understand in this instance it was beyond the committee's ability to do anything about the scheduling. But with some small agencies, I am not sure that this is the case now, officers have to travel to Canberra from faraway places, such as Sydney or elsewhere, and stay overnight in Canberra. We have had questions asked of them about their financial circumstances.

If I could take up the bat for the agencies, they are keen to ensure that they meet the efficiency dividend and the productivity savings that are required as well as manage their budgets appropriately, and they should not be put to the expense of appearing before committees when they are not required or are not asked questions. I understand that the present circumstances are beyond the control of the committee in this instance, but I politely remind the committee that appearances before the committee are expensive undertakings.

CHAIR—As chair, I am certainly mindful of that and I know that the secretariat is also. We are endeavouring to ensure that other senators who request attendance by officers of the agencies actually have questions for them on the day. We will work towards ensuring that that happens in the future.

Senator Ludwig—Thank you, Madam Chair.

[11.22 am]

Australian Human Rights Commission

CHAIR—I welcome officers and commissioners from the Australian Human Rights Commission. Ms Broderick, I am looking at you because you seem to be in the key spot. I assume that Ms Branson is unavailable. Are you acting in her capacity?

Ms Broderick—Yes. The president currently is travelling overseas. She has attended the biennial conference of the International Coordinating Committee of National Human Rights Institutions. She is attending a number of meetings. Commissioner Innes is travelling to the United States for his son's wedding. They both send their apologies.

CHAIR—All right. We hope it is a great wedding. He probably deserves that break. Ms Broderick, do you have an opening statement to make on behalf of the commission?

Ms Broderick—No, we do not, Chair.

CHAIR—Senator Barnett, do you have questions?

Senator BARNETT—Thank you. I will give you a heads-up. You may need a few moments to obtain this report. It is the Schofield Georgeson Lawyers report titled *Project consultation for intersections between the law, religion and the human rights project*. Do you have a copy of the report for the committee, please?

Ms Broderick—No, we do not have that report. We will make some inquiries.

Senator BARNETT—Thanks very much. We will be here for a short time at least. If it is available, it would be appreciated as soon as is possible.

Ms Raman—We do not have a final copy of that report. The consultants were briefed and have been working on a literature review, but we do not have anything final that we could give you at this stage.

Senator BARNETT—When is it expected?

Ms Raman—We are hoping to receive a draft fairly soon. I would have to go back and check exactly when it is due.

Senator BARNETT—All right. Could you outline the nature of the inquiry or the report and the terms of reference? Perhaps you could table the terms of reference for the committee. I understand it was commissioned on 13 May this year.

Ms Raman—That is right.

Senator BARNETT—The end date in my report is 15 July 2010.

Ms Raman—Yes, but we have not received a copy of it as yet. We are chasing that up with the consultants.

Senator BARNETT—Do you normally have reports that are three or four months late? Does that concern you?

Ms Raman—We cannot make them work any faster than they are working.

Senator BARNETT—Yes, but you agree it was due on 15 July. Is that your understanding?

Ms Raman—I do not have the contract with me, but if you say it was due on 15 July I am prepared to take your word on that.

Senator BARNETT—But you have accountability procedures within the commission to follow up on reports if they are not in by a certain time?

Ms Raman—We do.

Senator BARNETT—Perhaps in your response you could let us know what procedures and actions you took to get the report by the due date.

Ms Raman—Sure.

Senator BARNETT—Thank you. Perhaps we can go on to other areas—such as the Freedom of religion and belief in the 21st century project. At estimates hearings on 24 May 2010, Mr Innes said of the freedom of religion and belief in the 21st century project, Mr Innes stated that the timetable to release the report before June 2010, ‘has slipped and the report will be made available in the second half of 2010 but not before 30 June.’ What is the current timetable for release of the report? If there is any further delay, what are the reasons for the delay?

Ms Raman—We have received the first draft from the Australian Multicultural Foundation, who, you would understand, are the people we have commissioned to do the report. We received the first draft at the end of September. We are working through that draft. We hope to have the report completed by the end of the year—hopefully for release early next year.

Senator BARNETT—That seems to be an unusually lengthy delay. Can you provide any further reasons for the delay?

Ms Raman—I think it is not just the main report. There are eight supplementary papers as well. As you would appreciate, the project is a complex one. We want to make sure that the report reflects the complexity of the issues. We also have been working fairly closely with the Multicultural Foundation to ensure that the time lines are met. But as Commissioner Innes noted, the time lines have slipped. At the last estimates we said that we would expect to finish it by the end of the year.

Senator BARNETT—What were the eight supplementary reports to which you refer?

Ms Raman—We can give you a list of them. I think that there was a breakdown provided for you in the last estimates. We can provide you with an updated list.

Senator BARNETT—All right. Are they contracted independently and separately?

Ms Raman—Yes.

Senator BARNETT—Thank you. Could you provide the list, the details, the terms of reference, the cost, and any other related information?

Ms Raman—Sure. We did provide that breakdown for you last time, but we are happy to provide it again.

Senator BARNETT—And perhaps in your answer on notice, just be a little more specific. I am interested that you said ‘in the first half of next year.’ It was meant to be in the first half of this year. Can you be more specific in terms of the report?

Ms Raman—No. I said we were trying to complete the report by the end of the year to release it early next year. You would appreciate that we have to print it. We are working through it now. We then have to go through an editing process. It has to go through the commission, which it has not yet been through. That takes a bit of time. In terms of its release, we are thinking early next year rather than the end of this year.

Senator BARNETT—All right. What I am asking is: if you could be more specific it would be appreciated, because we are all waiting in great anticipation to receive this important report that you have been working on.

At the estimates hearing on 24 May 2010 the commission was unable to give a detailed breakdown of the additional \$6.6 million it is to receive over the next four years, as part of the \$18.3 million funding for the Australian human rights framework. Can you now provide that detailed breakdown of how those funds are expected to be expended and, at least for the extra \$1 million allocated for 2010-11, explain for each item whether it relates to a new activity of the commission under the framework or just more funding for existing activities.

Mr Dick—We have commenced a process of establishing a community engagement or community human rights education team to lead the commission's activities in this regard. We were able to appoint a director of that unit, starting in July, I think. But due to the election and caretaker conventions and so forth, we have not been able to progress further recruitment for that team until now. We are in the process of finalising that.

Senator BARNETT—What is the name of the team?

Mr Dick—Community engagement. Their role will be to lead the work on community education around human rights. A large part of this work is working with the Attorney-General's Department in the development of materials targeted to the public sector.

Senator BARNETT—Can you provide some examples of the work of your community engagement team?

Mr Dick—We have only a director of that team at this point because the team has not been recruited. It is still being negotiated with Attorney-General's. It is clearly flagged that the team has to work cooperatively with the Attorney-General's Department.

Senator BARNETT—But you must have an understanding of the role and functions of that team. Here we are in mid-October and that money is to be expended this financial year. You have appointed one person. Correct me if I am wrong, but an extra \$1 million has been allocated for this financial year. We would like to know what the money will be expended on and the details of that.

Mr Dick—Yes. As you would appreciate, because the money was identified by the opposition as something that it would not support if it got into government, we had to suspend any activities relating to that. That has taken us up to a few weeks ago, which is when we recommenced the recruitment processes. So there really has not been an ability to progress it much beyond the general understanding that there is of it, which is to develop and deliver community education materials about rights and responsibilities, including seminars and online materials.

Senator BARNETT—Where and when were you going to undertake that function? Do you have those details with you?

Mr Dick—It is still being negotiated with the Attorney-General's Department as to the complementary role that we will have to the role that they have in this. As you would also understand, there is the bill before parliament at the moment for the establishment of the parliamentary committee and the scrutiny role and the statements of compatibility. The

activities that we have will be linked integrally to those things. Again, a lot of the details have to be discussed.

Senator BARNETT—What is in your budget in terms of employment of staff? You said you have one full-time equivalent director, but at what level?

Mr Dick—An EL2 at the moment, and the recruitment of a team—

Senator BARNETT—How many are there in the team?

Mr Dick—There is an executive level 1 and two APS6 officers as well.

Ms Raman—There are additionally two people—

Mr Dick—Additionally, we have some funding for the additional complaint load that is expected to arise from the inquiries that will come from the educative work that we do. I believe there will be two staff in the complaint handling area of the commission at an APS6 level, and there is additional support in our public affairs communications area for work around the internet, social networking and other fora.

Senator BARNETT—What is their budget increase?

Mr Dick—Again, it is purely staffing.

Senator BARNETT—But how many extra staff for public affairs?

Mr Dick—APS6.

Senator BARNETT—One extra?

Mr Dick—One extra.

Senator BARNETT—Overall, how many extra staff will the commission have as a result of this funding increase?

Mr Dick—It is an EL2, an EL1 and five APS6s. That is in year 1.

Senator BARNETT—Do you have a budget for years 2, 3 and 4?

Mr Dick—Yes, we do.

Senator BARNETT—What is it?

Mr Dick—It is the amount that was announced in the budget papers.

Senator BARNETT—That is the \$6.6 million over the next four years.

Mr Dick—Yes. Year 1 is \$1.105 million, year 2 is \$1.433 million, year 3 is \$2.073 million and year four is \$2.092 million. Each year that funding is almost entirely comprised of staffing.

Senator BARNETT—You can take my question on notice, but I want to know how you are going to spend the money. I think you are advising that it is mostly staffing.

Mr Dick—It is.

Senator BARNETT—If that is the case, could you please on notice outline the staff levels and the functions and roles of the staff; and, if it is not staffing, what the funds will be used for. Can you do that on notice?

Mr Dick—Absolutely, yes.

Senator BARNETT—And provide as much detail as you possibly can regarding the use of that \$6.6 million?

Mr Dick—Absolutely.

Senator BARNETT—Thanks very much for that. Are you feeling like the lucky commission today? We have just had the Australian Law Reform Commission, which has had budget cuts of \$1.2-odd million over the next few years, whereas all this extra money is going to the Human Rights Commission. I will not say it is your lucky day or your lucky year, but there you are.

CHAIR—Some might say, ‘It’s about time.’

Senator BARNETT—The Law Reform Commission does not have that view, I am sure. Let us move on to the consultation on protection from discrimination on the basis of sexual orientation and sex and/or gender identity. Can the commission provide a breakdown of costs for this consultation. How is it being funded? What is the progress to date?

Mr Dick—Senator, the project is being funded under a grant from an international philanthropist through the Asia Pacific Forum of National Human Rights Institutions. We are a member institution of the APF, and they received funding for a number of national human rights commissions among their membership to conduct activities to advance the implementation of the Yogyakarta principles on sexuality discrimination. The grant we received was A\$10,000.

Senator BARNETT—That was \$10,000?

Mr Dick—Yes.

Senator BARNETT—And that is going to fulfil all the activities and work?

Mr Dick—Yes.

Senator BARNETT—With \$10,000?

Mr Dick—Yes.

Senator RYAN—Can you identify the philanthropist?

Mr Dick—No. The Asia Pacific Forum of National Human Rights Institutions, of which we are a member, put out a call to all of their member organisations to apply for grants from them. They received the funding from a donor overseas.

Senator RYAN—For this specific project?

Mr Dick—This specific project; that is right.

Senator RYAN—In Australia?

Mr Dick—It is for all national institutions in the Asia-Pacific region, so it was tied to advancing the Yogyakarta principles, which are about sexuality discrimination.

Senator RYAN—Are you aware of who that philanthropist is—who is providing the grant to the organisation that in turn is providing the grant to you?

Mr Dick—No, we are not.

Senator RYAN—That is not published by the organisation at all? How do you know it is coming from a philanthropist if you do not know who it is from? It could be coming from anyone.

Mr Dick—That is the information that the Asia Pacific Forum has provided.

Senator RYAN—So you do not know it is coming from an individual. It could be coming from somewhere else.

Mr Dick—We know it is an individual.

Senator RYAN—You have been told by the organisation that it is coming from an individual?

Mr Dick—Yes.

Senator PRATT—Does it matter?

Senator RYAN—It does. Do you know their nationality?

Mr Dick—We would have to check that. But the APF has its processes for which money it accepts and which it does not.

Senator RYAN—I know, but the thing is that your organisation is putting its trust in another organisation of which you are a member as to the probity, source or otherwise of these funds.

Mr Dick—Yes.

Senator RYAN—Could you provide on notice any information you have about the source of these funds, and whether any questions you asked were not answered.

Mr Dick—Sure.

Senator RYAN—Thanks.

Ms Broderick—We can try.

Senator RYAN—Whatever you have, I would appreciate.

Senator BARNETT—Just as a follow-up: does the commission receive further donations, grants or funds from other sources outside of government; and, if so, can you provide details, please?

Mr Dick—We do have occasional fee-for-service arrangements with organisations. You will recall that for the national human rights consultations we had one with the Australian Youth Foundation to conduct consultations with young people. Currently there is an arrangement with Westpac, I think it is, around gender equality issues.

Ms Broderick—And some of the NGOs.

Mr Dick—Yes. Oxfam also has some arrangements with us in the development of the Indigenous Human Rights Network Australia, which is an online resource around rights for Indigenous peoples. And the Christensen Fund, which is an American non-government organisation that works with Indigenous peoples across the globe, has funded activities for the commission on a community tool kit on the United Nations Declaration on the Rights of Indigenous Peoples. We have done supplementary work with FaHCSIA based on that. We

host the secretariat for the Close the Gap campaign as well. That is a fee-for-service arrangement to maintain the secretariat for that, though it undertakes a lot of its activities independently of the commission.

Senator BARNETT—Do you have set criteria for accepting or not accepting funds from outside government; and, if so, can you provide us with the criteria?

Mr Dick—We have commission-approved guidelines that comply with the FMAA and other requirements.

Senator BARNETT—I would be very interested to know if you have government-approved guidelines rather than simply commission-approved guidelines. Perhaps you can answer that question.

Ms Raman—They have complied with the FMAA. To that extent, they are government approved.

Senator BARNETT—I am not convinced of that, so please provide further details. Where are the guidelines? Can you give us a copy?

Mr Dick—Yes.

Senator BARNETT—Do you have a copy with you?

Ms Broderick—We do not have a copy with us, but we can supply a copy.

Senator BARNETT—So the commission has developed its own guidelines to approve funds from third parties to fund activities of the commission. Is that correct?

Ms Broderick—That is correct.

Senator BARNETT—Broadly speaking, can you advise me of the terms and conditions of such criteria in relation to the funds you accept and those you do not accept?

Mr Dick—The initial criteria are that they have to be for activities that are not within our core products that we are funded by government to provide. They have to be additional and are usually fee-for-service arrangements. That is the core criterion, and that is consistent with the FMA requirements.

Senator BARNETT—Is the government or the minister aware on each and every occasion that they commission is undertaking such activity in advance?

Mr Dick—The activity is certainly reported in annual reporting.

Senator BARNETT—‘In advance’, I said.

Mr Dick—Yes.

Ms Broderick—No. Application would be made to the commission executive, and then we would look at it in accordance with the guidelines.

Mr Dick—At one of the commission meetings.

Senator BARNETT—Then you include it in some annual or quarterly report and send it to the minister and say, ‘This is what you’ve done.’ Is that correct?

Ms Broderick—It would be in the annual report.

Mr Dick—It is in the annual report. For specific projects, we would also write to the minister and advise them of the projects, which is often the case.

Senator BARNETT—All right. How many outside activities are there? As far as I can tell you have mentioned Oxfam, Westpac, the Australian Youth Foundation, the Christensen Fund and the Australian human rights fund. Can you provide further and better particulars regarding these third parties for which you are undertaking a fee-for-service arrangement and/or other activity?

Ms Broderick—We can provide further and better particulars on notice. We are having some discussions with Westpac. That is not one that has been progressed.

Senator BARNETT—What discussions are you having with Westpac?

Ms Broderick—To look at the formulation of some gender equality indicators. It is a piece of research.

Senator BARNETT—Are you doing that on a fee-for-service basis?

Ms Broderick—That is the potential of the discussion, yes—on a fee-for-service basis.

Senator BARNETT—Are you seeking that work?

Ms Broderick—At the minute, it is very introductory discussions.

Senator BARNETT—But is it your intention that, if the discussions continue and are successful, you would be seeking to undertake a fee-for-service activity for an on behalf of Westpac?

Ms Broderick—The initial discussions are that we do not have gender equality indicators. That is really the extent of the discussion at the minute.

Senator BARNETT—Within Westpac's business?

Ms Broderick—No, not within its business; this is generally. It is the number of gender equality indicators generally.

Senator BARNETT—What is the nature of the discussion you are having with Westpac? I am not with you?

Ms Broderick—We are looking at a set of gender equality indicators. We really are in introductory discussions to see whether or not there is the possibility of funding some work in relation to gender equality indicators. That is where we are at. It is very embryonic.

Senator BARNETT—My question is: if those embryonic discussions continue and are successful, you would end up undertaking work for Westpac on a fee-for-service basis. Is that correct?

Ms Broderick—They would contribute funding to the development of gender equality indicators.

Senator BARNETT—And they would pay the commission accordingly. Correct?

Ms Broderick—They would make a contribution to the funding of that.

Senator BARNETT—Of course. They would pay the commission for that work for which they have negotiated with you an agreement to fund.

Ms Broderick—And potentially a research house which would conduct that.

Senator BARNETT—Separate to the commission or within the commission?

Ms Broderick—Separate to the commission.

Senator BARNETT—How would that operate?

Ms Broderick—They would directly fund a research house.

Senator BARNETT—Right. How often do you receive these requests for work and partnering arrangements? How many are there? This is somewhat revealing. What is the extent of this third-party discussion and activity that you are having presumably on a weekly or daily basis?

Ms Broderick—If we look at the Oxfam fee for service—for example, the secretariat for the Close the Gap campaign—there are some areas where we are not funded to do work and that funding is provided either by an external source, an NGO, or other sources. We can give you a list of those.

Mr Gooda—For Close the Gap, a coalition of people came together to agitate for a close to the life expectancy gap of Aboriginal and Torres Strait Islander Australians. Following on from that, once a commitment was made from government, it was decided that various organisations wanted a coordinating function and that would be best placed within the commission. It is work that is additional to what we would do. My predecessor, Tom, in his 2005 report made an issue of the gap in life expectancy. The commitment was made from government. There is a whole variety of organisations that contribute to Close the Gap, not just Oxfam. There is the Fred Hollows Foundation and a whole lot of other organisations that we can advise you about and provide.

Senator BARNETT—Okay. Does the commission receive donations with no strings attached?

Ms Broderick—No, we do not.

Senator BARNETT—Do you receive grants with no strings attached from entities other than the federal government?

Ms Broderick—No, we do not.

Senator BARNETT—Do you receive grants with strings attached?

Ms Broderick—For a particular project, yes—for an additional product set.

Senator BARNETT—All right. On notice, could you provide further and better particulars regarding those third parties for which you have a relationship, for which you have commercial or otherwise relationship, and details of the nature and extent of those relationships? That would be appreciated. Could you also provide the guidelines we discussed earlier and the criteria that you have, that the commission agrees to, and ipso facto at a later time is then advised in your annual report to the minister? If it is anything different to that, perhaps you could let us know.

Senator Ludwig—I would add only the proviso of unless there were commercial-in-confidence material, but I am sure the commission can advise you of that and put the grounds

and reasons for not providing it, if it is commercial-in-confidence. I am not aware of the material, but it is a caveat that I should at least put on the record.

Senator BARNETT—I am sorry, Minister, you are not aware of any commercial-in-confidence agreements?

Senator Ludwig—No, that is right. I am just simply putting on the record that there may be, and the commission may seek to rely on that. What you have asked for is quite a broad range of information. I am sure the commission will assist in providing as much information as it can in terms of what it can place in the public domain. Of course, the work the commission is undertaking is in the public good, so I suspect they will be able to provide certainly a broad cross-section of the work they do and will be able to justify some of the interest that people will have in this committee's work as to the work that the commission undertakes.

All of that, to my mind, is helpful. I put only a small caveat because of the breadth of your question. There may be commercial-in-confidence material that you have asked for. I simply state that they should then invoke the order in the Senate for justifying such material justifying by stating it is commercial in confidence and underpin that with reasons for coming to that conclusion.

Senator BARNETT—Thank you, Minister. I have previously advised the commission publicly of my concern that the commission is acting as a law unto itself. When I hear in evidence put to this committee that third parties are having relationships and receiving fee-for-service activities in which the commission is involved, one of the thoughts that comes to mind is whether there is some sort of cash-for-comment arrangement that is occurring in perhaps in a different form. I am not saying that in any respect of those entities you referred to it is occurring, but it raises questions. These questions need to be answered. I hope to pursue that in due course once we have further and better particulars delivered to the committee.

I will move on. I understand the government has introduced legislation to establish an age discrimination commissioner. Is that all sorted? Can you provide the status report on that, Ms Broderick?

Ms Broderick—Yes. On 30 September the government introduced to the House the Sex and Age Discrimination Amendment Bill 2010. That has been referred to the Senate Standing Committee on Legal and Constitutional Affairs for review. The chair knows about it.

CHAIR—We all know about it.

Ms Broderick—Okay. I think public submissions are due by 27 October.

CHAIR—That is right.

Senator BARNETT—I note the *Courier-Mail* headline on 1 October that ageism is a threat to the economy. The article calls for change and Ms Broderick is quoted. I am aware also of the media release of 30 September by the Attorney-General, Ms Kate Ellis and Mark Butler.

Ms Broderick—Right.

Senator BARNETT—Considerable angst has been expressed at least in the media regarding the housing industry. The *Australian* stated on 23 July that if you are disabled, you will wait outside for 10 years. Would you like to respond to that concern that has been expressed publicly?

Ms Broderick—Senator, as Commissioner Innes is not here, it would be good if we could take on notice any questions in relation to access to housing and disability standards.

Senator BARNETT—All right. I draw your attention to that article on 23 July in the *Australian* under the headline, ‘If you’re disabled, just wait outside for 10 years’, and the subheading ‘Bill Shorten’s deal with the housing industry is a farce’, written by Bill Moss. I draw it to your attention. You should be entitled to respond. I have not seen any response publicly from the commission. I would like to be aware of your views and response to those allegations. They are set out in that article. I draw that to your attention.

Ms Broderick—Yes, thank you.

Senator BARNETT—I understand that there is a hearing before the commission of the Fraser-Kirk and David Jones sexual harassment case. I do not want to transgress any sub judice concerns at all, but can you clarify if that is the case and what is the status of that hearing?

Ms Broderick—The media is reporting that the conciliation has settled the claim, but as you say the details of conciliation are confidential to the parties and I cannot say anything further about that.

Senator BARNETT—Is there a separate hearing before the commission?

Ms Broderick—The media has reported that both parties—and both parties have stated this—have approached the Australian Human Rights Commission for a conciliation. That process would happen independently of any process before the Federal Court. Currently there are pleadings and the matter is progressing through the Federal Court as well.

Senator BARNETT—Sure, but my question is: is the commission involved? Is that a fair question?

Ms Broderick—The media has reported that we are involved. I really cannot comment. We do not comment on any conciliation or any matters that are before the Human Rights Commission.

Senator BARNETT—Hypothetically, when a conciliation comes before the commission again, is that undertaken gratis, or do you get a fee for service for that type of activity?

Ms Broderick—When we conciliate—and we conciliate many sexual harassment claims every year—that is a free service that the commission offers. It involves highly skilled conciliators as part of our complaints division. It is a free service.

Senator BARNETT—All right. My final area of questions relates to the issue of freedom of religion. Considerable concern has been expressed about the United Nations defamation of religions resolution. Are you aware of that resolution?

Mr Dick—We know there is such a resolution but we have not undertaken any detailed analysis of it.

Senator BARNETT—I am advised that several years ago the Organisation of Islamic Conference, comprising 57 countries with significant Muslim populations, introduced the defamation of religions resolution to criminalise words or actions deemed to be against another religion, especially against Islam. On the surface it might sound harmless, but my question is whether it has the effect of providing international legitimacy to national laws that punish blasphemy or otherwise ban criticism of a religion. Do you have a response?

Are you familiar with the concerns that have been expressed about that particular resolution, noting that in Australia we have freedom of religion, freedom of speech and freedom of association, which we hold very dear. I am interested in the commission's view. Obviously the government may have a different view; the commission often has a different view to the government's on these matters, and we will come to the government and/or the minister shortly. I am interested in the commission's view as to the consequences of that resolution.

Mr Dick—The commission has not taken a public view on the resolution. As it is a resolution, I am sure you would understand that the status of resolutions in international law is fairly low level. It certainly does not have any binding application in Australia.

Senator BARNETT—It is not uncommon for the commission to consider many of these international obligations and treaties from the UN as extremely important. The commission previously has acted very vigorously to enact and fulfil what it sees to be its views of those international resolutions, so I am asking about this one.

Mr Dick—Yes. Under the commission's functions, it has statutory functions in relation to a number of international obligations that usually are treaties, so it is quite appropriate for us to advance issues relating to those. But this is a resolution which is not of that status, and we have not taken it public.

Ms Broderick—It is not something that has come before the commission executive.

Senator BARNETT—Is the commission aware of this resolution that has been put to the UN?

Mr Dick—Yes, we are aware. In broad terms, we are aware that it exists.

Senator BARNETT—And you have not considered the merit or otherwise of that resolution?

Mr Dick—No.

Senator BARNETT—Would you anticipate reviewing the merit or otherwise of that resolution and putting your views to the minister and/or the government accordingly?

Mr Dick—There are many resolutions that go through the General Assembly and the Third Committee and the Human Rights Council. The commission simply does not have the resources to comment on all these resolutions. We tend to keep our analysis to those issues that are within our statutory mandate and what we are doing work on.

Senator BARNETT—Perhaps Mr Wilkins and/or the minister can advise if they are aware of that resolution and the government's position with respect to it.

Mr Wilkins—We are not aware of the resolution. It is a matter that the Department of Foreign Affairs and Trade would be responsible for. The Minister for Foreign Affairs probably would be the right minister. I have no idea what the resolution is about, except what you have told us.

Senator BARNETT—Minister Ludwig cannot add anything to that?

Senator Ludwig—No. I am not aware of it, other than from what you have just advised. I can ask the Attorney-General whether he wants to provide any additional comment in relation to your question.

Senator BARNETT—Yes. Perhaps if you could pass that on to the minister, it would be good.

Senator Ludwig—I think the departmental secretary has outlined that it may very well be a DFAT question, so you might want to ask the question of them.

Senator BARNETT—Obviously it is of direct relevance to the commission. Accordingly the commission may or may not express its view to the minister as to the merits of the Australian government signing such a treaty.

Ms Raman—It is not a treaty, senator.

Senator Ludwig—It is not a treaty; it is a resolution.

Senator BARNETT—Sorry—support for such a resolution. I would like to know the government's position, whether it supports or does not support such a resolution.

Senator Ludwig—If it is a Foreign Affairs matter which is a resolution from the General Assembly, in the first instance it is a question that should be directed to the department of foreign affairs and to the Minister for Foreign Affairs.

Senator BARNETT—All right. I will just ask this last question in regard to this area on Pakistan. A Christian couple, Ruqqiya Bibi and Munir Masih, were sentenced on 3 March 2010 to 25 years imprisonment under sections 295-B and 295-C of the Pakistan Penal Code. They were accused of defiling the *Qur'an* and were arrested on false charges that they touched Islam's sacred scripture without ritually washing. The charges were brought by their Muslim parents who had been in an argument with them. In this case the anti-blasphemy laws were used by the Muslim parents to settle a personal score. They have been torn and will be sitting in jail for the next 25 years. Are you aware of that particular case at all? Is the commission aware?

Ms Broderick—No.

Senator BARNETT—That is the advice I received. Obviously it is concerning. In terms of freedom of religion, freedom of association and freedom of speech, it breaches all of those. So the commission is not aware of that and neither is the department.

Ms Broderick—We are not aware of it.

Mr Wilkins—I am not aware of it. Once again, it is probably something that you should be taking up with the department of foreign affairs in so far as Australia might have leverage in relation to it.

Senator BARNETT—Thank you very much and thank you, Chair.

Senator PRATT—Senator Barnett's question and the response to that answers my first question, which was in relation to the sexuality and gender identity consultations and why the commission was not able to visit states other than Victoria and New South Wales for those consultations. Given the budget that you have disclosed, that would be the reason.

Mr Dick—Yes. We are running two sets of consultations in Sydney and Melbourne. Within the budget we are accepting funding applications to fly people to those consultations and we certainly are flying people in from other states for that.

Senator PRATT—Yes.

Mr Dick—There is also the ability to make submissions through the commission's website through until 26 November as well.

Senator PRATT—Terrific. My next question is to Commissioner Gooda: what is the significance of the expert mechanism for the rights of Indigenous peoples? In particular, I believe you have made remarks about the significance of it including a negotiation framework. I want to ask you why that is important in the Australian context.

Mr Gooda—It follows on from the UN developing the UN Permanent Forum on Indigenous Issues, which is a place in New York where people come together. The expert mechanism is more of a working party structure that goes into more detail, and generally it is experts who go to that. The context in which we raised the issue you spoke about is the ability of Indigenous people to participate in decisions that affect them. That is why we talked about a negotiating framework that needed to be established to—

Senator PRATT—Excuse me, Chair. I am having trouble hearing because of other conversations.

Mr Gooda—From our view, it is about the implementation fully of the United Nations Declaration on the Rights of Indigenous People. It is just another plank for that. There is a specific article, which I think is article 18, that talks about the rights of people to participate in decisions that affect them, based on the concept of free, prior and informed consent. That is where we go to in relation to how we implement the declaration fully in Australia—giving full effect to the declaration and what it means for Indigenous people.

Senator PRATT—And the right to consultation and negotiation within that?

Mr Gooda—The right to consultation and negotiation and with, I might add, good faith. I think they are very important parts to remember.

Senator PRATT—I want to ask you for a general report back on the UN Permanent Forum on Indigenous Issues.

Mr Gooda—I think it is safe to say that the focus of the interventions made in New York was around the Northern Territory intervention, the Northern Territory Emergency Response. It was the subject of a couple of side events as well. We spoke about the development of the National Congress of Australia's First Peoples and how that will add to the ability of Aboriginal and Torres Strait Islander people in this country to participate in decisions that

affect them and to provide advice to government. It is about five years since the abolition of ATSIC, and it picks up that role.

We were there to celebrate the election of Megan Davis to the permanent forum. Megan is a young Indigenous woman who I think will do a great job. But mainly it was around the issues around the intervention and looking at how we are treated in Australia, focusing on what happened in the Northern Territory.

Senator PRATT—Recently you undertook a listening tour, as I understand it.

Mr Gooda—I did.

Senator PRATT—I assume that most of the things that you have come across will come through in your 2010 report—would that be correct?

Mr Gooda—We are preparing the 2010 reports as we speak—the *Native Title Report* and the *Social Justice Report*. We hope to table them at the Attorney-General's Department in November. Within 15 sitting days they have to be tabled in parliament, and we expect that will be early next year. I also will be making a speech on 3 November at the Press Club outlining basically my agenda for the term of my appointment.

Senator PRATT—You do not want to give us some advance warning of what you might be raising—or advance notice?

Senator Ludwig—Feel free to give it a plug!

Senator PRATT—Yes.

Ms Broderick—It will be a great speech.

Mr Gooda—It will be about relationships and how we start addressing the relationship between Aboriginal and Torres Strait Islander people and the rest of Australia. It will take in the Constitution and it will address things like racism, the relationship with government, our international relationships, the relationships that Aboriginal and Torres Strait Islander people have with us and the sort of damage that abusive types of relationships can do. I hope to raise those issues in the public consciousness on 3 November and throw it out there for debate, and at least we will start talking about it. It will start to address some of those issues we confront in the Aboriginal community.

I am fairly excited that all major parties, including the Independents, have made the referendum on at least recognition of Aboriginal and Torres Strait Islander people in our Constitution a priority, so I think that will happen within the next three years. We have had preliminary discussions with Minister Macklin about how the expert panel will be put together.

Senator PRATT—Did you get to Western Australia during your listening tour?

Mr Gooda—Yes.

Senator PRATT—I am interested in finding out from you what issues specifically were being raised there.

Mr Gooda—As you know, there is a welfare trial going on in Cannington and we talked to people about that. There is a welfare reform trial going on down there on income

management. We talked about the situation with Mr Ward and the impacts that was having on the Aboriginal community generally in WA. There is the issue of overpolicing—we see young kids, seven-year-olds, being charged with receiving stolen chocolate frogs. Thankfully, that piece of policing did not go much further than that.

We talked about what is a real issue in the Pilbara—housing. As you know, housing is at a premium in those mining towns. Aboriginal people are getting jobs in the mine and their income levels disqualify them from welfare housing. Basically there is no other housing in those places that people can move into. I think it is a real issue, particularly in those towns where there is almost a disincentive for Aboriginal people to enter the real economy of jobs in the mining industry.

Senator PRATT—Yes, particularly for people who live permanently in those communities.

Mr Gooda—Absolutely.

Senator PRATT—In that context, there is so much discussion about things like the Northern Territory intervention that it means quite similar issues in places like Queensland, parts of South Australia and Western Australia do not get the same profile or discussion at times. I wonder if you might also comment on that.

Mr Gooda—If I can just refer to my report, the *Social Justice Report*, we intend to focus on Fitzroy Crossing.

Senator PRATT—Good.

Mr Gooda—The reason we are focusing on Fitzroy Crossing is that we look at three very important areas—the alcohol restrictions, the Fitzroy Futures Forum and the FASD project that is being done in conjunction with the George Institute. They are great stories in and of themselves, but for me the underlying text is about the relationship that happens when Aboriginal people are actually in charge of the process. That is what happened in Fitzroy Crossing with the three of those projects that have happened. Where they are appropriately supported by government, we generally end up with different results. So I just want to highlight, first of all, the efforts of the people in Fitzroy Crossing, particularly the women like Junie Oscar and Maureen Carter, and then say, ‘What are the lessons we can learn out of that?’ I think they are very important lessons. It goes to my speech on 3 November, which talks about relationships and how we establish proper, respectful, trusting relationships and, once we do that, how things are different.

We have not really done it, but I was told to contrast the difference in alcohol restrictions in Fitzroy Crossing as opposed to in Halls Creek. That would probably be a fairly interesting piece of work to do, just to see how they are impacting differently.

Senator PRATT—Yes.

Mr Gooda—Again, it goes to what is going to be something that is going to be right at the top of my agenda: establishing good relationships. I think relationships have been fractured and wounded as a result of the Northern Territory Emergency Response and we have just got to fix those up.

Senator PRATT—Thank you very much.

Senator COONAN—I have some questions for Ms Broderick on diversity issues. I refer first to gender diversity. The latest EOWA report showed still painfully slow progress on the number of women on the boards of the top 200 listed companies and even more, shall we say, stunted progress with regard to women at executive levels. Of course, the lag effect means that the figures are probably not quite as bleak. Due to the efforts of the ASX guidance principles, the Australian Institute of Company Directors' mentoring program and other initiatives some real and encouraging progress is being made. Can you update the committee on the commission's work in this area and your views as to the significance of some of these numbers, at least with regard to gender?

Ms Broderick—The Equal Opportunity in the Workplace Agency report showed that in 2002 women represented 8.2 per cent of members on boards in the top 200 companies. That increased to 8.4 per cent in 2010, so we went up 0.2 per cent, which is just glacial. I have sensed that in the past six months there has been some real focus on this issue and greater activity. If I look at the real-time data, it shows that women represent 10.1 per cent of the members of ASX 200 boards. The question is if the focus were moved away whether that would continue. We continue to do quite a deal of advocacy on the issue because we think it goes to our international competitiveness. If we do not fix this issue as a nation, if we do not utilise all the talent that exists in Australia, over time there is no question that it will impact—

Senator COONAN—I am sorry to interrupt, but where do we rate?

Ms Broderick—In terms of our OECD counterparts, we are at the bottom end. Japan is beneath us. In fact, Kuwait has just overtaken Japan. We are probably next at 8.2 per cent. The figure in the United States is about 15 per cent and in the United Kingdom it is about 10 per cent to 12 per cent. We are very low compared to our OECD counterparts. Part of the issue is women's ability to be engaged in paid work as well as undertaking caring responsibilities and some of the systemic barriers we have in Australia. It is important that we maintain the focus. It has been good to see the government set a 40 per cent target for women on government boards and committees. Our call is to business to take this up as a serious issue and to focus on it.

Senator COONAN—I know you are very assiduous and careful attendee at corporate functions and that you keep a finger on the pulse of these issues. Last week you were at the *Australian Financial Review* chairman's roundtable. The issue came up that we are focusing a lot on gender but not very much on diversity, and that the arguments are probably just as compelling. I think that was largely accepted by the eminent chairman of the panel. Do you have a view about that?

Ms Broderick—I absolutely agree. It has to be seen in the wider context of diversity more generally. That is about racial diversity, indigenous people and people with disabilities. The point I also make is that if we cannot get it right for the majority of the population—and women do represent 50.8 per cent of the population—then it will be increasingly difficult to get it right for smaller minority groups. The work that is done on gender should help to promote more general diversity. All the research shows that organisations that have a greater diversity, particularly at senior levels, have better performance even in the short to medium term. So there is a strong business case for diversity. I think that is reasonably well recognised; it is not a difficult issue to solve.

Senator COONAN—Does the commission have a view about the timeframe around much greater diversity issues before it would consider looking at things like quotas?

Ms Broderick—In the advocacy that I have been doing as the Sex Discrimination Commissioner I have said that we need to be aiming for a minimum of 40 per cent of both genders on company boards within five years. I think that is the level that we are shooting for. The ASX reforms will be an important part of getting to that point. It is good to see some companies coming out the other day with a 40 per cent target, companies such as Westpac, and some of the other organisations with around 35 per cent. We will watch and see.

Senator COONAN—It is all very interesting. Recently I was at an international conference where the African countries, or at least their parliaments, are now legislating for 50 per cent of women, which is quite extraordinary. I felt that we did not have much to contribute when you have got in principle those sorts of moves abroad.

Ms Broderick—That is right.

Mr Gooda—Senator, can I add that the National Congress of Australia's First Peoples is a company limited by guarantee. I think it is the first company that has in its rules that there has to be equal gender at all levels. So there will be co-chairs—with a male and a female—and in the executive there will be equal gender representation. I think we are probably the first company in Australia to do that.

Senator COONAN—Perhaps I should have gone armed with that information. Thank you very much.

Senator FURNER—Ms Broderick, questions were asked quite some time ago about that new stand-alone age discrimination commission.

Ms Broderick—Yes.

Senator FURNER—Can you enlighten us on your responsibility in that area? What are some of the issues that are being raised in that field?

Ms Broderick—That is right. I carry dual responsibility. I carry responsibility for age discrimination under delegated authority from the president. The main issue on which we have been focusing has been around the prevalence of age discrimination—so the nature and extent of age discrimination, what it looks like in the workplace and how it plays out for people.

Our research, which has been through a series of consultations with peak bodies, unions, employers and older people more generally, shows that age discrimination is quite pervasive across the employment cycle. From pre-employment—'Don't send me anyone's CV who is over 45,' for example—through to when you are in employment—'Shouldn't you be considering retirement?'—through to when you fall out of employment and you try to get another job it is quite difficult.

The Australian Bureau of Statistics classifies mature age workers as 45 years and over. Research shows that from that age onwards your age becomes one of the greatest unaddressed barriers to you continuing in paid work. The point I have been making is that age discrimination sits above whether you have the right skills and experience. It is the group of

stereotypes I have about you because you are someone of that age. That is the issue that we need to address. It is about attitudinal and cultural change.

Senator FURNER—Do you see it changing in regard to the information with which you have been presented?

Ms Broderick—I think to have a dedicated full-time age discrimination commissioner is a positive step, particularly with the demographic change that is occurring. A consultative committee has been set up. One of the suggestions there is that it should commission some research to understand the full prevalence of age discrimination. Once you have that evidence base it will be possible to build educational programs off that.

Senator FURNER— You recently published some issues looking at encouragement for work participation for older Australians.

Ms Broderick—Yes.

Senator FURNER—Can you expand on that area, please.

Ms Broderick—Yes. We published an issues paper on age discrimination. It was the first publication that we put out as the Human Rights Commission which looked at the impact of age discrimination and some of the potential solutions. We found that age discrimination has a significant impact on those individuals who are experiencing it, and not only that—it is largely acceptable in the society in which we live, and it is accepted by the individual who experiences it. One thing I would say is that, when I look at all the different areas of discrimination that we deal with as a Human Rights Commission, it is probably the most insidious form because it is quite largely accepted. That is why we need things such as a full-time age discrimination commissioner and good research to start to dismantle ageism and to do something about it.

Senator FURNER—Thank you.

CHAIR—Do we have any other questions for the Human Rights Commission? Thank you all for making the trek to Canberra and for being with us today.

Ms Broderick—Thank you.

CHAIR—We look forward to seeing you in the next couple of weeks on the numerous pieces of legislation we have to dissect together.

Ms Broderick—Thank you for that.

CHAIR—Good luck with the National Press Club speech, Commissioner Gooda.

Mr Gooda—Thank you, Senator.

CHAIR—Before we move on to the next area and before we go to lunch, maybe you will be able to help us here. I am not entirely sure whether we need the Australian Commission for Law Enforcement Integrity. I am not sure whether ACLEI is present in the building or listening via webcam in an office somewhere in Canberra, but if you are not in the building then you can stay right where you are. People from the Australian Commission for Law Enforcement Integrity, we do not need you. We do not need officers from the Office of Parliamentary Counsel either, so you can stay where you are. We are not entirely sure about the Institute of Criminology and the Criminology Research Council. Senator Ludlam

requested those people. We will check in the next five minutes. If he does not need them, they will not need to come back at 1.30 pm either.

[12.23 pm]

Australian Transaction Reports and Analysis Centre

CHAIR—We are breaking for lunch at 12.30 pm. My understanding is that we will start with AUSTRAC, but at 1.30 pm we will then go to the agencies that are listed on the program. We will come back to AUSTRAC if we need to.

Mr Schmidt—Madam Chair, can I make one representation. I am staying in Canberra for three nights. At least two of my colleagues have young families and have not made accommodation arrangements for Canberra this evening. I am not sure about accommodation; I know that they had difficulties later in the week. Of course, we will do whatever the committee wants, but if there is some indulgence you can bring to bear then I would be grateful.

CHAIR—As chair I am at liberty to say that at 1.30 pm we will finish with AUSTRAC.

Mr Schmidt—Thank you; I appreciate that.

CHAIR—We will then move to the agencies that we have listed. That might help to accommodate balancing work and young families.

Mr Schmidt—You are most kind.

Senator ABETZ—How far have we progressed with consultation with industry regarding the proposed fees for reporting entities?

Mr Schmidt—Senator, thank you for your question. With the election intervening since last we met, we have not had consultation during that period. Currently we are finalising material for consultation—a discussion paper which will be going out shortly.

Senator ABETZ—Has consideration been given—possibly this is a question for the minister—to introducing a transparent fee charged directly to the customer instead of charging industry?

Mr Schmidt—A model is being developed for discussion purposes at the moment. I cannot go into the details of the model, obviously, because the government has yet to authorise it being released. The purpose of releasing the discussion paper is that we will be able to have consultation and feedback. That may be one proposal. If it is not addressed at the moment, it may come back as part of that consultation.

Senator ABETZ—Did either AUSTRAC or the minister, or indeed both, perform any research prior to the announcement of the proposed fees into the possible outcomes of introducing fees?

Mr Schmidt—As part of the budget process AUSTRAC, in consultation with budget agencies, did some preliminary work in respect of the cost recovery impact statement. Some draft work was done there. Obviously all this has to happen in the context of the cost recovery guidelines. I am sorry, but I will refer for an instant to your earlier question: of course, regard would have to be had to the cost recovery guidelines in relation to the extent to which there is

capacity under those guidelines to charge individuals directly for services when they are the customers of regulated entities. I am not quite sure how that would work.

Senator ABETZ—You talk about cost recovery, but this is a regulation imposed by government requiring these people to undertake this service on behalf of government. They are then told that somehow cost recovery is involved in this. The one example I have is of a post office in Tasmania being provided with information that it would cost them \$500 a year to be registered, and they have had no financial transactions of cash of \$10,000 or more, being a small country post office. They do not want to be in this scheme, but they are forced by Commonwealth legislation to be in the scheme—and for the privilege they will now be charged a cost recovery fee. That is what a lot of small businesses and a lot of licensed post offices all around the country simply do not understand. Mr Schmidt, are you aware of that sort of feedback?

Mr Schmidt—Senator, there are a number of elements that you have raised there. Yes, we certainly have had representations about the potential impact of the regime or the cost recovery element of the regime on small business. We are very alive to that issue. Of course, as part of the consultation process, that will be examined further.

Senator ABETZ—But do you understand that, with respect, it is a euphemism to talk about cost recovery from these agencies when it is not a service that the government is providing to, in this case, the licensed post office? It is in fact a regulatory requirement imposed by the government on the licensed post office and then you, Minister, are seeking cost recovery from these small businesses. It just does not seem to fit into the guidelines of cost recovery when in fact it is not a service provided but a regulatory requirement of these small businesses.

Mr Schmidt—That is an interesting point. If I could explore that a little bit further, I would give it a different characterisation. One of the methodologies we have noted through our experience in this field is that it is not the fact that you are a small entity that ensures you will not be subject to attack by criminal elements or abuse or infiltration by criminal elements. In fact, it is sometimes quite small organisations who are the very ones that are targeted by criminals to be used to funnel illicit funds. It is a regulatory regime where the entities who are providing the service are in fact the very ones who have the capacity to control the risk and control the exposure. In setting out the regime, the government—I will draw an analogy—is exercising its role in a way that is analogous to occupational health and safety. There are certain requirements that are for the benefit of the community, for the benefit of workers and for the benefit of customers of these entities. They are the ones that have the power to do the risk assessments; they are the ones that are actually open to attack by criminal elements.

If in fact they are a very small entity that does not engage in transactions that need to be reported to government, even under the model that was put out in the budget papers there would be a very small impost. We know that even that impost generated concerns from small business, so we are looking at that to see what can be done. But it is a regulatory regime which is intended to cover the field of people identified by the parliament in the legislation who should be reporting and who are required under the legislation to have anti-money-laundering programs in place. That is the regime the parliament has put in place. The service that the organisation provides is monitoring of the implementation of that program. We have

to be careful: we do not want people getting a competitive advantage over others who are not complying with what the government and the parliament have imposed upon them. I would use that analogy to OH&S.

Senator ABETZ—With great respect, I do not agree with that. Are we going to break, Chair?

CHAIR—We are going to break, but I do not want to break your train of thought. However, it is 12.30 pm.

Senator ABETZ—That is fine. When do we resume with AUSTRAC?

CHAIR—We will be back at 1.30 pm with AUSTRAC. We will finish with you and your officers and then we will move to the agencies that are listed for 1.30 pm. We will finish AUSTRAC on return to accommodate that need and then move on to the agencies. I am waiting to hear if we need the Criminology Research Council, and if we wait 30 seconds we will know. We are still not clear about that, so at this stage we are proceeding with AUSTRAC at 1.30 pm, after lunch, and then we will go to the Institute of Criminology and the Criminology Research Council.

Proceedings suspended from 12.32 pm to 1.29 pm

CHAIR—We will reconvene this public hearing of the Senate's Legal and Constitutional Affairs Legislation Committee inquiry into the supplementary budget estimates. We are going back to AUSTRAC. Mr Schmidt, over to you. We will take up from where Senator Abetz left off. As I understand it, Senator Ryan is going to ask those questions.

Senator RYAN—Mr Schmidt, I want to go back to what Senator Abetz covered. With respect to the cost recovery measures, are they a 100 per cent cost recovery with respect to the fees being levied on businesses for international transactions?

Mr Schmidt—It is as per the cost recovery guidelines. It is meant to recover the costs of the front-end supervisory regulatory activities of the agency.

Senator RYAN—Because you did mention the issue of the public benefit of this. I do not have a copy handy, but I do recall the Productivity Commission analysis of cost recovery guidelines. That did outline that, where there was a public good, that element should be covered by the taxpayer, because that is a public benefit as opposed to the private benefit conferred by the regulation or the licence. Was that taken into account in developing these and, if so, how was that shown in the cost recovery application?

Mr Schmidt—Perhaps I should have been more detailed in my response. Obviously, the regime is based on a very large number of private benefits for the firms which are under the regime. An analogy may be with the APRA arrangement, but we will talk in terms of the AML/CTF arrangement. There is the issue of economic stability. But certainly for the larger end of town their reputation internationally in respect of not being involved in money laundering, not being involved in criminality, having sound internal practices is of great importance and, obviously, in the recent global financial crisis the Australian financial market was found to be very, very robust. There are numerous benefits—

Senator RYAN—None of those apply to the Ross post office, though.

Mr Schmidt—If I could just clarify a point there, too. One extra item I should have raised is that you may or may not be aware that back in July this year the minister released a paper that outlined some more detail in respect of the government's proposal to introduce a heightened registration scheme for remitters. One of the elements in that scheme is a proposal to develop the concept of a network provider. The vast majority of remitters, and we are talking about small post offices in that context, are parts of a larger organisation that provide for network services. From a regulatory point of view, we have identified that already these networks, in fact, have very strong linkages with their affiliates and that paper posited more formally recognising that. Of course, if that happens for the vast majority of affiliate remitters—the Australia Post outlets, the small businesses—the primary point of contact, to a large degree, between AUSTRAC and that sector of the economy will be through the networks. through, of course, we will still be interested in how their affiliates behave. That leaves open the possibility then, when it comes to cost recovery, that the primary focus should be on the networks themselves, which are large corporate entities, rather than on your small country post office. That is being looked at at the moment.

Senator RYAN—When you were before this committee in the budget estimates, you outlined, and I think Senator Abetz covered this, that you were hoping to have completed consultation by the end of August. I cannot remember the exact words you used, but the \$500 flat fee and the \$1.06 transaction fee were not finalised, I suppose, and feel free to correct me on that. You were hoping to be able to have those done now. Where are we in that process?

Mr Schmidt—Yes, Senator. As I indicated earlier today, the election intervened in that process. The consultation paper I referred to earlier is the one which will hopefully be released in the very near future, which is the next step in that process and is a more detailed look at how the fee and the model may be structured.

Senator RYAN—Is that consultation paper complete?

Mr Schmidt—No, it is still being finalised, but I am hoping it will be finalised very shortly.

Senator RYAN—What is awaiting finalisation? Are we looking at fees or are we looking at the desktop publishing and printing of documents?

Mr Schmidt—I do not know. It is in discussions within government. We have been holding, as you would expect, discussions with the Department of Finance and Deregulation, the Attorney-General's Department, the small business office, the Office of Best Practice Regulation, to refine that model. We are still awaiting comments from one or two of those, I believe, and also discussions within government at ministerial level. That still has to be finalised.

Senator RYAN—Will that consultation paper propose a specific fee or potentially a series of options about how the cost recovery regime could be implemented? Or will it have a government position, which might be \$500 and \$1.06, or it could be slightly different? Will it have options or will it be a proposal?

Mr Schmidt—I think you will have to wait for the paper. I am not really in a position to say what the government is going to put out. We are developing something, but the government has the final imprimatur on that.

Senator RYAN—So the paper comes from the minister, not from AUSTRAC?

Mr Schmidt—It is a government paper. It is a government initiative; it is a government paper.

Senator RYAN—The decisions about what is contained in this will be decisions not made by you as CEO of AUSTRAC; they will be decisions made by the minister?

Mr Schmidt—It is a government paper, but we obviously have a very large role in helping develop it, as do other government agencies who have an interest in regulatory and other issues.

Senator RYAN—If I am here in February next year and I want to ask why it recommends \$522 and \$1.04, that decision is taken by the government and the minister, rather than by AUSTRAC?

Mr Schmidt—Ultimately, it is a matter for the government as to what model is released.

Senator RYAN—In your consultations about this, you mentioned quite a few agencies of government there. Did you go outside government? I gather from your discussions in May at this committee, you were indicating you were going to talk to the large banks and the commercial houses that are the substantial users of this service. Did you go outside government?

Mr Schmidt—There were some very, very preliminary discussions, both at the large end and the smaller end of town, with the banks, the major reporters, some of the major remitter networks and also with representatives, say, of the post office outlets. There were discussions with entities like that and some of the other business industry groups. Unfortunately, the timing of the election was such that it was not possible to have detailed discussions and, of course, any discussions were going to be prefaced on what the model looked like, which is the primary form of consultation which will take place. So the timetable has been pushed back, but we are hoping to release the paper shortly.

Senator RYAN—Can you take on notice a list of the organisations and the businesses with whom you met about this proposal?

Mr Schmidt—We can certainly provide information about the discussions pre the election that took place.

Senator RYAN—And discussions since—or have there been none?

Mr Schmidt—Until the paper is finalised, there has not been formal consultation, but I gave an undertaking the last time I was here, which I will reiterate, that we will be sending details of the proposal to our entire suite of regulated entities. We are endeavouring—

Senator RYAN—There are a lot of people who think they may be a regulated entity but this is all a very new experience for them, though—the post office and the Western Union agency.

Mr Schmidt—I would be surprised, because they already have obligations under the legislation, such as annually lodging compliance reports.

Senator RYAN—There is nothing quite like a bill from the government—

Mr Schmidt—Indeed—

Senator RYAN—for \$500 to bring your attention to the fact that you are newly regulated, though, Mr Schmidt.

Mr Schmidt—I would be disappointed if they did not realise they had some obligations, but I take your point.

Senator RYAN—I am quite happy to be very quickly corrected on this. I am looking at the number of transactions that is growing by seven, eight, nine per cent a year and your description in May that you expected your regulatory workload to be static, I think, was the word you used. I was not sure whether that was applying to the number of institutions you had to regulate or manage but, if there was a transaction based fee, seven, eight or nine per cent growth does lead to quite significant growth in the cost recovery revenues, for lack of a better way of putting it. Am I missing something there when I am seeing that potentially you could be getting, if it was \$1.06, an extra \$3 million or \$4 million a year?

Mr Schmidt—It is a very good point and I welcome the opportunity to clarify that for the benefit of the entities and in advance of further consultation. We are not in a position—we are not allowed—under the regulatory guidelines to go out there and just generate further income for our own benefits. As a regulator, the more money you have got, the more you can do. We have a budget which is set for us, as with any organisation. We will be recovering the amount which has been determined as the appropriate regulatory budget per annum. If in a year, because of the growth of transactions, it may be determined, looking with the benefit of hindsight, that there had been an overrecovery, then the fees charged in the subsequent years will have to be reduced so that we are not seen to be just deriving more and more income because of the number of transactions coming through the door.

Senator RYAN—When you are set that target, that is set by government under the cost recovery guidelines?

Mr Schmidt—Yes.

Senator RYAN—If, for example, one year—and I understand these are estimates and projections—there was a surge in the number of transactions and you made more money than you thought, is it up to the government, or is it up to AUSTRAC then to redress the fees for subsequent years so that over a set period there was not a surplus of revenue?

Mr Schmidt—It is incumbent upon us to review the fees on an ongoing basis so that if there was a massive or even a significant overrecovery in one year, then the fees or levies imposed for the subsequent year would be reduced to reflect that.

Senator RYAN—Finally on this point, if you had a surplus of revenue one year, is it within your power as AUSTRAC to determine, ‘We may grow our own employee base,’ for example, which may mean in a subsequent year that you did not have such a surplus?

Mr Schmidt—No, we would have to get approval from Finance for any change to our overall budget envelope.

Senator RYAN—Sure. I will put the rest of my questions on notice. Thank you, Chair.

CHAIR—Right. So no more questions to AUSTRAC. Senator Parry.

Senator PARRY—If I could just move to the annual report of 2009-10 and the first comment is from page 7. Two items were mentioned in the CEO's review and the first one is on page 7, third paragraph in the final column:

In the Federal Budget, handed down in May 2010, it was announced that AUSTRAC will receive \$24 million to develop its intelligence systems ...

Could you indicate as to whether or not any money has been spent and in relation to what?

Mr Schmidt—I will give the broad picture and then I will pass to my CFO. Yes, as was envisaged in the budget, the first year is preparatory to ultimately issuing a request for tender to the market. It is a four-year program, as you have identified. In broad terms, we are identifying the capabilities which may be available in the market so that we can craft our RFT accordingly and engage some experts to come on board to the organisation so that we have that in-house expertise to assist us in evaluating proposals and developing the tender material. So work is being undertaken. In fact, some of my colleagues recently visited our counterparts in the US and Canada, because it seems that at the moment financial intelligence units—our part of the organisation here which are separate organisations overseas—are also doing major IT redevelopment programs. So it is actually quite a useful time to be having dialogue because the major providers, of course, are international bodies and the experience learned is of great value. Mr Mazzitelli may add some more on detail.

Mr Mazzitelli—In terms of expenditure to date as at the end of September, it was approximately \$50,000.

Senator PARRY—Sorry, \$50,000?

Mr Mazzitelli—Some \$50,000 at this stage.

Senator PARRY—Out of the \$24 million. Again, what was that spent on?

Mr Mazzitelli—If I could just clarify, the budget for the entire financial year for that program in terms of the operating expenditure was \$0.95 million.

Mr Schmidt—So in the first year it is only \$0.9 million for preparatory work.

Senator PARRY—So the preparatory work was what?

Mr Mazzitelli—The year to date, sorry?

Senator PARRY—Yes. What was the work undertaken? Can you describe—

Mr Mazzitelli—Okay. At this stage it is just some initial project planning, some start-up costs amongst our staff in the project areas and some travel.

Senator PARRY—With that program planning, has that outlined how the rest of the money will be spent?

Mr Mazzitelli—We are in the early stages of our project planning; that is right.

Senator PARRY—Can you give any broad indication as to how that money will be spent?

Mr Schmidt—If this would be of assistance on notice, we can give you a broad high-level outline spanning the next few years of the program.

Senator PARRY—That would be fine; thank you. I will accept that on notice. If I could then move to page 41 of the annual report relating to the applications for relief in relation to

the Anti-Money Laundering and Counter-Terrorism Financing Act. In that table on the top right-hand corner we have 21 applications being processed and 37 were received. My reading of that is that the total was 37 and there are 21 still yet to be dealt with. Is that correct at the time of writing of the report?

Mr Schmidt—I think the figure is at the bottom there—that is, applications that have been processed as at 30 June 2010 is 27.

Senator PARRY—So that was the commencement of the year and then 2009-10 and the 21 are still outstanding from the previous year?

Mr Schmidt—That is correct. I gather there was a slight error in the previous annual report. But, yes, 21 was the opening figure.

Senator PARRY—Thank you. Does that 37 include the 21 outstanding, or is that in addition to the 37?

Mr Schmidt—It is applications in, applications out. I am not quite sure what the closing balance of 27 represents—that is, to what extent some might have been on hand at the beginning of the year and what percentage of those reflect others that have been received during the year. But we can provide that information if that would be of assistance.

Senator PARRY—Can we rule out that it was not 58 applications in total?

Mr Schmidt—Outstanding?

Senator PARRY—Yes.

Mr Schmidt—Absolutely.

Senator PARRY—Okay. Fourteen were granted and 17 were not granted, not valid or withdrawn. Can we have a breakdown of those three categories provided on notice?

Mr Schmidt—Yes.

Senator PARRY—Are you satisfied that the requests that are granted are granted in the right circumstances?

Mr Schmidt—I sign off on the majority of these, particularly if they are exemptions. So I would have to say that I am satisfied on those occasions, yes. It is an interesting area trying to strike that balance between the potential scope of the legislation and not being overly burdensome on particular specifics.

Senator PARRY—Can you give some broad examples? Just by way of compliment, I love the case analysis through your annual report.

Mr Schmidt—Thank you.

Senator PARRY—But can you give some broad examples as to what the applications that have been granted were granted for.

Mr Schmidt—Certainly. Say, for an exemption, we may have a closed government super scheme—for example, a small one such as a judiciary in a state that technically would fall within the legislation in that in accepting new members we are confident that they have the appropriate probity and there is no reason to suspect that they are going to be engaging in

transactions which would expose them to behaviour we are interested in. On that occasion we may be able to give them an exemption from all or certain aspects of the legislation.

With regard to modifications, again it may be that an interpretation arises where—I am just trying to think of the example—the legislation could be read in a way which has a broader application than perhaps had been envisaged. We may give a modification to say that, in respect of affected entities, the application is confined to the scope it was intended to meet.

In relation to no action letters, a specific example would be when an entity comes to us that has been identified during a compliance activity to be in breach of some of its obligations under legislation but we believe there are reasons as to why that is the case and it is working towards overcoming it. I am not here in my job to get scalps out of organisations; I am interested in the output and the systems that they have in place. So if there is good faith and we believe they are working with us, and they are being honest and upfront about problems that are identified, we will give people a no action letter, which is basically a statement that, in respect of certain things, as long as cooperation continues into the future, they should concentrate on fixing up the problems instead of worrying about potentially being pinged for something that they have done.

Senator PARRY—Mr Schmidt, is it at your sole discretion to sign off on these? You no doubt rely on advice?

Mr Schmidt—Absolutely, yes. We have a committee within the organisation comprised of general managers who look at the applications. There is legal advice from the legal area provided. So I get detailed briefs with respect to them.

Senator PARRY—On pages 54 and 55 of your annual report, there is a table indicating the dissemination of suspect transaction reports and suspicious matter reports. The table does not separate the two items, but that is not relevant to my question. A comparison of the 2008-09 table with the 2009-10 table shows that, in the dissemination of those reports there was a decline in numbers for the Australian Federal Police and, conversely, there was an increase for the Australian Crime Commission. Then if we look at the New South Wales Police Force and the New South Wales Crime Commission, there is an increase and a decrease respectively. Then we see a large change in Centrelink disseminations. My question is in two parts. Firstly, has there been a realignment of duties within each of those agencies that has changed the dissemination? Secondly—perhaps you could take this part first—is it relevant? Is it an important statistic?

Mr Schmidt—There is an explanation as to why there are some of those variances. I will get Mr Visser to answer that in a moment. As you have raised the point, I would clarify that you have referred to the two types of reports at the top of page 54—SUSTRs and SMRs. One is under the old legislation; one is under the new legislation. In substance they are the same. That is for completeness.

Senator PARRY—Different terminology.

Mr Schmidt—John, you might just explain the movements in the reports.

Mr Visser—On the face of it, there has been a shift as a result of the Organised Crime Strategic Framework and the establishment of a fusion centre and a move for the Australian

Crime Commission to take on more of a role of developing intelligence for referral to our other law enforcement agencies. So that may explain a drop in the AFP direct referrals as compared to the work take-up by the Australian Crime Commission. I cannot give you an off-the-cuff explanation for the New South Wales Police Force and the New South Wales Crime Commission.

Senator PARRY—You are not aware of any realignment?

Mr Visser—I am not aware of any.

Senator PARRY—What about Centrelink? That seems a fairly large drop.

Mr Visser—Centrelink participate with AUSTRAC on the financial intelligence assessment team and with the Australian Crime Commission and its Criminal Intelligence Fusion Centre. They participate with us. They get a lot of work coming out of the fusion centre in relation to Centrelink fraud—for example, high rollers at the casino who are also receiving benefits. So that has drawn attention to the value that they get from our data in use in their operations. Progressively they are becoming more interested, if you like, in the data that we have.

Senator PARRY—If any other information comes to light, I would be happy to accept it on notice.

Mr Schmidt—Certainly.

Senator PARRY—The fusion centre comment, Mr Visser, leads me to page 7 in the overview remarks. There was something about a seat at the table, if you like, for the fusion centre from AUSTRAC. Have you commenced that process yet? It is probably something I will direct to the ACC as well.

Mr Visser—In relation to the fusion centre, we are recruiting three people at the moment. I understand that those recruitment processes are nearing finalisation so we will be contributing three analysts.

Senator PARRY—So you will have three people from AUSTRAC moving to the fusion centre. Is that a relocation issue or is it a matter of attending there for meetings, for collaboration and for discussion? Is it a full-time position?

Mr Visser—The plan is that they will be outposted to ACC offices.

Senator PARRY—Finally, on the subject of integrity within the organisation, do you submit declarations of financial interest and major changes?

Mr Schmidt—Most certainly.

Senator PARRY—Is that for all the SES? Does it extend down to ELs?

Mr Mazzitelli—I think it is only the SES.

Mr Schmidt—Yes, we certainly do it for the SES.

Senator PARRY—Is there a designation officer within the organisation that receives that?

Mr Schmidt—Yes, we take our internal security very seriously.

Senator PARRY—Who are the declarations made to?

Mr Schmidt—There are two types. There is one I make to the minister, as the CEO, and the others are made to me as the CEO.

Senator PARRY—Thank you.

CHAIR—Mr Schmidt and your officers, thank you very much. We do not have any other questions.

Mr Schmidt—Thank you again, Chair, for your indulgence about the time.

CHAIR—We understand those pressures.

[1.53 pm]

**Australian Institute of Criminology
Criminology Research Council**

CHAIR—Dr Tomison, good afternoon and welcome. Do you have an opening statement or comments you wanted to make to us today?

Dr Tomison—Just a very brief statement. I am Director of the Australian Institute of Criminology and I also have responsibility for answering questions for the Criminology Research Council. I have with me my Acting General Manager, Corporate Affairs, Mr Brian Russell.

Senator LUDLAM—Thanks, gentlemen, for coming in. Can I just check who Mr Russell is responsible to?

Dr Tomison—Mr Russell reports to me as Director of the AIC.

Senator LUDLAM—So we do not have anybody here from the Criminology Research Council.

Dr Tomison—The Criminology Research Council is chaired by Mr Laurie Glanfield but I am the officer who is responsible for administering it, so I answer the questions.

Senator LUDLAM—Do they normally attend in person?

Dr Tomison—No, they do not.

Senator LUDLAM—I have a set of questions that I was going to ask both agencies in parallel. So with either hat on, because I am presuming your answers will diverge in some instances, can you tell us, to begin with, what the formal relationship is between the institute and the research council and how the two agencies—if that is how I refer to them; I am not sure what the technical term is—coordinate your research and the work that you do?

Dr Tomison—The Criminology Research Council has been constituted for a number of decades now. Initially it was incorporated within the Institute of Criminology. The short version is that there was a split in the way the organisation was functioning some time ago—in the late 1990s is my recollection—and based on that the Australian Institute of Criminology stayed as it was and was asked to provide secretariat functions on a formal basis to the Criminology Research Council. The Criminology Research Council has always been constituted as a board of management, which has state and territory representatives from the Attorneys-General and also Commonwealth representation from the Commonwealth Attorney-General's portfolio. At the moment, and for some time now, the chair of the

Criminology Research Council is been Laurie Glanfield, who is the Director-General of the New South Wales Attorney General's department.

The Australian Institute of Criminology has a separate board of management—again, state and territory representatives from the Attorneys-General, also two Commonwealth representatives from the portfolio appointed by the Attorney-General. At this point in time it is Ian Anderson, representing the Attorney-General's Department, and also Mr John Lawler, CEO of the Australian Crime Commission.

Senator LUDLAM—Those are the administrative arrangements. How do the two entities coordinate their work?

Dr Tomison—Both boards meet three times per year—twice at the AIC and once in a jurisdiction. The boards meet sequentially and what tends to happen is that each board considers issues of concern that may relate cross-portfolio. In terms of how the research gels, how that research is kept congruent, the AIC provides a CRC adviser, a senior academic, who provides advice on potential grants that the CRC may want to offer. There is also a CRC research fellow, who is an AIC staff member who is a researcher essentially funded to provide research support services to the CRC. I attend the CRC meetings and, of course, I am a member of the AIC board so I get to hear everything that is going on. Essentially, although the CRC is a grants program, there is discussion around what the Institute of Criminology is doing, where the board of the Criminology Research Council wants to take research, its priorities for the year—there is a discussion around that each year—and an attempt is made to ensure that there is some congruency. It is not a perfect match because, of course, the AIC has a broader research program and in most cases we are not funded by the Criminology Research Council—they fund research done by the academic field across the country.

Senator LUDLAM—Okay. That is great. Thank you very much. So in sequence, with each of your hats on, can you inform me where I could find a list of the current inquiries that the institute and the council are conducting?

Dr Tomison—Sorry, Senator, did you say inquiries?

Senator LUDLAM—Yes, inquiries or particular research programs. Is that all contained in the respective annual reports?

Dr Tomison—Yes, they are in the annual reports and they are also on the website. The CRC has a dedicated website within the Australian Institute of Criminology's website and they are listed there. I am happy to take on notice and give you a current listing of the work that we are doing at the AIC as well as the CRC's currently funded projects, if that would be of assistance.

Senator LUDLAM—Yes, that would be helpful. I will not make you list them now. I am going to ask you about a couple of particular areas. What process do you use for determining year to year what issues of crime and justice to conduct an inquiry into? Are matters referred to you from, for example, a particular Attorney's office or are they all own motion inquiries or projects?

Dr Tomison—If I could take the AIC first, essentially one of the roles of the AIC is to try to align its research priorities with the needs of government. To do that we take advice from

the minister for home affairs, from the Attorney-General, from the Attorney-General's Department and other government agencies. We set up a series of research priority areas each year which is endorsed by our board of management and then, within all of that, we will take on projects as our budget allows.

In addition to that, though, we also pick up between \$1 million and \$2 million per year of contracted revenue from government agencies at the federal level or at the state and territory level. That may be a police service, a department of justice or another portfolio agency, and occasionally we will also pick up work from the private sector like a bank organisation who may want us to do some financial crime work. We pick up those tasks based on our availability of staff, our specialisation or our expertise to do the work well and whether we can actually deliver a good product on time. So those decisions, if you like, are informed by our broad priorities but we will also consider work where we think there is relevance for the field that we can make a genuine contribution to.

Senator LUDLAM—Which hat were you wearing just then?

Dr Tomison—That is the AIC.

Senator LUDLAM—So the AIC does conduct some work for private entities?

Dr Tomison—At times, yes.

Senator LUDLAM—What would be the approximate balance with the amount of work?

Dr Tomison—The vast majority of the work that the AIC completes is for government agencies, either using core appropriation or contracted revenue.

Senator LUDLAM—And it is your discretion as to whether you accept private work or not?

Dr Tomison—That is true.

Senator LUDLAM—And what fraction of the agency's budget in an average year would constitute private work?

Dr Tomison—Less than five per cent, if you are talking about private work as in private companies rather than government agencies.

Senator LUDLAM—That is what I mean.

Dr Tomison—Yes.

Senator LUDLAM—Okay. Thank you. Did you want to give us a bit of a rundown as to the CRC's process of prioritisation of work?

Dr Tomison—The Criminology Research Council will meet each year and will determine its research priorities, usually informed by a biennial meeting with senior academics—essentially a roundtable—and based on that the council will form a view as to what it wants to fund. That is, if you like, the initial part of the year. There is then a call for research grant applications during the year, which is done annually. Once those applications are received, a panel of two senior academics recommended by the Australian and New Zealand Society of Criminology are invited to review those abstracts for the Criminology Research Council. Once that is done, the CRC research adviser—that is the senior AIC staff member who

provides advice to the CRC—also reviews those grants and essentially a position is formed, if you like a ranking of the applications received, which are then considered by the full board of management and they make a decision as to what they are going to provide grants for each year.

Senator LUDLAM—Okay. I presume it is well within the remit of either of those institutions to conduct research into initiatives that are underway overseas? You are not constrained to just looking at the domestic situation?

Dr Tomison—No, we are not. I think with the CRC it is probably fair to say that it is, again, a national focused research grants program, like the AIC is a national agency, but we are not forbidden from doing that sort of work.

Senator LUDLAM—Okay. I wanted to specifically ask whether either the institute or the council is aware of the concept of justice reinvestment which has been implemented in 10 states of the US and elsewhere around the world. Are either of the agencies aware of that work and have you conducted any research into it?

Dr Tomison—We are aware of the concept of justice reinvestment, which has had various names over its history. Most recently that terminology has been used by people like ex-Aboriginal and Torres Strait Islander Commissioner Tom Calma at a conference the AIC ran last September.

Senator LUDLAM—Which I attended and it was great.

Dr Tomison—That is right; excellent. The AIC actually has plans to look at the work we can do in that area. There is no specific project underway at this point in time. We have had some initial discussions with some agencies to see whether there is potential to maybe do that work. There was some initial conversation with AIATSIS for example, but nothing has happened at this point. In terms of the Criminology Research Council, off the top of my head there is nothing going on right now that would qualify as justice reinvestment work. I cannot speak for this year's grants program, which is in fact in the peer review stage right now and may lead to some funding of that sort of work in the future but I cannot comment on that at this point.

Senator LUDLAM—But specifically it sounded as though you would not quite say that the AIC had it under active consideration yet but it is possible in the near future. What do we need to do to get it into your current year's work plan? Do you take referrals from individual senators at estimates hearings?

Dr Tomison—Yes.

Senator LUDLAM—There are about five questions there. You can treat them in order if you want.

Dr Tomison—We have to make a decision each year based on our expected income as to where we are going to put our priorities and, as I said, we also during the year—this is the AIC I am talking about—will pick up work if contracted moneys become available or if government indicates they would like us to do that work. So it is possible that members of parliament or senators could actually write to us and suggest that we get involved in particular areas. It has happened before. For us though there are other considerations as to how we

actually make that happen, but at the end of the day we have to balance our books and ensure we can deliver on the things we have already committed to. What we tend to do at this point with this particular issue is we are looking for opportunities and we keep our ear to the ground. I have a number of staff who are interested in working this area and so we have feelers out, if I can put it that way, but we have no specific project in mind or that has been specifically identified for, for example, a submission for funding. That is about the best I can tell you really.

Senator LUDLAM—That is okay. It is actually more than I thought you were going to be able to tell me. I would like to put in a very strong bid for resources to be freed up to take a look at the experience overseas and urgently where it could be applied in Australia. You would be aware that it is a process that ranks in order of priority areas of very high incarceration of particular populations, and obviously in Australia Aboriginal people are bearing the brunt. It is something that I have been banging on about for at least since I saw Tom Calma's presentation last year, but we cannot seem to get any movement from the Attorney-General's office—unless they are about to tell me some time this week that things are happening. But if you folk are able to take the lead on it, I think that would be really valuable. Mr Wilkins, is there something you want to add?

Mr Wilkins—No, Senator. I think it is a good idea. I was just making the point that it is really a matter for the states and territories.

Senator LUDLAM—Yes, we have had this discussion before that the states and territories might pick it up in a patchwork, but the Commonwealth can play a leadership role in coordinating these efforts, at least through research if nothing else.

Mr Wilkins—We could do that through research; that is quite right, Senator. But if it is going to happen on the ground, it is going to be in the areas where the states and territories have almost exclusive operations.

Senator LUDLAM—There is nothing, for example, stopping the Commonwealth putting up a matching funding program for states and territories that take these initiatives up. The Commonwealth could match it dollar for dollar, so that is one proposition.

Mr Wilkins—That is true. The only thing that is stopping it is money.

Senator LUDLAM—Maybe we should leave that there. Dr Tomison, is there anything else you want to add in that regard, otherwise we will move on?

Dr Tomison—I think we are done thanks, Senator.

Senator LUDLAM—We are indeed. Thanks very much. Thanks, Chair.

CHAIR—Did you get that research proposal on the list?

Dr Tomison—I am sure we will go back and discuss it, Senator.

CHAIR—Perhaps he has to stand in line like everyone else.

Dr Tomison—We always have competing priorities. As I said, it is on our agenda. It is a matter of what we can get to and when we can get to it essentially.

CHAIR—That is a good answer. I do not think we have any other questions for the institute. If not, thank you, Dr Tomison, and your colleague for your attendance this afternoon.

Dr Tomison—Thank you, Senator.

CHAIR—Thanks very much. We are going to move to the Australian Crime Commission now.

[2.06 pm]

Australian Crime Commission

CHAIR—I welcome officers from the Australian Crime Commission. Mr Lawler, Ms Bailey and colleagues, good afternoon. Do you have an opening statement to provide to us?

Mr Lawler—No, I do not, Madam Chair. Thank you.

CHAIR—Then we will go straight to questions.

Senator BRANDIS—Thank you, Madam Chair. Mr Lawler, I wanted to ask you some questions arising out of the ANAO's audit report on direct procurement, No. 11 of 2010-11, which was published on 30 September. Am I right in understanding that the Australian Crime Commission was one of the four Commonwealth agencies that was the subject of that audit report?

Mr Lawler—Yes, that is correct.

Senator BRANDIS—Thank you. By any chance, do you have a copy of the audit report handy?

Mr Lawler—There is a copy of the audit report here, but I have studied the report and its findings. I can brief the committee on the ACC's response.

Senator BRANDIS—Please do not do that. I do not want a speech or a briefing. I want to put questions to you and I would like you to respond to the questions I and other senators put to you, and to limit yourself to an answer to those questions, not commentary. Mr Lawler, you could not dispute, could you, that of the four agencies that were the subject of the audit—FaCSIA, the Department of Innovation, Industry, Science and Research, the Department of Veterans' Affairs and the Australian Crime Commission—the report in relation to the Australian Crime Commission was far and away the worst in terms of your agency's compliance with the Commonwealth procurement guidelines so far as they concerned direct source procurement?

Mr Lawler—I do not intend to comment about the other agencies. Certainly the ACC agrees with the findings in the report.

Senator BRANDIS—Let me then take you through it by reference to the findings—in particular, those in chapter 4 of the report, 'Direct Source Procurement Processes'. Might I remind you, Mr Lawler, that, in order to be satisfied that the overall objective of 'value for money is the core procurement principle' is being observed, the application of the procurement principles in relation to direct source procurement require: first, that value for money is considered when making procurement decisions; secondly, that the procurement process encourages competition; thirdly, that the procurement method selected supports

efficient, effective and ethical use of Commonwealth resources and is in accordance with the Commonwealth procurement guidelines; and, fourthly, that key procurement decisions and actions are documented to support accountability and transparency. Those are the four considerations recited at paragraph 4.1 of the report. Those are, if you like, the benchmarks against which the four agencies the subject of this report were assessed. Are you aware of that?

Mr Lawler—Yes, I am.

Senator BRANDIS—There were 67 direct source procurements by your agency examined in the course of this review, were there not?

Mr Lawler—I understand that figure is correct.

Senator BRANDIS—That is table 4.1. Table 4.2 on page 87 of the report tabulates what are described as ‘Documented value for money considerations for Direct Source procurement’. It reports that the percentage of cases—that is, the percentage of those 67 instances—where documentation supporting an assessment of value for money was provided to the ANAO was, in the case of your agency, seven per cent.

Mr Lawler—That is correct.

Senator BRANDIS—And that in 93 per cent of cases there was no documentation supporting an assessment of value for money—considerably poorer than the other three agencies, although it should be said in fairness that the highest level of performance was the Department of Veterans’ Affairs at 31 per cent. Mr Lawler, given that the documentation of consideration for value for money is one of the benchmarks required of all agencies of the government, how can you explain to the parliament how your agency failed in 93 per cent of instances audited to meet that benchmark?

Mr Lawler—I think the principle issue relates to knowledge by staff of the Crime Commission of their requirements surrounding the documentation and that specifically goes to, in my view, issues of training. Quite clearly the report highlighted serious deficiencies within the ACC. That is acknowledged. What the ACC has been endeavouring to do, before even the report was tabled, is to remedy that.

Senator BRANDIS—I understand that. In the section of the report that deals with agency responses, at paragraphs 65 and 66 of the summary, the ACC’s undertaking to do better is appropriately recorded. But, Mr Lawler, these guidelines are not newly published guidelines. The Australian Crime Commission is not a brand-new agency. It is a reasonably recent agency in its current emanation but not a very new agency. How can it be that in 93 per cent of instances from a large audit sample this basic compliance requirement was not met?

Mr Lawler—All I can do is repeat my earlier comment to you—that is, there are issues of circulation of staff. We have a large number of staff who join the agency and leave the agency. But I do not want to proffer excuses here. Quite clearly, the audit’s findings are unsatisfactory and, as the chief executive officer, I am endeavouring to remedy that situation, and we are doing so.

Senator BRANDIS—Did the Australian Crime Commission have what in the private sector at least is described as a compliance program in operation so as to ensure that newly recruited staff were trained in the compliance requirements of procurement guidelines?

Mr Lawler—We have a very strong compliance regime. We are an agency of course where compliance across the broad range of our activities is crucially important.

Senator BRANDIS—It can't be a very strong compliance regime if it failed in 93 per cent of the instances.

Mr Lawler—In this particular area of procurement it is quite clearly an area that has not received the required governance, and what we have endeavoured to do since identifying that is to put steps in place to ensure our compliance is enhanced.

Senator BRANDIS—Table 4.4 on page 93 is directed to the question of whether documentation was prepared in accordance with agency guidance to support direct source procurements. The table reports that of the 59 direct source procurements—the difference between the 59 and the 67 is presumably in relation to eight instances where direct source procurements were not ultimately decided upon—the total number of direct source procurements where a procurement plan or equivalent documentation was not required by agency guidance was 59—59 out of 59. Mr Lawler, once again, it is one of the benchmarks for quality assurance in relation to direct procurement that a procurement plan or equivalent agency documentation is required. In this instance the Australian Crime Commission was noncompliant 100 per cent of the time. Can you explain that to us, please?

Mr Lawler—Again, I refer back to my earlier response that it went to issues of staff understanding of the guidelines and the requirements to have such documentation and plans in place.

Senator BRANDIS—Mr Lawler, it is all very well to blame the staff but, with all due respect, if the staff were not trained—and this is not rocket science: compliance with standard procurement practices is something expected of Commonwealth public servants and officers of Commonwealth agencies across the entire Commonwealth government—it is not because the staff did anything wrong; it is because the people responsible for the observance and implementation of these guidelines did not train them. That is a very serious omission, Mr Lawler.

Mr Lawler—That is true and that responsibility rests with me. I accept responsibility for it as being unsatisfactory and, as I have indicated to the committee, even before the report was published we put steps in place to remedy that.

Senator BRANDIS—Had this report and had the ACC not been picked by the ANAO as one of the four sample agencies, this would not have come to light, would it?

Mr Lawler—I do not know that I agree with that.

Senator BRANDIS—How would it have come to light?

Mr Lawler—You may very well be sceptical, but my view is that it would have come to light. Notwithstanding that, these omissions would have already occurred and would have been identified.

Senator BRANDIS—Mr Lawler, given that your agency was on two of the four key benchmarks noncompliant in respect of 93 per cent and 100 per cent of instances from quite a large sample size, I am interested to know what steps, including disciplinary steps, within the ACC have been taken. Has the senior executive officer with direct responsibility for this offered his resignation, for example, or been the subject of any disciplinary process?

Mr Lawler—The answer to both of those questions is no. As a broad context, the ACC's governance procedures since I have arrived at the ACC I think have been very significantly enhanced across a broad range of activity. Indeed, I commissioned two reviews when I commenced at the ACC around specific issues of governance. I asked the then Ombudsman, John McMillan, to come to the agency and conduct an independent investigation of the ACC's intelligence holdings and, indeed, commissioned a former New Zealand police commissioner, Robbie Robinson, and a team including former members from the Department of Finance and Administration, to put a benchmark in place as to the levels of governance required. I can report to the committee that since that time there has been enormous improvements around governance in the agency to the extent that the Commonwealth Ombudsman and the Australian National Audit Office have provided very complimentary comments around some of the governance within the agency, obviously not in the area of procurement, but in other areas I can take the committee to written documents praising the agency—

Senator BRANDIS—No, I am not asking you to do that.

Mr Lawler—I think it is about the context, Senator, but your points are well made. If I can take the committee to the second part of your question about what the agency has done about the audit's findings—

Senator BRANDIS—Yes, please.

Mr Lawler—What we have done is engaged Shane Carroll & Associates to deliver contract management and procurement training—as you indicated, one of the key things—

Senator BRANDIS—What was the name of that firm?

Mr Lawler—Shane Carroll & Associates.

Senator BRANDIS—Are they compliance training specialists, are they?

Mr Lawler—I understand they are. They have already conducted four courses in 2009-10—so last year—capturing 39 staff across six offices around the country. Two more courses are budgeted in 2010-11 for those key staff who are subjected to and are required to undertake procurement or contract arrangements. In addition to that—we have not left it at an external contractor alone—we have conducted four further in-house courses in 2009-10 by the new team leader of procurement, and that is for 45 staff in four offices. In a national context, in the last financial year we have put quite a lot of effort into improving the level of understanding and training to staff in this area. As I said, I am not happy with the audit result. It reflects poorly on the agency that is trying to significantly enhance its governance and standing in government, and we are looking to do something about it.

Senator BRANDIS—Mr Lawler, you talked about a team leader for procurement. How many staff at the Australian Crime Commission are wholly or largely tasked with

procurement responsibility; in other words, how many people do you have whose main job it is to make these procurement decisions?

Mr Lawler—I understand that we have three staff—

Senator BRANDIS—Three!

Mr Lawler—Three staff specifically responsible for procurement.

Senator BRANDIS—How much does it take to train three people?

Mr Lawler—Senator, what you need to understand is that that then relates to the managers in the various business units throughout the agency who also have a role to play in the procurement process.

Senator BRANDIS—Do these three people ultimately have to sign off on any procurement?

Mr Lawler—I understand that the sign-off comes from the business manager.

Senator BRANDIS—Is that one tier below?

Mr Lawler—It may be or it may be a tier above. But, whoever is responsible for the relative procurement, the three people that I am referring the committee to are people who are experts in procurement and they provide guidance to the line managers in this regard.

Senator BRANDIS—How many line managers are there, Mr Lawler?

Mr Lawler—There is an array and I would need to take that question on notice.

Senator BRANDIS—Roughly.

Mr Lawler—It might be 40 or 50.

Senator BRANDIS—So these procurement discussions in the first instance are made by around 40 or 50 line managers who are advised by three procurement experts. Is that what it amounts to?

Mr Lawler—In simplistic terms, yes.

Senator BRANDIS—Mr Lawler, if that be the case, even though it is in simplistic terms, I must say with all due respect that to me it beggars belief that the problem can lie merely in the training of staff because of the large throughput of staff through the agency. We are only talking about perhaps 50 individuals. How much trouble does it take to train even 50 individuals in observing and applying fairly straightforward Commonwealth procurement guidelines which are a requirement of all Commonwealth departments and agencies across the whole of government?

Mr Lawler—Well, that is what the agency has been doing.

Senator BRANDIS—Mr Lawler, the point in itself makes itself so I do not want to belabour it, but let me now take you to table 4.3 on page 88 of the ANAO report, the number of quotes sought for direct source procurements in the audit sample. May we take it, Mr Lawler, that we are in agreement that, given that the Commonwealth procurement guidelines recommend—even when there is a direct source procurement—a competitive process, at the very least one would expect that quotes would be obtained from potential suppliers. That

would as a matter of commonsense. Anybody out there listening to this broadcast would know that if they want a job done or something supplied they get a quote for it first. Do you agree?

Mr Lawler—In the main, yes.

Senator BRANDIS—But you see what to my astonishment table 4.3 reveals is that, of the 59 instances of direct source procurement by the Australian Crime Commission under review, more than one quote, which I suppose in most people's language would indicate a degree of competition in the process, was sought in only 12 per cent of cases, only one quote was sought in 19 per cent of cases and no quotes were sought in 69 per cent of cases. That is completely unsatisfactory, is it not?

Mr Lawler—That is not a good result, as the audit has found, and as I have—

Senator BRANDIS—You have three people in your agency who are procurement experts and in 69 per cent of cases they do not even get a quote when they procure a service or an item from a supplier. How could those people be doing their jobs if in 69 per cent of cases you do not even bother to get a quote and in 19 per cent of cases you only bother to get one quote?

Mr Lawler—Can I just explain? There is some level of complexity here that needs to be put so that it can be fairly understood.

Senator BRANDIS—Sure.

Mr Lawler—The first point is that some of the quotes are actually quotes that are rolled over so that if we have the same provider of the service from year to year, or from time to time, then effectively no quote will be asked for; the service will just be re-engaged again.

Senator BRANDIS—That is not good practice in itself, is it? Wouldn't you, when it came to renewing a contract, consider when the contract came for renewal whether you were getting value for money under the contract?

Mr Lawler—I understand that in some instances it has made good sense to do that and I would need to take on notice the specific cases involved. The second area is, of course, where there is only a single provider of the particular service concerned.

Senator BRANDIS—Yes.

Mr Lawler—And some of the unique nature of what the Crime Commission does—

Senator BRANDIS—I understand.

Mr Lawler—has only specific suppliers, unique suppliers to deliver particular services or particular capability for the agency. But notwithstanding that—

Senator BRANDIS—Mr Lawler, can I just say this. I understand the point that you have the problem of—what is it called?—monopsony, particularly with specialist suppliers, but even then you have a budget to meet. In those cases that would excuse not getting more than one quote if there is only one seller in the relevant market, but surely it does not excuse not getting any quotes so that you have no idea how much this is going to cost you in 69 per cent of cases?

Ms Bailey—If I might answer? The agency has gone through a fairly thorough process of trying to go out to market for its major services over the last two and a bit years. I am not sure exactly how old some of these issues are. Nevertheless, they are there in the ANAO's—

Senator BRANDIS—The report was published on 30 September. So we assume that it is reasonably current.

Ms Bailey—However, they did go back into some time in terms of looking at the cases. I accept that.

Senator BRANDIS—Sure.

Ms Bailey—We have done a lot to try to market test to get the best services and the best value for the agency. I accept that in this case—

Senator BRANDIS—Ms Bailey, you may say that, but you have to concede that you have failed, surely, when you are non-compliant against two guidelines in respectively 100 per cent and 93 per cent of cases. You do not even ask for quotes in 69 per cent of cases. How can anyone possibly look the Australian people in the eye and say, 'We are getting value for the taxpayers' dollar'?

Ms Bailey—I think we have put every endeavour into getting value for the taxpayers' dollar. Whether we have gone to every particular contract that has had to be renewed, I am talking about a suite of things that we have done. At the big end of our money we have absolutely gone and tested the market and achieved significant savings for the agency. Many of these, I understand, were continuing services around property management or computer services that were just being rolled over. So we are absolutely about it. I am not excusing the fact that the documentation was not there, but the agency has done a lot to market test to get the best value for the agency and save substantial money.

There is more work to be done, but we do not take it lightly and we have made every effort to try to focus on the bigger agenda items for us—bigger budget items—and fix those first. I would have to understand what the quantum of dollars was involved in these cases compared to the quantum of dollars in some others. So there is a context around this.

Senator BRANDIS—There may be a context but I think we should be able to proceed on the assumption that the ANAO in its report is studying a fair sample and it is a large sample—59 and 67 instances respectively. I do not want to go on about this. I think the figures speak for themselves. Mr Lawler, will you undertake to the parliament that you will make ensuring observance of the Commonwealth procurement guidelines brought by your agency a significantly greater priority than it has been in the past and that we are not going to again be faced with the embarrassment of finding your agency non-compliant in respectively 100 per cent and 93 per cent of instances against two key procurement benchmarks and that we are not going to be again faced with a situation in which there is no competitive process in relation to 88 per cent of your direct procurements and no quote is even sought in 69 per cent of your direct procurements?

Mr Lawler—Yes.

Senator BRANDIS—Thank you.

Mr Wilkins—Senator, I do not want to cut across what you were just talking to John Lawler about; I just wanted to make the point more generally that I am a member of the board, which is not a governing board—it is a board that deals with references et cetera—which includes the commissioners of police and various heads of agencies in the Commonwealth. I just want to make the point that since John has become the CEO of the Australian Crime Commission the general view of the board is that he has made a huge difference in a general sense in terms of the governance and general compliance of the agency. That does not go to the particular point that you have been raising, but I just wanted to put on the record that the board thinks very highly of the work that he has been doing.

Senator BRANDIS—That is fine, Mr Wilkins. It is generous of you to say that from Mr Lawler's point of view, I am sure, but the fact is that he is the person now with responsibility—

Mr Wilkins—No, I am not arguing about that.

Senator BRANDIS—Some of this data I will acknowledge is historical, but this is a gross failure in compliance with basic procurement principles.

Mr Wilkins—I am not arguing about the particular case.

Senator BRANDIS—It is entirely proper for the committee to chastise Mr Lawler and, through him, the agency for its failure.

Senator PARRY—If I could just direct the ACC commissioner's attention to resourcing, and I am going to just highlight some media articles which I am sure Mr Lawler is aware of. The first one relates to a Mr Michael Purchas, and this is an article that appeared in the *Age* on or about 31 August this year, indicating that resourcing is inadequate, and this is an experienced drug investigator. Also if I could go to the *Age* on 30 August, and this relates to a joint *Age* and ABC *Four Corners* program and some revelations on that program. I can quote Senator Stephen Hutchins, who called for reforms to combat organised crime on the waterfronts and a further quote that law enforcement agencies have been exposing what has been going on on the waterfront but it is whether or not we as politicians are prepared to give them the weapons they need to combat it. My questions go in two parts: firstly, resourcing for the ACC and the structure of the ACC and how it works with the Australian Federal Police in relation to operations of this nature and, in addition to that, state organisations; and, secondly, any broader comment about the articles in general, and I would assume that you have read those articles and are familiar with the *Four Corners* and the *Age* joint revelations. Could I indicate this is from the media, so I understand that this needs to be contextualised in that frame.

Mr Lawler—Just in relation to your first question around the broader interaction between the commission and the way it operates and the state and territory police and indeed our Commonwealth partners, the ACC has embarked upon quite an extensive change management program over the last 18 months or so and it has been focused around two things. The first is wanting to ensure that the ACC's resources are focused on the highest threats to Australia from serious and organised crime and examining the best ways to do that—the most effective and efficient ways to do that—and that is around following the money, looking to identify with partners such as AUSTRAC where the most significant flows of illicit funds are and

endeavouring to identify the criminality that lies behind that and indeed move to seize the funds concerned.

The second premise that the ACC has anchored itself to is a premise not to duplicate effort. As a small agency with a very significant remit, we needed to understand where it was that this agency could deliver the best value for the Commonwealth and the community of Australia. Part of that relates to using very relevant and contemporaneous criminal intelligence to help our partner agencies with interdictions and disruptions. That is not to say that the ACC will not investigate or interdict or disrupt, but we can get a force multiplier by providing irresistible intelligence—irresistible lead information—to our partner agencies so that they can use their much greater capacities by way of human resource to tackle that, because indeed we are in a target rich environment. There are more targets than all the combined resources we have could manage. It is about making sure that the resources that are applied are applied to the highest risk targets.

In relation to resourcing, notwithstanding what we have previously discussed around procurement, there have been some very significant attempts to ensure not only good governance in the ACC's operation but cost-effective delivery of outcomes and services. To that end, what we have seen is some very good state and territory interdictions, some very good use of resource. The reality is that there is not a CEO anywhere that would not like more resources, but what we are tasked to do is with the resources provided deliver the best possible outputs we can for the government. I believe that the agency is doing that.

Senator PARRY—You are familiar with the three articles in the media that I referred to?

Mr Lawler—I have the articles here. I would have read them at the time, but I have not refreshed my memory of them lately.

Senator PARRY—One of the general themes, if you like, from the articles is that drug importation, illicit drug supply, is running rampant and agencies, including the Australian Crime Commission, are not keeping up with it. Do you wish to make a comment on whether you believe that reflects what is accurate or whether it is too shallow in its understanding?

Mr Lawler—I think it is too shallow in its understanding. There is no question that Australia is a consumer of illicit drugs. That is reported by the United Nations office of drugs and crime, and of course we know that. The public know it from the large seizures that are made by law enforcement agencies. Indeed, 13 tonnes of illicit substance was seized by law enforcement in 2008-09.

That having been said, I do not believe that it is a futile exercise. I think there have been very significant and important steps forward in reducing the supply of illicit substances. Indeed, some take a view that stopping illicit substances that prevent one death in the Australian community is money well spent. I can report to the committee that the ACC and the broader law enforcement community are working in tandem with the other pillars of the illicit drug strategy—harm minimisation and harm reduction—and it is making a significant difference. We see that from time to time in an array of ways.

Senator PARRY—I am only raising these matters because they have been in the media and I believe they deserve public comment from the agencies. In terms of Operation Hoffman, which you would no doubt be familiar with, how significant was the Australian Crime

Commission's involvement in that? Did the Australian Crime Commission lead that or was that instigated elsewhere?

Mr Lawler—I try to move away from the word 'lead' because it is a word that actually puts one agency ahead of others. What it was was a very strong collaborative and partnership effort by a range of agencies at both the federal and state level. Many agencies were involved. The ACC played an important role. It showed transnational crime with all of the dangers that attach to it—highly flexible, highly innovative, transnational in its nature, involved in multiple crime activities from fraud to money laundering to identity crime to the illegal importation of narcotics.

As you would have seen from the *Four Corners* program, which was based on Operation Hoffman, it was a very sophisticated organised crime syndicate. That further reinforced that organised crime has moved away from hierarchies to more loose-knit networks involving multicultural entities and they are very difficult to target and very expensive to target by law enforcement. They facilitate their activities through corruption and they are in the business of making money and exercising power.

It was a very good effort by law enforcement collectively which involved \$66 million in illicit drugs being seized—that is drugs that are not making their way onto the streets and into the avenues and the laneways of Australia—\$9 million in cash and assets restrained and, indeed, on the public record, a number of the major players, the international players, are wanted on arrest warrants around the globe. In one sense, people do make commentary about the negativity of what is being done, but I put before the committee those sorts of outcomes as testament of the success that has been made.

Senator PARRY—You mention, Mr Lawler, that the expense of operations and the nature of policing that has changed, where it is more expensive to monitor and to track more sophisticated criminals. That does lead back to the question of resourcing. Also, do you want to make any comment about the comments of Senator Hutchins in relation to giving our agencies the right weapons, weapons from our perspective probably being legislative instruments? Would you like to make a comment about that? Do you feel as though additional resources in that sense would be of great assistance to the ACC?

Mr Lawler—The issue of weaponry, if we can call it that, in the fight against serious and organised crime, as you correctly point out, has many facets. It has, of course, a legislative facet to make sure that the legislation keeps abreast of the nimble nature, the flexibility of organised crime. They are always trying to thwart what the authorities and governments put in place to subdue and to disrupt their activities.

The second is in the context of capability; a capability offered in the context of technical capability. We see communications. We see technology expanding at a rate that would be inconceivable a decade ago. We see organised crime taking advantage of that, so it can operate and communicate anonymously. It can operate at a distance from its victims. It can operate and collaborate in a secretive way, more so than it has ever been able to do before. Whilst technology brings great benefit to society and communities, it has its downside in the context of organised criminality's exploitation of this and it is very real. That having been said, there is capability development. Law enforcement and governments are not standing still

and, indeed, the fusion capability that the government announced in July this year is a perfect example of that, where increased collaboration, increased lawful sharing of information between agencies, is now providing lead information and the edge that would otherwise not have been available. So investments like that can have a very significant effect on the impact we can have collectively on organised criminality.

As to the issue, finally, of resourcing—both human resourcing and fiscal resourcing—the ACC in the context of human resourcing has made very significant savings and efficiencies around the areas of supplier expense, ICT, travel, accommodation and those sorts of activities. We have made very significant savings, and that has enabled us to recruit more staff. As I said earlier, there is not an agency or a CEO anywhere in any place that would not ask for more resources and more people to tackle more issues. I think the clever part about the ACC's business model is that by working in partnership we can actually make the use of those human resources—and indeed the use of the human resources of partner agencies—all the more effective. I certainly think that is what the community of Australia would expect from the commission and from the other agencies that work with it.

Senator PARRY—Finally, if I could move to the fusion centre. I believe you were present in the room when I questioned AUSTRAC about how advanced that is. I gather the ACC is the coordinating agency for the fusion centre and it is physically located within the Australian Crime Commission headquarters. Is that correct?

Mr Lawler—That is certainly correct. The fusion centre, which was a \$14.461 million program over four years and invested in on the basis of the successful Financial Intelligence Assessment Team, the FIAT team, that had been working within the commission for quite some period of time, was launched in July this year by the Commonwealth Attorney-General and the Minister for Home Affairs, as he was then. It will be a centre that operates on a hub-and-spoke model, so the centre will be housed in the ACC offices in Canberra, but we will have satellite capability in our major offices around the country. There is very good reason for that. It is a phased approach for the implementation of the fusion capability and it has two initial phases. One is the recruitment of 17 identified specialists for the fusion capability. They go to capacities such as data mining and analysis, statisticians and people who can work with the significant amounts of data, particularly financial data, that the commission lawfully has access to.

Senator PARRY—Are they funded from their sponsoring agencies?

Mr Lawler—No, these will be staff that are recruited by the ACC to the commission specifically. We have recruited seven out of the 17 to date. But in addition to those staff, we have very strong secondment arrangements with an array of other Commonwealth agencies in the first instance and these are staff that are paid for by those agencies but seconded within the fusion capability. This is where the real strength of the fusion capability lies—in being able to, all within the space of the one centre, lawfully share information between those agencies, join the dots and produce the actionable intelligence that I was talking about earlier.

Senator PARRY—Are we talking about all state and territory jurisdictions that have a law enforcement capability?

Mr Lawler—States and territories will be invited to join the fusion capability, but as it stands now the secondment arrangements from our Financial Intelligence Assessment Team, including agencies such as the AFP, ASIC, the tax office, AUSTRAC who you heard from earlier this afternoon, DIAC, Centrelink and the CSIRO have all agreed to provide support to the fusion capability and, indeed, it is in their very great interest to do so.

Senator PARRY—That support is basically the salary and, I suppose, accommodation conditions for the secondees?

Mr Lawler—Any costs that relate to those staff will be picked up by the seconding agency and the value-add they get is, of course, understanding their exposure to serious and organised crime, and we know that serious and organised crime are focused on government revenues and money streams either in the private or the government sector.

CHAIR—Thank you, Mr Lawler and Ms Bailey, for your attendance this afternoon. That is all we have for the Australian Crime Commission.

[2.56 pm]

National Native Title Tribunal

CHAIR—I welcome officers from the National Native Title Tribunal to our estimates hearings this afternoon. Do you need to begin, Ms Fryer-Smith, with an opening statement at all?

Ms Fryer-Smith—No, thanks, Madam Chair.

CHAIR—We will go straight to questions then.

Senator HUMPHRIES—Welcome to representatives of the tribunal. Could I ask you about the amendments to the Native Title Act that were passed last year by the federal parliament, particularly the amendments that recognise the manner in which Indigenous communities record traditional laws and customs. I understand that the amendments removed the presumption that hearsay and oral custom or oral evidence of custom would be treated as inadmissible. Have I understood the amendments correctly? What effect has that had on evidence that has been taken by the tribunal? I assume this applies principally at the level of hearings by the Federal Court. I assume that the tribunal keeps records about the effect of that amendment on the work of the Native Title Act.

Ms Fryer-Smith—The amendments, as you say, did provide for Aboriginal people to give evidence in more culturally appropriate ways than apply under the established laws of evidence. The tribunal conducts some mediation hearings on country. These are normally very informal affairs. There was a particular hearing in New South Wales last year in relation to effectively preservation evidence, I think.

The evidence of the Aboriginal witness was given in the course of that mediation. I would need to check whether or not the provisions of the Native Title Act or the amended provisions which came into effect last year were actually applied in an overt sense, shall we say. But typically in mediation meetings matters are very informal. I think the question might be better directed to the Federal Court in relation to its more formal hearings relating to preservation evidence or substantive trials.

Senator HUMPHRIES—So the work of the tribunal conducting mediations and arbitrations and so on has always taken on board that kind of oral evidence and traditional law.

Ms Fryer-Smith—Yes. Mediations are conducted informally, yes.

Senator HUMPHRIES—So that change to the act has not made any change at all to the way that you conduct your part of the process.

Ms Fryer-Smith—Not substantively, no.

Senator HUMPHRIES—There were also changes made to section 86B of the act which dealt with the way in which bodies or individuals were appointed to conduct mediation and I gather this is an exercises undertaken at the level of the court in deciding who should mediate certain matters.

Ms Fryer-Smith—Yes, that is right.

Senator HUMPHRIES—Has that resulted in a change in the volume of mediation being undertaken by the tribunal?

Ms Fryer-Smith—It is difficult to answer that precisely in that there has been a slight reduction in the number of native title claims which are with the tribunal for mediation. That reduction has occurred since the amendments came into effect last September, but whether that is actually attributable to those particular amendments I cannot comment. I would suspect not since the matters in question which have been taken out of tribunal mediation largely have been programmed for trial rather than perhaps the matters being put in mediation by an independent third party. I think the court is making more extensive use of its own internal registrars for mediation, but at the moment the tribunal still has some 42 per cent of the current native title claims with it for mediation. In other words, we still have 190 claims out of 451 claimant applications with us for mediation.

Senator HUMPHRIES—Okay. You say records are not kept of the number of occasions where the court nominates somebody else other than the tribunal to conduct mediation.

Ms Fryer-Smith—Records are certainly kept, but I would suggest that perhaps the court should be asked about that. Although some matters have come out of tribunal mediation, as I say, to the best of our understanding the responsibility for mediation has not been vested in other mediators—that is, third-party mediators, if I can put it like that.

Senator HUMPHRIES—What other sort of mediators are we talking about? Who typically would be appointed other than the tribunal to mediate?

Ms Fryer-Smith—Under the amendments last year the court has unfettered discretion to appoint mediators to mediate a native title claim. Formerly under amendments made in 2007 the tribunal had the principal responsibility for mediating claims. Now under the 2009 amendments the court may order the tribunal to mediate a claim or part of a claim or it may do so internally, as I have suggested, by utilising its own staff and registrars or it may appoint an external third party. I understand that the court has a list of prospective mediators which it has published.

Senator HUMPHRIES—So what sort of people are these other mediators?

Mr Wilkins—Senator, it might be helpful if I got Katherine Jones to answer the question. I think your train of questioning is mainly about what the Federal Court is doing in terms of mediation.

Senator HUMPHRIES—If they are better able to tell me what sort of people they appoint to mediate, I am happy to do that.

Mr Wilkins—I will get Katherine to explain some of that.

Senator HUMPHRIES—Yes, that is fine.

Ms Jones—In terms of the process, the court went through a process of advertising for people to put in expressions of interest in relation to mediating in native title matters. They got a range of nominees put forward to be on this list, and that process took place over the first half of 2010 and they published the list on 30 July 2010. With regard to the types of mediators, obviously there is a bit of a mix of general mediation skills such as people who have expertise in dealing with Indigenous communities and stakeholders and a broad range of expertise in mediation. The court has published that list, and it is a matter not only of the court encouraging use of mediators on that list but also of indicating to parties who are involved in native title matters that these mediators are available, particularly if they are interested themselves in having different types of mediators who could bring different skill sets to assist in resolving particular matters.

Senator HUMPHRIES—There is no indication, anecdotally or otherwise, of whether non-tribunal mediators have achieved a high level of success in obtaining quick outcomes or appropriate outcomes?

Ms Jones—We would say it is pretty early days as yet in terms of using external mediators, so I think it will be something that needs to be assessed over a longer period of time.

Senator HUMPHRIES—Thank you. Could I ask about the client satisfaction survey which the tribunal conducted this year, please? It included 200 people drawn from the tribunal's clients over the course of the previous year. A number of areas were commented on in that survey—areas of services provided by the tribunal—things like research services and access to geospatial products and maps and so on. Were there questions relating specifically to the performance of the tribunal members?

Ms Fryer-Smith—I might have to take that on notice. I would need to check. There was certainly a significant improvement across-the-board in all the criteria that were assessed in the survey. I am not certain whether the performance of members per se was—I am sorry, I do not recall—a specific survey question. I would need to take that on notice.

Senator HUMPHRIES—I asked the question because there is discussion of the findings of the survey with respect to a range of what I might call ancillary services. But I would have thought that the core business was the work of the tribunal members in being out in the community, mediating, arbitrating, drawing up ILUAs and things like that. But there is no indication of any client satisfaction or dissatisfaction with that kind of service?

Ms Fryer-Smith—My colleague Mr Russo has just indicated that, in fact, there was a question relating to the performance of members, and there was a slight improvement in the ranking of the performance of members.

Senator HUMPHRIES—Okay. From what to what?

Ms Fryer-Smith—I would need to take that on notice and let you know.

Senator HUMPHRIES—That was on the work and performance of the members of the tribunal as they went about their business?

Ms Fryer-Smith—It would appear so, yes. I will check the precise wording and the ranking and provide that information.

Senator HUMPHRIES—Can we have a copy of the survey—the questions that were asked?

Ms Fryer-Smith—Yes, certainly.

Senator HUMPHRIES—I might put some questions to the Federal Court in that regard but there is one thing that I was going to ask which you may be able to help me with. I was just looking at the maps that are part of the annual report of the tribunal. I am looking particularly at figure 5 in the report on page 55. I am looking particularly at the native title determinations registered in Western Australia. I note that quite a large part of the state is subject to successful determinations but those determinations all stop quite neatly on the border with South Australia and the Northern Territory. Given that native title determinations have been done under the federal legislation and I assume—I am not familiar—that the people whose claims are being brought forward do not recognise those boundaries, the traditional lands are not governed by state boundaries, why is it that determinations appear to be unsuccessful in crossing those borders?

Ms Fryer-Smith—I am not certain necessarily that they would be unsuccessful in crossing borders in that for those matters that you see the shaded areas in that map that are grey and ocre, the first respondent to the claims in those areas would be the state of Western Australia. I imagine that most of those matters are consent determinations and that would suggest that agreement has been reached with the state of Western Australia. But, of course, you are right, the claims do not neatly observe arbitrary or post-colonial borders—the state and territory borders. I would need to check, but I would imagine that if, for example, one of those claims also had been lodged in respect to land in South Australia and the Northern Territory, then the government of South Australia would be the first respondent or the government of the Northern Territory respectively and perhaps for some reason agreement was not reached in respect of that part which fell into that jurisdiction.

Senator HUMPHRIES—If it is possible to get more information about those claims, that would be useful. It may be easy to obtain that. I would assume that there are live claims still before the tribunal in respect of land adjacent to those areas of Western Australia in both the Northern Territory and South Australia?

Ms Fryer-Smith—Yes, particularly Western Australia and South Australia but not necessarily the Northern Territory.

Senator BARNETT—Can I just go first of all to the consultancy report by Fellows Medlock and Associates—the review of the organisational structure. I wonder whether you have that report with you and whether we could have a copy please?

Ms Fryer-Smith—I am not certain that I have it with me, but I can check.

Senator BARNETT—Could you take that on notice?

Ms Fryer-Smith—I will certainly take it on notice and I would be happy to provide it to you.

Senator BARNETT—What is the thrust of the report? Can you outline for the committee the main recommendations of that report?

Ms Fryer-Smith—Yes, certainly. The terms of reference for the consultancy were to suggest an organisational structure for the tribunal which would permit it to operate in the most flexible possible way. The report was commissioned post the 2009 amendments which we have discussed already and also post some significant reductions in our budget. It was timely to review our structure to ensure that we could operate in the most cost-effective, useful way across all the jurisdictions.

In broad terms, the consultants suggested that we move to an east-west orientation. We have registries right around the country. We have had eight registries. We now have seven. We have closed our Darwin registry as a post budget measure in the last few months.

Senator BARNETT—Yes, I want to get on to that, but keep going.

Ms Fryer-Smith—In the longer term—and depending on how a number of the drivers that operate the native title system impact upon us—we do intend to move more to a concentrated hub concept on the east coast and the west coast.

Senator BARNETT—So does that mean one in the east and one in the west?

Ms Fryer-Smith—Hopefully not because we are very keen, to the greatest extent possible, to stay close to our clients. Our clients, of course, are not in capital cities. There is a bit of tension there. There are obviously significant costs to be saved and overheads to be saved if one is operating in two or three hubs, but that does create its own issues in terms of not being able to service clients with the same proximity that we have enjoyed.

Senator BARNETT—I understand that. In short, you are moving from the seven hubs which you have had to two or three; is that the plan?

Ms Fryer-Smith—There is no firm plan at the moment. Our chief focus at the moment in terms of saving costs is to look at our fixed costs, and, in particular, rental. For example, in Western Australia we have two registries in separate buildings. One of them is in commercial premises and it is an extremely expensive lease. We are very keen to see if there is some way we can reduce our costs in relation to rental. We have undertaken some staff reductions, as you would know also. At this stage, we do think the east-west orientation makes sense in that the majority of our work has been and continues to be both in Queensland and Western Australia and those states would appear to be natural hubs.

Senator BARNETT—Time is an issue here so I will try to be specific. You have had cuts of \$17.1 million over four years.

Ms Fryer-Smith—Yes.

Senator BARNETT—Can you identify the programs that have been cut and the staff numbers that have been or will be cut as a result of the funding cut by the government?

Ms Fryer-Smith—We now have a single program. We have within that program a number of functions, some of which are mandatory and some of which are discretionary. Of course, it is a priority for us to be able to meet the mandatory requirements of the tribunal which are prescribed by the act. In terms of the nature of the work that we do, such as the registration of claims, we have to make sure that that is still funded.

Senator BARNETT—Perhaps you can just focus on the ones that are being cut. Can you identify those for the committee?

Ms Fryer-Smith—It is more in the areas of assistance to parties, providing information to provisions in the act which permit us to provide assistance to parties. For example, with the same registration testing example that I just gave, it has been our custom to provide preliminary assessments to claimant groups, which we have found is extremely useful and saves a lot of time and angst on the part of claimants and native title representative bodies. That is the sort of service that will have to go. We provide a lot of geospatial information, we provide information, we carry out searches. They are the sorts of discretionary work that will have to go.

Senator BARNETT—How many staff do you have as at 30 June this year? How many do you budget to have as at 30 June next year and into the forward estimates over the next three to four years as a result, no doubt, of the cuts? Can you give us those numbers?

Ms Fryer-Smith—As at 30 June, we had 202 full-time equivalent staff, or 225 head count. Because of a voluntary redundancy initiative and the closure of the Darwin registry, which necessitated some involuntary redundancies, as of now we have reduced to 179 FTEs. There has been a significant, 10 per cent reduction just in the last few months.

Senator BARNETT—That is since 30 June?

Ms Fryer-Smith—Yes.

Senator BARNETT—So that is 23 reduced since 30 June?

Ms Fryer-Smith—Yes, that is right, FTE.

Senator BARNETT—And how many were cut from the Northern Territory office?

Ms Fryer-Smith—Four. For 30 June next year, bearing in mind that we are hoping to save, we are trying to maintain the greatest number of staff members that can continue service delivery, we are budgeting for—I do not have it here, excuse me, Senator—168 at the end of this financial year, Senator.

Senator BARNETT—Do you have a figure for June 2012?

Ms Fryer-Smith—Yes, we do; 154, Senator.

Senator BARNETT—And June 2013?

Ms Fryer-Smith—One hundred and forty from then on, Senator.

Senator BARNETT—So what you are aiming at is a 62 full-time equivalent cut over the forward estimates to your staff numbers and by 2013 that is the figure that you aim to be at?

Ms Fryer-Smith—With respect, Senator, I hate to use the word ‘aim’ because 140 FTE is pretty much approaching our critical mass of staff. We are preparing for it, shall we say, rather than aiming for it. We are very keen to retain the maximum number of staff that we can. But that is a projection, yes.

Senator BARNETT—Of course, yes. There are a number of offices and locations that you are seeking to rationalise and you are working through that at the moment. That is based on that organisational structural report that you have, at least in part?

Ms Fryer-Smith—At least in part, Senator, yes. For example, our lease of commercial premises in Melbourne expired naturally towards the end of the last financial year and we were able to move our small staff cohort into the Commonwealth law courts building in Melbourne, which has represented a significant saving of in the order of \$150,000. We have business to transact in Victoria. We are very keen to be able to do that at a local level.

Senator BARNETT—Is there any impact on tribunal membership in terms of members and vacancies and so on? Can you update the committee?

Ms Fryer-Smith—Currently we have seven members, six of whom are full-time and one is part-time. A year ago we had nine members. Naturally, there has been a significant increase in workload for the members.

Senator BARNETT—We have had considerable discussion in past estimates regarding the backlog, so can you provide us your best estimate in terms of your ability to combat and address the backlog, which goes out many years? Have you got your latest figures on the backlog and how that is being addressed?

Ms Fryer-Smith—The national report that we publish and also our annual report refer to the time which it takes to dispose of native title claims. In short, it appears that the time between first filing a claim and its ultimate disposition is not moving greatly. The time that it takes for a matter to be determined by consent typically is six years and one month. The time that it takes for a matter which is determined through litigation is approximately seven years.

Senator BARNETT—So that is the average—seven years to litigate a native title claim.

Ms Fryer-Smith—Yes, going back to when claims were first lodged in 1994 up to 30 June.

Senator BARNETT—In terms of mediation, it is six years.

Ms Fryer-Smith—Yes, six years and one month.

Senator BARNETT—The most lengthy delay—I think you have told me this on a previous occasion—is how long now?

Ms Fryer-Smith—Do you mean which claim was first lodged which is still in the system?

Senator BARNETT—Yes.

Ms Fryer-Smith—That is the Wik case.

Senator BARNETT—How long is that now?

Ms Fryer-Smith—That was filed in 1994. Most of the claim area of that particular matter, which is a Queensland case, has been determined. There is a very small portion which still remains to be determined and we understand that that consent determination in respect of that very small portion is imminent.

Senator BARNETT—If a claim is made today and let us say it is litigated, have you done any estimates on the expected length of time it will take to settle the matter? Are you saying that it is seven years or is it going to blow out as a result of your cuts to the staff of the tribunal?

Ms Fryer-Smith—As I said, we still have 190 of the 451 claimant applications with us for mediation. We can only focus on those claims which are currently with us for mediation. But, no, we have not done any projections for some time. We monitor how many determinations are made each year and we adjust our calculations accordingly.

Senator BARNETT—You will be able to get that report to us?

Ms Fryer-Smith—Yes.

CHAIR—There being no further questions, thank you for your attendance at our estimates hearing this afternoon. It is appreciated.

Proceedings suspended from 3.24 pm to 3.40 pm

Australian Customs and Border Protection Service

CHAIR—I reconvene this hearing into supplementary estimates for the legal and constitutional affairs committee. I welcome officers from the Australian Customs and Border Protection Service. Mr Carmody, hello again to you and to your officers. Do you want to start with an opening statement?

Mr Carmody—No, thank you.

CHAIR—In that case we will go straight to questions.

Senator CASH—Gentlemen, I have some questions on Customs processing, and they follow on from a visit that I had last week to the Shire of Derby in relation to the Curtin Immigration Detention Centre. In terms of irregular maritime arrivals that are transferred to the Curtin detention centre at Derby, where is their Customs processing undertaken?

Mr Carmody—We do not operate at the detention centres. We do have officers at Christmas Island, and the asylum seekers are taken there initially. That is where we undertake our part of the process.

Senator CASH—Just so I know that I am on the right page, when I was with the Shire of Derby people one of the issues that they raised—and their terminology may be incorrect—was that Customs processing of irregular maritime arrivals who are transferred to the Curtin detention centre is not undertaken when they arrive at the Derby airport. It is undertaken either in Darwin or at Port Hedland, and the planes carrying the irregular maritime arrivals are diverted to either Port Hedland or Darwin. The people are taken off the plane, they are processed, they are put back on the plane and then they are brought down to Derby where they are then transferred to the detention centre.

Mr Carmody—I will get Marion Grant to help you, Senator.

Ms Grant—The initial processing of people is, as Mr Carmody indicated, at Christmas Island. When they are further down the process and they are being transferred from Christmas Island to a mainland place, the flight pattern at the moment in terms of the initial international arrival into the mainland is via Port Hedland for the border processing, and then they journey onwards to their ultimate destination.

Senator CASH—Thank you, Ms Grant. In terms of the arrival at Port Hedland, could you describe for me the process that is undertaken in getting the people off the plane, and what occurs in getting them back onto the plane and then transporting them to, in my case, the Derby airport?

Ms Grant—Could I take that on notice, please? I personally cannot step you through each process because I have not undertaken it and I have not had a brief from the officer that can do the step by step.

Senator CASH—Okay. That is unfortunate, because a lot of my questions did actually flow on from that. Do you have any indication of how many staff are required to undertake the processing at Port Hedland?

Ms Grant—We have a district office at Port Hedland, and one of their routine duties is the processing of arriving aircraft. We will be able to provide you with the numbers involved in processing a plane. I will be able to get that while we are answering questions.

Senator CASH—Thank you, and could you also get for me the approximate turnaround time in terms of when they are actually taken off the plane, processed and put back on the plane and the plane is then turned around to actually go off to Derby.

Ms Grant—We should be able to have that for you as the proceedings go on.

Senator CASH—Thank you. In terms of processing, can you explain to me why this is not undertaken at the Derby airport?

Ms Grant—I think you may need to address that question to the Department of Immigration and Citizenship, because the aircraft that is chartered for the movement of the people is via Immigration and I am just not privy to the particular air routes. I know the air route that they are coming in on is via Port Hedland, but I do not have the reason why they use Port Hedland as opposed to another arrival place.

Senator CASH—No, and that is fine. It was explained to me by the Shire of Derby that at this point in time the shire actually do not have staff who are trained to undertake the processing. The issue that the shire have raised is that their understanding is there are limited staff who are actually required to undertake what they referred to as the Customs processing at Port Hedland. My understanding is that the shire themselves would actually like to commence the Customs processing at Derby and that all it would take is the training of the requisite staff.

Ms Grant—It is probably a little bit more complex than perhaps the shire understand, in that we have designated international airports for movements from overseas under section 15 of the Customs Act, and the main section 15 airports are in our capital cities. We also then have some restricted-use international airports, Port Hedland being one of them. We do not have such an airport in Derby and therefore we would not be able to process international

flights into Derby at this point. Then, of course, staff processing international flights do need the requisite training that our officers receive from the Department of Immigration and Citizenship. So we have trained officers at all of our district office locations, but Derby is not one of those locations.

Senator CASH—Thank you for that explanation. Can you take on notice to provide me with a more detailed explanation as to why Port Hedland is able to undertake the Customs processing but Derby is not, so I can go back to the shire and explain to them what the technical reasons are in terms of section 15 of the Customs Act. The question that then arises in terms of not being able to undertake the processing at Derby is: what is the turnaround cost of having to stop the plane at Port Hedland to unload the people, put them back on the plane and then have the plane en route to Derby? Are you able to find that out for me?

Ms Grant—That would be something we would need to refer to Immigration.

Senator CASH—Okay. Is the department aware or is the minister aware of any approaches by the Shire of Derby in terms of exploring whether or not the shire would be able to undertake the Customs processing at Derby, subject, obviously, to ensuring that they comply with everything under section 15 of the Customs Act?

Mr Carmody—We are not aware of any, but obviously if the situation changes we will notify you—the committee.

Senator CASH—Thank you very much. The approaches would have been to Minister Bowen, I understand.

Senator Ludwig—Certainly not to me, but if there is a question that you wanted to put to the minister to elicit a response, I can certainly pass that on.

Senator CASH—I would appreciate just understanding the correspondence or the meetings that the minister has had with the Shire of Derby on this particular issue and whether or not we are able to make any progress in relation to Derby being able to undertake the Customs processing requirements.

Senator Ludwig—Which minister are you referring to?

Senator CASH—My understanding is they met with Minister Bowen.

Senator Ludwig—Then you may have to pass that question on tomorrow.

Senator CASH—Yes, thank you very much. Those are all the questions that I have on that issue.

CHAIR—Are there any further questions? Senator Barnett.

Senator BARNETT—We were advised this morning by the Classification Board that there was a 40-foot container full of illegal pornographic material seized by Customs in Melbourne recently. Can you provide further and better particulars regarding that incident?

Mr Carmody—Yes. I think there has been more than one container seized recently, but Mr Mann will be able to assist.

Mr Mann—As we have discussed on earlier occasions, we are now working very closely with the Attorney-General's Department to receive from them information on entities that

they have identified as potentially being involved in distributing or wholesaling material that is likely to be refused classification. We have been taking that information and comparing it to our intelligence holdings and import data to better target our at-the-border inspections for objectionable material. Recently, three large commercial consignments of publications were detained for assessment against the Customs (Prohibited Import) Regulations controlling objectionable material. The first of those was a 40-foot container of adult magazines, which was detained in August 2010 as a result of this information. This resulted in—

Senator BARNETT—In Melbourne?

Mr Mann—Yes, I do believe that it was in Melbourne. This resulted in 2,495 magazines being seized from, I am advised, a total number of around 20,000 magazines in that consignment. Other material in that container was not considered to be objectionable and was released. A second container—

Senator BARNETT—Sorry, just to clarify: so, out of the 40-foot container, 2,495 magazines were deemed—

Mr Mann—Were detained and assessed as being objectionable material. We have not yet finalised our action as a result of that seizure and we will be doing so shortly.

Senator BARNETT—But you have only obtained that number out of the entire container?

Mr Mann—Correct.

Mr Carmody—Out of 20,000.

Mr Mann—The rest of the material was not considered to be objectionable.

Senator BARNETT—Okay. Sorry. The next one?

Mr Mann—A second container of magazines of the same nature for the same company was detained, with another 2,508 magazines detained.

Senator BARNETT—Was that Melbourne? And what was the date?

Mr Mann—It was soon after the initial container. I will have to take on notice the actual date, Senator.

Senator BARNETT—But after the August one?

Mr Mann—Soon after.

Senator BARNETT—And was it in Melbourne?

Mr Mann—Yes, I believe both were seized in Melbourne. A third container has been detained just in the last week for a separate entity, and I can confirm now an assessment of material involved in that case is currently underway. That involved, I believe, 1,100 magazines.

Senator BARNETT—And that is the same offender in each case?

Mr Mann—On two of those occasions. The third occasion involves a separate entity unrelated to the first.

Senator BARNETT—Is that not public, that information?

Mr Mann—These are live investigations so I would not be in a position to give much more information.

Senator BARNETT—Let us say prosecution proceeds; tell us what happens, hypothetically, or what might happen.

Mr Mann—I am not sure in relation to the first two consignments whether or not—we certainly have considered it, but I am not sure that it is necessarily the case—we will proceed with prosecution. My understanding is, and I do not really wish to go into too much detail about a matter that is still under investigation, that the material that was considered to be objectionable related to a small advertisement placed in one of those seized magazines.

Senator BARNETT—Do the prosecutions that may or may not proceed relate to financial penalties or potential imprisonment or both?

Mr Mann—There are a range of offences. Commercial importations of objectionable material are considered tier 1 goods, so in addition to potential fines of up to \$110,000 commercial importations can include up to five years imprisonment.

Senator BARNETT—Thank you for that. In previous estimates you have provided information regarding detections of pornography—1,100 detections of pornography in nine months in 2009-10, up to 31 March. Have you got the latest figures?

Mr Mann—Yes, Senator. At the end of the 2009-10 financial year there were a total of 1,373 detections.

Senator BARNETT—What have you done about those detections? What are the consequences of detection?

Mr Mann—Well, for the financial year there were 54 cases prosecuted. These included 47 cases involving child pornography.

Senator BARNETT—What are the consequences for that?

Mr Mann—All but four of the child pornography cases were successful. Penalties ranged from \$200 to \$20,000. Sentences included good behaviour bonds ranging from five months to two years to imprisonment ranging from six days to three years and nine months.

Senator BARNETT—I might put some more questions on notice about those issues, but I need to move onto other areas. Since August 2008, the advice I have, as of the latest figures, is that there were 174 illegal boat arrivals carrying over 8,200 people; and 106 boats have arrived in 2010 carrying over 5,200 people. I wanted to ask a question specifically about unauthorised boat arrivals. First of all, a press release issued by the Minister for Home Affairs on Friday, 8 October said:

HMAS Bundaberg, operating under the control of Border Protection Command, intercepted a suspected irregular entry vessel north of Christmas Island this morning.

The arrival consisted of two boats, one towing the other.

Border Protection Command has determined this arrival is a single suspected irregular entry vessel.

Initial indications suggest there are 74 passengers and three crew on board.

The question is, therefore: what implications are there for the processing of people smugglers if one authorised boat is towing another? Is this the first instance that one unauthorised boat has been intercepted towing another?

Mr Carmody—We understand this is the first instance. This matter will be the subject of an investigation undertaken by the Australian Federal Police.

Senator BARNETT—Has Customs investigated the circumstance that caused the boat to be towed?

Rear Adm. Barrett—That investigation is currently underway at Christmas Island. It is being done jointly with Customs and the Australian Federal Police.

Senator BARNETT—So it is a joint investigation?

Rear Adm. Barrett—It is being led by the AFP, but, yes, Customs is involved.

Senator BARNETT—How long is that expected to take? When is it expected to conclude? Will its report be—

Mr Carmody—I think the AFP are the lead agency in the investigation and this question might be best placed with them.

Senator BARNETT—All right. We can check with them on that. Has the protocol for the interception of unauthorised boat arrivals changed at all over the past six months? Has Customs given crew any additional advice on the interception of these vessels?

Rear Adm. Barrett—On a regular basis we review the arrivals to see whether there are any changes of pattern or whether there have been changes in how Border Protection Command does its business in managing these arrivals. So there are regular updates to crews at sea on how we do the business. But if the question is purely around have there been any specific changes based on the arrivals, there has been no broad formal statement on that.

Senator BARNETT—So there has been no change to the protocols as far as you are concerned?

Rear Adm. Barrett—I have not issued any specific changes to the protocols in the last six months.

Senator BARNETT—And you have not been issued with any changes from your senior personnel, Mr Carmody or anyone within the government?

Rear Adm. Barrett—No, from the operational aspect I have not changed any of those things. If I may correct one point, we have given what I would consider to be tactical advice to the boat crews, but, in terms of broad policy changes, I have not changed anything.

Senator BARNETT—Mr Carmody, do you want to add anything to that? Would you concur with that answer?

Mr Carmody—Tim issues those instructions so there is nothing further I could add.

Senator BARNETT—So you do not provide any broad advice in terms of protocol regarding the entry of unauthorised boat arrivals?

Mr Carmody—I do not provide advice regarding operational protocols. Tim has primary responsibility for that through Marion.

Senator BARNETT—Question on notice No. 32 following the hearing on 25 May 2010 explains that since August 2008 four calls have been identified as being received by the Australian Maritime Security Operations Centre of Customs from vessels believed to be SIEVs. The answer also details:

Additionally, on 16-17 October 2009 the Australian Defence Force Robertson Barracks (Darwin) switchboard received calls from a person claiming to be on board a vessel in distress. The calls were relayed to Border Protection Command (BPC) Darwin, and then to the AMSOC and the Australian Maritime Safety Authority Rescue Coordination Centre (RCC).

There were a further five instances where calls for assistance were received by the RCC.

So the question is this: of the four calls received by Customs, what were the circumstances of their distress? Were all four in genuine distress or was there evidence of self-sabotage to the vessel? How does Customs determine whether a vessel has been sabotaged? What were the circumstances and outcomes of the distress calls made on 16 and 17 October 2009 to the ADF switchboard in Darwin? Can you detail the circumstances of the five other instances where calls for assistance were received by the RCC?

Rear Adm. Barrett—I will do my best. In terms of each of the individual claims for distress, it has varied from a statement from the master of the vessel that they require assistance, which under the International Convention for the Safety of Life at Sea we would treat as being an initiation of a request for us to board to provide assistance. It could be as simple as that. Of those four that you mentioned, there were none, as far as I am aware, that were actually showing signs of the vessel sinking or actually having sunk. So we provide it based on the advice of the master that they require assistance. That is from those four.

Senator BARNETT—What about the other circumstances?

Rear Adm. Barrett—There have been other occasions—I do not have them listed here—where we have provided assistance where it was evident that the vessel was showing some form of genuine distress. There may have been a mechanical failure of the engine. It may well have been that they just did not have fuel or water sufficient to reach a port. So we provided assistance to them in that regard.

Senator BARNETT—You must have certain protocols that determine whether there has been sabotage or not. You must know. There must be an operational procedure which says, ‘There is sabotage in this case but in this other case there is absolutely no evidence whatsoever of sabotage.’ They are simply coming straight to Christmas Island or straight to the Australian border for the purposes of settlement or resettlement.

Rear Adm. Barrett—If it is evident that there is a safety of life at sea issue, if we are asked to assist or if there is evidence that the vessel is in real distress, we follow the protocol to the letter of the law. That is the advice that has been provided to both the Customs and the Navy patrol boats.

Senator BARNETT—Are you seeing an increased level of use of these phone calls going straight to the RCC or other maritime safety authorities? They simply call and say, ‘Listen, here we are. We are close to your shores. We are in distress. We need help. Come and get us.’

Rear Adm. Barrett—There is clear evidence that that has occurred. I would find it difficult to make a statement as to the trend for those. There have been known events. When

that occurs we follow the protocol as if it is a safety of life at sea issue, which is the safest action to take.

Senator BARNETT—We know these things are happening. What I am trying to find out is to what extent it is happening. Can you provide an overview of the level and extent of this type of behaviour?

Mr Carmody—I think that it is not necessarily new behaviour, but we would need to take on notice whether we have any information that could assist you.

Senator BARNETT—You can assist me, Mr Carmody; and Rear Adm. Tim Barrett is assisting me and is doing a very good job in that regard. I would like an answer to the question. I will put my question another way to assist you. I am happy for you to take it on notice, but I want you to provide an answer today to this question. I will ask it another way. Are there more or are there fewer incidents of this type of behaviour than three years ago?

Mr Carmody—I think we will have to take that on notice. We are trying to provide an answer for you.

Senator BARNETT—You cannot be definitive so you want to take it on notice. Is that right?

Rear Adm. Barrett—Yes.

Mr Carmody—We would like to provide you with an accurate answer. The Adm. has said that he will take it on notice.

Senator BARNETT—Are the majority of cases currently based on these calls being made to the safety authorities?

Rear Adm. Barrett—Are you asking if we are finding that the majority of arrivals are effected by these calls? I think the evidence would suggest not.

Senator BARNETT—You would say perhaps a significant proportion but not a majority.

Rear Adm. Barrett—Not a majority. I cannot state what significant means.

Senator BARNETT—A significant proportion.

Rear Adm. Barrett—We will provide the numbers so you will be able to make that judgement as to whether they are—

Senator BARNETT—So you will provide the numbers and you will give us an indication of the comparison with 2007, three years ago.

Mr Carmody—We will have to go back and look at the information we have and we will provide to you what we can.

Senator BARNETT—I want to get a view of where we are now and where we were then.

Mr Carmody—We understand the question, Senator.

Senator BARNETT—Well, further and better particulars in that regard would be appreciated.

Mr Carmody—We will do the best we can, Senator.

Senator BARNETT—In relation to the border protection command SIEV boarding cards that were tabled after the 25 May estimates round, have there been any instances where the cards were not understood? What procedures are in place in those circumstances? I am referring to question on notice No. 33, if that would assist.

Rear Adm. Barrett—Yes, I have that. I have not been made aware of any incidents where the cards were not understood and were not able to be used effectively amongst arriving PIAs, potential irregular arrivals.

Senator BARNETT—So you are not familiar with any—

Rear Adm. Barrett—I am not familiar. No occasion has been raised with me that they have caused difficulty.

Senator BARNETT—If you want to take that on notice to clarify that, if you want to get confirmation, I would be happy to—

Mr Carmody—Senator, what we will do is, if we find the answer is different, we will notify the committee.

Senator BARNETT—That is fine, all right. Perhaps we will move onto another area, and that is regarding staffing. There has been some publicity regarding disease hitting border staff. There was a headline in the *Herald Sun* of 12 October this year.

Mr Carmody—Yes, Senator.

Senator BARNETT—There is a note that six customs officers have caught tuberculosis from unauthorised arrivals in our northern waters. Can you provide details of the circumstances surrounding the infections, whether there are any additional cases of infection, what protection from infectious diseases is given to Customs officers when they intercept an unauthorised vessel and can Customs provide a list of diseases that have been detected in asylum seekers arriving by boat?

Mr Carmody—Senator, there have been cases. I think the important point to note is that these are latent TB cases, which are very different to active tuberculosis situations. My understanding is that only something like 10 per cent of latent TB cases ever manifest themselves into being active tuberculosis. A further 80 per cent of those 10 per cent, with treatment, which we provide, will never move towards the active situation. There is no particular vaccination for TB. However, we provide our officers with considerable information and the ability and the practices to prevent infection. I think we need to be careful: I think those cases were over the last four years or so. Whether they were from irregular maritime arrivals or from illegal fishing instances, I do not think we can be certain of how—in fact, we cannot be certain of how the person contracted the latent disease. However—

Senator BARNETT—Can I interrupt. Why can't you be certain?

Mr Carmody—If you let me continue with my answer, you will understand why. First of all, you do not get symptoms if you have the latent TB. A person does not get up one morning and say, 'Unfortunately, I have latent TB.' There are not the symptoms for that to occur. However, what we do, as I said, is that we provide instructions to our staff, we provide education programs on this, we provide personal protective equipment. I know that as soon as

there is any evidence, in the case of an illegal foreign fisher or the potential arrival of a suspicion of TB, then the situation is taken to isolate that person. In addition, we provide annual medical tests for possible testing of TB—

Senator BARNETT—Mr Carmody, can I interrupt for a minute. Let me just clarify something. Is it a fact that six of your officers contracted TB from people on this vessel?

Mr Carmody—We know—because, as I was saying, we provide annual medical tests but we then do chest X-rays every two years—that over the last four years or so six officers have the latent version of TB, which people can have and never experience any consequences from. We cannot be certain exactly how they contracted it.

Senator BARNETT—Are you suggesting that they have contracted TB from people other than people on these unauthorised vessels, whether you call them boat people or unauthorised arrivals and/or the illegal fishers?

Mr Carmody—I am not trying to avoid our responsibilities; all I am saying is that the nature of the disease is that we cannot be certain how they could contract it. But we acknowledge that they face the situation of potential cases because they do deal with people who, on occasions, whether they are illegal foreign fishers or potential irregular arrivals, may have TB. That is why we have the range of approaches we have in place both on a preventive basis and a screening basis. If, as in these cases, there had been situations of latent TB, then we put them on the medical program which, as I have indicated before, means that 80 per cent will not go any further.

Senator BARNETT—Are you able to advise what actions you have undertaken to protect and better safeguard the six individuals concerned?

Mr Carmody—Those six individuals have been put on a course of medical treatment. All but one of them have completed that treatment.

Senator BARNETT—And does that mean that they will not have health effects as a result of TB? What is their health condition?

Mr Carmody—Their health condition is healthy.

Senator BARNETT—For all but one of them?

Mr Carmody—No, that one officer is going through the treatment at the moment, and I think I indicated at the start that if you have latent TB only 10 per cent will ever potentially translate into active TB.

Senator BARNETT—Yes, but 10 per cent is 10 per cent, Mr Carmody.

Mr Carmody—Then the treatment we give takes 80 per cent of that 10 per cent. We have obtained the best medical advice that we can obtain to enable us to institute procedures and screening and test X-rays because people operate in a difficult environment.

Senator BARNETT—According to this report—and we cannot always believe what we read in the papers—they are still recovering from the potentially fatal lung infection. So you are saying that they have now recovered and they are healthy? If not, what is their condition?

Mr Carmody—Latent tuberculosis means, on the advice, someone does not have the disease and is not infectious. But I have been through the circumstances of what the rate is that flows from latent TB.

Ms Grant—Perhaps if I add that it is through our preventive medical program that these officers have been identified as having the exposure to TB, which is what the latent TB is; and you do not actually have the disease so there is nothing to recover from at that point in time. But to reduce the lifetime risk of it turning into the actual TB disease, a six-month course of antibiotics is administered on advice from the officers' specialist who we cover for them. After the six-month course of antibiotics your lifetime risk of it turning into the disease is reduced to one to two per cent. That is the 80 per cent of the 10 per cent. That translates into one to two per cent. Five of the officers have completed their six-month course of antibiotics and have no sign of developing active TB and one officer is still undertaking the six-month course of antibiotics. So the time period has not expired yet.

Senator BARNETT—All right. Okay, let me go on. The article also details:

... despite the risks of disease and injury, Customs officers patrolling Australia's northern waters were paid up to \$8000 less than those working in the Southern Ocean protecting the Patagonian toothfish.

Can you confirm whether this is the case—and what is the reason for the pay gap?

Mr Carmody—First of all, I just want to reiterate that our officers, because of the duties they are called on to perform, operate in difficult circumstances and I want to be clear that because of that we do everything we possibly can to prevent disease and to assist officers from there. Secondly, the issue of the allowances payable—and this is an allowance issue—is an issue of history that goes back to when we first introduced the Southern Ocean patrols. The particular circumstances there are that, if you have ever seen photographs of vessels operating in the Southern Ocean, it is an inclement climate and at the particular time a set of allowances was agreed. At the same time we have increased our operations in northern waters, and they are typically carried out by our Bay class vessels and the chartered vessel, the *Triton*, in particular but also the *Ashmore Guardian*. They were developed separately and a separate set of remuneration and allowances that were determined at the time as appropriate for those conditions were established.

What we are seeing now in terms of our marine units and enforcement officers is that the boundary between the two operations is blurring because we are increasingly looking for an integrated set of officers who are able to operate where the largest risk is. So you have seen, Senator—and we have talked about this—our southern patrol vessel being used in the northern waters. So we are dealing with a situation where historically a particular set of allowances have been agreed and reflected. Now that we are moving into a more integrated set of operations—and I should say operating at a different tempo, particularly in the last few years—we have agreed that it is time to look at those allowances and conditions as an integrated whole and we have committed to reviewing them. So it is a matter of historical development. Circumstances have changed. We have now agreed that we need to look afresh at them.

Senator BARNETT—That does not answer the question. Do you want to have a stab at the question?

Mr Carmody—You asked me: why does one set get a particular set of allowances and one get another? I am saying they were developed historically to reflect what was the view of the circumstances at that time. I am saying that now the circumstances have changed we have agreed it is time to look again at the pay and conditions and allowances.

Senator BARNETT—So that will change?

Mr Carmody—I expect that, as a result of this review, there will be changes to the allowances and conditions.

Senator BARNETT—When is the review to be completed?

Mr Carmody—We committed to undertaking that review in time for a new set of pay and conditions to be negotiated as part of the next enterprise agreement which is due to come into effect on 1 July next year.

Senator BARNETT—Could you please take on notice the protection measures that you undertake for and on behalf of your personnel to protect them from infectious diseases such as TB? You have protocols in place. Can you take that on notice and advise us accordingly?

Mr Carmody—Yes, certainly.

Senator BARNETT—Can you provide a list of diseases that have been detected in asylum seekers arriving by boat?

Mr Carmody—We will take that on notice, although it may be that Immigration have the clearer view of potential—

Senator BARNETT—Possibly, to the best of your knowledge, yes. Can you confirm whether it is indeed the case that maritime marine officers can have their deployment periods extended from 42 days to 92 days with little notice?

Ms Grant—I can deal with that particular issue now. It is incorrect that patrols would be extended to 92 days. The particular group of officers we are talking about typically have a patrol of 45 days. It can be extended for emergency situations such as an emergency medical rescue or in response to operational requirements. To date, the longest patrol for an officer has been 53 days.

Senator BARNETT—You are saying the average is 45 days?

Ms Grant—That particular group of officers is 45 days on average patrol, and that is the—

Senator BARNETT—When you say ‘that particular group’, which particular group are you talking about?

Ms Grant—That is what we would call our maritime enforcement officers who work on our large chartered vessels.

Senator BARNETT—The longest period you are saying is 53 days?

Ms Grant—That is correct.

Senator BARNETT—Good. Moving on, I refer to the *Canberra Times* article of 8 October headed ‘More lab testing, but union sniffs at handler pay parity’. According to that article, Customs dog handlers earn \$8,000 a year less than dog handlers in Quarantine and the AFP. The article goes on to say:

Customs dog handlers have refused to take part in Channel Seven’s new border security program Dog Unit because of management’s failure to address workplace concerns

What is Customs’ position on this issue? Are any measures being taken to rectify the pay gap?

Mr Carmody—First of all, we commissioned an independent party to undertake a review of the remuneration point of our dog handlers. They have provided us with a report. Unfortunately, that report has been with us for some time. I do not want to go into the arguments about the differences in pay. There are differences potentially between the officers. I do not want to go into that because—and I have given a commitment—we will undertake a review based on that report. I have said that I expect, given that we have had that report for some time, that we should be able to conclude that in a reasonable time frame. I had indicated that I would be prepared to move before we get to the 2011 enterprise agreement, under powers that are available to me, once we conclude that review. I indicated that I would expect that we would conclude that review by early in the new year at the latest.

Senator BARNETT—Let us move on. What is the current staffing level of Customs?

Mr Carmody—I have the exit figures for the 2009-10 financial year with me.

Senator BARNETT—So that is 30 June?

Mr Carmody—30 June 2010. Average staffing level—and there is a whole variety of—

Senator BARNETT—Is this FTEs?

Mr Carmody—Average FTEs. The average staffing level for 2009-10 was 5,489.

Senator BARNETT—The budget papers for the 2010-11 state that 250 staff will be cut from Customs. That is on page 122 of the Portfolio Budget Statement. Could you give an update of this figure and the area where the staff have been cut?

Mr Carmody—I think at the last estimates I indicated that we had revised that figure and we were looking at an average staffing level of 5,320. A number of the reductions occur from specific initiatives that were announced in the budget, including a transfer of staff involved in what is called excise equivalent goods to the ATO. We had put forward an enhanced compliance assurance program with efficiencies there. There are transfers of a security vetting function to the Department of Defence. With respect to our aircraft search we were looking at making better use of our detector dogs which was going to provide efficiencies there.

The reason that we changed the figure to 5,320 was that our clear preference is to find savings that do not impact on staffing levels. That continues to be the case. Because of changes that have occurred over the last two or three years we are also doing a rebalancing of some of our staffing levels. I think we have excess ASL2 officers, for example, in some of our regions and so we are looking to make adjustments there. Overall, the remaining efficiencies will continue to be through the focus on our operating costs to find more efficient ways of doing things.

Senator BARNETT—So you are not cutting 250—

Mr Carmody—It was due to be 5,510, I think, was last year's ASL, and we were talking about 250 down to 5,250. As I indicated last budget estimates, we are now targeting an average staffing level of 5,320.

Senator BARNETT—You may have advised the committee of that—

Mr Carmody—I did, Senator.

Senator BARNETT—But what does that mean for the budget in terms of costs?

Mr Carmody—The dollar figures are not changing; it is how we are utilising the dollars available to us. As I have said, what we are trying to do is maximise our staffing levels by finding efficiencies elsewhere.

Senator BARNETT—Let us move on. Customs staff currently stationed on Christmas Island—how many are there and has that number changed over the past 12 months?

Mr Carmody—I will need some assistance.

Senator BARNETT—Then I want to ask you about Customs staff overseas.

Ms Kelley—There are three full-time Customs and border protection officers based at Christmas Island and that number has not changed.

Senator BARNETT—Three?

Ms Kelley—Three.

Senator BARNETT—That is the same number as 12 months ago?

Ms Kelley—Yes, it is.

Senator BARNETT—Let me just follow through on Christmas Island. Do you have other staff operating or relating to the Christmas Island facility?

Ms Kelley—We have a range of other staff who we call acting officers of Customs who are employed part time. They are people who actually live on the island and they assist the Customs officers as required.

Senator BARNETT—How would you describe those people? Are they contracted, are they part time or casuals or what are they?

Ms Kelley—We call them part time.

Senator BARNETT—How many of those are there?

Ms Kelley—I think we will take it on notice because that can vary depending on who is available at the time, but we will take that one on notice.

Senator BARNETT—When you take that on notice, can you advise the committee of their role and function?

Ms Kelley—Sure.

Senator BARNETT—Can you also advise the committee of the role and function of the three full-time equivalents?

Ms Kelley—Yes, we will do that.

Senator BARNETT—How many Customs staff are currently posted overseas, where are they posted and what are their roles? Have you got those details with you? Perhaps you could table that. If not, I am happy for you to take it on notice.

Mr Carmody—Seventeen is the figure I have, but I would only be able to answer you generally on the specifics of where they are.

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

Mr Carmody—Thank you.

Senator BARNETT—Thanks again. We are up to the Bay class vessels replacement questions. I know Senator Brandis has an interest in this issue.

Senator BRANDIS—Thank you, Senator Barnett.

CHAIR—You have questions of Customs, do you?

Senator BRANDIS—I think that was obvious from what I just said to Senator Barnett.

CHAIR—Is there anyone else though on your side that has questions? Just you?

Senator BRANDIS—Thank you, Madam Chair. Bay class vessels replacement is our next area of interest. Can you give us an update on the eight Cape class patrol vessels that are replacing the ageing fleet of eight Bay class vessels? At what stage is the tender process at the moment?

Mr Carmody—The request for tender was released to industry in July 2010 with the tender closing date of 22 October at 12 pm Australian Eastern Standard Time, according to my notes.

Senator BRANDIS—Would you know before then how many? Are you able to tell us now, or are you not able to say before then, if there have been any responses and if so how many so far?

Mr Carmody—As I say, the tender process runs through to 22 October—

Senator BRANDIS—Yes, that is fair enough.

Mr Carmody—so I cannot tell you how many we will receive.

Senator BRANDIS—I do not want to get too technical about this, but in terms of the broad specifications of the tender, by when are the Cape class patrol vessels to be operational?

Mr Carmody—They will come in progressively, Senator. I think the first is due in for trials. We are taking the first one on trials for a period so that we can ensure it is sound before moving. The trials of the first vessel are due in 2013, with the projection that the remainder of the fleet will be progressively introduced through to August 2015.

Senator BRANDIS—When you say introduced, does that mean that the last vessel in the acquisition will begin its trials in the middle of 2015?

Mr Carmody—Operational, Senator. The first one is the trial of the design and the first vessel, but we expect by August 2015 they will progressively come into operation.

Senator BRANDIS—Does that mean that by August 2015, you expect that all eight will be fully operational?

Mr Carmody—That is our expectation, Senator.

Senator BRANDIS—Are there any modifications or upgrades needed for the existing Bay class vessels in order to prolong their operational lives, in particular in the period between now and when the Cape class vessels are fully operational?

Ms Grant—Senator, we have no upgrades program for the Bay class vessels. They will be subject to normal maintenance and rectification of any unserviceability issues that emerge between now and when the Cape class replace them. We need to recognise that it is an ageing fleet, reaching the end of its life. So we do expect maintenance will increase, but it is not any lifetime extension. It will just be maintenance to keep the vessel serviceable.

Senator BRANDIS—Have you received a report from those responsible for the maintenance of the vessels to reassure you that between now and when the last of them goes out of service they will be able to be maintained to a sufficient level of operational capability?

Ms Grant—We have a maintenance contract and regular reporting from our provider is subject to analysis by Customs and Border Protection. The expectation is that the Bay class will be able to operate till progressively phased out of their operational service from 2013 to 2015. But, as I said, we do anticipate that a high level of maintenance will be required and I think our provider is signalling that that will be the case.

Senator BRANDIS—And you have been reassured by your maintenance contractor that the appropriate levels of safety of these vessels will be maintained right to the end of their operational life?

Ms Grant—Definitely, Senator.

Mr Carmody—Senator, we would not allow them to operate if we were not satisfied as to their safety.

Senator BRANDIS—Do you have a budget for the maintenance costs you expect between now and when the vessels go out of service, between 2013 and 2015? You have indicated, Ms Grant, that you expect because of the life of the vessels that the maintenance task will be more demanding. Presumably that means it is going to cost more. Can you give us an estimate of the costs of the maintenance of these vessels for the balance of their service lives?

Ms Grant—I would need to take that on notice, Senator. I do not have those figures with me.

Senator BRANDIS—Have those figures been, in fact, arrived at?

Ms Grant—We do estimate what we anticipate spending on maintenance in each yearly budget.

Senator BRANDIS—Up to when? Has the most current, recent estimate been done?

Ms Grant—Our most recent estimates take us out through the forward estimates period of the current budget, plus the out years.

Senator BRANDIS—Plus the out years; what is that? Would that take you to 2015?

Mr Carmody—We will take that on notice, Senator. Forward estimates is generally four years, but we will take that on notice and make available what we can.

Senator BRANDIS—But in any event, your expectation would be that the maintenance cost would escalate over the last three or four years of the lives of these old vessels?

Mr Carmody—I think Ms Grant has indicated that we expect maintenance costs to increase, and we are budgeting for those.

Senator BRANDIS—What is the cost of the eight Cape class patrol vessels?

Mr Carmody—First of all, they are out to tender. So we do not know what the cost will be.

Senator BRANDIS—But the tenders have specifications.

Mr Carmody—Yes.

Senator BRANDIS—The specifications must include some indication, surely, of the range of—

Mr Carmody—We have not told industry what they should tender. We want it to be a competitive bid. To maintain that competitiveness the government did not disclose the estimated, at the time, capital costs of the vessels, although it was included in the contingency fund or reserve in the government's accounts.

Senator BRANDIS—So an estimate of the likely cost of each of these vessels has been made but it has not been published.

Mr Carmody—You would understand that when we went to government with a proposal to replace our fleet government expected to see some territory of the amount involved, and we provided that. But it has not been disclosed, although a figure has been included in the contingency fund or reserve. I am just not sure of the correct title.

Senator BRANDIS—I understand.

Mr Carmody—We did not want it released, because we want this to be a competitive process, as competitive as possible.

Senator BRANDIS—When did you say the tender closes?

Mr Carmody—On 22 October.

Senator BRANDIS—I would like you to take on notice my question of what is the government's estimate of the cost of the replacement of those vessels with the eight Cape class vessels? But I indicate to you that I would not expect you to respond to that question before the close of the tender.

Mr Carmody—I will do that, but we need to see the nature of the tenders before we are in a position to determine what we can disclose.

Senator BRANDIS—Why?

Mr Carmody—The normal process you go through with tenders is that there will be a competitive process and then there will be negotiation about the exact and final specifications. So I am not sure we will have the final figure at the point of time that the tenders come in. If we can provide information for you that does not compromise the tendering process, we will do that.

Senator BRANDIS—You do have the information. The question is whether the provision would compromise the tendering process. It is not as if this is an unknown fact. It is a fact known to you and known to government which for perfectly proper reasons, which I accept, you feel not at liberty to disclose now. What I want to know is how soon that can be disclosed. I accept as well that after the close of tenders there is likely to be a period of negotiation and that it may well, for perfectly sensible reasons, not be appropriate to disclose the estimate at that time either. But there will come a time at which this process has been completed and a contract is signed with the successful tenderer beyond which there could be no reason for not disclosing that information to the parliament.

Mr Carmody—I am sure that point of time will be reached, and when we are able to make information available we will.

Senator BRANDIS—Do you have a view as to how long after 22 October it is likely that you will be in negotiation with one or more of the tenderers?

Mr Carmody—On current projections—and you know these are dynamic circumstances—we would look to be taking a preferred tenderer to government, to the minister, around April next year.

Senator BRANDIS—About April next year.

Mr Carmody—That is on current projections.

Senator BRANDIS—Would you then expect that that cost would form part of the 2011-12 budget or is that too late to be included in the 2011-12 budget?

Mr Carmody—They are matters that we would have to work out with the department of finance.

Senator BRANDIS—By when would you be expecting the government or the cabinet to adopt your recommendation or, if it be the case, not adopt?

Mr Carmody—Senator, you are probably more familiar with these processes than I am. I have indicated—

Senator BRANDIS—I was only familiar with them during the Howard government, when they actually worked.

Mr Carmody—Senator, I can assure you this has been undertaken meticulously.

Senator BRANDIS—All right. That is fine. In any event, you expect to go to government by April next year.

Mr Carmody—We expect to have the final—

Senator BRANDIS—With the preferred position.

Mr Carmody—position by around April next year.

Senator BRANDIS—All right. I will not press you to provide the information I have sought before at least the time at which you make a recommendation to government by identifying a preferred tenderer.

Mr Carmody—Thank you.

Senator BRANDIS—Can I turn to the question of illegal tobacco. Has there been an increase in illegal tobacco smuggling since the government's decision on 29 April this year to increase the tobacco excise by 25 per cent?

Mr Carmody—I do not think we have information that could precisely answer that.

Senator BRANDIS—Surely you have an idea as to what enforcement measures you have taken and what illicit goods you have seized in different categories and whether within a particular category the numbers have gone up or down?

Mr Carmody—That is a different question.

Senator BRANDIS—No, it is not.

Mr Carmody—It is a different question, about the amount of smuggling as opposed to the amount of detections, and we have details of detections.

Senator BRANDIS—I see. I understand your reservation, Mr Carmody. I can only ask you what you know about it.

Mr Carmody—Absolutely, and we are now going to answer, framed in those terms, what we do know.

Senator BRANDIS—All right.

Ms Kelley—Over the past three financial years we have seized 780 tonnes of tobacco and 225 million cigarettes in sea cargo and we have successfully prevented potential revenue evasion of approximately \$304 million. During the calendar year 2009, we made 37 seizures of smuggled tobacco products consisting of 315 tonnes of tobacco and 61 million cigarettes. These represent a potential revenue evasion of \$117 million plus GST. During the first half of 2010, we have already made 23 detections, involving 129 tonnes of tobacco and 31 million cigarettes in sea cargo. The potential forgone revenue here is around \$52 million plus GST.

Senator BRANDIS—Are these figures disaggregated by month?

Ms Kelley—I do not have those with me.

Mr Carmody—We do not have those on us. We have what Roxanne has given to you.

Senator BRANDIS—No, I did not ask whether you had them; I asked whether they are disaggregated by month.

Mr Carmody—We would be able to do that, I am sure.

Senator BRANDIS—All right. Thank you.

Mr Carmody—We could provide that on notice.

Senator BRANDIS—Could those figures—that is the tonnage per seizure, the number of cigarettes seized and the cost to revenue avoided—please be disaggregated for the months of May, June, July, August and September 2010.

Mr Carmody—I expect we will be able to do that, and we will provide that to you on notice.

Senator BRANDIS—Thank you. In the last round of estimates it was revealed that the government had not asked Customs to conduct any analysis on the impact of the cigarette tax

increase on illicit tobacco smuggling. Since that last round of estimates when that disclosure was made, has any research or analysis been conducted on the impact of the increase in the cigarette tax on illicit tobacco smuggling?

Mr Carmody—To the best of my knowledge, we have not conducted any such research or analysis.

Senator BRANDIS—Was that the result of a specific decision not to do so—the issue having been raised here—or was it merely a case of inaction that you just did not do it?

Mr Carmody—I think we have just not done it, to the best of my knowledge. No, we have not done it.

Senator BRANDIS—Since the last round of estimates, has there been any increase to the resources dedicated to enforcement measures against tobacco smuggling?

Mr Carmody—I am not aware of any particular increase. If I am wrong, we will provide it to you on notice.

Senator BRANDIS—Thank you.

Mr Carmody—Chair, Marion has some questions that were asked by Senator Cash earlier if you would like us to read those.

CHAIR—Some answers?

Mr Carmody—Sorry, answers to questions.

CHAIR—Yes, all right then.

Ms Grant—We undertook to find out how many staff were used to process the flights from Christmas Island at Port Hedland and how long it took. We undertook to provide that information during the proceedings. The flights are usually resourced with an average of six Customs and border protection officers and the process takes approximately two hours to complete. So they were the two pieces of information we said we would provide during the proceedings. Other information will be provided on notice.

CHAIR—Thanks. Further questions. Senator Barnett?

Senator BARNETT—Thank you, Chair, yes. In terms of aerial surveillance, I refer to the answer to budget estimates question on notice No. 31 regarding the components of the \$146.3 million in savings over four years, with one of the savings measures being as follows:

- a risk based approach to aerial surveillance of areas south of major threat areas that have been assessed as a low risk. The risk based approach, ensuring aerial surveillance coverage of higher risk areas is maintained, will result in efficiencies of \$16.2m across the forward estimates ...

Can you advise the committee which areas have less surveillance as a result of this cut.

Mr Carmody—They are general areas, Senator. It is a big coastline. There have been no cuts to the threat areas for maritime people-smuggling. So it is the surveillance that we do south of those areas and—

Senator BARNETT—Mr Carmody, would it be easier if you could provide us on notice with a map and let us know where the areas are that are low risk and where the areas are that we are no longer surveilling? Could you do that?

Mr Carmody—It is all done on a risk basis; but, yes, we will take that on notice.

Senator BARNETT—I do not want you to take it on notice; I would like you to commit to providing us with a map. Can you do that, on notice? I just want your commitment to do it.

Mr Carmody—Yes, we will.

Senator BARNETT—Thank you. Can you also provide an update on the aerial surveillance of our northern waters.

Mr Carmody—In what—

Senator BARNETT—On the extent of that surveillance.

Mr Carmody—I will just get the Adm..

Ms Grant—Senator, could we clarify: is it a time period or an area that you were after an update on?

Senator BARNETT—Certainly, for the last 12 months—but it is the area that we would like to know and the level and extent of that surveillance of our northern waters.

Mr Carmody—Just bear with us, Senator.

Rear Adm. Barrett—Firstly, the figures that we can represent will be those areas that I consider to be the northern waters for the patrol areas that we have, and we can indicate the coverage that we have in those particular areas, but I am indeed reticent to indicate specifically where that coverage has been made within northern waters because, as has been indicated, we approach it from a risk base here, a threat base, and we will fly where we believe there is a threat. I would like to keep the specific areas within the northern waters to ourselves, for obvious reasons. But we can indicate the sort of coverage that we have achieved and I think that would answer the question.

Senator BARNETT—That would be excellent—and in so doing, either now or on notice, Rear Adm., if you could advise the committee of your definition of ‘northern waters’.

Rear Adm. Barrett—Fine. I would indicate the waters largely directly north of the area around Darwin through to an area to the north of Broome but seaward from that area, noting that we have several offshore islands within our jurisdiction.

Senator BARNETT—Thank you. Go ahead with whoever is answering the question. Mr Carmody?

Mr Carmody—I have here the—no, this is not northern. This is total surveillance. I do not have the split on me, Senator. Can we provide that on notice?

Senator BARNETT—You can provide that on notice.

Mr Carmody—We will provide it on notice. Thank you.

Senator BARNETT—I would like as much detail as possible, without getting into operational matters and specific areas. But, as the Rear Adm. has indicated, that would be appreciated.

Mr Carmody—We will do that, Senator.

Rear Adm. Barrett—As we have been prepared, we have the total picture but we are able to provide that in the level you seek.

Senator BARNETT—All right. Let us go for that. Let us have a look at the Southern Ocean patrols in terms of illegal foreign fishing. Can you provide the number of illegal foreign fishers who have been apprehended over the past three years?

Mr Carmody—In the Southern Ocean?

Senator BARNETT—Yes.

Mr Carmody—I do not think there has been any illegal foreign fishing around Heard or McDonald Islands.

Rear Adm. Barrett—Heard and McDonald Islands are the areas that we patrol and we have not had an indication of an illegal—or there has been no apprehension of an illegal foreign fisher in that area.

Senator BARNETT—Since when?

Mr Carmody—In the last three years.

Rear Adm. Barrett—I think it is the last three years, yes.

Senator BARNETT—All right. If that is not correct, you can let us know.

Rear Adm. Barrett—Correct.

Senator BARNETT—So there has obviously been a decrease in illegal foreign fishing. Is there any evidence to suggest that those who were formerly involved in that trade are now involved in people smuggling?

Rear Adm. Barrett—From the Southern Oceans?

Mr Carmody—I do not think we have any evidence of that.

Rear Adm. Barrett—No, there has been no evidence that people in the Southern Oceans have been involved with people smuggling.

Senator BARNETT—All right. I refer to a report in the *Daily Telegraph* written by Ian McPhedran headed ‘People smugglers go fishing for a new ploy’ dated 13 October this year. It says that people smugglers have employed a new strategy of using fishing boats to tow a rescued asylum seeker vessel to Christmas Island in order to escape people smuggling charges. What is Customs’ position on this type of arrival? What will the response be in the future? Is there now a protocol for dealing with this type of arrival? What is the legality of this situation?

Mr Carmody—Senator, I think we answered these questions earlier in the hearings to the extent we could. Just a matter of clarification: you asked your question as to whether people involved previously in illegal foreign fishing in the Southern Ocean were involved in people smuggling, and we answered that. I think there is evidence certainly that fishing boats from, for example, Indonesia and other areas to the north have been used to transport potential irregular immigrants and you would be aware of a number of prosecutions of crew from those vessels.

Senator BARNETT—Do you have any data on that?

Mr Carmody—On what?

Senator BARNETT—How many fishing boats have been used?

Mr Carmody—Almost all of the arrivals are on what you would call fishing boats—boats that are typically used for fishing. With regard to the question about the towing, we discussed that earlier and said that is currently a matter under investigation led by the AFP.

Senator BARNETT—That is fine. I do not want to go there. Are you aware of a shift in people smuggling strategies over the last period in terms of their use of fishing boats or the way they do their business? Can you advise the committee?

Mr Carmody—Senator, that is a very broad question and I would not want to go into what intelligence we have about the particular techniques of people smugglers because I know they like to know what we know and they like to respond.

Senator BARNETT—Can you not share that in the broad?

Mr Carmody—Senator, I have indicated to you that typically these arrivals are on fishing vessels. I have indicated that, but I do not want to go into operational issues about the particular techniques we are aware of that are used by people smugglers.

Senator BARNETT—Have they changed? Have the techniques changed over the last three years?

Mr Carmody—I am prepared to say techniques have changed, Senator, not only over the past three years; I suspect if you were to go back further than that you would find that they changed. But I do not want to go into the particular details of that.

Senator BARNETT—I do not want to go into operational plans. I am just asking in terms of changes over the last three years. Obviously we are awash with people and we are awash with boats. But in terms of the nature and extent and the techniques used, you cannot provide any further detail?

Mr Carmody—Senator, I remain very concerned about talking about the techniques of people smugglers. I do not want to give them a leg up.

Senator BARNETT—We certainly do not want that to happen. Just going back to the Southern Ocean patrols—Ms Grant, you might be able to assist us here—on average how many days are Customs officers on deployment for Southern Ocean patrols?

Mr Carmody—We did answer this just a little while ago.

Senator BARNETT—No, you did not answer this specific question. You answered a question regarding irregular maritime arrivals and patrols and—

Mr Carmody—No, Senator. When you were out of the room we provided details. I think the average patrol provided was 45 days. That was the answer we gave.

Ms Grant—That is correct, Senator.

Senator BARNETT—Is that the same for Southern Ocean patrols?

Mr Carmody—That is the Southern Ocean.

Senator BARNETT—I stand to be corrected—

Mr Carmody—We can provide the details again if you like, Senator. We have it here.

Senator BARNETT—Just a quick answer, Ms Grant: was it 45 days?

Ms Grant—I could clarify. I think you were asking a question around media reporting that was referring to a larger number of days and I said that that reporting was incorrect. I answered that the average patrol was 45 days and it could be extended in emergency situations or operational situations, and 53 days had been the longest patrol—

Senator BARNETT—Yes, I was here when you said that.

Mr Carmody—I apologise, Senator.

Senator BARNETT—I heard all of that, but I did not take that as for the Southern Ocean.

Ms Grant—That is what I was going to clarify, Senator: that, for those particular types of patrols, that answer related to either patrols in the Southern Ocean or patrols in northern waters where we are using our large contracted vessels. It is the same maritime enforcement officers who can be deployed either to the Southern Ocean or to the northern waters. The length of a patrol, if you are actually on a Bay class vessel, is different. They operate on 22-day patrols. It is a completely different construct of a vessel.

Senator BARNETT—So are you able to be definitive with respect to Southern Ocean patrols?

Ms Grant—The definitive answer in relation to the Southern Ocean, Senator, is: on average, 45 days. The longest extension we have had is up to 53 days.

Senator BARNETT—Thank you. I will move on to another area, if I could, going through these areas. Over the past financial year, what was the number of import air cargo consignments and sea cargo 20-foot equivalent units, TEU, reported? So air cargo and sea cargo.

Mr Carmody—Are you asking for inspection numbers, Senator?

Senator BARNETT—Yes.

Mr Carmody—Over 2009-10, 1.5 million air cargo consignments were inspected; 101,500 20-foot equivalent sea cargo inspections.

Senator BARNETT—Is there another category apart from inspections?

Mr Carmody—Yes, there is examinations, which is where I think we physically look for high risk. We physically go in.

Senator BARNETT—Have you got a figure for that?

Mr Carmody—I think they were the targets, I am sorry, Senator. I need to get the actual figures. They were the targeted figures. Here we go. For the 2009-10 financial year, inspections were 322 20-foot equivalents over the target of 101,500 for sea. We are working off different charts here. According to what I have here—and I am sure someone will correct it if it is wrong—inspections for sea cargo were 322 above the target of 101,500. For air, we were 0.48 per cent below target with inspections. So we were 7,238 of 1.5 million below for air. In sea cargo inspections—

Senator BARNETT—Mr Carmody, just to assist, can you take it on notice? Just specify the inspections and then the examinations and the target and the difference between the two.

Mr Carmody—Yes, we will do that, Senator.

Senator BARNETT—That would be great; thanks so much. Could we move on to illicit drug detections. I have two more areas to go. This is the second last one. Can you provide figures for the past three financial years of the amount in weight of illicit drugs detected on air passengers, in cargo and mail, including a breakdown of the type of illicit drugs? You may not have that with you.

Mr Carmody—I only have the general figures.

Senator BARNETT—I am happy if you take it on notice.

Mr Carmody—To break it down into those, I will need to take it on notice.

Senator BARNETT—We are interested also in whether there has been an increase or decrease over that period of any particular illicit drug, particularly over the last 12 months. Could you let us know that?

Mr Carmody—Yes.

Senator BARNETT—Also in your answer could you advise from which countries they are largely coming?

Mr Carmody—We will explain what we can.

Senator BARNETT—The different South-East Asian nations or wherever. The final area is the vessels boarded. Senator Parry asked question on notice No. 36 at the estimates hearing on 25 May 2010. It stated:

If ACBPS greets 6,450 vessels that arrive in Australia each year, what is the total number of arrivals? What percentage is greeted out of this total number of arrivals?

The answer was as follows:

The number of arrivals varies from year to year. The Australian Customs and Border Protection Service greets as many vessels as possible, including all high risk vessels.

As the question was not answered, can you give the total number of vessels that arrived in the financial year 2009-10 and the percentage of this total number of arrivals that were greeted. We want to be more specific.

Mr Carmody—I think the figure in 2009-10 was that something like 65 per cent were greeted, in your terms.

Senator BARNETT—Sixty-five per cent?

Mr Carmody—Yes.

Senator BARNETT—On notice can you give us the actual figures?

Mr Carmody—Yes. It is 65 per cent.

Senator BARNETT—Could you let us know the exact figures on notice.

CHAIR—There being no more questions on Customs, thank you Mr Carmody and your officers for attending. We will see you again in February no doubt.

[5.04 pm]

Australian Federal Police

CHAIR—I welcome officers from the Australian Federal Police. Commissioner Negus, good afternoon to you and your team and welcome to estimates. Do you have an opening statement that you wanted to provide to us?

Mr Negus—Yes, I do have a very brief opening statement to cover off on a few issues. I would like to place on the parliamentary record the passing of Sir Robert Mark and also briefly address an issue relating to our key performance indicators that arose during the last estimates hearing. First of all, I would like to acknowledge the contribution of Sir Robert Mark to policing in Australia. Sir Robert was a former commissioner of the Metropolitan Police in London and died on 30 September 2010 aged 93.

As some of you may know, Sir Robert played a significant role in the establishment of the AFP more than 30 years ago. Following the Hilton bombing in February 1978, the Australian government engaged Sir Robert to report on the organisation of police resources in the Commonwealth. In his report tabled in parliament later that year, Sir Robert recommended that the Commonwealth create a new force that incorporated the Commonwealth Police and the ACT Police. He also recommended that the new organisation be called the Australian Federal Police. The Australian government accepted these recommendations and in July 1978 royal assent was enacted to the legislation. On 8 June 1979 Sir Colin Woods was appointed the AFP's first commissioner. In later years Sir Robert returned to Australia to provide advice to government, including the introduction of complaints against police procedures. I would like to acknowledge his significant contribution to the Australian and international law enforcement arena and also record our condolences on his passing.

During the last estimates hearing Senator Brandis raised the omission of conviction rates from the AFP's key performance indicators for 2010-11. At that time I undertook to review this matter and I am able to advise the committee of two outcomes. Firstly, although conviction rates were omitted as a KPI from the PBS for the AFP for 2010-11, they will be reintroduced within the additional estimates in November 2010. Secondly, as reported in the AFP's annual report, which was tabled last week, convictions were achieved in 96 per cent of cases which reached a court decision. So far in the 2010-11 financial year, we are tracking at 97 per cent against a target of 90 per cent in this area. That is the completion of the opening statement.

CHAIR—We are going to go to questions. I am going to go to Senator Ludlam because he has been here for quite a while waiting.

Senator LUDLAM—Thank you. There are three issues that I would like to raise—probably all of them I have raised with you before. If we could start with cybersafety. In May 2008, the government announced that it would spend \$49 million over four years under the cybersafety plan, which would result in 91 additional AFP officers working in online child protection by 2011. So we are two-thirds of the way there. Can you tell us how many additional officers have been employed to date to work on online child safety since this announcement?

Mr Negus—I will just have my officers look for the actual figures, but I can tell you that there has been a significant commitment to meeting that requirement. Certainly, our online cybersafety and child protection area is one of the most effective units in the AFP and has made a significant number of arrests in that environment over recent years, but I will have the number for you very shortly.

Senator LUDLAM—That is great. I will just move through these questions until you are ready to table that material. In that light, I am interested to know how many investigatory officers were assigned to the online child exploitation task force for the financial years 2007, 2008, 2009 and 2010.

Mr Negus—I have just been handed something, so if you could just give me two seconds I will have a look. As of 1 October 2010 there were 91 officers, including 56 under the coordinator of high-tech crime and child protection operations, committed to child protection operations more broadly. So, just to be clear on that, 91 officers have actually been assigned to those responsibilities, as you articulated in your opening. Ninety-one of them have been placed in that area. Fifty-six of those come under—and this is more of an internal thing—the coordinator of high-tech crime and child operations. The others would have been more broadly spread through the child protection area within high-tech crime. So there are 91 there, as was foreshadowed.

Senator LUDLAM—Where are they all based? Are they all here or are they distributed throughout the states and territories?

Mr Negus—There is a large number here in the ACT, in our headquarters, but they are dispersed through the states and territories as well.

Senator LUDLAM—Is there somebody with those responsibilities in each state and territory?

Mr Negus—There are child protection teams which come under our broad investigations area, but they are assigned those responsibilities.

Senator LUDLAM—I am specifically interested in the online child sexual exploitation portfolio, if you will. Is there somebody from the AFP with those specific responsibilities in each state and territory?

Mr Negus—Yes, there is. The way our structure works is that we are coordinated from Canberra but each of our investigative functions has a responsibility in each of those states. So there are people who report functionally back to Canberra but perform those duties in each of those states.

Senator LUDLAM—Okay. Do they work directly with the state and territory police departments and their relevant communities?

Mr Negus—They do—not directly as in a joint operational team every day, but certainly there is a large degree of interaction between them. And I know that up in Queensland there has been a particularly significant joint effort against child protection operations.

Senator LUDLAM—It has been put to us, I think actually by some former AFP officers who were with the high-tech crime unit in the media, that we could do with a much higher degree of collaboration between the state and territory forces. So obviously the expertise is

based out here but that is really quite uneven. So Queensland maybe, as you say, have gone a long way in that regard. Maybe some of the other states and territories are lagging. What have you got in mind, or is there anything in process at the moment, to improve collaboration with the states and territories?

Mr Negus—One of our key strategic principles for the AFP is to improve our stakeholder relationships and work more effectively with our partner agencies. I know there is a lot of work being done, particularly in the high-tech crime space, to make sure that we are leveraging off the capabilities that do exist in the states and territories. Certainly if there are opportunities for those things to be done the AFP will be the first one to the table to make that happen. There have been issues over the years of different capability developing in different areas. The AFP is trying to take a national and international coordination role in this area and certainly bring our state and territory colleagues to the table in a much more coordinated way. As you would be aware, we do receive referrals from overseas quite regularly in these areas where people are identified accessing international websites in that online environment. We triage most of that material and we do work then with the states and territories for them to investigate components of that because it would not be capable of being done just by the AFP. So there is a level of cooperation and certainly where we can we work effectively with them in that environment. We can always do more and we are working towards that.

Senator LUDLAM—So, for example, what was raised with me was the instance of a parent or somebody ringing the local police department to report something that their kids found online and then the local police department not necessarily having the expertise or the capability to know what to do with it. Is there any initiative that you guys can point us to now where you are moving to take some kind of a national presence at that front end or will that be left to local state and territory departments?

Mr Negus—As a group of commissioners we do talk about this area. It is not surprising that perhaps the odd front-office constable working in a location might not be as au fait with the broader sort of national procedures as might otherwise be, but we are working to make sure that all of our forces know what to do when this occurs. We are certainly working in the online environment to have ‘report abuse buttons’ available where people can actually hit a button on screen which translates directly to the AFP and we can triage that material and send it out to the appropriate area. Upskilling all police across the country is something I know all my fellow commissioners are very much aware of, and we need to make sure that we do that for the future because it is a real issue.

Senator LUDLAM—Well, a one-stop shop, whether it is a button or some kind of console or something, that is what I mean.

Mr Negus—We do have a number of national working parties which the AFP is involved in as well. This is taking on board the particular areas of expertise within the states and territories. We get together with those people and look at ways of going forward. Certainly the head of our high-tech crime area is here sitting in the back and I am sure he will take that on board as an example of perhaps what we might be able to do. I have just been told there is a child protection committee, a national one, which the AFP sits on, again working towards fixing these issues. It is an escalating problem, as you have identified. We do have one of our officers embedded with the Western Australia Police, for example, to work in that team to

again create better linkages between the two. We do work with the other states and territories certainly on a needs basis operationally. As I said, if there are any opportunities the AFP will be the first one to the table to commit resources to working collaboratively.

Senator LUDLAM—Where does that committee sit? Under whose auspices is that?

Mr Negus—It comes under what is known as the ANZPSA group, which is the Australia and New Zealand Policing Support Agency, and it is chaired by the Western Australia Police but has representatives from all of the states and territories and the AFP on it.

Senator LUDLAM—On the instance that you referred to before that you might be referred traffic—if I understand you correctly—originating in Australia, which is people potentially located in Australia hitting websites overseas, how common is it that are you getting those kinds of referrals and what are your powers to trace where that material is originating from or who is receiving it?

Mr Negus—It is a fairly regular occurrence, unfortunately. You would have read in the papers and in releases we put out about large rings of paedophiles or large rings of exploitation material that we do take down. The powers are subject to, and depend on, where the product originates from. Some are more difficult than others, but we work through issues such as mutual legal assistance and those sorts of practices, work with our partners overseas, particularly the FBI—we have a very strong relationship with them—but the normal constraints about international presentation of evidence and those sorts of things apply.

We are working in a strategic alliance group with the FBI to look at better ways of speeding up that mutual legal assistance process, and I have spoken to the secretary of Attorney-General's Department about that. So there is a lot of work going on behind the scenes looking at some of the problems as they arise to make sure that we are on the front foot trying to actually fix them, whether that be through better cooperation or looking at proposing legislative change or other amendments that might need to be made.

Senator LUDLAM—Thank you. It looks as though you have reached the figure of 91 a year early. Are you still recruiting or will that now plateau—that is, the number of officers employed?

Mr Negus—Through a range of different internal mechanisms, we have managed to squeeze a few more staff out of our budget envelope and we have a few more staff than we thought we might actually have. So we have met our target there early. That will be a matter of ongoing judgement about where those extra resources need to be placed and as they come through the recruitment college we have an operational committee that looks at the needs of what is coming through the door. I should say in some instances where there are major operations where we might execute 10, 20 or 30 warrants all at the same time and internationally coordinate those, a lot more people than 91 will be involved in that process and we draw them from other parts of the business to actually go through that operational phase and then they return back to their normal business units.

Senator LUDLAM—But the investigators would be drawn from the—

Mr Negus—The investigators would be drawn from there, yes.

Senator LUDLAM—In terms of the increased funding and staffing levels, has that led to a noticeable or documented change in the level of prosecution for these kinds of offences?

Mr Negus—We would have to take it on notice to give you figures, but I think at the last estimates I spoke about more than 300 people being prosecuted for those sorts of offences, and I am sure that has gone up since then. It is a simple task. With more staff available to investigate these offences, more prosecutions are undertaken. We are trying to take a national coordination role in this in that we do not do everything ourselves because we physically cannot. We need to engage the states and territories to help us out. So many of these things are a national effort and arrests made in Queensland or Victoria by the state police there may well have been coordinated through here but then go on to the statistical sheets, if you like, of those particular police forces.

Senator LUDLAM—Maybe I will just look forward to anything that you are able to table that will—

Mr Negus—I should have mentioned it before, but one of the things that we are very proud of is that we have been part of a thing called the Virtual Global Taskforce, which is a group of seven countries committed to fighting child abuse across the world; and places like the UK and the US are involved in this as well. We have just been elected as the chair of that group and Neil Gaughan, who is sitting behind me, will take over that international role as the chair of the Virtual Global Taskforce. A range of cybersafety programs such as Think U Know, which the Minister for Home Affairs launched during the last year, have all emanated from that group. I think it is a really positive message about the way Australia is taking this seriously in that some of the innovative things that we are doing in that space have been recognised and we have been given the responsibility to chair that group.

Senator LUDLAM—Maybe come February we might ask Mr Gaughan to come to the table and report directly on what has happened.

Mr Negus—I have had a couple of figures just given to me now. From August 2005 to 1 October 2010, 609 offenders have been charged with 837 online child sex offences. Some 95 offenders have been charged with 151 online child sex offences between October 2009 and 30 September 2010. So in the last 12 months there have been 95 offenders with 151 online child sex offences.

Senator LUDLAM—Thanks very much for fishing that out so quickly. I want to turn to a different area and probably a different bunch of people. Does the AFP have a specialised unit for investigating suspected war criminals or perpetrators of war crimes residing in Australia?

Mr Negus—We do not have a special war crimes unit, but it is contained within our crime operations portfolio. We do, however, have people who have been specifically trained in the investigation of war crimes and they have been overseas and received training in places like the Hague on that type of incident.

Senator LUDLAM—How many people would you say have got that kind of specialised expertise?

Mr Negus—I am sorry, but I do not have that data with me. I could certainly take it on notice and see who has done that training.

Senator LUDLAM—Yes, if you could. Has there been such a unit in the past or has there been maybe, if not a unit, some looser affiliation of people charged with investigating these sort of people directly?

Mr Negus—Over the years we have received a range of referrals relating to war crimes. There is not a great history in prosecution. In fact, there have been no successful prosecutions in Australia over that period of time. So teams have been formed and dismantled depending on what cases are available. But over the years there has been a significant number of investigations undertaken and there are some ongoing as we speak.

Senator LUDLAM—The legislative framework here in Australia makes it very difficult to prosecute people if the activities commenced before certain dates. Can you tell us how many people the AFP has investigated for potential war crimes or crimes against humanity and genocide over the last 12 months?

Mr Negus—I think I do have those figures. As of 1 October 2010, the AFP has received 88 referrals in relation to allegations of war crimes.

Senator LUDLAM—Since last October?

Mr Negus—As of 1 October. That number is since 1997. So between 1997 and 1 October 2010 we have received 88 referrals. The status of the referrals is that we have seven active investigations, two matters are before the court, three have been terminated, 12 were not accepted after an evaluation obviously identified there was insufficient evidence to go ahead and 64 have been finalised.

Senator LUDLAM—Is the information about the active investigations in the public domain?

Mr Negus—Some of them would be, but certainly we would not be talking in any detail about what those seven are. There are obviously some that people are well aware of.

Senator LUDLAM—Does the AFP investigate the conduct of Australian corporations overseas in situations where they are suspected of complicity in current war crimes, crimes against humanity or genocide as per the Commonwealth Criminal Code, as you would if they were implicated in such activities here?

Mr Negus—Where matters are referred to us, yes, we do.

Senator LUDLAM—Are there any that would fall into that bracket at the moment?

Mr Negus—I do not have a breakdown of what those seven investigations are. But I do not believe so, from the nod from my deputy commissioner.

Senator LUDLAM—I just have one or two questions on some matters that were raised with Foreign Affairs and Trade people earlier today about investigations of Australian embassy officials who went to Ambon in late August of this year. They made inquiries about the allegations of torture by an Indonesian police unit, I believe, or paramilitary unit, known as Detachment 88. Is that an outfit that the AFP has a direct relationship with in a training capacity?

Mr Negus—We do have a relationship with them in a head office environment in Jakarta. We do not get involved in any operational activity, although some of the members from

Detachment 88 would have participated in AFP training courses over the years. I am sure you are familiar with the Jakarta Centre for Law Enforcement Cooperation. It has trained almost 7,000 people over the last seven or eight years. I am sure some of the people from that detachment would have gone through those training courses.

Senator LUDLAM—We do not have any idea how many presumably that come and go?

Mr Negus—We do not engage on a day-to-day basis with Detachment 88. As I said, in the operational environment we do provide some training. I think some work is also undertaken in the forensics area and post bomb blast analysis. We do things on their request.

Senator LUDLAM—I understand that the nature of our role with Detachment 88 was particularly around counterterrorism activities. But that unit, over a period of three or four years, has been implicated in arrest, torture and indefinite detention of pro-democracy protesters with no links to violent protest or terrorist organisations at all. What would it take for the AFP, or have you been asked at any stage to withdraw support or not train individuals with known associations with that detachment?

Mr Negus—No, we have not been asked to withdraw support. I should say that all the training that we undertake with all of our overseas endeavours certainly has components of human rights—certainly has standards which we would expect of police in this country. We do our best to make sure that is understood. We would certainly not be complicit in any activities that encouraged or tolerated that sort of behaviour.

Senator LUDLAM—What happens next then? We have quite well-documented cases of human rights abuses by Detachment 88. We do not know whether the AFP or others have trained those individuals. What do we do then when such a unit is implicated in those sorts of abuses of torture and so on?

Mr Negus—I do not have any ready answers for you. I have not seen anything other than the media article that has detailed some of this material. It is something we would have to examine. Again, our working relationship with the Indonesians across the board is a very good one. We work very collaboratively with them. We have not seen and we are certainly not involved in the day-to-day operational activity of them. If we saw anything that could be described as the way you have described it, certainly it would not be tolerated. It would be raised with the appropriate authorities in Indonesia.

Senator LUDLAM—We have seen it now, so have you raised it?

Mr Negus—I am saying that firsthand we have not seen that, from the AFP's experience working with these people in a head office environment. Again, I would have to examine what the allegations were and how many of those were substantiated to look at that. We would also have to talk to our Foreign Affairs colleagues about what action the Australian government might want to take in that regard.

Senator LUDLAM—They do not seem to be very interested in taking any action at all. I am wondering, are you committing here to do that or you still sound like you are speaking in the abstract?

Mr Negus—Again, I do not have a good understanding—other than reading the media article that you are perhaps talking about—I do not have any definitive evidence or I have not

seen any definitive reports. Certainly, my own people have not seen or been involved in any of that type of behaviour.

Senator LUDLAM—It is unlikely, I suppose, if you are dealing with head office in Jakarta, that you would be witnessing brutality or the kind of activities that are reported in the press. So will you undertake for us now to conduct your own investigation or at least talk to the—

Mr Negus—Senator, it was also reported in the press that the AFP were sending a team over to investigate, Detachment 88. That is patently false.

Senator LUDLAM—I understand that.

Mr Negus—We do not have any capability or right to go to a sovereign country and investigate their police force. Other than to assess what material is available and then talk to our Foreign Affairs colleagues about what might be an appropriate response, again this would need to be shown to be proven. I have not got that material in front of me, so I could not really give you that commitment.

Senator LUDLAM—But are you undertaking to do that now—to at least talk to your Australian colleagues?

Mr Negus—I am certainly going to have a look at it, Senator, and see what issues are there. My experience, as I said, dealing with our Indonesian colleagues has been a very positive one. I have not seen, as I said, anything to suggest the nature of the material you are talking about.

Senator LUDLAM—Well, there are 60 or 80 pro-democracy activists in indefinite detention at the moment, some of them tortured and some of them in hospital. I suspect that we may have a real problem on our hands if we are paying money. Again I do not know whether you can confirm this for us, but the article indicates that our support for that detachment in particular is in the order of some millions of dollars, including training and expertise and the time of your personnel. I would hope that we would take some kind of interest in whether we are enabling that kind of brutality in any form.

Mr Negus—As it has been raised, as I said, I undertake to have a look at it, but again I do not have anything at my disposal at the moment to make any judgements one way or the other.

Senator LUDLAM—I will leave it there, thank you very much.

CHAIR—Mr Negus, just before I go to Senator Barnett for questioning, I want to highlight the fact that the Senate's Legal and Constitutional Affairs Committee was provided with a parliamentary committee trip just prior to the federal election. We went to Indonesia and Singapore to look at a range of issues. No doubt you have feedback that we got a very professional and comprehensive briefing from the Australian Federal Police officers, particularly in Jakarta. We got quite a detailed summary of what Detachment 88 has been up to. Then we jumped on a Garuda flight, but I will not detail how exciting that was, except to say that Julie Dennett is probably just smiling and saying that she was right. We went to the Jakarta Centre for Law Enforcement Cooperation at Semarang. It is a really impressive and fantastic operation.

Mr Negus—Yes, it is.

CHAIR—We have not yet tabled our report in parliament. That will be tabled next week. I would urge you to get a copy and have a look at it, because it makes some very complimentary comments about the work that your officers do, particularly in Jakarta. Perhaps now that I have the opportunity I should place on record our thanks for the work that your people are doing over there. You should be incredibly proud of them. It was very useful and very informative, and we got a lot of benefit from our trip.

Mr Negus—Thank you, Madam Chair. Certainly I appreciate the comments. Like you, I am very proud of the work they do there. We have a very good relationship in Indonesia and it is working very well to protect this country and its people from a threat of terrorism in South-East Asia. I really appreciate your comments.

CHAIR—We managed to attend a graduation ceremony at the college, actually, in Semarang. You probably heard about that.

Mr Negus—I have been to one myself, yes.

CHAIR—It was wonderful to see so many people from right around the world taking the opportunity to actually benefit from the knowledge and the expertise that our people have and the way in which we pass that on. It is a very impressive operation. I think it is one that all Australians ought to know about, and you should be particularly proud of your men and women. They are doing a great job.

Mr Negus—Thank you, again.

Senator BARNETT—Through you, Chair, can I just associate myself with those remarks and pass on my thanks and appreciation for the work of you and your officers in Indonesia. I note the good work that they do under tough conditions. I had no idea, and I think Senator Crossin and others were not fully aware, of the extent of the service that we are providing in Indonesia. We were very impressed, particularly with the ceremony and those there who are undertaking that training and education. That facility is seen to be first class and well regarded throughout the region. I would also note that we have made a number of recommendations in our report which will be tabled shortly. I draw those to your attention and to the attention of other policy makers—Mr Wilkins and others—who may have an interest in that report.

Mr Negus—Thank you again, I appreciate the comments.

Senator HUMPHRIES—Could I go to the progress with the implementation of the commitment made by the government in May 2008 to increase the number of sworn police officers in the AFP over five years by 500. Does that commitment still stand? It has not been abrogated or modified as a result of any subsequent events?

Mr Negus—No, it is still in place.

Senator HUMPHRIES—Could you perhaps—and you may take this on notice—give us an indication of how far we have come down the path over two financial years of delivering on that promise? I assume you have some projection of how many more officers you intend to recruit in the next couple of financial years to achieve that target?

Mr Negus—That promise was phased over a period of five years. It was 30 in the first year, 30 in the second year, 40 in the third year and then 200 in each of the fourth and fifth years. We are coming up to a phase of quite large numbers in recruitment. Those 30, 30 and 40 have been recruited. In fact, the AFP over that period of time, through a range of internal efficiencies, has managed to increase its number of sworn police far more significantly than that. We are actually ahead of our target if you add what we have done internally to the additional funding provided by the government to meet that target.

Senator HUMPHRIES—So the 40 were to be recruited in the 2009-10 financial year?

Mr Negus—The 40 is in 2010-11—this financial year.

Senator HUMPHRIES—So we can say at the end of this financial year that we would expect to have 100 more AFP officers than was the case in May 2008—a net increase of 100?

Mr Negus—That is right.

Senator HUMPHRIES—Can we have the number of officers in the AFP as of May 2008?

Mr Negus—I am sure we have those figures here. I am just being reminded that that was an election commitment so it was from the date of the election rather than from May 2008. It really goes back to November 2007.

Senator HUMPHRIES—All right.

Mr Negus—So as at 28 November 2007 there were 2,696 sworn police officers in the AFP. At 1 October 2010 there are 3,044 sworn police officers in the AFP. This is an increase of 348 sworn police officers over that time. If you take this year into account, we are about 276 ahead of the target. That has been generated through some changes in management structures and the way we have moved supplier expenses—so travel and office expenses, vehicles and those sorts of things—into our operational areas to actually try to increase the number of staff. That has been a very successful process.

Senator HUMPHRIES—The tenor of then Minister Debus's announcement in May 2008 was that this extra resource would be directed towards tackling domestic and transnational crime and combating activities of organised crime syndicates. Is it fair to say that 100 of those additional 348 police are indeed in that area?

Mr Negus—Yes, it is. Shortly after I became commissioner we structured our operational areas to focus on organised crime. We now have a serious and organised crime area and a crime operations area. The bulk of those people would be in those locations?

Senator HUMPHRIES—I assume that those increases are premised on a certain rate of turnover of existing AFP staff. What is the predicated or assumed rate of turnover?

Mr Negus—I am pleased to say that our sworn attrition is at an all-time low. It is under two per cent. I will just get the figures here for you. It is on page 2. The attrition rate for sworn police officers is 1.97 per cent, which is almost historic lows for the AFP. The attrition rate for the broader AFP, which takes into account our protective service officers—our unsworn officers as well—is 3.05 per cent. So it is still a fairly low number. So in many ways it has been useful when we are trying to grow the organisation to have such a small number of people leaving the organisation at the other end.

Senator HUMPHRIES—Yes, indeed. So the cut that was announced as a result of the recommendations of the federal audit of police capabilities of \$23.5 million will not affect the achievement of those targets that you have just referred to?

Mr Negus—The \$23 million—I am just checking—Roger Beale made recommendations to government, which were then accepted, that we could retain the savings from those areas and then reinvest that back into the organisation over a period of time. This goes to the all-in model in aviation. There is a range of different things that the savings are derived from, but the government has agreed that that should be reinvested back into the AFP over time.

Senator HUMPHRIES—Great. Can I get you to table on notice how many sworn AFP officers were deployed in that core investigative capability in those areas that I referred to as of November 2007 and as of today, please.

Mr Negus—We would have the split for 2007. So I will certainly happily table those on notice.

Senator HUMPHRIES—Thank you very much. Could I turn to the article which appeared in yesterday's *Canberra Times* about the sackings and resignations of officers who had been deployed overseas. I am sure you have seen the article. Was it substantially correct in terms of the number of staff who resigned or who have been sacked?

Mr Negus—The numbers quoted were essentially correct. I take exception to the headline, but you can only control what you can control.

Senator HUMPHRIES—Yes. If we could all control headlines, we would all be doing very well indeed. Can we have an idea of the nature of the complaints that were made that in turn led to those dismissals?

Mr Negus—I have certainly details of the three AFP appointees who were terminated. Is that what you were after or do you want a broader—

Senator HUMPHRIES—Yes, please.

Mr Negus—In 2004 an AFP appointee deployed to the Solomon Islands engaged in a sexual relationship with a local contrary to what commander's orders stated and also provided then false information whilst under direction with our professional standards team when the matter was being investigated. So his employment was terminated in 2006. Also in 2004 an AFP appointee deployed to the Solomon Islands engaged in a misuse of a corporate travel card and various breaches of commander's orders, including fraternisation. Again, employment was terminated in 2006. In 2005, the third of the people who were dismissed was deployed to the Philippines and engaged in the fraudulent use of corporate travel card and impersonating a local police officer. His employment was terminated in 2006 as well. They are the three who were terminated. There were 15 others who have resigned, as was outlined in the article. About 103 complaints have been substantiated over that time between January 2003 and when the article quoted the figures, which was June 2009.

Senator HUMPHRIES—Were any of those 15 offered voluntary redundancies before they made their decision to resign?

Mr Negus—We do not offer voluntary redundancies to people who are under investigation. Either they resign or we dismiss them. So certainly, I have not got that explicit detail, but I can be very, very confident that that would not be the case.

Senator HUMPHRIES—Okay. You can advise me that that is not the case.

Mr Negus—Yes.

Senator HUMPHRIES—Thank you. But it is fair to link complaints made about each of those 15 to their subsequent decision to resign.

Mr Negus—My understanding is that they were all under investigation for a variety of different things and they chose to resign. I do not know the severity of each of those allegations. I must say that in the 103 substantiated matters a very large component—in fact the majority of those matters—were seen as being minor disciplinary matters. Management action was taken and the person moved on with their career, and no further action was required.

Senator HUMPHRIES—It may be useful to have a list of the nature of the sorts of complaints that led to that step. I do not want the complaint next to a name or anything like that.

Mr Negus—This may assist you to start with. The 15 AFP appointees resigned whilst the subject of investigation. There were allegations of serious misconduct. They involved issues including the misuse of corporate travel cards; again, fraternisation with the locals; and providing false information whilst under direction. It is a sad case that occasionally we will have people who will be interviewed for relatively minor matters, but if they do not tell the whole truth when they are being interviewed it becomes an integrity matter and they are subsequently dismissed. These people have chosen to resign. More broadly, as I said, there was a full gamut of matters. If you look at the numbers here, you will see there have been over 4,500 deployments of AFP personnel. Some of those complaints are of the same person multiple times. Since 2003 there have been 100 substantiated complaints over that period of time.

Senator HUMPHRIES—Is it fair to say that the rate of complaint about overseas deployed AFP is lower or the same as it is for the AFP domestically?

Mr Negus—I do have some statistics here which I could find. The short answer is that the statistics do not suggest there is any greater rate overseas; in fact, it is a lower rate. I just do not have the figures right at hand. Currently across all of the AFP there is one complaint received for every 33 AFP appointees; overseas it is one in 52. So one in 33 in Australia; one in 52 offshore. That is per annum.

Senator HUMPHRIES—So it is a lower rate.

Mr Negus—It is lower offshore. That is not surprising in many ways because, even though these people work in difficult environments, in their predeployment training there is a substantial amount of discussion about their behaviour. I or one of my senior executives will speak to each of these deployed groups and tell them that they are ambassadors for this country and that their standards of behaviour must be exemplary. They are working in very

close confined environments where their peers and the supervisors have very good visibility of all of their actions 24 hours a day.

The other thing that was pleasing for me when I looked at this matter was that around 80 per cent of the matters that were referred came from internal AFP personnel. So their peers are seeing their behaviour and not accepting it as being proper for the environment and reported it, and those matters were accordingly investigated. So, from a culture perspective, it is pleasing that the peers are identifying that behaviour and putting these people in.

Senator HUMPHRIES—The 80 per cent peer initiated complaint rate would be much higher than for domestic officers, I assume.

Mr Negus—I do not know, but I suspect that is right. Most of the complaints in the ACT, as I am sure you remember, come from members of the public.

Senator HUMPHRIES—Yes. Thanks for that. I will move on to a couple of other issues. How many AFP officers were sent to the Delhi Commonwealth Games?

Mr Negus—We sent 14 people and we had two people who were on the ground there in Delhi as our liaison officers. So 16 in total.

Senator HUMPHRIES—What role did they play in New Delhi?

Mr Negus—Of the 14 officers whom I talked about being deployed, one was the AFP forward commander, two were team security liaison officers for the venues, two were team security liaison officers for the athletes' village, two were close protection liaison officers, two were investigators, two were intelligence officers, two were high technology crime officers who provided technical support to the joint command post, and one was a logistics officer. Then, as I said, there was a senior liaison officer in Dakar who went over to provide support and a senior liaison officer from India.

Senator HUMPHRIES—Is it usual to provide an AFP presence for Commonwealth and Olympic Games teams?

Mr Negus—It is something we have done. They are purely there in liaison roles; they do not have any operational policing capability. They are not armed. But they are there to facilitate the transfer of information from officials and local law enforcement authorities to teams and to organisers.

Senator HUMPHRIES—Can I move on quickly to some other areas—airports. Can you provide me with a breakdown of AFP staff who are federal agents or sworn officers—I will rephrase that—who are uniform police in Australia's airports, how many people might be classified as protective service type positions and, if you have the information, how many state and territory police officers are stationed in our airports?

Mr Negus—Currently we have 420 protective service officers across the 11 designated airports and we have 291 state police.

Senator HUMPHRIES—Those 420 protective service type police are being upgraded, I understand—the positions are being upgraded to full uniformed sworn officers.

Mr Negus—That is right. After Roger Beale's review we are moving to an all-in model where there will be an homogenisation, if you like, of the sworn police and the protective service officers where we will just have sworn police performing both roles at the airport.

Senator HUMPHRIES—When will that process be completed?

Mr Negus—It is a three- to five-year transition time. We are about almost a year in now. We are looking, as I said, at about three to five years. We are working with the states and territories, working with a range of other groups as well—with the unions and others—on making this as smooth a transition as possible. Just last week I went and opened the first protective service officer transition program. They do 16 weeks training to transition to become full sworn police officers. We opened that last week. It is the first foundation course of that process.

Senator HUMPHRIES—Moving again to another area, I noticed the other day that we sent 16 AFP officers to Afghanistan. Is that the totality of our commitment in Afghanistan as far as Federal Police are concerned or did they join other officers?

Mr Negus—They joined other officers, Senator. We have a total of 28 there. There were 12 deployed over the last couple of months and this completes the contingent changeover which occurs during, as I said, October.

Senator HUMPHRIES—Where are they based? In a single place or across the country?

Mr Negus—No, they are spread between three locations. We have 21 of those in Tarin Kowt, which is the military base, and they provide training there to the Afghan National Police. We have three in Kandahar, who again provide a range of intelligence and tactical liaison between other groups, and then we have four in Kabul who are looking more at the strategic objectives of what is being achieved there with the Afghan National Police working closely with the NATO training mission and again influencing what happens in the major crimes task force and those sorts of areas in Kabul.

Senator HUMPHRIES—They do not provide any protective services at the Australian Embassy in Kabul?

Mr Negus—No. In fact, we have protective services provided for them for working in those environments. So we have our own private security employed in Kabul, for instance, to transport them around Kabul.

Senator HUMPHRIES—You would be aware of reports relatively recently about an endemic problem of corruption within the Afghan public service generally, if I can put it that way. There was a report in the *Sydney Morning Herald* a few days ago that suggested that there were Afghani police who are certainly involved in the drug trade and other allegations made about that. Given the prevalence of bribery as well, reportedly, within the Afghan public service, including police, what training do the AFP have before they go there to identify those sorts of practices and deal with them as part of their role?

Mr Negus—They all go through predeployment training, both through the AFP and also with the military, to help them work in those environments. The 16 that we farewelled just last week have all worked in various missions throughout the world. So these are experienced people.

It is a competitive process but we look to send very experienced people who have worked in difficult environments before with fledgling police forces or people who are still growing into their role to enforce the rule of law, so they have good background and good skills in that regard. The training itself is focused on values and ethics and those sorts of areas and we make sure that that is institutionalised within the training curriculum and influencing what is happening going forward. There is no doubt we are starting from a low base. Literacy levels, education levels and the level of corruption that exists through Afghanistan, not just in the police but more broadly, are difficult issues to deal with. But we have trained almost 700 officers in Tarin Kowt. We have trained just under 150 in the major crimes task force in Kabul. These are people who are warming to the training and we are giving them some basic skills to go forward. As I said, whilst we are starting from a low base, it is a step and it is a vital step obviously in that country's development.

Senator HUMPHRIES—If an AFP officer involved in training Afghani police were to see or get credible evidence of an Afghani police officer taking bribes, would they be trained to report that to higher authorities to counsel the police officer concerned? What would they do?

Mr Negus—Again, we are there under the auspices of NATO and there is quite a defined reporting regime in NATO which coordinates the training of police across the country. So there are defined chains of command, if you like, and they certainly would not tolerate that. In fact, in a successful operation they ran not so long ago they arrested a senior police officer for corruption offences in a joint task force in Kabul.

Senator HUMPHRIES—The AFP arrested him?

Mr Negus—No, sorry. When they arrested him the task force did under the mentorship, if you like, of the AFP officers working there. So these are again small steps but they are significant. We are seeing police officers being arrested and prosecuted through the judicial process for corruption type offences, and that sends a pretty strong message to the rest of the police force.

Senator HUMPHRIES—Jumping again to something else, we are all well aware that between the time of her election as Prime Minister and a period shortly after the federal election special security arrangements were made for the Prime Minister with respect to her home in Altona in Melbourne. Can you just outline what those arrangements are, given that they are no longer, presumably, in operation?

Mr Negus—More broadly, we do not talk or speculate, whether it be the Prime Minister or the Leader of the Opposition, about what happens during the election campaign because their security and future security operations may well be compromised by detailing locations or methodologies or transport arrangements of what might happen there. So I would certainly prefer not to step into that area. If there is a specific question you would like to ask on—

Senator HUMPHRIES—Okay. Can you indicate the cost of the arrangements that were made?

Mr Negus—The AFP certainly do not keep a record of costs. I think Prime Minister and Cabinet certainly would be the place to refer that to.

Senator HUMPHRIES—Does that mean Prime Minister and Cabinet reimburse AFP for the costs that they incur of having officers stationed at places like that?

Mr Negus—We have protection officers that are funded as part of our core business to do that. The cost of AFP officers would be something that is known to us, but the cost of accommodation and those sorts of things certainly we would not have.

Senator HUMPHRIES—I have a couple of questions about your annual report. I am looking at the Drug Harm Index that describes quite a sharp drop in the extent to which a key performance indicator for the AFP is being met in that respect. I note also in the table on page 31 of your annual report that there are very substantial reductions in the weight of drugs seized throughout this last financial year. What do you attribute that to?

Mr Negus—I am sure you have seen in there as well that there are two sides to this story. Certainly with regard to our Drug Harm Index the numbers by weight have dropped significantly over that period of time, and there is no denying that. Interestingly, over the same period of time the numbers by seizure—so each particular seizure—rose by 62.5 per cent. So we seized a lot more individual seizures but the weights were a lot less. Some of that can be attributed to different methodology.

We have certainly run a number of proactive investigations about people sending narcotics to this country through the post in smaller amounts. We know historically that that has been something that has evolved and people will take that opportunity. I can say categorically that we are working with a range of partner agencies, including Customs, the ACC and others to address that. In a very proactive operation a few months ago, we arrested about 25 people in one week, including three people in South America who had sent cocaine to this country.

The other thing to examine is how these things are measured. Year on year, one-off individual large seizures can impact upon those numbers. With the seizure, for instance, last week of almost 500 kilos of cocaine in Queensland, if that had been two months ago our Drug Harm Index target would have been met. This year we are off to a good start. It does not change the fact that last year the weights were down.

The other thing is that part of the Drug Harm Index also measures the AFP efforts offshore. That was also well down on previous years. I am told that the way it is measured is that it has to be determined to be definitely heading for Australia for it to be counted in our offshore statistics. We work in a range of joint investigations across the world. Where the destination of the narcotics is unknown or can be only partly attributed to Australia, they are not counted in those statistics. I am told if even only a small percentage of the joint investigations that we actively were involved in had been used, we would have blown that international KPI off the chart. But it is just a matter of the way that these things are used. We are modifying our KPIs into this year to give, I think, a better feel for that. But again, it can be influenced by one-off large seizures and, as I said, changes in methodology for how narcotics are brought into the country.

Senator HUMPHRIES—I suppose one way of reading the fact that there are more seizures but smaller amounts in each case could be that drug smugglers are, in fact, making their shipments in smaller lots to protect more of their consignments, as it were. Is that a reasonable interpretation of the evidence?

Mr Negus—Certainly that is a reasonable interpretation. I think that is part of the answer. The evidence and the intelligence we have is there are still large shipments of narcotics destined for Australia. As I said, we saw almost 500 kilos last week. We do not resile from that fact. We are working with Customs and with our partner agencies around the country, state and territories, as well as the ACC to look at the waterfront, to look at how methodologies have changed and to really try to keep pace with what is very much a changing environment. Every time we intercept something, the organised criminals find a new way of hiding it or a new way of getting it into this country. Again, things like corruption and sophisticated concealment methods are all the things that we are working very hard to try to get to the bottom of. We have instituted a new waterfront task force in Sydney, with a very multi-agency approach to look at issues around that. All these things are something that we are certainly not sitting on our hands about, but it is a difficult task.

Senator HUMPHRIES—I assume you can extrapolate from the price that is being paid for drugs on the streets of Sydney and Melbourne how many total drugs are reaching the streets of Sydney and Melbourne. Do you monitor those sorts of prices? Do you have an idea of whether those indicators would suggest that fewer drugs are reaching our streets than was the case 12 months ago, for example?

Mr Negus—Certainly I do not have anything at my disposal here. Certainly our analysts and others do monitor drug prices and we look at that. Unfortunately, the size of the market is such that you have to take a fair whack out of it to make an impact on the price. We have seen that with previous big shipments, where it has not moved the price very much at all, if at all. I do not think it is a great indicator because of the size of the market, unfortunately.

Senator HUMPHRIES—It could be the best indicator in some respects, almost.

Mr Negus—Well, it does give you that, I suppose, yes.

Senator HUMPHRIES—All right, jumping again to protection services. I notice there has been a significant drop in the level of client/stakeholder satisfaction, close personal protection principles from 92 per cent the previous financial year to 81 per cent in the most recent financial year. I assume that the number of people we are talking about in that category who are clients or stakeholders is quite small. What do you attribute that drop to?

Mr Negus—I might just hand over to Deputy Commissioner Drennan, who has responsibility for that particular area, and I can come in at the end if I need to.

Senator HUMPHRIES—Sure.

Mr Drennan—Thank you, Senator. You are correct that the sample size there is quite small. What we found is that some of the people we surveyed were not the ones that we were actively engaged with. Secondly, we had not actually done any work with those people to ensure they understood fully what the survey was about.

What we have done as a result of that—and we are preparing for the next business satisfaction survey now—is ensure that the list of clients who are surveyed is more extensive so we can get a more accurate picture. We are engaging with those prior to the survey to ensure that they understand the significance of the survey. We are ensuring that the manner in which we provide the service to them is what they expect. In short, we are proactively

engaging with them to ensure we have the correct people and they understand the importance of the business satisfaction survey.

Senator HUMPHRIES—I do not quite understand what you mean by saying that they previously were not aware of the nature of the survey or the nature of the services being provided to them. What do you mean? Surely they are either satisfied or dissatisfied with what is going on with respect to their close personal protection?

Mr Drennan—The business satisfaction survey covers a broad range of issues. It is actually about ensuring that people understand what the actual issue is and that we are talking to the correct person. If the business satisfaction survey is sent to a department and is dealt with by people who are not actively engaged with the AFP then the response we get may not be as accurate as if it went to the person who was actively engaged with the AFP.

Senator HUMPHRIES—So is there evidence that people who were not actually being protected have responded to the survey?

Mr Drennan—People with administrative responsibility for supporting those people as opposed to the actual person for whom the protection is provided.

Mr Negus—There is a very high target set of 90 per cent of people who are satisfied or very satisfied in that regard. Last year we achieved 81 per cent, which is still a relatively high number, but, in the close personal protection space, we insist on this being a very strong relationship. I think we have learnt some lessons about that from last year. Traditionally those numbers are in excess of 90 per cent. For a few years I remember they have been at 100 per cent. We need to make sure that we are getting the questions right and getting the service right.

Senator HUMPHRIES—Can I ask whether the present or previous Prime Minister or their office have indicated any dissatisfaction with the services they have received?

Mr Drennan—The survey responses from individual people are anonymous so that we can ensure that people will provide a frank response. Who actually provided the individual response is not part of the information that comes back to us.

Senator HUMPHRIES—How do you handle an anonymous complaint from the Prime Minister's office? How does that work?

Mr Negus—Usually it is not an anonymous complaint from the Prime Minister's office. Through the survey the answers provided are anonymous. That is part of our normal survey process to make sure the survey stands the proper test. If there are concerns or issues during a period of time—whether it be from the Leader of the Opposition or the Prime Minister—we would certainly look to remedy those very quickly. I am pleased to say that those are very infrequently received.

Senator HUMPHRIES—Someone other than the AFP does the surveying?

Mr Drennan—The University of Queensland.

Senator HUMPHRIES—You may have heard that evidence was given to another committee today that there was some commentary on headgear being worn into Parliament House. I understand that Ms Graham from the Department of Parliamentary Services

indicated that there would not be a requirement for security staff in the building—that is, obviously not the people outside the building but the ones admitting people to the building—to ask a person wearing a balaclava to remove their balaclava. I wonder whether the AFP had any view about the security implications of people entering Parliament House wearing balaclavas?

Mr Negus—I did not hear the evidence given in the other committee. Personally, I would have some concerns about someone wearing something into a secure environment which may disguise their identity. But, again, I do not know the circumstances of the evidence that was given.

Senator HUMPHRIES—I recommend that you have a word with the people from the Department of Parliamentary Services if that is the evidence that they gave—and that is what has been reported in the media. I also noticed an article in the *Canberra Times* only a couple of days ago about the purchase of \$1.5 million worth of armoured vehicles from BMW. Can you tell me why these vehicles, rather than an Australian-made product, were chosen for the protection of Australian and foreign dignitaries?

Mr Negus—Certainly. The BMW X5 Security was selected through a comprehensive evaluation and tender process to be the most suitable replacement vehicle for the ones that currently exist. The BMW X5 Security meets the specifications required for a close personal protection security vehicle for use in providing CPP to high-risk individuals. The AFP uses alternative Australian manufactured non-armoured vehicles—and these BMW X5s are factory light-armoured vehicles. So we use Australian manufactured non-armoured vehicles for providing CPP for lower-risk individuals. So these five are only part of a broader fleet, and the rest of them are Australian made.

The AFP considered a range of armoured vehicle alternative options available within the Australian market and found that no Australian manufacturer provides a suitable purpose-built light armoured vehicle alternative. The BMW X5 Securities are Australian design rules compliant, allowing them to be registered in Australia—which, again, is a concern. These vehicles carry a lot of extra weight in the bulletproof glass and other protection that is available. They will be used by AFP personnel as escort vehicles and in the normal conduct of their close personal protection duties.

A range of options were canvassed. We certainly have a requirement to buy Australian vehicles where we can but, again, these vehicles, being factory armoured, provided all of the requirements that were needed and were seen to be the best vehicle after that comprehensive evaluation and tender process.

Senator HUMPHRIES—So it is not possible to make security adjustments to a Ford Territory or some other Australian manufactured car?

Mr Negus—You can do it, and, in the past, we have done it with certain vehicles. That usually costs pretty much the same as what these ones do, except the windows do not wind up because of the weight of the glass. They wear out their brakes every time you drive them three laps around the block and there are a whole range of other processes about emissions and the greenhouse effect of these vehicles. They are not standard designed to carry the sort of weight and be the sort of vehicles that they are. The German-made BMWs are. They meet all

Australian standards at a very similar cost. I think \$300,000 per vehicle is not cheap, but when you buy a Statesman or something like that and then try to retrofit them, it becomes a very expensive exercise. They do not have the handling or the capability which would be of use to our officers to get out of tight situations when you need them to.

Senator HUMPHRIES—Yes. I have not noticed the Prime Minister being driven around in a BMW at this point in time. So I assume she is not one of the beneficiaries of the more secure vehicles. That is a comment rather than a question. Can I move to a question about operation—

Senator Ludwig—Just before you do that: as I recall, you prefaced your remarks with comments about foreign dignitaries or Australians being carried in these vehicles. I do not believe that that is actually the case. I think they are used by the AFP. I will ask Mr Negus to clarify that. I am not sure myself, but I just want it not to be left on the record, in a response by you or a question by you, that that was the case.

Senator HUMPHRIES—Okay.

Mr Negus—I am sorry, I did not pick up the introduction to the question, but certainly they are not to be used to carry foreign dignitaries or Australian dignitaries. These are for the AFP protection officers who escort them. They are escort vehicles. Traditionally, most of the vehicles that are used by foreign dignitaries in high-risk situations—and these are for high risk—would already be factory armoured. For instance, if President Obama were to visit, the vehicles he would bring would already have a degree of protection afforded to them. These are for our own officers as escort vehicles.

Senator HUMPHRIES—Okay. Thank you for clarifying that. How many AFP officers are involved in Operation Rune—the investigation into the Securrency issue?

Mr Negus—We currently have 23 officers working on that case.

Senator HUMPHRIES—Can you give us an update on where that investigation stands at the moment?

Mr Negus—Again, I will preface my remarks by saying that the matter is still an ongoing investigation, so I am somewhat limited in what I can say. But I can certainly update you on some of the recent activity in that regard. As you would be aware, this matter has been going for some time. On 6 October 2010, the AFP executed search warrants on six residential addresses in Victoria and seized an amount of property. On the same date, in coordinated raids across the world, the United Kingdom authorities executed nine search warrants. Two people were arrested for questioning in the UK. Those people are yet to be charged. They have been released and have not been charged. On the same date, Spanish authorities executed two search warrants in Spain relating to the matter. As a result, evidentiary material was seized but no persons were arrested and charged. This is a very complex investigation. It has been going for quite some time. Again, it is progressing and progressing well, I think. I receive regular personal briefings on this case. But we are not at the point yet of completing the investigation.

Senator HUMPHRIES—Thank you. I have other questions which I will place on notice.

Senator BARNETT—Tasers have caused a good deal of interest and media speculation, particularly in different jurisdictions. Could the AFP provide its policy view with respect to the use of tasers—by whom and where it is appropriate?

Mr Negus—We have a fairly restricted use of tasers. At the moment they are only available to members of our advanced warrant teams. These are people who receive additional training and do high-risk search warrants where there is quite often forced entry into premises—those sorts of things. Also, tasers are available to our police tactical groups, which are the SWAT team equivalents, to put it in common terminology. They are not available to everyday federal agents or officers on the road here in Canberra who do community policing.

Senator BARNETT—Have you expressed your views in terms of the appropriateness of the use of tasers to your colleagues in the various state and territory jurisdictions?

Mr Negus—It has been something we have discussed. As you said in your opening comment, there is no standard policy. It is something we have talked about, but it is a very difficult issue to get consensus on. It ranges from the full spectrum of a very restricted use to a very wide use across the states and territories. It is up to each of those individual governments and police forces to make their own judgements. We have fairly restricted use. We think that is appropriate in the ACT particularly. We are doing a review at the moment on the operational use of tasers in the ACT. I spoke to the ACT Minister for Police and Emergency Services, Simon Corbell, just the other day about this. He, like me, is looking forward to the review being completed, and we can make some judgements then.

Senator BARNETT—Who is undertaking the review?

Mr Negus—I am not sure of the exact person doing the review. I think it might be an internal review, but I do not have the name of the person.

Senator Ludwig—As I understand it, it is the Australia New Zealand Policing Advisory Agency. They might have commissioned the review, but I am not sure who will conduct it. We will take it on notice and find out.

Senator BARNETT—Is that for and on behalf of the ACT or—

Mr Negus—The ACT is doing a separate review. I think this one might relate to a broader review. We have had discussions amongst commissioners. Again, it has been a very problematic area in which to get any form of consensus.

Senator BARNETT—You have your police management capability unit—I have forgotten the correct name of it. Does that have a policy position on tasers?

Mr Negus—I am not sure of the unit you are actually talking about—unless you are referring to ANZPSA, which is the Australia New Zealand Police Support Agency, who provide support to the commissioners and to ministers in that regard.

Senator BARNETT—No, I was referring to the Institute of Police Management, I think it is called. Do they have a view on these issues?

Mr Negus—No. They are basically an education facility. The policies regarding each of these areas are really up to the respective state and territory governments or commissioners.

Senator BARNETT—It has been considered of such importance that ANZPAA has now got a view and they are undertaking a review. Who is undertaking that review and when will that review be reported?

Mr Negus—I think I probably need to go back two steps to make sure we are on the same track here. The review that is being undertaken in the ACT is an internal review, and that will come to the chief police officer in the ACT and me and the minister. ANZPAA has provided some support to all of the commissioners under the senior officers group. This group is under the ministerial council on emergency services for police, which the Minister for Home Affairs sits on. They have provided some support in the past, but there has been no group consensus or review that I am aware of that has actually been taken by ANZPAA. There has perhaps been some research but no policy view. I am just reminded that there has been some operational advice provided by ANZPAA which says that perhaps you should avoid shooting to the chest cavity and those sorts of things. That is advice and that is already part of our training.

Senator BARNETT—Is that advice available to the various state and territory agencies?

Mr Negus—That has gone out to all of the state and territory agencies as well, yes.

Senator BARNETT—Is that a public document? Is that to be made available? Can we see it?

Mr Negus—The advice is certainly public. I am not sure if it was a report or just an advising.

Senator BARNETT—Thank you. My last area of questioning relates to a report in the Northern Territory on 27 September under the heading ‘Government knew of people smuggling’. I do not think this has been covered. It states:

An unnamed federal government agency knew of plans to bring a boatload of asylum seekers to Australia before the voyage began but did not inform police, a court has heard.

It goes on to say:

... claims were referred to the Australian Federal Police ... and the boat, known as SIEV 46, which had set off from Malaysia, was intercepted some 236 nautical miles ... from Christmas Island on June 26.

‘I accept that this was the first time the AFP had any knowledge of this boat,’ Judge Tupman said.

Can you provide further and better particulars regarding that incident?

Mr Negus—Since those comments were made in the court, we have reviewed the matter. The agency, which I would prefer not to name—the other agency—actually did provide the AFP with some sensitive information. Because of its classification it was not placed on our broader systems. It related to a separate issue, but it was not available to the investigators who were investigating the people-smuggling case. It certainly was not material in the aspects that have been alluded to in the newspaper article, but it certainly could have been of use to the investigators. This is about having information which is classified as secret or top secret available to people working on systems that are at a much lower classification level, and the AFP is taking some steps to make sure that that would not happen again. So it really was not the fault of the unnamed agency. It really went to the way the AFP treated the material because of its classification. The timeframes were very compressed and it had not been

transferred on to the lower level system to make it available for the investigators involved in the case.

Senator BARNETT—So you are saying it was a system failure?

Mr Negus—Certainly the information did not get to where it needed to be because of the classification issues. Those have been addressed, or are being addressed, as we speak—in looking at how to transfer classified material to make that open to investigators to use in their day-to-day investigations.

Senator BARNETT—Let me go back a step. You accept there has been a system error where something occurred which was not done in an appropriate fashion in accordance with usual protocols—or did they follow usual protocols and there was a system error?

Mr Negus—The systems let us down. What happened was that there is no system to actually allow this to happen. We are in the process of rolling out a top secret system in the AFP—an IT system—which would allow us to then transfer this material accordingly. We do have vaults in each of our offices. We do treat sensitive material such as this very carefully on a daily basis, but transferring some things into that operational environment, which is at a lot lower classification, has been problematic. Working in our new building, which we have just moved into in the last few months, IT systems are beginning to be rolled out which would cater for this type of material and allow it to be transferred much more easily.

Senator BARNETT—Clearly it would have been sensitive information. It would have been secret information. For the life of me, I cannot quite comprehend why it would not have been passed to the relevant authorities within the AFP. But you are saying that did not happen. You are also saying it will not happen again. How can we be confident it will not happen again—because of these new IT systems you are putting in place? Is that correct?

Mr Negus—Senator, I did not say it will not happen again. It is subject to human frailties, and people make mistakes. But this process will be greatly aided by the new IT system we are putting in place. It allows connectivity with our partner agencies at that secret level and between offices. We are talking about the Sydney office and what happened in Canberra here, and transferring that material at a top secret or secret level becomes problematic for us without those IT systems. A top-secret vault in our Sydney office to house that material appropriately has just been commissioned and should be completed shortly. So we have had our issues with this sort of material, but I would like to make clear that I am certainly not being critical of that other agency that was named. The way that the article was constructed in the newspaper is not far off the mark, but it does not properly represent what happened.

Senator BARNETT—Why can't you name the agency if they are not at fault?

Mr Negus—Well, they are not at fault, but again the nature of the material and how it was collected becomes a matter of classification. To name the agency puts them in a difficult position, I think.

Senator BARNETT—All right. My final question relates to an article on page 1 of the *Age*, on 9 September, with the headline 'Asylum boat crews freed'. It states:

Ten Indonesians who helped bring asylum-seeker boats into Australian waters have been secretly flown home without facing people-smuggling charges that carry long mandatory jail terms.

Australian Federal Police decided the 'personal circumstances' of the crewmen justified the use of discretionary powers to free them.

That would probably be concerning to members of the community who read that. I am sure you have a response. I am wondering if you could let us know your feedback on that one.

Mr Negus—I might just pass to Deputy Commissioner Colvin, who has responsibility for the people-smuggling area. He is our Deputy Commissioner of Operations.

Mr Colvin—We are obviously aware of the article that you refer to. The information in the article is close to accurate, but it is not quite accurate. Certainly again, as the commissioner has already said on an earlier piece, the headline is probably not quite reflective of the truth of the matter. But it is fair to say that, as part of the process, the AFP investigates crew members, people who are involved with the bringing in of the asylum seekers into Australia. As part of that investigation we make a number of determinations. One of those is about their age and their culpability in the actual endeavour. The criminality attaches to the person's role as a crew member on that vessel or whether they were a crew member at all. If there is not sufficient evidence and there is not a case that we can prosecute, then those people are returned. It is not a secret return. It is a normal part of the process of the investigation of these members.

Senator BRANDIS—What does their age have to do with it?

Mr Colvin—Their age comes into it in terms of the Commonwealth prosecution guidelines. There are a whole range of guidelines that are controlled by the Commonwealth in terms of when a prosecution should or should not be advanced.

Senator BRANDIS—I understand that, but the age is merely one of the ingredients of culpability, is it not?

Mr Colvin—That is exactly right. If we were to come across a minor, for instance, whose culpability was such that it required prosecution, then they would be prosecuted. However, we need to lead evidence of that level of culpability or criminality. If it is a minor whose role was very minimal and we cannot lead—

Senator BRANDIS—I understand that, Assistant Commissioner Colvin. I thought you were saying that age was a stand-alone criterion.

Mr Colvin—No, not at all.

Senator BRANDIS—I would not have thought so.

Mr Colvin—No, age and culpability.

Senator PARRY—I think Senator Trood had some questions.

CHAIR—We are breaking at 6.30 for dinner.

Senator TROOD—I understand that. Commissioner Negus, I understand you have answered a few questions about the deployment in Afghanistan. Senator Humphries has confirmed with you that the number of AFP officers there is 28.

Mr Negus—That is right.

Senator TROOD—There has been a suggestion—and I would ask you from where—that there may be an increase in the deployment of AFP officers in Afghanistan. Is that correct?

Mr Negus—There has certainly been some discussion about that with the Australian government. I think the Minister for Defence also has spoken publicly about a request that was made of him for additional policing resources. But, again, nothing has been decided at this stage.

Senator TROOD—So this was a request made by the Afghan government, was it?

Mr Negus—I could not tell you that. The defence minister has spoken about a request for additional police resources that was made of him on a recent trip to Afghanistan. I have discussed that with my own minister here, but nothing has been decided.

Senator TROOD—What sort of additional numbers are we talking about, do you know?

Mr Negus—The number that have been spoken about publicly is 15.

Senator TROOD—Do you have 15 officers that you can deploy in Afghanistan were you to accept this opportunity?

Mr Negus—Our international deployment group is quite a large cohort of people who are in places like Sudan, Afghanistan, the Solomons and Timor. The rotations of those are such that we think we could probably provide additional staff if they were required, but again there has been nothing settled. Importantly, with Afghanistan, a lot depends on the location of the proposed training, the security systems that are in place and whether it is inside a place like Tarin Kowt or in a different location that requires additional security. There are a range of issues that would have to be fully considered before we could actually commit to that. As I said, at this early stage we have really just been in discussions on that.

Senator TROOD—So are you actively considering this request?

Mr Negus—I think the Australian government is best placed to consider that. We have been asked whether we could supply the officers. The answer to that is yes, given the conditions that I have talked about. If that comes to fruition and we can meet all of those conditions that I have talked about, then we could supply those officers.

Senator TROOD—But I assume you have to satisfy yourself that the conditions under which they would be deployed meet your principles and criteria for the deployment of officers in relation to security et cetera. Are you actively undertaking any kind of consideration of those matters at the moment?

Mr Negus—Not at this stage, because it is too early in the case. I do not think any decision has been made. We have not even actively looked at where the location might be and what the circumstances would be from there, because a lot depends on that physical location and the environment.

Senator TROOD—Do you keep statistics on the number of Afghanis trained?

Mr Negus—We do, yes.

Senator TROOD—How many have you trained to date?

Mr Negus—So far in Tarin Kowt there have been 682 Afghan National Police trained. We have also trained a range of people in Kabul who are part of the major crimes task force. There are 143 of those. It is a separate environment but we have trained them as well.

Senator TROOD—How do you determine the length of your mission? In relation to defence, for example, we understand that the training force brigade is part of the obligation under the ISAF forces. How do you determine whether or not you will complete your mission or when you will have completed your mission? Do you have an aim in terms of the number of Afghan police officers you are training? What are your criteria?

Mr Negus—We have two years of funding for our deployment into Afghanistan. That will be reviewed at the end of that two years. It will be a decision of the Australian government.

Senator TROOD—So you are expecting to be there at least two years—

Mr Negus—Two years.

Senator TROOD—And you will train as many people as will be made available to you in two years, is that right?

Mr Negus—Our focus is on Oruzgan Province. That is where the majority of our trainers are. We have trained just under 700, as I have mentioned. There are about 2,600 officers in Oruzgan. We plan to train at similar levels. We hope to get another 1,000 over the next year or so. Again, I think we then need to make decisions about the effectiveness and the ongoing issues around who else is yet to be trained and how we can actually assist in that regard. The security situation and all those issues will become important as well.

Just to finish that thought: the training that we provide is inside Tarin Kowt. We do not go out and mentor them in the field. This is a training course of six weeks. They come in under the guidance of NATO and us, and they are provided with basic human rights skills, policing skills and survival skills.

Senator TROOD—Do you keep statistics on the retention rates after training?

Mr Negus—Certainly with the people on the ground there is an ongoing mentoring relationship where they can come back in and speak to individuals. I do not have any of the statistics about retention rates. The Afghan National Police, unfortunately, sustain numerous casualties. One of the statistics I saw is that for every one Afghan soldier killed there are five police killed in that environment. It is a very dangerous environment in which they work. I do not have any particular follow-up on attrition rates and those sort of things.

Senator TROOD—There is presumably a difference between retention—that is, officers trained and continuing with their careers—and those who are killed in the line of action. I presume those are different statistics.

Mr Negus—Certainly. I have just given an example that shows it is a difficult environment these people go back out to operate in.

Senator TROOD—Do you know whether the retention rate is high or low?

Mr Negus—Broadly, what I have been told is that retention rates in the Afghan National Police are a problem. That is something that other people, as part of their transition force, are

working to reduce because, again, if you train people, you want them to be part of that force going forward.

Senator TROOD—And the attrition rate may also be a problem, is that right?

Mr Negus—Certainly it could be across the police force, yes. I do not have specific figures for Oruzgan. It is just a general thing.

Senator TROOD—So if the retention rates are low and the attrition rates are high, that is an equation which is not going in the right direction.

Mr Negus—I do not think I said attrition rates are high.

Senator TROOD—No.

Mr Negus—It is a difficult environment, absolutely. We are working with NATO to get the best outcomes to identify the people most worthy of this training—the people who are going to be there and who will be the most effective in this environment to enforce the rule of law. But it is a difficult environment in which they work and it is a difficult environment in which my people work. There are only 28 of them. This is the point. To look at 2,600 in Oruzgan: with the Afghan national police around 96,000 and looking to grow to 120,000 over the next few years, it is a large police force and we are doing our bit in one part of it.

Senator TROOD—Do you do the assessment as to the people who are being trained or is a decision made about recruits and they are then given to you to train?

Mr Negus—We do the latter. NATO actually select the people who are there to be trained and they are provided to us and we work in conjunction with them on the ground. So it is not just an AFP led mission there; there are a range of other people who contribute to training in Tarin Kowt.

Senator TROOD—Thank you, Commissioner.

CHAIR—That leads us to the dinner break.

Senator BARNETT—Can I just put on notice the three reports that I have indicated I would appreciate a copy of, if at all possible—the Beaton Research and Consulting report review of the AFP legal area; the Inspired Solutions report, ‘Business analysis services for high-tech crime operations’; and the University of Queensland return on investment study for fraud investigations report.

CHAIR—All right. Commissioner Negus, I thank you and your officers for your attendance this evening. We do not have any other questions for you, so you are free to go. Just before we break for dinner, though, I need to advise that we do not need the CrimTrac agency, the Insolvency and Trustee Service, the Director of the DPP and the Office of Parliamentary Counsel. So those four agencies can go. I am sorry to have made you sit here this afternoon without being a bit more definitive, but at least you might get home before dinner time—if they have saved you any! After dinner we are going to go to ASIO and the Australian Government Solicitor and then to the courts and then after that we will go to the departments. There has been a request, Mr Wilkins, that perhaps officers from the department who are responsible for the restructure of the courts may want to sit at the table at the same

time as the courts appear at eight o'clock, if that makes it easier. I will see everybody back here at eight o'clock.

Proceedings suspended from 6.35 pm to 8.00 pm

Australian Security Intelligence Organisation

Senator BARNETT—I am interested in the consultancy report.

Mr Wilkins—I will clarify that. I do not think it is actually in such a document. I think it is work that was done rather than a document that was produced. But I can certainly hand up the March 2010 document.

Senator BARNETT—Thank you.

Mr Wilkins—I can hand up the KPMG review of program administration. Of the other two, there is some difficulty. One of them does not exist. First of all, I might deal with that. That is the review of legislative arrangements for regulating the construction of offshore installations and the application of Australian laws to such installations. This was a report that we were beginning to have done after we had done the rationalisation of offshore criminal laws, or law enforcement, and the department thought it might be a good idea to look at reviewing the legislative arrangements for regulating the construction of offshore installations. Then the Montara incident occurred and the Montara report occurred so no further work was done on this. Instead, we are cooperating with the department of resources and energy in relation to the Montara report. So there is no such report.

Senator BARNETT—All right.

Mr Wilkins—The other one you asked for was the evaluation of Australia's revised arrangements for bushfire advice and alerts. We do not have any difficulty in making that available, but it is an intergovernmental report and will require us to get the agreement of the other states and territories that were involved in commissioning this report. So we are in the process of trying to get the agreement of jurisdictions. When we have done so, we can hand up the report.

Senator BARNETT—Thank you for that. There was a good deal of interest in that particular report and I look forward to receiving it.

Mr Wilkins—It is a report that is being acted upon in terms of revising those alerts that you see that go from—

Senator BARNETT—Yes. When was that concluded? I have 30 June.

Mr Wilkins—It was concluded in October, and the changes have been implemented in October as well.

Senator BARNETT—Okay. Good.

Mr Wilkins—I cannot be sure, but I do not anticipate we will have push-back from the states and territories. But it is a matter of going through that.

Senator BARNETT—Thanks for that.

CHAIR—I understand Senator Trood is on his way with questions for ASIO.

Senator BRANDIS—I did not want any more questions. He is not here.

CHAIR—I am in your hands. It is your colleague. We are waiting for Senator Trood. Apparently he is on his way.

Mr Wilkins—I have a little more information on the ACIL Tasman. They are in the process of helping us prepare a regulatory impact statement for the national legal profession reform. That has not been concluded, but it will go out with the bill in the package, so we can make it available when it exists.

Senator BARNETT—All right. That is fine. Thank you. While we are waiting for Senator Trood, perhaps I could ask one question of ASIO. Are you happy about that?

CHAIR—Yes.

Senator BARNETT—Mr Irvine, I will ask you to respond to an *Age* story of 29 September headed ‘ASIO files found in drug raid’. You are no doubt familiar with the story. I wonder if you would respond to that particular concern that has been raised in the *Age* by Nick McKenzie and Richard Baker. It states:

Secret files stolen from ASIO and police and anti-corruption agencies have been discovered during a drug raid in Melbourne, raising fears of a major breach of national security and crime intelligence.

Mr Irvine—Some documents were found in a drug raid in Melbourne, as that article suggested. I can confirm to you that those documents—those ASIO related documents, because there was some relationship to ASIO—were not national security classified documents and that no breach of ASIO secure material has occurred. If there were a breach, then, frankly, serious and heavy penalties could apply. But in this case, the documents—

Senator BARNETT—So there was no breach of the law and no breach of protocol?

Mr Irvine—There was no breach of security.

Senator BARNETT—But was there a breach of protocol? You would not be happy, would you?

Mr Irvine—Look, frankly, now that I know what the nature of the documents were, they went back some considerable period of time—20 years, I think, or thereabouts to the early 1990s; it related to job applications in respect of ASIO—so, no, I am not concerned about that.

Senator BARNETT—So they were dated up to 20 years old?

Mr Irvine—I would have to give you an exact time. But my recollection is that they relate to about 20 years ago.

Senator BARNETT—All right.

Mr Irvine—But it could be a shorter period than that.

Senator BARNETT—All right. Thank you.

CHAIR—Senator Trood, we have got ASIO here for you for questioning.

Senator TROOD—Thank you, Madam Chair. I think Senator Barnett has asked some of the questions that I wanted to ask about this.

Senator BARNETT—Only one regarding the top-level ASIO files being discovered in a drug raid in Melbourne. And the answer was—

Senator TROOD—Yes. Well, that was the area of questions.

Senator BARNETT—Have you got other areas of questions, or is that it?

Senator TROOD—About that issue?

Senator BARNETT—The response from Mr Irvine was that it was not a breach of national security. You can drill down, if you would like to drill down a little further.

Senator TROOD—Mr Irvine, do you say that on the basis that these were inconsequential documents, or do you say that on the basis that you believe that the protocols which apply to these documents were properly adhered to, or both or either?

Mr Irvine—As I understand it, the documents appeared to be personal papers related to possible job applications with ASIO. The word ‘ASIO’ was probably mentioned in the documents. I have not seen them myself. But I am advised by my people that no breach of national security occurred.

Senator TROOD—I see.

Mr Irvine—They were not classified documents. They gave away no national security information.

Senator TROOD—Well, that is welcome reassurance, Mr Irvine.

Mr Irvine—I must say I agree.

Senator TROOD—Are you of the view that they were properly in the hands of the individual where they were located or found?

Mr Irvine—Look, my understanding is that they were in fact the personal papers of the individual.

Senator TROOD—So, as far as you are concerned, there was no reason why these documents ought not to have been in the hands of the individual who was found with them?

Mr Irvine—I think that is a fair statement.

Senator TROOD—So you have not done anything, or have you, in relation to the protocols in relation to the handling of ASIO documents as a consequence of this raid?

Mr Irvine—Not as a consequence of this raid, no.

Senator TROOD—So you have satisfied yourself that there is no need to change the arrangements that apply to the passage of documents between agencies or between individuals in the agencies as a result of this raid?

Mr Irvine—This document appeared to be a personal document held by an individual and would not have been subject to passage between agencies and so on.

Senator TROOD—I see. So your agency had no particular reason to be concerned that they were in the hands of this individual?

Mr Irvine—I must say we were very concerned when we first saw the headline.

Senator TROOD—Indeed.

Mr Irvine—But subsequent inquiries gave us—

Senator TROOD—Assured you?

Mr Irvine—Assured me that it was okay.

Senator TROOD—All right. Good. Another matter which I know is close to your heart is your new building and its progress.

Mr Irvine—Yes.

Senator TROOD—Now, there have been some changes in the budgetary arrangements for this building, as I understand it. ASIO and ONA were going to be partners in this building, which is not now the case, as I understand it. Is that correct?

Mr Irvine—That is correct, Senator.

Senator TROOD—But the building proceeds apace, as I think everybody who comes to Canberra will have noticed. Indeed, it gets more handsome every day.

Senator BRANDIS—It is remarkable.

Senator TROOD—Indeed it is. I am sure Senator Lundy is very excited about it, being the local member here. But the cost of it presumably does not change. Are you now having to bear the whole cost of this building, which was going to be a shared cost, as I understand it?

Mr Irvine—Originally, the cost was \$606 million. That is the budget for the building. When ONA withdrew in May of last year, the budget was reduced to \$589 million. That includes the building, the fitting out and so on. Of that, \$527 million related to the value of the managing contractor's contract and those of the key consultants. So that related to the building of the building. The remaining \$62 million related to ASIO and the internal fitting out costs and so on. That will be borne by ASIO. The issue is that as a result of that withdrawal by ONA there will be some additional spacing in the building for which the government will no doubt be seeking a tenant.

Senator TROOD—I see. But this is not affecting your costs for the building or the expenditure that ASIO has to place into the building?

Mr Irvine—We will be renting the whole building, but we will also be looking for uses for that space that has been left with the departure of ONA. And it is our intention that we either utilise that ourselves, and then we will bear the whole cost, or alternatively we will find a suitable tenant.

Senator TROOD—So you will hold the head lease and be the recipient of—

Mr Irvine—That is correct, yes.

Senator TROOD—And be the recipient of the rental for the lease?

Mr Irvine—Well, I am not quite sure exactly how the financial arrangements will be worked through.

Mr Fricker—That is quite correct. It remains to be seen what the final arrangements will be. However, I would expect that what you just said will be the case. We will be the tenant for the whole building. We will sublet the space left vacant by ONA's withdrawal.

Senator TROOD—I see. Now, is the building on time and on budget?

Mr Irvine—I think the answer to both questions is yes. It has now reached the highest level, so what you see now is as high as it is going to be.

Senator TROOD—I think that is very reassuring to most people around, Mr Irvine.

Mr Irvine—Yes. Indeed, with the trees around it, it is actually not quite as visible as I was led to believe it would be.

Senator TROOD—So it is inconspicuous, would you say?

Mr Irvine—That is a value judgement, Senator. But the construction of the façade has now been completed. I think about half of the slab floors are now in. The internal design is about 85 per cent completed. The car park structure will begin this month—that is, the car park area. At the moment, we are on schedule for building handover by the managing contractor in the middle of 2012. We are still on schedule. And the staged occupation of the building is due to commence some time after mid-2012—probably in the last quarter.

Senator TROOD—I see.

Mr Irvine—Given fit-out and all the rest.

Senator TROOD—And the cost of the building, you are assured, is on budget. Is that right?

Mr Irvine—I am assured that it is indeed on budget, yes.

Senator TROOD—I see. Thank you.

Senator BRANDIS—Has a name been chosen for the building, Mr Irvine?

Mr Irvine—No. But we are very interested to hear suggestions.

Senator BRANDIS—I assume it will not be called the Lionel Murphy Building.

Mr Irvine—That is a good suggestion.

Senator BRANDIS—Perhaps it could be called the Sir Charles Spry Building.

Mr Irvine—That has been suggested.

CHAIR—All right. So we have no more questions, then, for ASIO?

Senator BRANDIS—No.

CHAIR—Mr Irvine, and your colleagues, thank you very much for joining us and for your short time in our hearings. I ask the Australian Government Solicitor representatives to come to the table. I should also place on record our acknowledgement, Senator Lundy, of your first time at estimates in front of our committee. So on behalf of the Legal and Constitutional Affairs Committee, welcome to estimates and congratulations on your appointment.

Senator Lundy—Thank you very much, Senator Crossin. It is a pleasure to be here.

[8.21 pm]

Australian Government Solicitor

CHAIR—Mr Govey, good evening, and welcome to estimates. To begin, do you have any opening statements you want to make?

Mr Govey—No, I do not have any opening statements.

CHAIR—All right. We will go to questions.

Senator BRANDIS—Thank you, Madam Chair. I suppose in this mood of felicitations, I should begin by congratulating you, Mr Govey, on your appointment as Australian Government Solicitor.

Mr Govey—Thank you very much, Senator.

Senator BRANDIS—Mr Govey, when the Australian Government Solicitor gives advice to the Commonwealth or a Commonwealth agency, does it regard the relationship between it and the department or agency to whom the advice is given as the orthodox relationship between solicitor and client?

Mr Govey—I do not know that it is possible to give a black and white answer to that, Senator. In general terms, we start off with that proposition and treat client agencies as if they were our client. But equally we have to be mindful of the fact that at the end of the day most of our client agencies constitute the Commonwealth. We are therefore mindful of that and the fact that the Attorney-General, as first law officer, has particular responsibilities for legal advice and legal services to the Commonwealth.

Senator BRANDIS—I understand that. It is more a question of the division of function. But when the Attorney-General is not himself engaged and you are instructed by a Commonwealth department or agency to provide advice to it, your attitude essentially is that it is your client?

Mr Govey—That is correct. But subject, as I say, to that important overriding obligation to the Commonwealth.

Senator BRANDIS—Indeed. And, therefore, the ordinary rules and legal principles that govern the relationship between a solicitor and client apply to the relationship between you and the Commonwealth department or agency that you are advising?

Mr Govey—Again, subject to that same qualification.

Senator BRANDIS—Thank you. Mr Govey, you are aware, are you not, that the Australian Government Solicitor provided some advice to the Treasury on the question of the constitutional validity of the proposed resources super profits tax?

Mr Govey—I can imagine that is correct, Senator, but I have no personal knowledge of that advice.

Senator BRANDIS—Perhaps an officer who does have personal knowledge or who can respond more fully to my question could come to the table.

Mr Govey—Senator, there is nobody from AGS who will be in any better position to do that. I should point out that from our point of view we are subject to the usual position when it comes to government legal advice.

Senator BRANDIS—Advice to the client?

Mr Govey—Well, not so much that, but the general position is that we would not be providing information to the Senate in relation to legal advice that we had given unless it was otherwise on the public record or unless our client had told us to do so.

Senator BRANDIS—Unless your client had put it on the public record?

Mr Govey—Yes.

Senator BRANDIS—Mr Govey, have you seen the *West Australian* newspaper this morning?

Mr Govey—No, I have not, Senator.

Senator BRANDIS—Are you aware that this morning the *West Australian* newspaper published, in response to an FOI request, both in its printed newspaper and, as of today, on its website the advice the Australian Government Solicitor gave to the Treasury in relation to the constitutional validity of the resources super profits tax?

Mr Govey—No. I was not aware of that, Senator.

Senator BRANDIS—I ask the assistant secretary of the committee to put a document in front of you, Mr Govey. I will circulate copies to the members of the committee. Mr Govey, I can tell you that the document that I am putting before you, which I will take you through in a moment, has been downloaded from the *West Australian* newspaper's website. Let us go through it. The first two pages, which appear to be in a times new Roman font to distinguish them from what follows, are an extract from a Treasury minute. You will see that the title of the minute is 'Resource super profits tax and constitutional issues'. Do you see that?

Mr Govey—Yes, Senator.

Senator BRANDIS—Mr Wilkins, would it help you if I gave you a copy of this document as well?

Mr Wilkins—I would be most gratified, Senator.

Senator BRANDIS—I take you to the second page of the document. You will see at the sixth dot point the author of the minute says:

Australian Government Solicitor (AGS) have advised that a cap on royalties based on the rates applicable at the time of announcing the RSPT would risk being unconstitutional on the grounds that the RSPT would have the potential to discriminate between or give preference to states and parts of a state. This would also apply in respect of a territory.

Then on the final dot point on the second page of the document it identifies as attachment A an extract from AGS advice. I am not asking you any questions at the moment, Mr Govey. I am just giving you the opportunity to familiarise yourself with the document that I have put in front of you. The next five pages of the document—and, as I said a moment ago, this was produced by Treasury in response to an FOI request—is identified as attachment A. It is entitled 'Extract from AGS advice'. It comprises paragraphs 6 to 8, 21 to 24 and 50 to 72 of advice from the AGS. The balance of the document, which is of less immediate consequence, the final five pages, attachment B, is what appears to be a Treasury document entitled 'How the tax would operate.' Mr Govey, as I say, the Treasury has produced this document to a newspaper in response to an FOI request. The Treasury was your client. The response to the request was dated 1 October 2010 and it was signed by Dr David Parker, who is, as you know, a senior officer of the Treasury. Given your previous answer, Mr Govey, may I take it that you are now in a position to respond to my questions concerning this advice which has been published by your client?

Mr Govey—I think it would depend on what the questions were, Senator.

Senator BRANDIS—Well, that is fair enough. All right.

Mr Govey—If they are questions about legal issues, I do not think I would be in a position to do so.

Senator BRANDIS—Okay. Let me just ask a couple of questions to better identify the document. You may need to take these on notice, or if there are officers in the room who know the answer, they could please come forward. I would like to know, first of all, the date on which the advice, a copy of which I have put before you, was given to the government and the date on which the advice was requested by the government. I would also like to have produced to the committee a copy of the letter of instructions or other commissioned document by which the Treasury sought the AGS's advice that I have put before you. Are you able to help us with any of those three matters, please?

Mr Govey—I would need to take that on notice, Senator.

Senator BRANDIS—Is there nobody here who even can tell us the date of this advice?

Mr Govey—No, Senator.

Senator BRANDIS—All right. Let me take you through it, Mr Govey, by reference to the numbered paragraphs. That part of the document I put before you comprises the AGS advice. In paragraph 7, the Australian Government Solicitor advises the Australian government:

In our view, there is a risk that this proposal—

that is, what is described in the document as the RSPT—

specifically the proposal to cap the amount of refund available based on the state in which the expenditure was incurred—constitutes discrimination between states for the purposes of section 51(ii) of the Constitution and a preference between states for the purposes of section 99 of the Constitution.

There is some discussion of the current learning from the High Court about what constitutes discriminatory taxation in breach of section 51(ii) and what constitutes a preference in breach of section 99 and, in particular, whether the proposed tax credit or refund scheme might violate those constitutional prohibitions. In paragraph 53 of the advice, the Australian Government Solicitor advises the government:

However, where it is proposed to offer a tax credit or refund to offset the RSPT and the amount of this offset or refund will be based on state royalty regimes and will vary between states, it is necessary to reconsider the discrimination/preference question. As noted in our previous advice, the threshold question is whether the law entails discrimination between states. If there is no discrimination, there is no preference for section 99 purposes.

In the subsequent paragraphs there is further discussion of the authorities in the High Court. Then in paragraph 59, the author of the advice advises the Australian government:

In the present circumstances, although the RSPT would be imposed consistently across states, the associated tax credit or refund would be available to persons who have paid royalties to a state or territory and would vary according to state specific determined levels. On its face, this appears to be discriminatory because a person mining a resource in one state could receive a different tax refund/credit than a person mining the same resource in another state.

Then the author of the advice goes on to say in paragraph 62:

Accordingly, under the more substance based view that we consider the High Court is more likely to follow, we think there is potential discrimination between states in the operation of the proposed law for section 51(ii) and section 99 purposes.

And it goes on further to say in paragraph 66, and I quote:

However, in our view, there is a risk that a court would find the cap which is based on state locality is not only not reasonably necessary to achieve a proper objective but actively works against that objective in the sense of allowing the overall national consistency to be lost over time. For this reason, we consider there is a risk that a court would find that the law discriminated between states for the purposes of section 51(ii) and was therefore outside the scope of the taxation power. It follows that it would also be possible to argue that to the extent that the law in effect permitted a mining operator to receive a more favourable tax treatment in one state over another, it constitutes a preference for section 99 purposes.

Do you see those extracts that I have read to you, Mr Govey?

Mr Govey—I do.

Senator BRANDIS—That is the advice of the Australian Government Solicitor to the Australian government on the topic addressed by the advice?

Mr Govey—That would appear to be the case.

Senator BRANDIS—That would appear to be the case. Now, Mr Govey, of course you are familiar with the provisions of section 51(ii) and section 99 of the Constitution?

Mr Govey—I would not be about to embark on any discourse about it.

Senator BRANDIS—No. I am not going to engage you in a discourse. But we all know that section 51(ii) of the Constitution gives the Commonwealth parliament legislative power to impose taxation but not so as to discrimination between the states or parts of the states. And we know that dicta in the High Court in more recent years have extended the scope of section 51(ii), including the prohibition to the territories. We also know that section 99 of the Constitution prohibits legislation which gives a preference to one state over another state. To put it simply and basically just to state the language of the sections, that is what they say. Is that right?

Mr Govey—Yes.

Senator BRANDIS—Mr Govey, we now know, because the Treasury chose to publish this advice to the *West Australian* newspaper, which has in turn this morning published it to the Australian public, that on a date yet to be identified the Australian Government Solicitor advised the Australian government that the RSPT, in the form that it was then on this unspecified date being conceived, was likely unconstitutional. Now, Mr Govey, you are also aware, are you not, of the law in relation to the waiver of legal professional privilege?

Mr Govey—In broad terms.

Senator BRANDIS—Well, the law in respect of the waiver of legal professional privilege, or lawyer-client privilege, as I think it is now more commonly described, tells us that if the client publishes legal advice or waives the privilege in relation to legal advice or part thereof, then that is a waiver of privilege for all purposes unless there is an express reservation. Now, Mr Govey, given that your client, the Treasury, has published this advice and, therefore,

waived the privilege and consistently with your previous answer, I ask you again—you may wish to take it on notice—to provide to the committee a full copy of this advice in respect of which the privilege has now been waived.

Mr Govey—Well, I certainly need to take that on notice, Senator.

Senator BRANDIS—All right. Now, Mr Govey, I take you back to paragraph 50 of the advice. There is a reference to earlier advice dated 9 December 2009. It is reference 090833409. I ask you: in view of what appears to be the waiver of the privilege in relation to that advice by paragraph 50 of the advice I have placed before you, can you produce to the committee a copy of that advice?

Mr Govey—I will take that on notice, Senator.

Senator BRANDIS—I take you to paragraph 55 and, in particular, the second sentence by which the Australian Government Solicitor advises the government, and I quote:

The present Solicitor-General has recently advised that it is reasonable to work on the hypothesis that a proper objective must be one that is competitively neutral as between states and parts of states and that the differential treatment is reasonably necessary to obtain the objective. Thus, a proper objective may be the accommodation of particular circumstances existing in particular states or parts of states, including state based regimes.

It would appear from the context that the Solicitor-General's advice there referred to is advice in respect of the RSPT and that that advice, or the privilege in relation to that advice, has also now been waived by your client, the Treasury. I ask you, in view of that, to provide the committee with that advice, please.

Mr Govey—Senator, in relation to that one, I would probably need to talk to the Treasury and the Attorney-General's Department because we are not necessarily the solicitor in relation to that matter.

Senator BRANDIS—That is a fair comment. All right. I will pursue that with the department and with Treasury, of course. In any event, Mr Govey, going back to the language from paragraph 66 of this advice, it amounts to this, does it not: on a date yet to be specified but which we can locate as being at a time when the mining tax, to use a more general expression, had been designated the RSPT—the resources super profits tax—between that time and now, the Australian Government Solicitor advised the Australian government that there was a risk that the RSPT was unconstitutional?

Mr Govey—That appears to be the case in relation to a certain proposal. Of course, there were—

Senator BRANDIS—Well, that is the proposal that you were asked to consider. If you read the Treasury minute that I put before you and annexure 2, that was the shape of the proposal at the time that advice was sought.

Mr Govey—That would appear to be the case.

Senator BRANDIS—Thank you.

Mr Govey—I was about to say that there are, of course, some suggested changes to the proposal set out in two of the paragraphs there. I do not obviously have any knowledge about—

Senator BRANDIS—No, you do not.

Mr Govey—the proposal as it was put and the timing and proposal that might have been used—

Senator BRANDIS—I did not expect you to have any such knowledge. That is why I did not ask you that question. Thank you, Mr Govey.

Mr Govey—It has been suggested that we should, for the sake of completeness, ask that paragraphs 68 and 69 be put on the record—

Senator BRANDIS—Well, they published the document.

Mr Govey—In the same way that the rest of the extract was.

CHAIR—It is a tabled document for the purpose of this committee hearing, so it is open.

Mr Govey—Thanks, Chair.

CHAIR—There being no other questions for the Government Solicitor, Mr Govey, thank you for your time this evening.

Mr Govey—Thank you.

[8.43 pm]

Family Court of Australia

CHAIR—I welcome officers from the Family Court. Mr Foster, good evening.

Mr Foster—Good evening, Chair.

Senator BRANDIS—Madam Chair, I see Mr Phelan sitting in the body of the committee room. The opposition does not have any questions for the High Court. I thought we actually conveyed that to the committee last week. Unless other senators do, we can excuse Mr Phelan.

CHAIR—Senator Brandis, the fact that you did not want the High Court was not conveyed to us, which is why they are on the program. Mr Phelan has been notified to come. So our apologies, Mr Phelan. I am sure some people will get organised sooner rather than later for the next time. But thanks for your attendance. Mr Foster, again, good evening and welcome. Do you have an opening statement?

Mr Foster—No. I do not.

Senator BRANDIS—Mr Foster, are you still in your Janus like capacity the CEO of the Family Court and the acting CEO of the Federal Magistrates Court?

Mr Foster—Yes, I am, Senator.

Senator BRANDIS—I have questions to both institutions, but they are largely the same questions. So what I propose to do is to ask those questions of you. If there is any point at which you feel your double capacity causes you a difficulty, can you just indicate, please?

Mr Foster—Certainly.

Senator BRANDIS—Mr Foster, I will ask these questions without differentiation between the two courts. There was a meeting, was there not, by teleconference of the federal magistrates convened by the Chief Federal Magistrate on Friday, 20 August 2010—that is, the day before the federal election—at 8.30 am?

Mr Foster—I think that is right, Senator, but I did not attend that meeting.

Senator BRANDIS—You did not participate by teleconference?

Mr Foster—No.

Senator BRANDIS—Have you seen a report of that meeting?

Mr Foster—No, I have not.

Senator BRANDIS—Are you aware of the fact of the meeting having taken place?

Mr Foster—I knew there was a meeting taking place.

Senator BRANDIS—Was there a report given to you of the transactions of that meeting by anyone subsequently?

Mr Foster—No. I have not received a report from that meeting.

Senator BRANDIS—Nevertheless, Mr Foster, are you not aware of the continuing issue about the fate of the relationship between the Family Court and the Federal Magistrates Court; the extent to which the recommendations of the Semple review, as announced by the Attorney-General during the last parliament, are going to go forward; and what changes there might be to those plans and so forth? You are generally aware of that issue?

Mr Foster—Yes, I am, Senator.

Senator BRANDIS—Are you aware, Mr Foster, that at that meeting the Chief Federal Magistrate advised the magistrates that the Chief Justice of the Family Court, Chief Justice Bryant, no longer supported the restructure model that had been announced by the government whereby the federal magistrates, or most of them, would be folded into the Family Court as a second tier of that court?

Mr Foster—No. I am specifically aware of that, Senator. As I said, I was not at the meeting, so I am not quite sure what was raised there.

Senator BRANDIS—Is it not the case, though, that certainly as at 20 August 2010 that had become the view of the Chief Justice of the Family Court that, speaking on behalf of her court, the Family Court no longer supported the Semple report?

Mr Foster—No. I do not think I could agree with that, Senator. The Family Court certainly has not formed a view about the structure of the courts other than what it responded to in the original Semple report some 2½ years ago.

Senator BRANDIS—So if that is what the Chief Justice of the Family Court said to the Chief Federal Magistrate in advance of a teleconference on 20 August 2010, then that was her own view, not the view necessarily of the court?

Mr Foster—If that is what was reported, that would be perhaps her view. But it is certainly not the view of the court.

Senator BRANDIS—Is it not the case that at some time shortly before 20 August 2010 the Chief Justice of the Family Court and the Chief Justice of the Federal Court, Chief Justice Keane, had met and conferred and agreed that neither of them supported the Semple report proposal?

Mr Foster—I could not confirm that either, Senator.

Senator BRANDIS—I put it to you that that did occur. Madam Chair, the next question on the same topic is probably best directed to officers of the Attorney-General's Department. May we deal with the same topic in the same bracket of time?

CHAIR—We agreed to do that. I think that is why Mr Wilkins has facilitated that by having the officers present.

Senator BRANDIS—Mr Wilkins, this is to you, but it may well be that there are officers of your department who are in a better position to answer. Is it not the case that before 20 August 2010, although, as I am advised, not long before 20 August 2010, the Chief Justice of the Family Court and the Chief Federal Magistrate spoke with officers of your department and informed those officers that there had been a change of attitude on the part of the Family Court and of the Federal Magistrates Court and that neither of those courts any longer supported the proposal?

Mr Wilkins—Senator, I am told that there was a meeting of a working group or some consultative group at which concerns were expressed that the restructure might fail. But other and further than that—

Senator BRANDIS—Is that a group called FLAG, the Family Law Advisory Group?

Mr Wilkins—Yes, apparently.

Senator BRANDIS—And which officers of your department, Mr Wilkins, sit on the Family Law Advisory Group?

Mr Wilkins—Elizabeth Kelly sits on that.

Ms Playford—And I was there.

Senator BRANDIS—Ms Playford, that is you, is it? You are in my notes here.

Ms Playford—Yes, I was present.

Senator BRANDIS—Do you sit on the Family Law Advisory Group?

Ms Playford—Elizabeth Kelly is formerly the department's representative. I attended that particular meeting with her.

Senator BRANDIS—Are there any other officers of the Attorney-General's Department who sit on the Family Law Advisory Group?

Ms Playford—Not of the Attorney-General's Department, no. It is a courts group.

Senator BRANDIS—Who else sits on the Family Law Advisory Group?

Ms Playford—Mr Foster might correct me if I am wrong, but it is the chief justice and the Chief Federal Magistrate—

Senator BRANDIS—The Chief Justice of the Family Court?

Ms Playford—Of the Family Court. The Chief Federal Magistrate, Chief Justice Watts and Federal Magistrate Michael Baumann and Richard Foster in his CEO capacity of both courts.

Senator BRANDIS—In his two capacities. That at least saves one airfare, I suppose. So it is Mr Foster in both of his capacities, yourself, Ms Kelly from the Attorney-General's Department, the Chief Justice of the Family Court and Justice Watts and the Chief Federal Magistrate and Federal Magistrate Baumann. Are they the Family Law Advisory Group?

Ms Playford—That is right. I think that is all.

Senator BRANDIS—Ms Playford, are meetings of the Family Law Advisory Group minuted?

Ms Playford—They are.

Senator BRANDIS—Might the committee please have provided to it a copy of the meetings of, let us say, the four meetings of the Family Law Advisory Group immediately prior to 20 August 2010?

Ms Playford—I would have to take that on notice.

Senator BRANDIS—I understand. Thank you. Is it not the case, Ms Playford, that shortly before 20 August 2010 at a meeting of the Family Law Advisory Group both the Chief Justice of the Family Court and the Chief Federal Magistrate said words to the effect that their respective courts no longer supported the restructure?

Ms Playford—They raised some concerns.

Senator BRANDIS—What were those concerns, please?

Ms Playford—They were concerns, to the best of my recollection, about, I guess, the timing and support there might be from the judiciary or from magistrates for the proposal.

Senator BRANDIS—Go on.

Ms Playford—I guess that is a summary.

Senator BRANDIS—Is it not the case that at that meeting the chief justice and the Chief Federal Magistrate expressed the view that the Federal Magistrates Court should be retained and not absorbed into the Family Court?

Ms Playford—I cannot recall. Mr Foster might be able to recollect.

Mr Foster—My recollection, Senator, is that the discussion was fairly free-ranging and general.

Ms Playford—And general.

Senator BRANDIS—I knew you were going to say wide-ranging. I am sorry. I do not mean to be mocking, but I knew you were going to say that.

Mr Foster—I did not say wide-ranging. I said general, actually. From my understanding—and I would need to check the minutes—there were no conclusions of a substantial nature

drawn from it. And I certainly can say with great confidence that the chief justice may have had a personal view but certainly had not tested any such view with the members of the court.

Senator BRANDIS—Well, the fact that you qualify yourself by saying that you can say that with some confidence suggests to me that you know that for sure. So may we take it that the view that Chief Justice Bryant expressed to the Family Law Advisory Group meeting shortly before 20 August was her own then view, not the view of the court?

Mr Foster—Yes. I think that is a fair statement.

Senator BRANDIS—Thank you. Now is it not the case that last week, in fact on Monday, 11 October, the Attorney-General had a meeting with the Chief Justice of the Family Court in relation to this matter?

Mr Foster—That is right.

Senator BRANDIS—And is it not the case that at that meeting the Attorney-General told the Chief Justice of the Family Court that the government was abandoning the proposed court restructure model in its pre-existing iteration and was proposing a new iteration of the restructure model, the principal features of which would be that federal magistrates would be offered commissions as Family Court judges but that the two-tier proposal would not be proceeded with?

Mr Foster—I am not sure what was said at the meeting, but it is not what has been said to me by the Attorney-General; let me put it that way.

Senator BRANDIS—All right. And is it not the case that on Thursday of last week, 14 October, the Attorney-General had a meeting with Chief Federal Magistrate Pascoe at which he said words to the same effect to Chief Federal Magistrate Pascoe—that is, that the government was not proceeding with the pre-existing restructure model but was proposing a new iteration of that model which was materially different from the previous iteration, in particular, that the federal magistrates would be offered commissions as Family Court judges?

Mr Foster—There certainly was a meeting between the Chief Federal Magistrate and the Attorney-General last Thursday.

Senator BRANDIS—Did you attend that meeting?

Mr Foster—No. I did not attend either of those meetings, Senator—either the one with the Chief Federal Magistrate or the chief justice.

Senator BRANDIS—It is the case, though, is it not, Mr Foster, that last week the heads of at least two of the jurisdictions affected—the chief judge of the Family Court and the Chief Federal Magistrate—if not also the Chief Justice of the Federal Court, were told that the government had revised its proposal and proposed a materially new model in which, among other things, the federal magistrates would now be offered commissions as Family Court judges? That is right, is it not? I know this has not been announced by the government, but nevertheless I am putting this to you and I expect you to respond.

Mr Foster—Sorry, Senator, I was not at this meeting with the chief magistrate. But I think Ms Playford was and her recollection is somewhat different from what you have just said.

Senator BRANDIS—Yes, Ms Playford.

Ms Playford—My understanding from the meeting is that the Attorney told the Chief Federal Magistrate that the government intends to reintroduce both the bill to restructure the courts that it had introduced on 24 June and the Military Court of Australia Bill in a similar form to what they were previously introduced and that there is no change to the model that was announced in May of this year and was in those bills that were introduced in June.

Senator BRANDIS—At which meeting was this said?

Ms Playford—This was at the meeting with the Chief Federal Magistrate on Thursday. My understanding is that he told the chief justice on Monday a similar—

Mr Foster—It is certainly consistent with what he told me too, Senator.

Senator BRANDIS—All right. Are you also aware—I suppose I should ask you this question, Mr Foster—that there was a meeting at some time after the federal election but before the one-on-one meetings I have just been referring to between the three heads of jurisdiction—that is, the Chief Justice of the Federal Court, the Chief Justice of the Family Court and the Chief Federal Magistrate? Are you aware of that?

Mr Foster—I am not entirely certain, Senator, but I would like to take that question on notice.

Senator BRANDIS—Are you aware, Mr Wilkins, whether there was such a meeting?

Mr Wilkins—No. I am not aware of such a meeting, Senator.

Senator BRANDIS—Now, Mr Foster, you attended a plenary meeting of the federal magistrates in Canberra this morning?

Mr Foster—Yes, I did.

Senator BRANDIS—You gave them a report on this matter?

Mr Foster—No. I did not.

Senator BRANDIS—You did not. Perhaps I am putting this too loosely. This matter was addressed in the course of the meeting?

Mr Foster—I am not certain what happened. I gave a report at the opening of the meeting this morning, Senator, on the activities of mostly the corporate side of the court over the last 12 months and produced a written report. I then spoke to that report, but I made no mention of the restructure in my presentation to the federal magistrates this morning. I left the meeting after that.

Senator BRANDIS—Because the meeting went into closed session involving only the federal magistrates?

Mr Foster—Exactly. I left and then took no further part in it. And I have not had an opportunity to talk to the Chief Federal Magistrate about what any outcomes may have been determined at that meeting today.

Senator BRANDIS—There were about 60 federal magistrates at this meeting today, were there not?

Mr Foster—I am not sure of the actual number that were there today.

Senator BRANDIS—Almost the whole court was there.

Mr Foster—There are 61 federal magistrates, and there was a very large number of them at the meeting.

Senator BRANDIS—Almost the whole court.

Mr Foster—I would say almost the whole court. I think there are a number from general federal law in Sydney who were not at the meeting.

Senator BRANDIS—Are you aware, or if you are not, let me make you aware, that this afternoon at the closed session of that meeting of the federal magistrates, almost the entire federal magistrates court, a resolution was passed without dissent that the view of the federal magistrates was that they wanted the existing court to be retained, its appropriate status recognised and that the Chief Federal Magistrate was to report the view of the magistrates to the Attorney-General?

Mr Foster—No. I was not aware of that.

Senator BRANDIS—Well, let me make you aware of it. Are you aware that in the discussion of that resolution there was near to unanimous opposition to the government's proposed restructuring of the court, there was repudiation of what has been called the Semple model and there was overwhelming support for the model proposed at the recent federal election by the coalition?

Mr Foster—No. As I said, Senator, I have not had a discussion with the Chief Federal Magistrate today since I left the meeting at 9.30 this morning and I have no idea what the outcomes of the meeting were.

Senator BRANDIS—Okay. Are you aware that there was a meeting in Canberra today as well of the Family Court judges?

Mr Foster—Yes.

Senator BRANDIS—You attended that meeting?

Mr Foster—I did.

Senator BRANDIS—And are you aware that this matter was discussed at that meeting as well?

Mr Foster—The only bit of the meeting that I attended to, and it was a discussion about court structure, was a discussion that was about the size of the full court. There was some discussion amongst the judges about how many judges should be appointed to the full court to do that court's workload. I did not get to the meeting until about a quarter past 11 this morning. I sat through that, sat through lunch and then made my presentation to the court about the CEO's report to the court and then left the meeting. So I was not party to any discussions about the structure or make-up of the courts.

Senator BRANDIS—And are you aware, Mr Foster—and if you are not, let me make you aware—that in the discussion among the judges of the Family Court at this plenary meeting of their court there was a variety of views expressed about the court restructure plan but that the Chief Justice of the Family Court, Chief Justice Bryant, told the meeting that she would adopt

a wait-and-see attitude, that she neither endorsed nor opposed the government's position in relation to the proposed restructure of the court?

Mr Foster—No. I was not aware of that.

Senator BRANDIS—That is a different position from the position the Chief Justice of the Family Court took a month earlier when she had said she no longer supported the proposal and a different position again from the position the Chief Justice of the Family Court took in this debate within the last 12 to 18 months, when her position was that she did support the government's proposal?

Mr Foster—I am not sure what she has said in a public sense since that time, Senator.

Senator BRANDIS—It was not a public meeting. But I am just making you aware of it. This is a mess, Mr Foster, isn't it? I suppose I cannot in fairness ask you to answer that.

Senator Lundy—What sort of a question is that, Senator Brandis? It is a comment, is it?

Senator BRANDIS—No. In fairness to Mr Foster, I had better not press him any further. Thank you.

Mr Foster—Thank you.

Senator BRANDIS—That is all I have. I am sorry, but I have one other question for the courts. I beg your pardon, Madam Chair. This is a little more parochial, Mr Foster. What are we going to do about the Family Court judge in Townsville? You have received representations from the North Queensland law society about the replacement of the soon-to-retire Family Court judge in Townsville. You are aware that the replacement of that judge by another Family Court judge is very important to the community and the profession in that locality. What is going to happen when the current judge retires?

Mr Foster—To my knowledge, Senator, he has not indicated any retirement date as yet, so I am not sure when he is going to retire. I guess any replacement would be a matter for someone else to decide.

Senator BRANDIS—Mr Wilkins, do you remember receiving a letter from Heather Graham, the President of the North Queensland Law Association, dated 13 August 2010, together with an attached submission?

Mr Wilkins—I do not, Senator.

Senator BRANDIS—All right. Perhaps you can consult your file. Can I tell you that this issue of maintaining a Family Court judge in Townsville is an issue that was raised, among others. May I advise you, having met with members of the profession in Townsville as recently as last Thursday morning, that this is an issue of great concern to them and they are looking to the government for reassurance that, in the event of the retirement or resignation of the resident Family Court judge in Townsville, the government will fill that position by appointing another Townsville based Family Court judge?

Mr Wilkins—As I say, I cannot recall the letter. But I will take on board what you have just said, Senator.

Senator BRANDIS—Thank you. Mr Foster, would it be your intention, in your capacity as chief executive of the Family Court, in the event that there would be a vacancy in the

Townsville Family Court judge's position, to replace that judge with another Townsville resident Family Court judge?

Mr Foster—I think in my position as the CEO, the advice that I would be giving to the chief justice would be based on workload. If there were sufficient workload to justify an appointment in a location, I would strongly urge her to do whatever she could to ensure that appointment took place.

Senator BRANDIS—Do you have a view in relation to that matter?

Mr Foster—Do I have a view?

Senator BRANDIS—Yes.

Mr Foster—I would think, based on my memory of the workload in Townsville, that you would probably be hard pressed on the current workload to justify a full-time appointment of a judge in Townsville.

Senator BRANDIS—So your disposition would be, in the event that there were to be a retirement or a resignation, not to replace that judicial officer with another Family Court judge based in Townsville?

Mr Foster—I am not saying that at all. You could have a Family Court judge based in Townsville, but I think, to have a full workload, that person would need to circuit to other locations on a frequent basis. It does not mean they could not live in Townsville. That would be a matter for other people to determine.

Senator BRANDIS—That sounds to me, Mr Foster, as if your disposition is that, in the event that were to occur, there would be fewer judge days on which the Family Court would sit in Townsville.

Mr Foster—My understanding, based on the workload figures that I am drawing out of the back of my head, is there is probably sufficient justification at the moment for a part-time judge, whatever percentage of part time that is, rather than a full-time judge to get full benefit of the judge's firepower. I think the person, if they were located in Townsville, would need to circuit out of Townsville to other locations to have a full-time workload.

Senator BRANDIS—All right. Thank you.

CHAIR—No other questions for any of the courts, Senator Brandis?

Senator BRANDIS—No, not from me.

CHAIR—Mr Foster and your colleagues, thank you.

Mr Foster—Thank you, Chair.

CHAIR—Thank you very much for your time this evening. We will be moving to the Attorney-General's Department and the outcome.

Senator BRANDIS—Madam Chair, I think Senator Abetz had some questions for the Federal Court.

[9.09 pm]

Federal Court of Australia

Senator BRANDIS—Perhaps I will ask Mr Soden a couple of questions while Senator Abetz is coming.

CHAIR—You will have to track him down or they will be out the door.

Senator BRANDIS—We are breaking at 9.15.

CHAIR—At 9.30.

Senator BRANDIS—Perhaps, for the sake of convenience to senators, we could break at 9.15, Madam Chair. Mr Soden, did you hear my questions to Mr Foster concerning the proposed restructure of the Federal Magistrates Court and the Family Court?

Mr Soden—Yes, I did.

Senator BRANDIS—Did Chief Justice Keane have a meeting with the Attorney-General last week in relation to this matter?

Mr Soden—I do not know, Senator.

Senator BRANDIS—May I take it that the view of the Federal Court in relation to any proposed restructuring of the Family Court and the Federal Magistrates Court continues to be as it was under Chief Justice Black?

Mr Soden—That is correct. I might add, in the context of that is the proposal we were asked to comment about, and we made the comment that is on the record.

Senator BRANDIS—I put some documents to you at a previous estimates hearing—in particular, a letter from Chief Justice Black. I think that was a couple of years ago, in fact.

Mr Soden—Senator, that view has not changed. It has not been—

Senator BRANDIS—So the views set out in Chief Justice Black's letter that I tabled in Senate estimates whenever it was—some time ago—remain the views of the Federal Court of Australia?

Mr Soden—In relation to the proposed—

Senator BRANDIS—In relation to the proposed restructure?

Mr Soden—At that time, yes, Senator.

Senator BRANDIS—All right. Thank you.

Mr Soden—Madam Chair, through you, I will make one comment. I was at this hearing this morning when some questions were asked of the Native Title Tribunal in relation to the Federal Court. With your permission and the committee's indulgence, could I have five minutes to put some information on the record or table some information for the committee that I believe would assist the committee?

CHAIR—Let us do that, yes.

Mr Soden—The first issue is there were some questions asked of the tribunal in relation to amendments concerning hearsay evidence. To clarify that issue, the amendments were

actually to the Evidence Act, which made it clear that hearsay-like evidence was admissible. The background to that is that when the Native Title Act first came into existence, the court passed rules—this is 1999—Order 78 of the rules. Those rules allowed evidence to be admissible in relation to song and dance. It was quite innovative at the time. It was subject to an ALRC report and comment. The amendments to the Evidence Act confirmed what was possibly a little doubtful—that such evidence could be admitted as known as hearsay evidence. This is a recognition of the oral culture of the Australian Indigenous community.

The second point I want to just clarify is that there were some questions about the external mediators that the court proposes to use. What I would like to table for the committee is the list of those mediators, which I expect would assist the committee. That list is a printout of what is available on the web. It explains how the list is compiled. They are not selected by the court. They are not considered by the court and rejected. It is a list of people who, subject to a quite long list of criteria, have thought it appropriate to add their name to the list of people that could be used. The point that is important is that the court would not force those people upon parties to the proceedings; they would have to be used by consent.

The other thing I would like to say is that in terms of the management of workload, this committee might recall that I appeared before this committee when it was constituted for the purpose of considering the proposed legislation which gave to the court the responsibility for managing native title. I recall saying at that hearing that the cases were crying out for attention. That is what the court is doing at the moment. The other matter that I draw to the committee's attention is this new list of priority cases available on the web. There are about 100 cases on that list. We have set ourselves the target of trying to complete those cases within two years. If you go to the website and click on the name of the case, you will see the status of the case and the orders involved. It is an interactive list that will be kept up to date. Thank you, Madam Chair.

Senator HUMPHRIES—The purpose of the questions I was asking this morning about the changes in respect of the Federal Court's operation under the Native Title Act was to find out to what extent those changes might be leading to greater use of evidence otherwise excluded under the hearsay rule in native title hearings. Has this change to the Evidence Act actually led to a greater use of such evidence? Are records kept of such occasions under the course of—

Mr Soden—No, Senator, they are not, but I would be very surprised if there was not greater use or greater potential use. It may not get to a situation where the evidence is actually used before the court. But the fact that it was now admissible would give it weight in the negotiation process.

Senator HUMPHRIES—So have any cases, in your experience, turned on the use of such evidence?

Mr Soden—Undoubtedly, yes, but I do not have in the forefront of my mind those particular cases, Senator; I am sorry.

Senator HUMPHRIES—Thank you.

[9.16 pm]

CHAIR—Mr Soden, thank you for your time this evening. I thank your officers. We now will move on to questions of the department. We will go to program 1.1, the Attorney-General's Department operating expenses, civil justice and legal services. Are those officers at the table?

Senator PARRY—I think I will direct these questions to Mr Wilkins. They are in relation to questions that arose out of the finance and public administration estimates hearings this morning in relation to the funding for the Department of Parliamentary Services operations room. There was confusion about the funding. Some of the funding costs have been directed to this estimates hearing. Could you, Mr Wilkins, explain the funding mix between Attorney-General's and the Department of Parliamentary Services for that room?

Mr Wilkins—Sorry, for which room?

Senator PARRY—It is the new operations room that has recently been constructed.

Mr Wilkins—This is the Parliament House briefing room?

Senator PARRY—Well, it is called the operations room. That is my understanding.

Mr Wilkins—It was funded by the Attorney-General's—

Senator PARRY—Next to the cabinet suite.

Mr Wilkins—It was funded by the Attorney-General's Department. It was a project managed by the Attorney-General's Department and it was handed over to the parliament, essentially.

Senator PARRY—In that case, then, can we have some discussion about costs? What was the cost? While the cost is being sought, was there any funding whatsoever from the Department of Parliamentary Services?

Mr Wilkins—Sorry, I will just get someone to look up the costs. I do not quite understand that question, Senator.

Senator PARRY—Well, this was originally raised with the department in the finance and public administration committee because of the control by the Department of Parliamentary Services. The Department of Parliamentary Services indicated that it was funded by the Attorney-General's Department.

Mr Wilkins—That is right.

Senator PARRY—So the involvement of the Department of Parliamentary Services, one would assume, is purely of control and management rather than construction and funding?

Mr Wilkins—That is right. It is in the parliament. That is right.

Senator PARRY—So the Department of Parliamentary Services had no funding whatsoever in relation to that room?

Mr Wilkins—As I understand it, no. There may have been some collateral things that might have had to be done, like putting up something or other. But essentially it was all funded by the Attorney-General's Department.

Senator PARRY—Is it unusual that a room in Parliament House would be funded by the Attorney-General's Department?

Mr Wilkins—Well, not really in this case because this is built to a very high standard in terms of national security purposes et cetera. So for this particular purpose—and it links up with the new crisis coordination centre, which is being built down in the Edmund Barton Building, in the police building, by us again—there need to be linkages et cetera with that for the management of crises. So I guess that is the reason why in this case. It is part of a network which extends outside the parliament but into the parliament. So obviously the parliamentary services guys are custodians of it once it is here. But essentially its design and its project management was done by the Attorney-General's Department.

Senator PARRY—And the Attorney-General's Department would have had to have applied to the Department of Parliamentary Services to have the construction of the building, or was it the other way around?

Mr Wilkins—No. Well, I think we certainly worked cooperatively with them. We needed to get agreement of the parliament to put it there. It obviously was fairly intrusive at times, so we had to sort of stop work or fit it in with parliamentary committees et cetera.

Senator PARRY—So who instigated the room construction?

Mr Wilkins—The government.

Senator PARRY—The Prime Minister's office?

Mr Wilkins—No. The cabinet.

Senator PARRY—And I believe you have the cost in front of you now.

Mr Wilkins—Yes.

Mr Darby—At the end of August, this department had spent a total of \$4.44 million in administered funds and \$2.46 million in departmental funds on the Parliament House briefing room. I will go back to your query about the Department of Parliamentary Services. There was some displacement of staff from the Department of Parliamentary Services. The Attorney-General, as part of the project, picked up the funding for those people to put them in alternative accommodation and will be assisting the Department of Parliamentary Services with the development of new office space for those people when they return to the parliament.

Senator PARRY—So they were located offshore?

Mr Darby—They were moved into offices in Barton, at 35 National Circuit in the AGD building.

Senator PARRY—Can you just give me those figures again? You just went a bit too quick. It was \$44.4 million?

Mr Darby—It is \$4.44 million in administered funds.

Senator PARRY—Sorry, I thought you said—

Mr Wilkins—Four point four.

Mr Darby—It is \$4.44 million and \$2.46 million in departmental funds.

Senator PARRY—And the second figure?

Mr Darby—It is \$2.46 million in departmental funds. There has been allocated a total of \$12 million for the Parliament House briefing room.

Senator PARRY—For the \$12 million, if we use that round figure, what did we get?

Mr Wilkins—It is probably useful, without going into too many of the delicate details, to go through the sorts of facilities that are there, Senator.

Mr Darby—We get a room which is security rated to allow the Security Committee of Cabinet to deal with issues of national security, to have links to other areas around Australia so they can deal with premiers and chief ministers through video conferencing facilities and through similar facilities overseas to embassies overseas.

Senator PARRY—Are these secure links?

Mr Darby—Yes, they are secure links so as to have appropriate technology to provide situational awareness to cabinet, essentially to facilitate decision making in the event of a crisis. It also allows the new National Crisis Coordination Centre, which we are building, to provide those links into the Parliament House briefing room. Similarly other departments—foreign affairs and defence—will have links into that facility as well.

Senator PARRY—So, if I could be crass about this, is it like what you would see on *West Wing* when the President of the United States goes down to a bunker underneath the White House? Is it a similar room? Is that what we are talking about?

Mr Darby—We do not use the term ‘bunker’.

Mr Wilkins—It does not look like a bunker, Senator. Actually, it looks like—

Senator PARRY—But it has that sort of connotation and that facilitation?

Mr Wilkins—No. It has state-of-the-art communication facilities of a secure sort to key parts of the world to our allies et cetera. It means that you have a secure link of the highest order where on both sides heads of government would be comfortable that they are conversing in absolute security. Similarly, it would allow people within the room to be given state-of-the-art briefings on the situation, whether it is in relation to a bushfire or terrorist activity or whatever the key thing is. But ‘bunker’ is probably the wrong word. It looks and feels like a cabinet room.

Senator PARRY—And obviously the existing cabinet room could not have been used because of the additional equipment, one would assume?

Mr Wilkins—Yes. The new equipment, et cetera. It was thought that if you are going to install that sort of software and hardware, it is better to put it into a new site. You can have the cabinet meet in there.

Senator PARRY—And how is it accessed? Through the cabinet suites?

Mr Darby—Through the ministerial wing. I do not know the exact area that you come through. But it has its own security. It has the security requirements of a room that is dealing with information at that classification. That is the main reason for it.

Senator PARRY—Opposite the Prime Minister’s office entrance there is the entrance to the cabinet rooms. Is it through that access?

Mr Darby—Yes. I believe so.

Mr Wilkins—Yes. You go through that and it is off to one side. But to access it you would need a good deal more security clearance—the actual apparatus for security clearances. It is not like walking into the cabinet room.

Senator PARRY—Have there been any actual crises that have required the activation of that room, or any simulated exercises?

Mr Wilkins—I am not sure that I am in a position to be able to say that, but it has been used.

Senator PARRY—You cannot say whether it has been used for simulated exercises or real life situations?

Mr Wilkins—That is right, Senator.

Senator PARRY—Thank you. The department is satisfied that there was value for money in relation to the fit-out and the construction?

Mr Wilkins—Yes.

Senator HUMPHRIES—I have questions for Emergency Management Australia. I am not sure whether they are in this area or 1.6.

CHAIR—Yes. Mr Darby is there for you.

Senator HUMPHRIES—I wonder if you are aware of a speech given a few days ago at the ANU by David Templeman, the former Director-General of Emergency Management Australia, about the state of disaster preparation in Australia?

Mr Wilkins—No, Senator. I will introduce Campbell Darby. He is the new head of Emergency Management Australia.

Senator HUMPHRIES—Thank you. Mr Darby, you are not aware of that speech either?

Mr Darby—No. I am not aware of that speech.

Senator HUMPHRIES—Well, I recommend it to you because Mr Templeman is very critical of what he sees as the state of preparation in Australia for major manmade or natural disasters. He goes to some length to question how well coordination would occur in such circumstances and what arrangements are in place, particularly for the Commonwealth, to exercise leadership in those circumstances. For example, he points to the need for some kind of coordinated document or plan to deal with such a situation. He refers to a statement in the government’s *A Secure and Fair Australia* statement issued before the election, in which it says, and I quote:

We have moved to align emergency management arrangements across Australia into a single comprehensive and coordinated plan to ensure consistency of planning and the pooling of expertise and resources.

He goes on to say that he is not aware of any such plan. He has asked for such a plan and has not received a copy of one. Is there such a plan? If so, can the committee see that plan?

Mr Wilkins—Yes, there is such a plan, and we will give you a copy.

Senator HUMPHRIES—Great. Not now?

Mr Wilkins—Not now.

Senator HUMPHRIES—When was that plan formulated?

Mr Darby—The plan he might be referring to is the national catastrophic disaster plan, which was agreed, I think, about 12 months ago. I was not in the chair. But that is probably the timeline. It is supported by Commonwealth disaster plans sitting underneath that.

Senator HUMPHRIES—That is the plan you are referring to, Mr Wilkins?

Mr Wilkins—Yes. I chaired the national emergency management committee that agreed to it about 12 months ago.

Senator HUMPHRIES—Just last week, ASPI, the Australian Strategic Policy Institute, issued a special report.

Senator BRANDIS—A fine institution.

Senator HUMPHRIES—Yes, indeed it is. It issued a special report on Australia's national security institutions. And it contains some criticism about what it sees as the level of planning in this area. It says:

The whole of government rhetoric—

and I quote him here—

is commendable and it follows that national security agencies must operate in an all-hazards environment, but fails to convert these into practical outcomes.

They are referring there, I understand, to the lack of legislative or structural changes to national security agencies in order to drive improved cohesiveness and coordination. Why do you think ASPI would make such a criticism given that there is a plan in place to deal with the kind of coordination that has been—

Mr Wilkins—Senator, ASPI in that report was not dealing with the same thing that you were referring to before. And even so—

Senator HUMPHRIES—What is it referring to?

Mr Wilkins—I think they are looking at the entire national security space. They have done some work in which they consider that the architecture of it needs to be changed somewhat. That is if we are talking about the same report, which I have read, which is about four pages long, or something. So I am not sure that you are talking about the same thing as Mr Templeman is talking about. That is a different issue. I disagree with them both, actually.

Senator HUMPHRIES—You disagree with ASPI's view as well?

Mr Wilkins—Yes.

Senator HUMPHRIES—Why do you disagree with ASPI's view?

Mr Wilkins—I think it is a little carping and it does not really understand what we are trying to do in terms of this. It would take some time to explain it. But essentially I do not

disagree with everything in the report. I think it raises some interesting issues. But I think it is talking from the outside. It does not really know what is going on.

Senator HUMPHRIES—I put it to you, Mr Wilkins, that it would be concerning if the Australian Strategic Policy Institute, the former Director-General of this agency—

Mr Wilkins—Well, the former former. He is a way off now.

Senator HUMPHRIES—Well, he is still a former Director-General of the agency. They all had these criticisms to make.

Mr Wilkins—On different aspects, Senator. They are talking about quite different things here.

Senator HUMPHRIES—Well, Ric Smith, in his 2008 review, recommended that there be a more streamlined approach to emergency management that would optimise efforts and address fundamental gaps, such as a national plan to deal with catastrophic disasters.

Mr Wilkins—Yes.

Senator HUMPHRIES—You would say that your plan deals with that?

Mr Wilkins—Absolutely. Ric Smith is, if you like, almost biblical in terms of what we have been doing over the last two years. We have been implementing the Smith review. That was one of the things that he suggested—bringing an all-hazards approach and giving a much higher profile to emergency management. That is exactly what we have been doing. That is why I think these guys need to come and talk to us or get much clearer. I am getting a little tired of just getting criticisms—ASPI I do not include in that—on a regular basis from somebody who is obviously not well-informed in this area.

Mr Darby—Senator, I will add something to that. One of the things you are talking about is all hazards and a more coherent approach. The old EMA would never have dealt with anything apart from natural disasters. My remit now is that I actually look at all hazards across Australia and overseas and I provide advice and information to government so the government has the best information now on which to make decisions. The old Emergency Management Australia never ever dealt with anything apart from natural hazards.

Senator HUMPHRIES—Okay. I am not sure that invalidates the criticism. Nonetheless, let us suppose that, heaven forbid, there were a major bushfire event which crossed the border between New South Wales and Victoria and was on a large scale with lots of deaths, a large number of injuries that needed to be dealt with and much loss of infrastructure and property and so on. Given the size of such a hazard, you would agree, would you not, that there would be a role for the Commonwealth in coordinating across the board what kind of response ought to be made to such a disaster? I can see you nodding.

Mr Wilkins—Yes.

Senator HUMPHRIES—In those circumstances, what power would the Commonwealth have under the present disaster plan to assume control and leadership of a disaster which was national in character because it crossed Australian borders?

Mr Wilkins—Under the disaster plan, it would assume a leadership role in circumstances where these two states were not able to deal with it themselves. But the point is that the

Commonwealth does not have the wherewithal to actually deal with emergencies on the ground. It has the Defence Force and it has certain other capacities which would be brought to bear and are brought to bear. Its main role would be in terms of leadership and in making sure other states, and perhaps even countries or facilities or capacities outside Australia, were drawn in to deal with this. So the plan that we are talking about contemplates the appointment of, if you like, a person—I forget what we call it in the plan—who would be the coordinator across a number of different state boundaries and a number of different jurisdictions to take control of the resources and deal with the situation.

Senator HUMPHRIES—Is this person appointed after consultation with the states?

Mr Darby—Yes.

Senator HUMPHRIES—And the person has to be appointed with the consent of the states concerned, presumably?

Mr Darby—Yes.

Senator HUMPHRIES—How is it envisaged that this process occurs?

Mr Wilkins—It would occur by the Prime Minister talking to the premiers.

Senator HUMPHRIES—There is no right, though, for the Commonwealth to assume that leadership unless the states make the decision that they should assent to a Commonwealth leadership role in those circumstances?

Mr Wilkins—That is right. There is a constitutional problem otherwise.

Senator HUMPHRIES—You could avoid that by agreement on a process that was to be—

Mr Wilkins—There is an agreement on process—that is true.

Senator HUMPHRIES—You are satisfied that that constitutes a decisive way for the Commonwealth to take leadership in circumstances of a national disaster that is on a large scale and that crosses state borders?

Mr Wilkins—I think so, yes.

Senator HUMPHRIES—All right. Until I have a look at it, I suppose I should not pass comment. But I look forward to seeing the document.

CHAIR—Is this a good time to break for coffee for 10 minutes?

Senator HUMPHRIES—I think I have gone as far as I can on those questions, so unless anyone has any questions for EMA—

CHAIR—Senator Fifield, what have you got questions on?

Senator FIFIELD—Just a very, very brief question.

CHAIR—On this area?

Senator FIFIELD—No.

Proceedings suspended from 9.37 pm to 9.52 pm

CHAIR—We have the department in front of us. I understand we have not finished questions to programs 1.1 and 1.2. Senator Ludlam will run through his areas and Mr Wilkins can tell us what program they fit into.

Senator LUDLAM—It is a pretty random list of things. A cluster munitions bill?

Mr Wilkins—That would be the Office of International Law, 1.1. Should I just go through this list, Chair?

CHAIR—We will sort out the list first and then come your questions.

Senator LUDLAM—Have we dealt with the office of the Director of Public Prosecutions?

CHAIR—Yes, we have.

Mr Wilkins—That is not part of us.

Senator LUDLAM—Extradition treaties?

Mr Wilkins—That is 1.2.

Senator LUDLAM—Immunity gap relating to suspected war criminals residing in Australia?

Mr Wilkins—1.2.

Senator LUDLAM—And the Rome Statute Review Conference in Kampala that occurred in June?

Mr Wilkins—1.2.

Senator LUDLAM—Okay. That is me sorted.

CHAIR—All right. Senator Fifield, we will go to you for questions in 1.1 and 1.2, then Senator Trood and then Senator Ludlam.

Senator FIFIELD—Thank you. I want to check that transport standards under the Disability Discrimination Act is 1.1.

Mr Wilkins—Yes.

Senator FIFIELD—Thank you very much. The transport standards formulated under the DDA came into operation in October 2002. Under part 34, it is required that there be a review of the effectiveness and efficiency carried out within five years of the commencement of the standards. I understand in 2007 the Allen Consulting Group was appointed to carry out the review and that a draft report was released in 2008 for public comment. I think it was January 2008 that the draft report was released and feedback was sought by the end of March 2008, which is a little while ago now. Are you in a position to say when the final report and the government's response to it will be completed?

Mr Wilkins—It is mainly a question for the department of transport, actually.

Senator FIFIELD—I knew you were going to say that, Mr Wilkins—mainly in the sense that they do the work in consultation with A-G's, but the standards fall within the Attorney-General's portfolio. All of the standards would pertain to some other portfolio.

Mr Wilkins—The hold-up is about some requirements of the Office of Best Practice Regulation, which is in neither department, actually; it is in the department of finance. But

essentially it is a matter for the Department of Infrastructure and Transport. I think the question of timing is probably best addressed to them, actually.

Senator FIFIELD—So if they never got back to your department, your response from here until eternity would be, ‘Well, that is a matter for Transport,’ even though the Disability Discrimination Act standards come under your department?

Mr Wilkins—We would obviously be pushing them to hurry up with a response. Ultimately it would be a matter for them and their minister to deal with, and they deal with the states and territories on this issue. I would imagine that that is also where most of the issues will occur. I do not know if Katherine Jones has got something—do you want to add anything to that?

Ms Jones—The only other point that I would add to that is that the Department of Infrastructure and Transport have the policy expertise in relation to these issues. We certainly consult with them on a regular basis, and we are keen to ensure that there is significant progress. But at the end of the day they do have the appropriate policy expertise and linkages with stakeholders to progress this.

Senator FIFIELD—So the role of the Attorney-General’s Department is, what, essentially that of a postbox and website host when it comes to the standards?

Mr Wilkins—No. We are not, I would say, on this particular issue the lead agency, effectively, but we are not simply a postbox. We obviously work with them.

Senator FIFIELD—From what I am hearing, it sounds as though it is the case that you would quite like Transport to come back to you. Hopefully at some point they will. At such time as they do, your website will be updated with the relevant material. But until such time as that happens, you hope and might occasionally inquire about where things are at?

Mr Wilkins—No. It is much more imminent than that. As I said to you, Senator, we had problems presented about the way in which the standards were couched by the Office of Best Practice Regulation. My understanding is that that has effectively been dealt with. We are now in a position where we are waiting for ministerial sign-off on it.

Senator FIFIELD—That will take us through what the issues were in relation to the office?

Mr Wilkins—I am not entirely sure, but I think that it required a substantial rewriting to comply with their requirements in relation to regulatory best practice and the regulatory impact of proposals.

Senator FIFIELD—So what does ‘imminent’ mean in the context where March 2008 was the closing point for when feedback was sought?

Mr Wilkins—I cannot really give you a date. I just think it is in a position where it could be signed off by ministers relatively soon.

Senator FIFIELD—Are there time frames that the department specifies for the lead agencies, the relevant departments in relation to standards? Do you like to have your stuff back within six months, a year, two years—2½ years in this case?

Ms Jones—There is no specific time frame. Obviously we work with the relevant department to try and progress things as quickly as possible. Certainly the process of going to the Office of Best Practice Regulation and then working through their comments did take a significant amount of time in relation to this report because of the complexities that it raised and the important issues for a whole range of commercial and government stakeholders.

Senator FIFIELD—Do you know when the material first went to the Office of Best Practice Regulation?

Ms Jones—I will have to take that on notice.

Senator FIFIELD—Okay, if you could. I shall ask further questions of Transport. Are there any other standards under the DDA which there are currently a review of which are outstanding at the moment?

Ms Jones—There is a review of the standards in relation to education and, of course, the Department of Employment, Education and Workplace Relations is the lead agency for that. I think that process just been initiated, and there are the premises standards which have just been finalised recently.

Senator FIFIELD—But there is nothing else that is outstanding in the ballpark of 2½ years?

Ms Jones—No.

Senator FIFIELD—Is there anything more that the department could do, or should do, or would like to do when things blow out by this sort of period?

Ms Jones—Currently we meet directly with the relevant lead agency on a regular basis. We try to assist them as best we can in terms of the general process and continue to put pressure on them in relation to progressing the work as quickly as possible.

Senator FIFIELD—At the moment, is the only hold-up the requirement for the relevant minister to sign off?

Ms Jones—I think we are in the very final stages of preparing the material for ministerial sign-off.

Senator FIFIELD—We being?

Ms Jones—The lead department is the Department of Infrastructure.

Senator FIFIELD—The minister being Mr Albanese?

Ms Jones—Yes.

Senator FIFIELD—Nothing, as far as you are aware, has yet been submitted to him?

Ms Jones—It is in the final stages.

Senator FIFIELD—So we cannot blame Mr Albanese on this occasion?

Mr Wilkins—I do not think you can do that, Senator.

Senator FIFIELD—We will look for others to pursue further.

Senator TROOD—I have some questions about the intercountry adoption program. These are questions relating to the Ethiopian program. I have various areas that I wanted to cover,

the first being the status of the new memorandum of understanding which, as I understand it, is to be concluded between the Australian and the Ethiopian governments. Could someone give me an update on the progress of the negotiation of that memorandum?

Ms Playford—Australia is currently in the process of finalising the drafting of a revised memorandum of understanding. We hope to forward it to Ethiopia shortly to commence negotiation and we anticipate that it will be finalised by the end of this financial year.

Senator TROOD—My understanding is that there is an existing bilateral agreement between Australia and Ethiopia. Is that right?

Ms Playford—That is right. There was a bilateral agreement in 1994.

Senator TROOD—That agreement continues to operate. Is that right?

Ms Playford—That is right.

Senator TROOD—Why is there a need for a new memorandum, which I assume will replace the 1994 agreement? Is that correct?

Ms Playford—That is right. The old agreement essentially is outdated and does not reflect the new arrangements that operate within Australia in terms of how the intercountry adoption program operates with the relationship between the Commonwealth and the states.

Senator TROOD—I see. But, in the meantime, although the 1994 agreement is on foot until the new one is concluded, the program is nevertheless suspended. Is that right?

Ms Playford—No. There was a suspension on the program, which was lifted in April this year, I think.

Senator TROOD—So it is not suspended.

Ms Playford—No.

Senator TROOD—Are intercountry adoptions taking place between the two countries?

Ms Playford—The program is currently not receiving any referrals at this time because two of the orphanages which were identified as partners are currently not viable. One was closed by the Ethiopian authorities due to licensing issues and the other is yet to be formally licensed. We are in the process of considering other potential partner orphanages and discussing options with relevant Ethiopian government authorities.

Senator TROOD—Just before we talk about the orphanages, in relation to the MOU my understanding is that a draft of that document was taken to Ethiopia over a year ago, in June 2009. Is that correct?

Ms Playford—I would have to take that on notice. I think there may have been some initial discussions about a new MOU. I am not sure if there was a draft taken.

Senator TROOD—My advice is that an initial draft was taken to Ethiopia for consideration by the Ethiopian government.

Ms Playford—I would have to take that on notice to confirm it.

Senator TROOD—Would you be good enough to do that. You have told me that you are negotiating an MOU. Is that correct?

Ms Playford—That is correct.

Senator TROOD—There seems to be some confusion about status of this document—whether or not there was a draft. Let us assume that my information is correct. There was an initial draft, which is now being renegotiated.

Mr Wilkins—I think Ms Playford is saying that we are negotiating an MOU. That is a process. It might start with some initial discussions. It might then result in the exchange of documents. It might then result in people sitting down and talking about those documents. It is a conventional sort of process that takes some time and there may be various iterations. I have been involved in things where you get mark 25 of the MOU. It is a process of negotiation.

Senator TROOD—So there may well have been a document in existence—

Mr Wilkins—There might have been something or other.

Ms Playford—Yes.

Senator TROOD—in June 2009 which is now under further redrafting as a result of conversations, discussions and negotiations.

Ms Playford—Yes, both with the Ethiopian government and also with states and territories within Australia. I am just not sure of the timing and whether June last year was—

Senator TROOD—Has the Attorney-General's Department or your branch concluded its discussions with the states and territories as to the contents of this MOU?

Ms Playford—We are still finalising our discussions with the states and territories.

Senator TROOD—Do I take it that you would seek to do that before you would negotiate with the Ethiopian government, or do these activities take place simultaneously?

Ms Playford—Yes, there have been several reiterations of discussions—that is my understanding.

Senator TROOD—Have you concluded any of the discussions with the state or territory governments? Can you tell me?

Ms Playford—I would have to take on notice the exact situation, but I understand that we have not concluded discussions with the states and territories on that. But we are hoping to finalise those by the end of this financial year and formally commence discussions with them again.

Senator TROOD—This program has been under suspension—or at least there have not been any children that have been adopted under the program—for some period of time. Do you know how long it is since any child came to Australia under the program?

Ms Playford—Again, I will have to take on notice when the last child came to Australia under the program. The program was suspended from November last year until April this year, when the Attorney lifted the suspension, and there have been a number of events outside our control that have meant that no children have been referred. That is not necessarily related to the MOU; it relates to whether our preferred partner orphanages have yet received licensing.

Senator TROOD—I will get to that in a moment. I am just trying to establish the status of this MOU. At the moment, you do not think there is any likelihood of this MOU being concluded before the end of this financial year, so we are talking June 2011?

Ms Playford—I think I was talking about the calendar year.

Mr Wilkins—The MOU, while it is going to update our relationships and put them on a more orderly footing, is not actually a precondition of adoptions occurring.

Senator TROOD—No, but it would seem to be one of several reasons why no adoptions are taking place.

Mr Wilkins—No, it is not; we are not saying that. You seem very keen to know where it is up to, so we have been telling you, but it is really just trying to modernise the current arrangements. As you say, there is a 1994 agreement and adoptions can occur.

Senator TROOD—I will move on in a moment, but could you just clarify whether we are talking about concluding this agreement by the end of this calendar year or by the end of the financial year. I thought you said financial year, Ms Playford.

Mr Wilkins—I think it probably depends a little on the Ethiopian government.

Senator TROOD—Of course it does, but I am interested to know about your expectations at this stage.

Ms Playford—When I was referring previously to my expectations, I was talking about the calendar year, but Mr Wilkins is correct that it will be very dependent on the Ethiopian government.

Senator TROOD—Did you have any negotiations scheduled to take place between now and the end of the year?

Ms Playford—We are planning a delegation visit to Ethiopia either towards the end of this year or early next year, and the purpose of that would be around negotiation of this MOU.

Senator TROOD—You are unlikely to conclude the agreement if you do not send a delegation before the beginning of the new year.

Ms Playford—I think I said that I did not expect it to be concluded by the end of this calendar year, and for the delegation visit the timing of when that would be finalised would depend very much on the Ethiopian government.

Senator TROOD—In relation to this, does the Attorney-General's Department have a representative in the new embassy in Addis Ababa?

Ms Playford—No.

Senator TROOD—Are you intending to locate an officer there?

Ms Playford—No.

Senator TROOD—So you will be using the facilities that are now in place in Addis because that has recently opened, as I understand it?

Mr Wilkins—Yes.

Senator TROOD—The MOU is independent of any progress or adoptions that might actually take place. Why do you say, Ms Playford, that no adoptions have actually occurred?

Ms Playford—One of our preferred partner orphanages is yet to receive a formal licence from the Ethiopian government in order to operate. Our other preferred partner orphanage was closed by the Ethiopian government authorities earlier this year and its future is yet to be determined by the Ethiopian government. We have identified another potential partner orphanage but need the agreement of both the Ethiopian government and the Attorney-General to commence working with them.

Senator TROOD—What was the partner orphanage that lost its licence?

Mr Wilkins—It is called Kunkeet Orphanage.

Senator TROOD—That was the orphanage with which we were dealing. Is that correct?

Ms Playford—Yes.

Senator TROOD—And its licence has been suspended or withdrawn?

Ms Playford—Yes.

Senator TROOD—So, obviously, that is not available to us. Have you identified an alternative?

Ms Playford—We have identified an alternative orphanage, the Grace Children's Home.

Senator TROOD—But that does not have a licence. Is that right? or it is waiting?

Ms Playford—It is waiting to get a licence from the Ethiopian government.

Senator TROOD—What do you understand to be the position as to how long that might take?

Ms Playford—Our understanding is that the licensing process would generally take three to six months. There have been some extended delays in relation to this particular orphanage, and it is really a matter for the Ethiopian government.

Senator TROOD—Do you have any capacity, in light of the concern that exists amongst families who wish to adopt, to approach the Ethiopian government to ask them to press this process? Have we done that?

Ms Playford—We have raised our concerns during delegation visits and we have made a number of active inquiries in Ethiopia through the DFAT consular official who has been acting on our behalf.

Senator TROOD—What responses are we getting to those inquiries?

Ms Playford—I think I need to take that on notice.

Senator TROOD—Please do that. There is an orphanage, as I understand it, called the Sister Zenebech Orphanage, which I gather was among those being considered as the partner orphanage. Is that right?

Mr Wilkins—Not that I know, but I am not sure.

Ms Playford—Again, I would have to take it on notice to confirm, but my understanding is that that one is one of the orphanages that may have been considered.

Senator TROOD—Can you tell me what the status of that orphanage is?

Ms Playford—I would have to take that on notice.

Senator TROOD—Perhaps I should begin by asking: what kinds of considerations you take into account when you are determining the appropriateness of an orphanage?

Ms Playford—Sorry?

Senator TROOD—Presumably you have certain criteria you apply as to the suitability of an orphanage with which we deal. Are they criteria that the Australian government establishes or the Attorney-General's Department, or are those criteria established by the Ethiopian government?

Ms Playford—That is criteria that is established under the Hague Convention on Intercountry Adoption, to which Australia is a signatory.

Senator TROOD—So you just apply the Hague convention to orphanages with which we deal. Is that correct?

Ms Playford—Yes. Australia's practice is to apply the Hague convention to all countries with which we deal.

Senator TROOD—Perhaps you would take on notice as to whether or not you have investigated the suitability of the Sister Zenebech Orphanage and, if you have, whether or not you have deemed it suitable and, if you have not deemed it suitable, why it is not suitable?

Ms Playford—I can take that on notice.

Senator TROOD—Would you do that for me, please. There is also a question, as I understand it, with regard to the Australian representative in Ethiopia. My understanding is that this program operates through an Australian agent. Is that right?

Ms Playford—That is right.

Senator TROOD—At the moment do we or do we not have a representative?

Ms Playford—We have a representative who will be retiring in December this year. So we are in the process of identifying a new representative, but we have a current representative to call.

Senator TROOD—What progress have we made in identifying a new representative?

Ms Playford—We have made a number of active inquiries in Ethiopia about a replacement, including with two individuals and an already existing agency in Ethiopia. To ensure the confidentiality of those discussions, it would not be appropriate for me to comment further at this time.

Senator TROOD—If you are not prepared to tell me the names of these potential individuals, can you tell me how long you expect it to be before an agent is appointed?

Ms Playford—We are working towards having an agent appointed while this transitional arrangement is in place with our current representative. That is expected to be finalised in December.

Senator TROOD—So do I take it that you anticipate a new agent to be appointed by the time the existing agent contract, if that is what it is, concludes?

Ms Playford—We are hoping to achieve that. It is obviously subject to a number of different—

Mr Wilkins—I think there are lots of vagaries when you come to dealing with some of these issues in Ethiopia.

Senator TROOD—Mr Wilkins, I think that profoundly understates the situation that exists in relation to this matter.

Mr Wilkins—It is obviously not easy dealing with all of these issues under different laws, different systems and different arrangements. It is not like simply signing up agreements with the US or the UK—and that takes time as well. Obviously we are doing the best we can in trying to expedite it.

Senator TROOD—It obviously is a difficult environment in which to work, but I do not think I have been given a precise answer or any assurance in relation to any of the matters that I have asked about this evening.

Mr Wilkins—That is right, Senator: we are doing the best we can.

Senator TROOD—How good is that? I think that is the question that comes naturally to mind. How well, Mr Wilkins, is your department pressing the matters which I have asked you about? There is a constant expression of hope or expectation, but no certainty, in any of these matters.

Mr Wilkins—That is true, and the same is true of a number of other countries with which we have dealings. It is a difficult job and we do the best we possibly can. We are to some extent hostage to other governments and other systems. We are certainly signatories to the Hague convention, so we cannot take this stuff lightly.

Senator TROOD—No, nor should I encourage you to do so. But you will understand the frustration of the families involved in this program—

Mr Wilkins—Sure, I understand that.

Senator TROOD—and the deep distress that it causes them when this program has been suspended for so long and no adoptions have taken place. Essentially people's lives are on hold while these matters are settled.

Mr Wilkins—I understand that, but we are doing the best we can to try and get something in place which conforms with the obligations—which is what they would expect us to undertake. If we started cutting corners, they might end up in some very difficult situations.

Senator TROOD—I have just a few more matters. Do I take it that, in all the negotiations of these matters that you undertake with Ethiopia, you are also in constant touch with the states and territories as to the appropriate way in which these matters should be settled? In the end, it is the state government. You negotiate the arrangement at a formal level, but it is the states and territories, is it not, that actually manage the programs?

Ms Playford—They manage the placement of the children in the programs, yes, and we liaise with them frequently.

Senator TROOD—Can you at least assure the committee that you are in constant touch with the states and territories about the matters that I have raised—

Ms Playford—Yes.

Senator TROOD—and that you do not take any steps without consultation with them?

Ms Playford—That is right.

Senator TROOD—And can you also reassure me that your interlocutor in Ethiopian is in fact the Ministry of Women's Affairs. Is that right?

Ms Playford—That is right.

Senator TROOD—And you remain engaged in negotiations with the Ministry of Women's Affairs. Is that correct?

Ms Playford—That is correct.

Senator TROOD—Good. I think that is the range of issues, but when we resume in February I will be asking further questions about this, Mr Wilkins, and I hope you will be able to report some progress to the committee.

Mr Wilkins—I hope we can, but I am not guaranteeing it, under the circumstances. We will obviously use our best efforts, but I would be silly to guarantee to you that we will have success on all these fronts. We will do our best.

Senator TROOD—That is probably a wise course, but I put you on notice that I am interested in this matter and I would like to see progress.

Mr Wilkins—We would too.

Senator TROOD—And I would like to see the department, insofar as it is able to do so, press the range of issues that I have raised with you and to receive a greater degree of confidence and assurance that progress is actually being made.

Mr Wilkins—Okay.

CHAIR—Senator Ludlam, we will go to your questions now.

Senator LUDLAM—Thank you. I have a couple of questions under 1.1 and I think we decided the rest were in 1.2. I understand that the bill concerning the implementation of our obligations under the Convention on Cluster Munitions is due to come before parliament at some stage soon. Is that the case?

Mr Manning—As I understood the question, you are asking whether it is intended to bring a bill before parliament. The answer is yes.

Senator LUDLAM—Can you let us know where that is in the pipeline? Has it been drafted, have you sought advice on its drafting or is it complete? Where are we up to?

Mr Manning—The bill is being drafted, but it has not yet made its way completely through the government's approval processes.

Senator LUDLAM—It is my understanding that the bill will not include provisions and sanctions on investment in cluster munitions by private Australian companies. Is that correct?

Mr Manning—As I said, the bill is not finalised. But the intention is that the bill will implement the obligations in the convention. The convention contains obligations about directly and indirectly assisting with the production of cluster munitions, but that is with an intention to do so.

Senator LUDLAM—That is interesting. Can you spell out for us then how the convention would deal with, for example, a private Australian company being involved in the investment or the manufacture of such munitions? Can we expect such investment to be unlawful when the new act comes through parliament?

Mr Manning—I will limit my answer to the convention obligations.

Senator LUDLAM—That is fine. Before you do that, you are telling us that the bill will strictly stick to what our obligations are. You have not strayed outside that.

Mr Wilkins—The bill needs to go through the cabinet process, so it is really a matter for the cabinet and the government. But I think the idea is that to give effect to our international obligations it should give effect to the convention. I think Mr Manning is going to talk about what is in the convention.

Senator LUDLAM—He would if I stopped interrupting him! Go ahead.

Mr Manning—The convention prohibits the direct or indirect development or production of cluster munitions and the provision of assistance in such development or production, but this requires an intention to assist, encourage or induce a person to do that.

Senator LUDLAM—Yes, that sounds reasonable.

Mr Manning—So, when you talk about investment, it is possible that investment would fall outside of circumstances where there is intention to have cluster munitions produced as a result.

Senator LUDLAM—Can you give us an example of how that might be the case? I can tell you are trying to help, but I am still not quite sure.

Mr Wilkins—You could invest in an investment trust, for example, or a unit trust, which holds shares in a hundred different companies. One of the subsidiaries of one of those companies might in turn be doing R&D which might then flow on to cluster bombs. There is no way that you would know that, and to penalise somebody for holding a few units in a unit trust—

Senator LUDLAM—But they may not know what is actually going on. But, in terms of degrees of separation, if you are a company that is directly involved in producing these devices you would be caught by the convention?

Mr Manning—The intention of the convention is to prohibit the type of conduct where there is an intention to produce cluster munitions.

Senator LUDLAM—Thank you very much, and I will leave that one there.

Senator BARNETT—I just want to go to this UN resolution, which I understand Australia has signed, and I would bring it to your attention. It is the UN Resolution on combating defamation of religions. It was adopted by the UN General Assembly, I am advised, by a recorded vote of 80 in favour, 61 against and 42 abstentions. Australia was one of those that

voted against on the previous occasion. I do not have the date with me. Are you aware of that, Mr Manning?

Mr Manning—I am not personally, but I am being informed someone might be.

Mr Wilkins—I was not aware of it.

Senator BARNETT—I know that these UN resolutions are non binding. But they are influential statements and in the name of religious tolerance—

Mr Wilkins—We only know what we have gone and found out from DFAT. As we said, this is really a matter that you should be asking the department of foreign affairs about. Australia did not support the resolution.

Senator BARNETT—That is what I am advised. Is that your advice?

Mr Wilkins—That is the advice that we have got from DFAT, yes.

Senator BARNETT—That is also my advice. But it is now coming up for a vote again in November or December this year. We are talking about in a short of amount of time—a month or two. It obviously has implications for Australian law, and that is why I am seeking your advice as to your awareness of it or otherwise. It is obviously a UN resolution. The Organisation of the Islamic Conference, 57 states with a majority of significant Muslim populations, have a working for several years through the UN nation system to justify and advance that defamation of religions resolution. It is a concern.

Today I have been made aware of and have received a copy of a letter from the Prime Minister of New Zealand, and I would like to table that letter. I will give it to the secretary. The letter from the Prime Minister of New Zealand is dated 2 August. It says in response to a Mr Bruce Quedley, Regional Director, Open Doors, that they are seeking assurance that New Zealand will not vote in support of the defamation of religions resolution at the UN General Assembly, and John Keys, on behalf of the New Zealand government, confirms that they will not. I am seeking advice as to whether you are aware whether the Australian government position is the same as previously—that is, that it will vote against this particular resolution. I wonder if you are aware of that.

Mr Wilkins—I expect it would be but, as I say, it is a question that needs to be directed to the Minister for Foreign Affairs and the department of foreign affairs. It is their bailiwick; they should answer it.

Senator BARNETT—I draw it to your attention. It is of extreme concern to a range of people in community groups in Australia. We voted against it last time. I urge the government to take that same position again. I draw it to your attention.

Mr Wilkins—I will convey those sentiments to the department of foreign affairs.

Senator BARNETT—Yes, and if you could relay the Prime Minister of New Zealand's letter as well, that would be most useful.

Mr Wilkins—I will do that.

Senator BARNETT—Thank you.

Senator LUDLAM—Can you tell us briefly what the procedure is for the department, if any, checking the welfare of Australian citizens who it extradites overseas? Is there any kind of formal system of monitoring?

Mr Wilkins—I think it is fair to say that the way extradition works is that we assure ourselves before we send somebody under an extradition treaty. That is the whole point—the treaty, in a sense. We do not actually—

Senator LUDLAM—That is sounding a bit like a no.

Mr Wilkins—Yes. You enter into an arrangement with somebody and you have procedures here at the Australian end to assure that the person is being properly extradited to face—we do not have, as far as I understand, monitoring systems in place.

Ms Jackson—We do it for Australians, the consulates.

Mr Wilkins—For Australians, yes.

Senator LUDLAM—That was the question. So in that case, the two things you would want to get right would be the integrity of the treaty itself and you would have to be happy with the state of the rule of law in the country you are extraditing people to, as we do not have a monitoring system in place. That would obviously then also apply to the welfare of non-citizens that we would extradite.

Mr Wilkins—We do monitor Australians.

Ms Jackson—Yes, DFAT does. There are consular services under the Vienna Convention.

Senator LUDLAM—Of Australian citizens?

Ms Jackson—Yes.

Senator LUDLAM—You have lost me, because that was my first question.

Mr Wilkins—I thought you were talking about non-Australians.

Senator LUDLAM—Australian citizens, we do monitor their welfare?

Ms Jackson—Yes.

Senator LUDLAM—That was my question. Can you point us to where we can find that? Is it by regulation or what is our process for looking after people whom we might have sent elsewhere?

Ms Jackson—That is under the Vienna Convention, that Australia can provide consular assistance to Australians detained overseas, including people surrendered under extradition.

Senator LUDLAM—How many extradition requests has Australia received in the last 12 months and how many of those requests were granted? Do you want to just table that for the committee? I am interested to know for the last 12 months, or even if you just want to give us the last financial year—that might be simpler—the number of individuals extradited who were Australian citizens, Australian residents or visitors from elsewhere, just a breakdown of what that actually looks like. Do we grant any requests from countries that we do not have extradition agreements with or is that prevented?

Ms Jackson—We can also grant extradition in accordance with multilateral treaties—for example, the UN convention on drugs and the UN convention on transnational organized crime each contain extradition obligations, so Australia could extradite under those conventions to other states parties.

Senator LUDLAM—Can I ask you in the material that you would take on notice for us to provide a breakdown in the last financial year of any requests that might have occurred outside our formal treaty framework extradition treaties?

Ms Jackson—Yes.

Senator LUDLAM—Regarding some changes that were made at the Review Conference of the Rome Statute which created the ICC, which happened just now in June 2010 in Uganda, did we have any officers there? We did, great. Does the Australian government support the implementation of the crime of aggression within the Rome statute, which is one potential addition that was discussed at the review conference?

Mr Wilkins—In principle, yes.

Senator LUDLAM—Do we have any plans or intentions to implement the crime of aggression into Australia's domestic legislation, as we have done with other crimes over which the ICC has jurisdiction?

Mr Wilkins—I think the best way to put it is that we are considering the matter. We are going through a ratification process.

Senator LUDLAM—Do you want to just sketch for me what that consideration looks like in this instance? Are we considering drafting of domestic legislation?

Mr Wilkins—Whether it is actually necessary. When you go through a ratification process I guess you would be thinking about whether the existing laws are adequate to cover contingencies that might arise to give effect to your obligations under the convention. For your information DFAT is once again leading that process.

Senator LUDLAM—Thank you. Part of the Labor government's election platform in 2007 was to close the immunity gap for suspected war criminals in Australia. Is this still a priority of the government and can you tell us any steps at all that the government has made since November 2007 to close the immunity gaps for war criminals visiting or residing in Australia?

Mr Wilkins—Do you want us to do this in—

Senator LUDLAM—We have about 30 seconds.

Mr Wilkins—I think it might be better for us to take it on notice rather than give you a garbled answer.

Senator LUDLAM—I definitely agree, if there is something to say. I think last time I asked this nothing at all had occurred. You are shaking your head. Does that mean we have not done anything?

Mr Wilkins—I think we need to give you a proper explanation about what the government is and is not doing.

Senator LUDLAM—If it is a question of what the government is not doing, we could do that in 60 seconds. If there is activity then I would ask you to take it on notice.

Mr Wilkins—I will take it notice.

Senator LUDLAM—Thank you. I will leave it there.

CHAIR—Senator Barnett, we will come back to you. Have we finished with 1.1 and 1.2?

Senator BARNETT—I am not entirely sure where these questions are in the portfolio, but I am sure Mr Wilkins can assist. I just want to go firstly to the sexual harassment case with David Jones. I have been advised and have seen reports today of a settlement of \$850,000. It is purportedly Australia's biggest sexual harassment case where there has been a settlement. My first question is: what have we learnt from this case? The second question is: what is the average payout where damages are awarded for a quadriplegic claim where there is clear negligence on the part of the defendant and what is the average amount of damages awarded for a sexual harassment claim in Australia?

Mr Wilkins—All of those things are things we will have to take on notice. They have really got nothing to do with the department. You had the Australian Human Rights Commission here this morning. They could have been asked all of these questions. We will do our best to try and take this on notice and give you some response.

Senator BARNETT—Thank you. You are obviously aware of the initial claim, which was some millions.

Mr Wilkins—I wasn't actually.

Senator BARNETT—I am sure many of your officers would be aware and it is all on the public record.

Mr Wilkins—I am not sure the claim was actually on the public record. There were various newspaper stories and things like that.

Senator BARNETT—Various newspaper stories stating it was in excess of \$30 million and there is a settlement of some \$850,000 for a sexual harassment claim.

Mr Wilkins—If the media reports are correct, but there seemed to be a lot of speculation about a lot of different figures.

Senator BARNETT—I just wonder what it says about our law in this country and whether we have the law right, whether there is an incentive to make ambit claims in this instance or in other related matters, whether we are becoming more litigious as a community and whether you had a view on that.

Mr Wilkins—They are very philosophical questions for this time of night.

Senator BARNETT—Indeed. It raises a whole lot of questions. We have been through a lot of publicity regarding this particular incident and this sexual harassment claim over the last few weeks. I will move on to some other areas in light of the time. I just wanted to ask the department about the book by David Hicks and the assurance by the department and by the government that the profits will not be used inappropriately.

Mr Wilkins—We are just getting the relevant officer. Your question was, Senator?

Senator BARNETT—Will Mr Hicks benefit from the profits from the book? If so, how, and if not, can you give us an assurance that he will not?

Mr G McDonald—We are in a position where we cannot answer definitively whether there has been a profit or not. That is something that is not within my knowledge. Clearly, there is legislation—the Proceeds of Crime Act—which provides that while people can tell their stories they cannot make a profit by exploiting criminal notoriety.

Senator BARNETT—Is Mr Hicks subject to that law?

Mr G McDonald—Yes, that law applies.

Senator BARNETT—Therefore, is it not correct that the profits made from the book should not go to Mr Hicks and should be surrendered accordingly to, I assume, the Commonwealth—or some other entity?

Mr G McDonald—That is right. If there is a situation where he is making profits then that is something that the investigative authorities can look at under that legislation.

Mr Wilkins—We would have to investigate the elements of the actual provisions in the legislation, I think it is fair to say. The book has only just arrived on the scene and it would be a question of whether it falls within that legislation. That would need to be a decision made by us, the AGS and possibly even the police—if it is a prosecution under that legislation.

Senator BARNETT—Whose decision would that be?

Ms Chidgey—That would be a decision for the Commonwealth Director of Public Prosecutions under the Proceeds of Crime Act.

Senator BARNETT—The decision is with the DPP and—

Ms Chidgey—The decision is with the DPP as to whether to seek such an order, and then it is at the discretion of a court as to whether such an order would be granted in all the circumstances.

Senator BARNETT—Could the DPP be requested to investigate and to pursue the matter if the government so chose to ensure that the agreement is complied with and that the profits were properly surrendered in accordance with what I understood was a pre-trial agreement made in the US with relevant US authorities?

Ms Chidgey—The provisions of the Proceeds of Crime Act would be relevant in this instance. It is a matter for the AFP to take investigative action. Obviously, they are an independent statutory agency, so they would take investigative action as they saw fit.

Senator BARNETT—Do you have in your possession, or are you aware of the pre-trial agreement with Mr Hicks?

Ms Chidgey—I am aware of the agreement.

Senator BARNETT—Is it fair to say that this is a matter that you are actively monitoring?

Ms Chidgey—The department is certainly monitoring that, and it is a matter for the AFP as to whether to investigate under the Proceeds of Crime Act. Ultimately, after such an investigation it is a matter for the CDPP as to whether to seek such an order.

Senator BARNETT—Thank you. I move to another area of interest—the Administrative Review Council. We have talked before about the council at previous estimates, and I just want to go back to that if I could. The ARC has not produced a report since November 2008—is the ARC working on anything at the moment?

Ms Power—The ARC met most recently in August and is giving consideration to a project on judicial review. Also at that meeting it expressed interest in looking again at automated decision making, which is something the council has considered in the past.

Senator BARNETT—Automated?

Ms Power—Automated decision making; the use of computers to assist in decision making, particularly in high volume agencies.

Senator BARNETT—How many times would it have met this year?

Ms Power—There was a telephone meeting earlier in the year and there was a face-to-face meeting, the meeting I referred to, in August.

Senator BARNETT—So, two times, one by telephone and one in person.

Ms Power—There was a teleconference on 1 February, there was also a teleconference on 17 June and there was a face-to-face meeting on 17 August. There is a further face-to-face meeting scheduled for November this year.

Senator BARNETT—Can you advise the agenda items for each of those meetings either now or on notice?

Ms Power—I will have to take that on notice.

Senator BARNETT—Likewise for the November meeting, if it is possible?

Ms Power—Certainly.

Senator BARNETT—Will it produce an annual report?

Ms Power—It has produced an annual report which has been tabled.

Senator BARNETT—Other than any other advices that have been provided to the Attorney-General from the ARC in this calendar year?

Mr Wilkins—How do you mean ‘advices’, Senator?

Senator BARNETT—Advice, recommendations, reports, anything at all.

Mr Wilkins—They have actually formed a view on a number of different issues, not simply to the Attorney-General though.

Ms Power—The council has produced a publication, a 59th edition of the *Admin Review* bulletin of May 2010, and consulted and provided comments on four different matters, which I can read out to you or put them on notice.

Senator BARNETT—Put them on notice.

Mr Wilkins—I think it is easier just to read them out.

Senator BARNETT—All right.

Ms Power—The Senate Standing Committee of Finance and Public Administration’s inquiry into the *Freedom of Information Amendment (Reform) Bill 2009 [Provisions]* *Information Commissioner Bill 2009 [Provisions]*, the UK Administrative Justice and Tribunal Council’s consultation on its principles of administrative justice, the Department of Immigration and Citizenship’s consultation on the proposed simplification of Australia’s visa system and AGD’s development of an administrative law policy guide to provide direction for Commonwealth officers developing policy and legislation involving administrative law issues.

Senator BARNETT—Thank you. Anything else to report regarding the ARC in terms of their activities?

Mr Wilkins—Do you have other questions on that, Senator.

Senator BARNETT—No. I think you have covered it because it has been very sparse in past times based on evidence to Senate estimates.

Mr Wilkins—I think it is safe to say there is a new precedent and certainly a strategic approach to admin law by both the department and the ARC. The work it will do on judicial review will no doubt come to this parliament in due course.

Senator BARNETT—Thank you. I look forward to further deliberations. I would like to put on notice another area regarding legal costs across portfolios. You have previously advised the committee of \$555 million in legal fees expended by the Australian government across portfolios year on year. I wonder if you have the latest figures for us. If not, I am happy to take that on notice.

Mr Wilkins—We cannot really take it on notice either. You might recall at our last estimates committee we explained that we got these figures at a certain point in the year, and maybe Dr Popple could explain when we would be in a position to provide you with the latest figures.

Dr Popple—As you recall, departments are required by legal service direction to report their spending to us on a financial year basis. They were required to report that by the end of August. Several departments and agencies have not provided that information and we are in the process of collating information, and of course once we have managed to get all the information together we will be in a position to provide all of the information.

Senator BARNETT—It is now mid-October, so when do you expect the information?

Dr Popple—Very soon, Senator. As you know, in previous years we have had it all by mid-October. We are disappointed that we do not.

Senator BARNETT—Yes, so am I.

Dr Popple—I would add that those agencies that have not provided it by 30 August have breached the legal service directions and we will of course be breaching them in the usual course for that.

Senator BARNETT—How many are there that have not complied? Can you identify them?

Dr Popple—I am afraid I do not have that list with me at the moment. I can take it on notice certainly.

Senator BARNETT—Yes, please. When are you expecting them? You have been following it up and it is now mid-October.

Dr Popple—Yes. I think that it is a matter of weeks, Senator.

Senator BARNETT—So you will provide the full details across portfolio, by agency and by department. Could you compare it over the previous three years?

Dr Popple—I am not sure whether it is three years, but we can prepare whatever figures we have previously provided.

Senator BARNETT—In terms of the comparison over the past few years.

Dr Popple—Yes.

Senator BARNETT—Thank you for that. I have got a few minutes left so I will ask a question about the National Legal Profession Reform Project. Mr Wilkins, I am sure will be up to date with that in terms of progress. At the last Senate estimates I expressed a view on behalf of the Tasmanian legal community and, indeed, tabled a letter from the Chief Justice. I wonder whether you can provide an update on the progress. I note also the ACIL report that has been tabled noting the cost-benefit analysis in that report, which sets out considerable millions of dollars in benefits. But obviously, from parts of the legal profession there are still concerns about the independence of the reform process and the board. I wonder whether those stakeholders have had those concerns allayed and dealt with.

Mr Wilkins—I think so, Senator. We have had recent constructive discussions, as recently as Friday, with the attorneys-general from all the different states and territories. There have been discussions with all the chief justices. There have been discussions with a variety of stakeholders.

Senator BARNETT—Is there agreement, Mr Wilkins? Is there consensus?

Mr Wilkins—I think that there is an emerging agreement around some compromises on both the composition of the board and the greater devolution of responsibilities to the states and territories in terms of the implementation of national standards. I think that there is an emerging mood that says that this is a good thing for Australia. There was concern expressed by a variety of states and territories about—

Senator BARNETT—Including the Law Council?

Mr Wilkins—Yes. There was some concern expressed by a variety of people about this being too much central bureaucracy. That has all been dealt with and my assessment is that it is probably fair to say that there is an emerging consensus. It is not a perfect consensus; there are still areas of disagreement. But on those key issues people seem to be agreeing that some of the ideas being put forward by the task force will probably sort out those issues.

Senator BARNETT—We will monitor that with interest. Thank you for your feedback. I will put my further questions on notice, and thank you again.

CHAIR—Thank you, Mr Wilkins, and all of the officers in your department. Thank you for your attendance today. We will see you in February next year. This committee is adjourned until 9 am tomorrow when we will be considering immigration and citizenship.

Committee adjourned at 10.59 pm