



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

**(Consideration of Budget Estimates)**

TUESDAY, 27 MAY 2003

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**

**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**

**Tuesday, 27 May 2003**

**Members:** Senator Payne (*Chair*), Senator Bolkus (*Deputy Chair*), Senators Greig, Ludwig, Mason and Scullion

**Senators in attendance:** Senators Bolkus, Faulkner, Greig, Kirk, Ludwig, Lundy, Payne and Scullion

**Committee met at 9.09 a.m.**

**ATTORNEY-GENERAL'S PORTFOLIO**

Consideration resumed from 26 May 2003

**In Attendance**

Senator Ellison, Minister for Justice and Customs

**Attorney-General's Department**

Mr Robert Cornall, Secretary

Mr Ian Carnell, General Manager Criminal Justice & Security

Mr Ian Govey, General Manager Civil Justice & Legal Services

Dr James Popple, Executive Adviser

Mr Richard Oliver, General Manager, Corporate Services

Mr Trevor Kennedy, Chief Finance Officer

Mr Peter LeRoy, General Manager, Information and Knowledge Services

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Mr James Faulkner, Acting First Assistant Secretary, Office of Legal Services Coordination

Mr Paul Griffiths, Assistant Secretary, Office of Legal Services Coordination

Ms Philippa Lynch, First Assistant Secretary, Family Law and Legal Assistance

Ms Sue Pidgeon, Assistant Secretary, Family Pathways

Ms Renée Leon, Acting First Assistant Secretary, Office of International Law

Mr Bill Campbell, Principal Adviser

Mr James Graham, Acting Principal Legislative Counsel

Mr Peter Ford, First Assistant Secretary, Information and Security Law Division

Ms Janet Power, Acting First Assistant Secretary, Native Title Division

Ms Kathryn Shugg, Assistant Secretary, Native Title Division.

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch

Mr Craig Harris, Assistant Secretary, Law Enforcement Branch

Mr Chris Meaney, Assistant Secretary, Strategic Law Enforcement Branch

Ms Robyn Frost, Director, International Crime Branch

Mr Keith Holland, Assistant Secretary, Security Law and Justice Branch

Mr David Templeman, Director General, Emergency Management Australia

Ms Kathy Hilgert, Assistant Director, Business Management, Emergency Management Australia

Mr Ed Tyrie, Executive Director, Protective Security Coordination Centre

**Administrative Appeals Tribunal**

Ms Jill Toohey, Acting Registrar

Mr Steve Wise, Finance Manager

**Australian Federal Police**

Mr Mick Keelty, Commissioner

Mr John Davies, Deputy Commissioner

Ms Audrey Fagan, Executive Director Protection

Mr Trevor Van Dam, Chief Operating Officer

Mr Trevor Jones, Former Acting Chief Financial Officer

**Australian Crime Commission**

Mr Alastair Milroy, Chief Executive Officer

Mr Lionel Newman, Acting National Director, Corporate

**Australian Customs Service**

Mr Lionel Woodward, Chief Executive Officer

Mr John Drury, Deputy Chief Executive Officer

Mr John Jeffery, Deputy Chief Executive Officer

Rear Admiral Max Hancock, Director-General Coastwatch

Ms Marion Grant, National Director Border Compliance and Enforcement

Mr Phil Burns, National Director Cargo and Trade

Mr Alistair Cochrane, Chief Financial Officer

Ms Gail Batman, National Director Border Intelligence and Passengers

Ms Jenny Peachey, National Director Office of Business Systems

Mr Murray Harrison, Chief Information Officer

Ms Sue Pitman, National Manager Trade Measures

Mr Stephen Goggs, National Manager CMR Transition

**Australian Government Solicitor**

Ms Rayne de Gruchy, Chief Executive Officer

Mr David Riggs, Chief Financial Officer

**Australian Law Reform Commission**

Professor David Weisbrot, President

Ms Rosemary Adams, Executive Director

**Australian Transaction Reports and Analysis Centre**

Mr Neil Jensen PSM, Director

Mr Andrew Joyce, Senior Manager, Policy and Coordination

Mr Alf Mazzitelli, Senior Manager, Corporate Resources

**Australian Security Intelligence Organisation**

Mr Dennis Richardson, Director-General

**CrimTrac**

Mr Jonathan Mobbs, Chief Executive Officer

Mr Stewart Cross, Director, Business Operations

Ms Nicole McLay, Chief Finance Officer

**Family Court of Australia**

Mr Richard Foster, CEO

Ms Angela Filippello, Principal Registrar

**Federal Court of Australia**

Mr Warwick Soden, Registrar and Chief Executive

Mr Philip Kellow, Deputy Registrar

Ms Anne Hicking, Chief Financial Officer

**Federal Magistrates Service**

Mr Peter May, Chief Executive Officer

**High Court of Australia**

Mr Christopher Doogan, Chief Executive and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Mr Lex Howard, Marshal

**Human Rights and Equal Opportunity Commission**

Ms Pru Goward, Sex Discrimination Commissioner

Ms Diana Temby, Executive Director

Mr Stephen Duffield, Director, Human Rights Unit

Ms Meredith Wilkie, Director, Race Discrimination Unit

Ms Sally Moyle, Director, Sex Discrimination Unit

Ms Rocky Clifford, Director, Complaint Handling

Ms Susan Roberts, Director, Legal Services

Robyn Ephgrave, Manager, Finance and Services

**Insolvency and Trustee Service Australia**

Mr Terry Gallagher, Chief Executive

Mr Peter Lowe, Executive Director

Mr David Bergman, Legal/Policy Advisor

**National Native Title Tribunal**

Mr Christopher Doepel, Registrar

Ms Marian Schoen, Director Corporate Services & Public Affairs

Mr Hugh Chevis, Director Service Delivery

Mr Erwin Winkler, Manager Financial Services

**Office of Film and Literature Classification**

Mr Des Clark, Director

Mr Paul Hunt, Deputy Director

**Office of the Director of Public Prosecutions**

Mr Damian Bugg QC, Director of Public Prosecutions

Mr Grahame Delaney, First Deputy Director

Mr John Thornton, Deputy Director Legal & Practice Management

Ms Stela Walker, Deputy Director Corporate Management

**Office of the Privacy Commissioner**

Mr Malcolm Crompton, Federal Privacy Commissioner

Mr Timothy Pilgrim, Deputy Federal Privacy Commissioner

Robyn Ephgrave, Manager, Finance and Services

OBSERVERS

**Attorney-General's Department**

Ms Judith Reeves, Emergency Management Australia

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Ms Chris Freudenstein, Acting Assistant Secretary, Crime Prevention Branch  
Mr James Cockayne, Director, International Crime Branch  
Barry Jeffress, Director, Corporate Performance and Coordination Section  
May Levantis, Project Officer, Corporate Performance and Coordination Section

**Australian Customs Service**

Mr Krishna Kumar, Director Budget Management and Reporting  
Ms Christine Marsden-Smedley, National Manager Planning and International  
Mr Tom Marshall, Deputy Director-General, Coastwatch  
Ms Kylie Jenkins, Manager Parliamentary and Cabinet Liaison

**Australian Federal Police**

John Lawler  
Mike Phelan  
Catherine Castles  
Errol Raiser  
Anne Lyons  
Peter Jones  
Dianne Carlos  
Michael Chilcott  
Dennis Ryan  
Annie Davis

**Family Court of Australia**

Peter Maynard, Manager, Strategic Policy  
Dawson Ruhl, Principal Mediator  
Dianne Carlos, former Chief Finance Officer

**Human Rights and Equal Opportunity Commission**

Jan Payne, Director, Public Affairs  
Robyn Ephgrave, Manager, Finance and Services

**Office of Film and Literature Classification**

Patricia Flanagan, Marketing and Development Manager

**Office of the Privacy Commissioner**

Fiona Ciceran

**CHAIR**—Welcome to the second day of consideration of portfolio budget estimates for the Attorney-General's Department and portfolio agencies. I welcome the minister and the secretary of the department. We are continuing in the program as printed and we will begin this morning with consideration of the Administrative Appeals Tribunal.

[9.10 a.m.]

**Administrative Appeals Tribunal**

**Senator KIRK**—The budget provides \$32.6 million over four years to the AAT as a result of the decision not to proceed with the amalgamation of the AAT with the ART. Yesterday, the department indicated that in real terms this is a small decrease and that cost savings are being sought from the tribunal in the order of \$0.5 million. How will the AAT find these savings?

**Ms Toohey**—It will clearly put some pressure on the tribunal and we will have to look at finding savings but that is a process that is underway in any event. Now that the tribunal's

future is somewhat clearer we are looking to make savings in and review areas like our properties—there are a number of leases around the country—and some of the large contracts the tribunal has. We have already put in place some measures to more tightly control large expenditure like travel and we are looking at new IT systems.

There is also the ongoing tribunals efficiency project, which involves the four tribunals which were to be part of the ART. They are continuing to work together and to look particularly at opportunities when leases arise. There are to be amendments to the Administrative Appeals Tribunal Act which will give greater flexibility and streamline procedures. We should be able to get greater efficiencies and some savings in there.

**Senator KIRK**—It sounds like quite a significant process that you are embarking upon there. Has there been any formal review initiated at this point?

**Ms Toohey**—Within the tribunal the president has established a number of committees to review areas of operations—principally practice and procedures within the tribunal—with a view to streamlining them and making them more efficient, particularly looking at where delays occur. He has also established a committee that looks at the constitution of the tribunal and the use of multimember tribunals and the role of experts, lawyers and non-lawyers. Those reviews are formal in the sense that the president has established them and they work to committees.

**Senator KIRK**—Who sits on these various committees?

**Ms Toohey**—The membership varies but the president and the registrar. It depends upon the committee. The practice and procedure committee comprises deputy presidents in each registry, district registrars and conference registrars. The other committees, which are the constitution committee and the professional development committee, are made up of members from more registries around the country.

**Senator KIRK**—These committees that you are talking of: are they standing committees or committees that have just been established as part of this cost-saving process?

**Ms Toohey**—They would be more like standing committees. It is expected that possibly the constitution committee may have a limited life but that the others would be ongoing committees.

**Senator KIRK**—What is the time frame for the review of these various areas that you mentioned, such as properties, contracts and IT systems?

**Ms Toohey**—The review of properties is an ongoing process because leases come up at various times around the country. But a process has started already to review the leases in Sydney, Canberra and Melbourne, which will be the ones that will come up the earliest.

**Senator KIRK**—With the review of the leases, is that likely to lead to a movement of the premises of the tribunals in each of the cities?

**Ms Toohey**—If that appeared to be the most cost-effective outcome then that is what we would look at. But at this stage we cannot say what the likely outcome is.

**Senator KIRK**—Which cities are being reviewed in the process?

**Ms Toohey**—Presently, there is a lease in Canberra due to expire next year and a lease in Sydney at the end of the following year.

**Senator KIRK**—What sorts of contracts are being reviewed? What is the nature of those contracts?

**Ms Toohey**—The principal large contract has to do with recording of proceedings.

**Senator KIRK**—What is the nature of the review of that contract? Is it for cost savings?

**Ms Toohey**—Yes. That contract will expire in about 12 months time.

**Senator KIRK**—And IT assistance?

**Ms Toohey**—Over the period when it was proposed to establish the ART the tribunal did not put money into areas that were not going to be of some sort of ongoing benefit to the ART itself and so, in particular, a number of the tribunal's systems are now quite out of date and need replacing or upgrading. The tribunal's case management system in particular is now very old and needs replacing. A process has started to look at what might be the best system and what the options are. It will probably require an 18-month to two-year project before we have something in place.

**Senator KIRK**—Is the new IT system going to result in a cost saving?

**Ms Toohey**—In the longer term it will. It is obviously going to involve an initial cost, but we would hope that longer term the efficiencies we would get from a new system rather than the old 10-year-old system would be an improvement.

**Senator KIRK**—What impact will all these changes that you have referred to as cost savings have on services to members of the public who use the tribunal? Have you thought about that?

**Ms Toohey**—Yes. None of those would have a detrimental effect on the service provided to the public. We would hope that a case management system would help speed up processing and help identify cases more quickly. The area that the practice and procedure committee has focused on in particular is reducing delays, and it would clearly result in a better service to the public if we could reduce delays where they occur.

**Senator KIRK**—So you are suggesting that these cost savings of \$0.5 million will, if anything, assist the public rather than be of detriment to them.

**Ms Toohey**—I would not see that they would of themselves have an adverse effect. They are things that we can do internally that would not go directly to the service in an adverse way.

**Senator KIRK**—So when you are looking at cost savings, you are not looking to reduce staff or resources in any way—there will be no impact on staff?

**Ms Toohey**—No, not at this stage, we are not.

**Senator KIRK**—Was the AAT consulted on the required cost savings prior to the budget?

**Ms Toohey**—It was a decision of government.

**Senator KIRK**—So the answer is no?

**Ms Toohey**—That is correct.

**Senator KIRK**—Is that normal? Does a consultation process normally take place prior to budget cuts?

**Ms Toohey**—I would have some trouble answering that. I have been in this position for only eight months and I am not familiar with what happened formerly.

**Senator KIRK**—Like me. I want to ask some questions about tribunal membership. I understand that since the government made its decision, which has now been abandoned, to amalgamate the AAT into the ART, there have been some changes in the tribunal's membership. As at 30 June 1998—that was the most recent report that I could get my hands on—the tribunal had 99 members. That was nearly five years ago. How many members were women at that point?

**Ms Toohey**—I would have to take that on notice. I do not have the answer with me.

**Senator KIRK**—As at 30 June 2002—four years later—the tribunal was down to 76 members, so it had gone from 99 to 76. Are you aware of how many of those members were women?

**Ms Toohey**—I should be able to tell you if you bear with me for a second. I believe it was 16.

**Senator KIRK**—What is that in percentage terms, approximately?

**Ms Toohey**—It is something over 20 per cent. There are currently 78 members of the tribunal. I could clarify that. I want to be sure of my figures.

**Senator KIRK**—That is fine. I want to pursue the fact that obviously since 1998 there has been a significant decrease in the tribunal's membership, down some 20-odd members. There has also been a decrease, as I understand it, in the proportion of female members. My figures are that as of 1998 approximately 26 per cent of the tribunal's membership were women, so it is down. What accounts for the decrease both in the numbers of tribunal members and also the proportion of female members?

**Ms Toohey**—I think the decrease in numbers was during that period leading up to the establishment of the ART. There were some members who left the tribunal. That number is gradually increasing again. As for the reasons behind the membership, that would be a question for the government or the department.

**Ms Leigh**—As was said last time we had a large number of vacancies and there was a selection process, a number of positions that had previously been part time were filled on a full-time basis. So when you are looking at the total numbers you need to take into account what proportion of the total numbers were part-time members. A part-time member can work anything from the smallest percentage of full-time hours up to almost completely full-time hours, so you need to know the individual case in relation to the previous appointments to be able to assess whether there is any actual change in capacity of the tribunal.

**Senator KIRK**—How much change has there been, then, in the equivalent full-time membership?

**Ms Leigh**—I would have to take the details on notice, but I think that the main explanation for the change in numbers is the explanation I have just given you rather than there being any other significant issue.

**Senator KIRK**—What impact have these changes to tribunal membership had on the workload of the tribunal?

**Ms Toohey**—There was a period when there were fewer hearings being conducted because the number of members was fewer, but that was some two or three years ago. The output of the tribunal is now increasing, the number of decisions finalised is increasing and the number of matters on hand not finalised is decreasing.

**Senator KIRK**—On the question of the proportion of female members on the tribunal, was there an active attempt to increase that representation? I understand it is now about 20 per cent. In the past it has been up to about 26 per cent. Are there any active steps being taken in that regard?

**Mr Cornall**—The question of appointment is a matter for the Attorney-General, it is not a matter that the officers of the AAT would be consulted about or have input into.

**Senator KIRK**—Perhaps I will ask the government that question. Minister?

**Senator Ellison**—We appoint the best person for the job. As to any detail as to the method of appointment or any particular policy, if you are suggesting there should be a policy in relation to maintaining numbers at a certain level for female appointees, I will take that up with the Attorney-General.

**Mr Cornall**—I have some statistics in relation to court appointments, which is not the question you have just asked. Since March 1996 the government has appointed 63 judges and federal magistrates. Of those appointments, 18 have been women, or 30 per cent.

**Senator KIRK**—And at the AAT? Do you have the figures?

**Mr Cornall**—No, these are the figures I have for courts. I do not have them for the AAT. But, as Ms Leigh said, we will do an analysis of those figures for you.

**Senator Ellison**—The Office of the Status of Women, and in particular the minister concerned, Minister Vanstone, keeps an overall watch on government appointees and the percentage of women being appointed. That is an overall assessment of this across the board because it is an issue which the government takes seriously and that is in the area of Senator Vanstone's responsibilities. I will convey your comments to her as well.

**Senator LUDWIG**—When was the last time the Office of the Status of Women inquired of the Attorney-General in relation to the appointment of women to determine whether or not things have been equitable?

**Mr Cornall**—I do not think we can answer that question without taking it on notice. We have had correspondence from the Office of the Status of Women alerting us to the register they maintain of women available for appointments to boards and so on. That is the only correspondence I can immediately bring to mind.

**Senator Ellison**—From my own experience both Senator Newman and Senator Vanstone have raised this with ministerial colleagues and I recall receiving correspondence on this, but we will take it on notice.

**Senator KIRK**—On 6 February this year the Attorney-General announced that the government was planning amendments to the relevant legislation, stating:

... areas of amendment could include procedures of the tribunal, constitutional requirements and allowing greater use of ordinary members.

I understand from what you have said today that the president of the tribunal has established a number of committees, in particular the practice and procedure committee and the tribunal constitutional committee, to address some of those issues. Has there been any progress to date on that and have there been any changes in the interim to the tribunal's practices as a result of the work of those committees?

**Ms Toohey**—Since 6 February? Not so much to specific procedures—that work is ongoing—but there has been work done, for instance, in the way that the registry staff are organised into teams to more efficiently process cases. That does not involve fewer staff; that just involves a different organisation. But if I could take that on notice I feel there may be one or two things that have happened that are escaping my mind at the moment.

**Senator KIRK**—Sure, that would be helpful. What about a timetable for an outcome with regard to this? I understand that the committees have been established but obviously they have some terms of reference and a date hopefully that they are looking to to make some recommendations. Is there anything along those lines yet? Are there any dates that have been settled upon?

**Ms Toohey**—The president and I have concluded the round of meetings with each registry and I am now in the process of putting together a report with the recommendations for what sorts of changes might be needed following that consultation. I think that we are getting fairly close to it; the issues are fairly clear, the sorts of areas where the tribunal might look at efficiencies internally in processing are fairly clear, so I think it will be within a matter of months that we would get some outcome from that committee.

**Senator KIRK**—Was the tribunal consulted on the proposed amendments that the Attorney-General spoke of?

**Ms Toohey**—Yes, the tribunal has been consulted.

**Senator KIRK**—What was the nature of that consultation? Was it a verbal consultation?

**Ms Toohey**—It has been fairly close consultation, particularly with the assistant registrar in the department. A number of the proposals in those amendments have come from the tribunal itself so there has been a fairly close working relationship there.

**Senator KIRK**—So the report that you are preparing will be given to the Attorney-General? Is that the plan?

**Ms Toohey**—I guess that will be a matter for the president, but he would certainly be advising the Attorney-General of what steps he is proposing to take.

[9.30 a.m.]

### **Australian Crime Commission**

**CHAIR**—Good morning, Mr Milroy. Welcome to your first appearance at budget estimates as the new Chief Executive Officer of the Australian Crime Commission. I certainly hope it will be a beneficial relationship for all of us.

**Senator BOLKUS**—I will start with questions about funding. When the ACC was formed on 1 January its funding included last year's budget for the former NCA, the ABCI and the Office of Strategic Crime Assessments. Can you give us the specific amounts that were carried into the new organisation?

**Mr Milroy**—I might ask Mr Newman to give you that information.

**Mr Newman**—I would need to take that one on notice. I have got the aggregated figure but not the specifics for each of those. I can get that for you.

**Senator BOLKUS**—What is the aggregated figure?

**Mr Newman**—Is this in relation to the appropriation?

**Senator BOLKUS**—What was appropriated in last year's budget for those three entities?

**Mr Newman**—I would need to take that on notice.

**Senator BOLKUS**—And, was all that money transferred into the new entity on 1 January?

**Mr Newman**—It is my understanding that that money was transferred to the new entity.

**Senator BOLKUS**—What was that aggregate amount?

**Mr Newman**—I said that I would need to take that on notice. My understanding is that the total amount became part of the ACC's appropriation at the start of this year.

**Senator BOLKUS**—This is a pretty fundamental question about funding. Why haven't you got that information?

**Senator Ellison**—I think what might be understood from your question, Senator Bolkus, is what money was left in the bank and transferred over. You are saying, 'What was the funding for 2002-03 for ABCI, OSCA and the NCA, was all that money transferred over and what were the amounts transferred over?' The first of January was the middle of the year. Obviously, that funding had been expended, and the officer would have to look at the exact amount that was transferred on 1 January. That is what you are asking.

**Senator BOLKUS**—I think you have got half my question, Minister. The other half is: what was the actual amount budgeted?

**Senator Ellison**—That we can find very quickly for you.

**Senator BOLKUS**—Can we now have those individual amounts for the three entities that were allocated in the budget before this one?

**Mr Cornall**—Just before we move onto that question, the Office of Strategic Crime Assessments was an operational area within the department; it was not separately funded in the budget. We apportioned \$700,000 out of the department's budget as the amount that was allocated for that area: it did not have a separate budget appropriation.

**Senator BOLKUS**—That was the amount you allocated to be carried over for the full financial year?

**Mr Cornall**—To be transferred to the crime authority.

**Senator BOLKUS**—For six months?

**Mr Cornall**—It is ongoing, because the staff have left the department.

**Senator BOLKUS**—For what period, though?

**Mr Cornall**—It has gone out of our ongoing base funding and into the Australian Crime Commission's.

**Senator BOLKUS**—Is it \$700,000 per annum or just a \$700,000 one-off payment?

**Mr Cornall**—No, \$700,000 per annum.

**Senator BOLKUS**—Okay, how much was handed over for this current financial year?

**Mr Cornall**—That is the amount. I will just confirm these figures.

**Senator BOLKUS**—It cannot be both.

**Mr Cornall**—Mr Kennedy was saying that for the current financial year the proportion that was allocated to the Crime Commission from our budget was \$430,000 and the ongoing transfer from our budget to the Crime Commission's budget is of the order of \$700,000 to cover the OSCA staff who were transferred to the commission.

**Senator BOLKUS**—That is one part. What about the ABCI?

**Mr Newman**—My understanding is that the ABCI budget was approximately \$7 million. On an ongoing basis, that money has become part of the ACC's budget.

**Senator BOLKUS**—You will tell us what you receive for the completion of this financial year, but for next financial year?

**Mr Newman**—Next financial year our appropriation is approximately \$65 million—\$65.069 million. The total price of our outputs is \$67.798 million, I believe.

**Senator BOLKUS**—Does that mean you are short by a couple of million?

**Mr Newman**—As you would appreciate, the NCA had a significant part of its funding that was essentially tied funding. It was tied to particular special projects, special programs. The NCA, like other agencies, was subject to budget decisions on continuation of tied funding. It was not part of its base funding. We received moneys for money laundering, one new program—Midas—and a continuing program on telecommunications capacity of the organisation. They have been carried through. There was other tied funding that was not continued.

**Senator BOLKUS**—Which was that?

**Mr Newman**—A special operation that had been a two-year program, yet there is some money remaining from that program which has been carried over into this financial year which will be used to continue to fund that capability.

**Senator BOLKUS**—I am sorry; you have told me that a couple of operations were not to be continued.

**Mr Newman**—No. The tied funding was for some aspects of our business. For one in particular, a special operation, a new submission, new funding was not forthcoming in the budget. But we do have carryover funding for that program.

**Senator BOLKUS**—Which program was that?

**Mr Newman**—It is a program called Sagan; it is a special operation.

**Senator BOLKUS**—We will get to that later on. What was the NCA budget for the last financial year?

**Mr Newman**—If you will bear with me; I have my finance manager here and I might ask him for some help.

**Mr Cornall**—It was \$62.519 million.

**Mr Newman**—It was \$62 million.

**Senator BOLKUS**—So \$62 million plus \$7 million for ABCI plus \$700,000 we are told from OSCA gives us almost \$70 million, and your budget is \$65 million.

**Mr Newman**—The appropriation is \$65 million. We receive money from jurisdictions to support our activities as well. I would say that a proportion of that money is also used to administer the APG.

**Senator BOLKUS**—But you would have received money from other entities and jurisdictions under the previous budgets. I am trying to compare apples with apples. If you look at the budget outlays for the three entities last financial year and compare them with your budget appropriations for this year, you have actually gone down \$5 million.

**Mr Newman**—The difference essentially is the non-continuation or the non-funding of what had been the Sagan program, which had been approximately \$9.2 million over two years which, when one looks at it, is approximately \$4.5 million a year.

**Senator BOLKUS**—But the real effect is that your budget appropriation is down by \$5 million on previous years. We can go to the individual components later on.

**Mr Newman**—Yes.

**Mr Milroy**—I think the ACC is a different organisation. The new legislation encapsulates the roles of the integrated agency, of course, but it now forms a new unit, a new organisation with different functions.

**Senator BOLKUS**—I think we are working on that premise.

**Mr Milroy**—Yes.

**Senator BOLKUS**—At page 261, there is mention of two particular projects that have lapsed. One is the cybercrime investigation and the other is a special intelligence project. Why has a decision been taken not to continue funding for those two projects?

**Mr Milroy**—I assume the special intelligence project is a reference to Sagan.

**Senator BOLKUS**—Is it? Is that what are you telling me?

**Mr Milroy**—Yes, partly it is. You realise that Sagan was developed in the days of the NCA. Its role is critical within the ACC but in a different form, in line with the new menu of

work. As Mr Newman indicated, the \$4.5 million has been carried over and Sagan special operations will continue, aligned to the ACC's new operations.

**Senator BOLKUS**—Let us clarify one thing. Is the project going ahead or is it not?

**Mr Milroy**—It is going ahead but re-engineered to suit the new organisation.

**Senator BOLKUS**—Last time you told us that it was under review.

**Mr Milroy**—That is correct.

**Senator BOLKUS**—What decision has been taken? You say that it is a newly defined project. How has it been newly defined? What are the changes to the pre-existing project?

**Mr Milroy**—The actual group is a covert operation. The limited information I can provide is that the type of work that they are doing is unique to Australian law enforcement as it was originally envisaged under the NCA. But the way we are going to use them in our new menu of work is slightly different in terms of their covert operations. In particular, they are supporting our operations in gathering intelligence and investigations. As I indicated, this is a new organisation that we are moving through and setting in place in law enforcement in Australia. It needs to be continually monitored and reviewed as we progress over the next 12 months with the operations that were only just approved on 13 May. So they do have a place in the organisation and the review will take into consideration the work that they have done for the NCA but, in particular, their role in enhancing our operations and those of our partner agencies over the next 12 months. I guess we could say that it is a work in progress.

**Mr Cornall**—When this matter was last discussed, the position in relation to the unexpended funding was not clear either. Through the budget process it has become clear that the agency is able to retain the unexpended portion of the previous allocation and carry it forward into next year—approximately \$3 million. A number of budget proposals were under consideration but not resolved when we were last before this committee. Therefore, the organisation was at that stage uncertain what its total funding was going to be for 2003-04. Those situations have been clarified and it is now better able to plan on the basis of actual figures.

**Senator BOLKUS**—That is \$3 million that will be available to the new entity for this coming financial year?

**Mr Cornall**—Yes.

**Senator BOLKUS**—Is that included in the \$65 million that you mentioned earlier?

**Mr Newman**—No.

**Senator BOLKUS**—How much money has been spent on project Sagan since it started?

**Mr Milroy**—We would have to take that question on notice.

**Senator BOLKUS**—Also, how many people were employed in that in the last financial year and how does your newly defined role affect the employment levels?

**Mr Milroy**—I can provide the current level of positions on notice, but we have not increased the size of the unit and at the present moment, looking at the work we have for the

next few months, we are currently reviewing just how many more of these specially skilled people we require. A decision has not been made at this time.

**Senator LUDWIG**—When you talk about a new menu of work, is that part of the way you are going to address the operation of Sagan itself? In other words, are you going to keep it like it was? I assume you knew that it was a special operation within the NCA and that it had its own staff and staffing level and they were tasked because it was an initiative. You are now, as I understand it, going to incorporate it into the ACC model or menu of work. Am I right about that?

**Mr Milroy**—Yes. They are classified as what I might say is a skilled resource, so they fall into the same category as our surveillance, electronic surveillance and telephone intercept capability. The skilled resource, which is quite an expensive item, and the type of work that they do will be actually targeted where necessary to the projects that we now have approval to commence. That is how they will be managed, particularly in relation to how they carry out their work as it is required under the new menu of work.

**Senator LUDWIG**—Can you just explain what a new menu of work is?

**Mr Milroy**—I can give you a hypothetical case study. For example, we have a reference that relates to an organised crime group. After consultation with partner agencies, because we are taking a collaborative approach in terms of how we move this organisation forward, we would consult with state and federal bodies who are actively involved in that particular area of operation to draw on their intelligence, their expertise and to fully understand what they are doing in the same area of operation. Under a joint management arrangement with state and federal agencies, we would then determine the strategic direction that is required for this particular project. We would then look at what skill is required to put into the team to effectively achieve those objectives. Those resources would then be allocated and strictly managed and the joint management arrangement would occur on a weekly basis with our partner agencies

Basically, we are taking a completely different approach to, you might say, targeting at the top-of-the-pyramid type operations and going forward in a joint approach with our partner agencies as they pursue targets that could be linked to our operations, and any intelligence that we receive would be referred back to them to enhance their operations.

**Senator LUDWIG**—How many of the previous NCA staff who were identified as part of the Sagan operation have transferred to ACC?

**Mr Milroy**—All of them.

**Senator LUDWIG**—In the new menu of work, will you require all of the skills within those employees within Sagan?

**Mr Milroy**—Yes. They are fully engaged at the present moment and we are currently reviewing the work that we are required to conduct over the next 12 months as to whether we require some additional resources in the Sagan area.

**Senator LUDWIG**—So the review is an upgrade rather than a review of whether or not you have too many?

**Mr Milroy**—Yes. It is more to do with how we are going to use them effectively and, secondly, whether there is a need to increase—and at the present moment there is an indication that probably we would be looking to increase, but these are highly skilled people who are really very limited in numbers in the Australian law enforcement environment and overseas. So it is a delicate area and it is critical to the sort of work that we are doing.

**Senator BOLKUS**—So you would rule out laying people off in that area?

**Mr Milroy**—Yes, subject to their performance, of course.

**Senator BOLKUS**—The other project was the cybercrime investigation. What is happening with that?

**Mr Milroy**—As far as the funding is concerned, that has transferred across and the cybercrime project is continuing and, in particular, we are entering into arrangements with the Federal Police and their high-tech crime department. We are looking at not wasting resources in operations for both agencies where we can work together in partnership. Our cybercrime unit will continue to operate and service the ACC and work in close conjunction with the Federal Police high-tech crime unit. That operation will continue.

**Senator BOLKUS**—Do you expect savings from this greater cooperation with the Federal Police?

**Mr Milroy**—Yes, I would say so in the long term.

**Senator BOLKUS**—Do you have any idea as to what those savings might be?

**Mr Milroy**—Not at the present moment. We are looking at the possibility of looking at where we can save on shared services. We are looking at a number of areas to review. But, of course, we do believe that we need an in-house capability ourselves because of the sensitive nature of the operations and our targets for security reasons.

**Senator BOLKUS**—On the cybercrime project, do you anticipate savings there by this closer cooperation with the Federal Police?

**Mr Milroy**—It is mainly in relation to perhaps technology.

**Senator BOLKUS**—Page 261 of the budget statement says that two particular projects have lapsed. Which ones are they?

**Mr Newman**—The Sagan program that we talked about in terms of the tied funding for this year—

**Senator BOLKUS**—Tied funding?

**Mr Newman**—Yes. And cybercrime also had a carryover of \$1.5 million which we are using to once again continue the capability within the organisation. But the specific tied funding for cybercrime has lapsed.

**Senator BOLKUS**—So is the money the same for both cybercrime and Sagan?

**Mr Newman**—In terms of what? We have indicated that we will carry over \$3 million from Sagan, and the \$1.5 million carryover from unspent moneys on cybercrime will continue to establish our capability for cybercrime within the ACC.

**Senator BOLKUS**—I am trying to work out what the budget allocated to cybercrime was last year and what it is this coming year.

**Mr Newman**—We will have to take that on notice.

**Senator BOLKUS**—I would like you to take it on notice in respect to the Sagan initiative as well.

**Mr Newman**—Okay.

**Senator BOLKUS**—The 2001-02 annual report of the NCA has not been tabled as yet.

**Senator Ellison**—Yes, it has.

**Senator BOLKUS**—It should have been, but I am told that it has not been.

**Senator Ellison**—I gave instructions for that to be tabled. I will just check on that.

**Senator LUDWIG**—To be tabled today?

**Senator BOLKUS**—If it has not been tabled, will it be tabled next week?

**Senator Ellison**—No, it will be tabled today.

**Senator BOLKUS**—Someone was on the money. You must have known what was in our briefing notes.

**Senator Ellison**—This report is a little different. You have to remember that it has to go via the states and territories as well.

**Senator LUDWIG**—I was going to ask what the delay was, Minister. The last time I inquired I understood that a couple of agencies or others needed to sign off on the NCA report before it was tabled. Was that the case?

**Senator Ellison**—It is a little more convoluted than for a normal report because you also have the states and territories to consider as well. I think we had letters to come in from the states and territories on that and also from all the IGC members. I think that was the delay there.

**Senator LUDWIG**—When did it arrive on your table, Minister?

**Senator Ellison**—I would have to check. I will take that on notice and let you know. It comes to me first and then it goes around to all the others and then comes back to me.

**Senator LUDWIG**—I see. Perhaps you could tell us the two dates, then.

**Senator Ellison**—Okay.

**Senator LUDWIG**—Turning to the ACC: what resources do you allocate for the operation on people-smuggling and is a current project in place?

**Mr Milroy**—We are not involved, other than gathering intelligence in regard to that and most other matters. We are doing an intelligence probe in regard to the sex slave industry, which I suppose is linked, but we are not specifically involved in people-smuggling at the moment.

**Senator LUDWIG**—What work is that in relation to the sex trade?

**Mr Milroy**—That is an intelligence probe in conjunction with the Federal Police in regard to the sex slave industry.

**Senator LUDWIG**—Is there a menu of work or has a team been put together?

**Mr Milroy**—Yes, the board has been advised that we have been doing that for the last three or four weeks. We will report back to the board in September or, out of session, we will advise the Federal Police, or whichever relevant agency we believe requires the information, on the outcomes of our probe.

**Senator LUDWIG**—Can you explain how the work came about. Is there a reference or were you given a task by the board?

**Mr Milroy**—In regard to that particular matter, we took an initiative based on the information that we received. We consulted with the Federal Police and the chairman of the board and said that we would commence a probe because of certain information that the agency had received. We progressed that work and then advised the board that that was a project that we would continue to pursue over the next two months.

**Senator LUDWIG**—What can you tell me about the issue so far? Is it a major operation, a minor operation—I am not familiar with the term ‘probe’.

**Mr Milroy**—In an intelligence probe, normally it is talking to other agencies but at the same time perhaps gathering information from sources and, depending on the information we receive, it may require referral by the agency because it is evidence. But, as I said, we have been doing that for the past month and it would be touching on operational matters for me to comment any further.

**Senator LUDWIG**—Thank you. Turning to tackling hand guns in the community, there are news reports this week of a new national crime squad to crack down on illegal hand guns. Is that part of your operation?

**Mr Milroy**—Yes.

**Senator LUDWIG**—Is that a reference or an initiative?

**Mr Milroy**—That was carried over from the former NCA and was one of three or four matters that the new agency was pursuing from January. In March, when I came on board, we commenced the review following discussions with the board to refocus that matter for a future operation. On 13 May the board agreed to a special investigation which allows the ACC to use its coercive powers. That will be driven by the ACC under joint management arrangements, which will allow us to draw into the management arrangements the partner agencies which have task forces operating in respective jurisdictions.

**Senator LUDWIG**—Is this your first reference?

**Mr Milroy**—It is the first of the determinations, but the ACC has been operating on three or four fronts since January, in particular pursuing the former NCA matters.

**Senator LUDWIG**—Is this the first ACC reference?

**Mr Milroy**—This is the first of a number of determinations made by the board under the new instruments.

**Senator LUDWIG**—And you have applied the menu of work to this to organise the team.

**Mr Milroy**—Yes. We are currently in the process of doing that. It involves looking at the experience and results of the past five or six months and working with the various state and federal bodies who are also involved in this particular activity. Then we will finalise the program of work or the strategic plan. Once that is finalised, the resources with the appropriate skills will be allocated to the project, a head will be appointed and the project would commence and be managed by a governance committee which is chaired by me.

**Mr Cornall**—There were a number of determinations.

**Mr Milroy**—Yes. We have had a number of determinations made, other than the one that you have just asked me about.

**Mr Cornall**—I did want you to be left with the impression that there was only one new determination. There were a number of new determinations made on 13 May.

**Senator LUDWIG**—What else was made then?

**Mr Milroy**—There was a special investigation into South-East Asian organised crime, which was also a carryover matter from the NCA; established criminal networks, which again was a carryover matter from the NCA; money laundering and tax fraud, which was under a reference called Swordfish and for which the funding expired on 30 June this year—and of course the new tied funding under the Midas projects will allow that project to continue. That is a joint operation with the Australian Tax Office. Then there was a special intelligence operation on amphetamines and other synthetic drugs; and there was a special operation on vehicle rebirthing. So those six matters allow us to use the coercive powers.

There was an approval by the board for us to continue an intelligence probe in relation to identity crime, an intelligence probe on card skimming, a strategic intelligence assessment on cybercrime and, of course, the strategic intelligence assessment on people-trafficking, with a particular reference to the sex slave industry.

**Senator LUDWIG**—In relation to the hand guns, do you tie funding to that in terms of allocating a pot of money to determine how much resources—or do you have a resource allocation process?

**Mr Milroy**—Yes. We have made an assessment in regard to what resources we believe we would be required to apply to that particular project for a 12-month period, although this would be reviewed monthly. As you would appreciate, in these operations there is a tendency for things to sometimes develop fairly quickly and that might require additional resources for surveillance and electronic surveillance and Sagan type operatives to be applied to the reference. Based on our experience over the last six months on this particular project, and looking at what our partner agencies can also do in the particular field of activity, we have estimated what resources we need to put into this project, as we have done with all our projects, and all of them will be within the budget we have been given by the government.

**Senator LUDWIG**—Can you tell us what funding you have allocated?

**Mr Milroy**—At the present moment I would have to take that on notice because, as I indicated, we are now reviewing the project plan as a result of the intelligence we have been gathering and the investigations we have been carrying out. We have to enter into a discussion

with our partner agencies—in particular about how far they are prepared to commit their task forces to this joint management approach. Those discussions are becoming fairly favourable. Based on that, we will indicate the resources to be allocated to the project in a phased approach. The head would be appointed, and then we would cost it. We are introducing an activity costing process into the investigation area to ensure the maximum utilisation of our resources and that the managers are accountable for the usage of those resources and the associated costs attached to that.

**Senator LUDWIG**—Do you have an expectation of what the other joint partners would contribute in percentage terms, or is that the model you then work on and use?

**Mr Milroy**—In the past there have been some successful joint management arrangements, but in regard to their handguns, and this applies to other references, there are state task forces and federal task forces that specialise in these areas at the present moment. To ensure that we can effectively destabilise some of these syndicates, there is an agreement now, because of the commitment of the board, which is representative of all state and federal police forces and other law enforcement agencies, to actually work together more closely in pursuing these targets. Although the state task forces would pursue their local work, the agreement on targeting and the exchange of intelligence, and of course the utilisation of our coercive powers, allow for this collaborative approach to perhaps gain far better results than has been the case in the past. With the board fully committed to this more national approach, I am fairly confident that all the state and federal bodies, including Customs and ASIO, at this stage have given their undertaking to work together where they can.

**Senator LUDWIG**—I am using this as an indication of how you expect it to proceed: am I right to assume that you get together your team, there is an expectation of what the joint partners will contribute, you work out an overall cost and then you apply it and away you go? If the expectation of what the joint partners are going to contribute is not realised, what happens then?

**Mr Milroy**—When I say they contribute, they contribute in terms of the conduct of their operations; they do not contribute in terms of funding at this stage, although there is a commitment by some to second staff to our agency at their cost. These are negotiations that are currently under way. Their task force would operate, for example, pursuing their state matters but fully aware of the targets that they are working on and we are working on. In other words, there would be some work done by state and federal task forces that would alleviate the need for us to pursue some of those activities, which allows us to focus more directly on our targets at the top of the pyramid. There is no actual cost contribution; there may be a joint operation where their resources would join with ours to pursue or execute search warrants. They may arrest some people on our behalf and interview them and free up our resources to focus on the major project. It is more that sort of collaboration at this stage.

**Senator LUDWIG**—How do you work out a budget for that collaboration?

**Mr Milroy**—We take that into consideration at the early stages where there is an agreement to pursue the activities in this particular area. For example, with the hand guns we would know what sort of commitment the state and federal bodies are going to put into that particular area of activity, we would draw on that knowledge and then we would apply our

resources to the particular area that we are going to pursue. That would be a weekly arrangement. You cannot put a cost on it at the moment but we are factoring all that into our activities.

**Senator LUDWIG**—Can you come up with a ballpark figure as to how much money you would expect to earmark for, say, this project?

**Mr Milroy**—No, not at the present moment; not until we finish reviewing the project plan for this particular matter. That is currently under way.

**Senator LUDWIG**—When will that be completed?

**Mr Milroy**—Possibly in the next few weeks. We finalise the appointment of the head of the investigation next week. That will probably be a state officer seconded from a state police force—a commissioned officer. But in regard to the other matters, the heads of those will be from within the ACC.

**Mr Cornall**—May I make some observations about what Mr Milroy is saying? Firstly, he is talking about internal budgets, which are obviously subject to change as an administrative matter depending on how matters go.

**Senator LUDWIG**—I understood that.

**Mr Cornall**—Secondly, the arrangements put in place for the new ACC contemplated that there would be joint task forces on some matters.

**Senator LUDWIG**—I understood that.

**Mr Cornall**—In the budgeting that Mr Milroy does, he will be able to say that a certain police force might provide X number of officers or a certain police force might undertake some portion of the work, so the ACC does not have to pay for that.

**Senator LUDWIG**—Yes. I thought Mr Milroy explained that quite well.

**Mr Cornall**—The third thing is that there is an issue about how far we go about explaining what budgets are for particular investigations and putting those details on the public record. There is also the issue of whether or not information about how much we are prepared to spend on a particular reference should necessarily be in the public arena.

**Senator LUDWIG**—I assume Mr Milroy would know when to stop.

**Mr Cornall**—It is Mr Milroy's first visit here. I am sure he is trying to be very helpful.

**Senator LUDWIG**—I thought you might have briefed him, Minister.

**Senator BOLKUS**—People become less helpful the more often they come here.

**Senator LUDWIG**—If that is the case I should strike early, then. What can you tell us about Swordfish; where was it and where is it going to now?

**Mr Milroy**—Swordfish was a money laundering and tax fraud Commonwealth project which has been running for the last three years. The funding expires in June. The lessons learnt from that project—which, as you would be aware, is a joint project with the Australian Tax Office and AUSTRAC—led to the submission for Midas, which the government has approved the tied funding for. Drawing on the experiences of Swordfish, Midas is a similarly directed project which has funding for four years. Staff involved in Swordfish will probably

continue on that project, with some additionally skilled people added to the project team. That is where we are at the present moment. That again falls into the same area where their project plans have to be submitted to me and the governance committee for approval in regard to their menu of work.

**Senator LUDWIG**—If I recall correctly, it was one of those ones which it was considered might end when the NCA finished. There was some conjecture or concern about that—if I have that right; I am happy to be corrected. You are now saying that the project has been picked up, the employees that were employed under Swordfish are now ongoing and that that program will continue. Is that roughly right?

**Mr Milroy**—That is correct.

**Senator Ellison**—Albeit in another form—it will not continue as Swordfish.

**Senator LUDWIG**—Will it have a new name?

**Mr Milroy**—Midas.

**Mr Cornall**—That is again a special project with a limited life span of four years. It has not become part of the base funding of the organisation. It has a four-year funding cycle.

**Mr Milroy**—It does not constitute base funding.

**Senator LUDWIG**—Is that tied funding?

**Mr Milroy**—Yes, it is.

**Senator LUDWIG**—How much is the tied funding for that?

**Mr Newman**—About \$30 million.

**Senator LUDWIG**—Over how long?

**Mr Newman**—Over four years.

**Senator BOLKUS**—While Senator Ludwig is working out the funding, it maybe a silly question but how did you come up with a name like Swordfish and why have you changed it to Midas?

**Senator LUDWIG**—They watched the movie.

**Mr Milroy**—That was done before I got there.

**Senator Ellison**—I think what is important is not that the name might have changed but that the inquiry itself has changed. As Mr Milroy said, it has taken on a new format. It has adapted to the threat which is being dealt with. There was previously a lot of pressure to continue funding for the old Swordfish. As was said at the time, it would be reviewed by the tax office principally and others as well. Certainly in this changing climate of criminal threat to carry on with more of the same is not necessarily the best. Midas has been adapted to meet not an entirely new but a changing area of threat. It is still dealing with money laundering and fraud on the Commonwealth, but we are seeing different methods of operation and different threats.

**Mr Milroy**—I think it is the old saying that the criminals learn from law enforcement activities and change their methods accordingly, and we have to adjust. This is one of the processes of dealing with these sophisticated, profit driven crimes.

**Senator BOLKUS**—I can understand that. It was just the name Midas. You are obviously optimistic about its prospects.

**Senator LUDWIG**—And not the end result of the fable. How many other projects with tied funding are under way?

**Mr Milroy**—There is tied funding for the ALERT project, which is part of the intelligence database, and for Midas. There is also \$2 million allocated under the NIDS program for enhancement of the ACC's technical capacity for telephone intercepts.

**Senator LUDWIG**—That is a total of what?

**Mr Milroy**—ALERT started in 2002 or 2003 and goes through until 2005-06. For the next financial years there is \$2.82 million, \$2.88 million for 2004-05 and \$3.9 million for 2005-06, and Midas is \$7.28 million, \$7.44 million, \$7.54 million and \$7.71 million.

**Mr Newman**—The \$2 million for enhancing the technical capacity is built into the forward estimates.

**Senator LUDWIG**—The \$4.5 million is effectively the overspend for this year.

**Mr Newman**—Yes, essentially it is the carryover funding which we are expending in this financial year.

**Senator LUDWIG**—Where do you have to find that from? Is there an advance?

**Mr Newman**—No, this is money that we actually have which is a carryover.

**Senator LUDWIG**—But you have got to then show it as a minus.

**Mr Newman**—We have got to show it as a minus because we are expending it over and above our appropriation as such.

**Senator LUDWIG**—Is the appropriation of the \$65-odd million inclusive of all this tied funding?

**Mr Newman**—Yes, it is of our existing tied funding—our official tied funding. The carryover is the difference.

**Senator LUDWIG**—When you take the tied funding out, what is your budget left with?

**Mr Newman**—We have got about \$11 million, nearly \$12 million, of tied funding in this financial year. It is about a fifth of our total budget.

**Senator LUDWIG**—That roughly goes from year to year; it is roughly about \$11 million each year, including the out years.

**Mr Newman**—Yes, at this point.

**Senator BOLKUS**—Does your research indicate any new or emerging areas that you anticipate will be of greater interest to you in the next two or three years?

**Mr Milroy**—We are monitoring that all the time. We have a threat assessment unit. I do not think it would be appropriate for me to comment or give opinions on matters that may or

may not affect the community, but we have got a fairly rigorous program in place to ensure that we, in consultation with our partner intelligence agencies, are picking up these matters that you might call over-the-horizon. We are effectively advising the board, even out of session, and other agencies of these particular threats. This is a day-to-day issue and we have got extensive feelers out, naturally; we do not just canvass the Australian environment, we are looking at global issues as well.

**Senator BOLKUS**—So there are none that you would like to tell us about or identify now?

**Mr Milroy**—No, none other than the actual work that we are publicly working on.

**Senator Ellison**—Mr Milroy has outlined to the committee the eight new determinations. Card skimming, identity crime, vehicle rebirthing, amphetamines and other synthetic drugs are largely new areas of emerging threats for the future. So, in the short space of time that the ACC has been in operation, it is addressing these areas. It has also been intelligence gathering on sex trafficking, which was not on the NCA's radar. So what we have is certainly an identification of emerging threats on the Australian criminal horizon or spectrum, and these are issues which are all very important. Mr Milroy is quite right in what he says about identifying other more covert matters; these issues are publicly on the record and they are new emerging threats in the criminal scenario for Australia.

**CHAIR**—I appreciate that in your responses, Minister and Mr Milroy, you have been trying to walk the tightrope between matters that can be discussed in a public forum such as this and matters that cannot. I think the information has assisted the committee.

**Senator BOLKUS**—Focusing on the National Illicit Drug Strategy, there is something like \$2 million allocated each year for the investigation of illicit drugs and other crimes. I think it is mentioned in the budget statement. What other crimes are we talking about here?

**Mr Milroy**—I will have to take that on notice.

**Senator Ellison**—Which page are you referring to, Senator Bolkus?

**Senator BOLKUS**—I will take that on notice too, but 'other crimes' is mentioned. You may want to take this on notice as well: are the ACC's activities primarily focused on particular classes of drugs such as amphetamines at the moment or are they broader than that?

**Mr Milroy**—I think the determinations made by the board were looking at amphetamines and other synthetic drugs, but the actual intelligence department, because we are setting up the national database, is receiving information from our partner agencies both here and overseas and we are conscious of receiving information on a variety of activities on areas of criminality. So, although we are not actually working on special investigations or special operations as approved by the board in those areas, our intelligence department is gathering intelligence from all organisations in Australian law enforcement and overseas. When we do receive intelligence we are conscious of these things and we refer it to our partner agencies or they can access the information directly. So we do have a collection process in place from a national point of view.

**Senator BOLKUS**—In respect of amphetamine laboratories in Australia, what level of interest have you got running in that area?

**Mr Milroy**—As I indicated, it is under the special investigations and special intelligence operation. Amphetamines cover the whole spectrum.

**Senator Ellison**—Both imported and those made domestically. I also point out that South-East Asian organised crime determination also touches on drugs as well as the other one on amphetamines. That also extends to heroin. On the question Senator Bolkus asked about drug trafficking and other major crimes, I think what is meant there is related major crimes such as associated money laundering, which we find travels side by side with drug trafficking. In the drug industry you do not have to go very far before you find other associated crimes which are being perpetrated—violence, murder, money laundering. What goes along with that whole criminal industry is a collection of other major crimes.

**Senator LUDWIG**—Just turning to the relationship between the new board and the ACC operationally, how does that now interface: will you either develop your own program or undertake your own work but also get references from the board?

**Mr Milroy**—That is correct.

**Senator LUDWIG**—Will the board then monitor or ask for a report or feedback as to how that reference is going?

**Mr Milroy**—Yes.

**Senator LUDWIG**—You will then attend the board and that will turn up on the minutes of the meeting, and then, if you are the person who is specifically looking after that program, you will be able to report on how it is progressing. Is that how you are envisaging it operating? I am trying to get an understanding of how the new operation will interface with the board.

**Mr Milroy**—Yes. I have a responsibility to report to the board either out of session or at the nominated board meetings. Out of session is where, for example, we receive information that is, as Mr Cornall indicated, deserving of the need for the board members to consider setting up a national task force because of a specific matter of concern. So I have that duty to advise the board out of session and seek their approval or their involvement. In normal board meetings we report in detail on the status reports for the matters that they have made determinations on and also on the matters that are on the menu of work, such as the intelligence probe. In addition to that, I consult the board members out of session in relation to the participation of their individual state and federal bodies in some of these programs.

**Senator LUDWIG**—What happens if there is a disagreement in terms of what work you have commenced and what the board wants you to do?

**Mr Milroy**—That has not happened. I am not in a position to comment on what discussions the board members might have at a board meeting or, as you would appreciate, which other parties they consult out of a board meeting when it comes to their decision making. But that has not occurred at this time.

**Senator LUDWIG**—It is a bit difficult. I was not asking you to put yourself in the shoes of the board members, but is there a mechanism to overcome a disagreement if there is one? But that is hypothetical—

**Mr Milroy**—Yes.

**Senator LUDWIG**—and we will not go there at this point in time. I will wait for one to occur, I suspect.

**Mr Cornall**—On that issue, Mr Milroy is the head of the ACC and the board's responsibilities are to provide strategic direction and set priorities for the ACC. So there is in the act a clear role for the board, but it certainly does not extend to operational responsibility, which is vested in the CEO.

**Senator LUDWIG**—I accept that. I was just wondering how it would work in a practical sense if there were a strategic direction because of a program that Mr Milroy might set in place—which would seem appropriate from his perspective, sitting as the manager of all the operations—and the board takes a view about a different strategic direction with a different prioritisation. But, as it has not arisen, I think that we would be going into a hypothetical area that I do not want to really try to go into at this point in time.

**Mr Cornall**—We are. The only other comment about it is that the board makes the determinations which Mr Milroy and his team will be working on. So the board has to have some commitment to that before Mr Milroy can even start the work.

**Senator LUDWIG**—He would not get his coercive powers if he wanted them, and they would talk it out, I would hope, before they got themselves into that position. On the use of coercive powers, do you report to parliament as to how many times they are used annually?

**Mr Milroy**—Do you mean have they been used since January this year?

**Senator LUDWIG**—Yes.

**Mr Milroy**—Yes, they have been used.

**Senator LUDWIG**—How many times have they been used?

**Mr Milroy**—The number of days of hearings? Bear with me for a second. In relation to the new determinations, the examiners have not carried out any hearings at this stage but, in regard to the carryover matters from the NCA, I could take that on notice and give you an answer.

**Senator LUDWIG**—My next question is to the minister. With special projects such as Midas, do you normally give the opposition or the shadow minister a briefing on those broader programs and how they are going? How does that work? I am not familiar with it, but I am curious about when new programs develop such as that, especially the strategic direction whereby you now have references of eight or so.

**Senator Ellison**—Coming up in the first week of July, we have the intergovernmental committee on the Australian Crime Commission that state and territory ministers attend. I chair that meeting. A report is given to that meeting by the CEO and the chairman. So there is a briefing, in that sense, given to the states and territories. In relation to the ACC, I do not think I have received a request for a briefing from the opposition in relation to matters being dealt with by the ACC, but I know we have the parliamentary joint committee which does have to be briefed.

**Senator LUDWIG**—That is what I was going to next.

**Senator Ellison**—So you have the opposition being briefed via that committee. But, as my office, or the practice in my office has indicated, I am not averse to giving briefings to the opposition spokesman from time to time in relation to these matters. But there are very formal mechanisms for the opposition to be briefed—the parliamentary joint committee and also the states and territories through the IGC.

**Senator LUDWIG**—So if they asked for a briefing, you would be forthcoming with offering a briefing in relation to those projects?

**Senator Ellison**—It would depend on the operational matter, because we have had this issue with the PJC. I have just been given a note that there was a briefing requested on Midas from the opposition, but that was being considered in the budgetary context and, because of that, we really could not give a briefing, as you would understand. But, certainly, I cannot see a problem with a briefing in relation to that, should the opposition spokesman seek one—on the understanding that there are the usual constraints when dealing with operational matters. But the PJC has similar constraints as well.

**CHAIR**—Indeed, Minister. I might say that this committee, with the agreement of the opposition, will probably seek a briefing from the ACC in its new incarnation with its new CEO in due course also.

**Senator Ellison**—I have no problem with that, Madam Chair.

**Senator LUDWIG**—Thank you, Chair. I did not want to go there on the record and second guess the chair of the committee.

**Mr Milroy**—I can advise you that, in relation to your question on the use of coercive powers, from the period 1 January to 30 March, we conducted 62 hearings and they are related to four of the matters which were carryovers from the NCA, which relate to the determinations that have now been made by the board.

**Senator LUDWIG**—Thank you. I will ask this question, but bear in mind that you may not want to answer it. I am curious—and this really comes from examining that last NCA report—about how many of those 62 hearings led to prosecutions in relation to people who remain silent?

**Mr Milroy**—We would have to take that on notice.

**Senator LUDWIG**—I am curious about it being a coercive power and that you require people to talk to you.

**Mr Milroy**—That is correct.

**Senator LUDWIG**—So you have had 62-odd hearings and, if I do not ask the next question, I assume that people have provided information to you that you have requested.

**Senator Ellison**—You want a success rate.

**Senator LUDWIG**—Yes; I want to know if the hearings have been successful, but that is probably not a true indication of what really happens.

**Senator Ellison**—It is the quality of the information really that counts.

**Senator LUDWIG**—So I wonder how many people do not talk and then what happens next as to what the follow-up action is—whether you prosecute them or whether you just move on.

**Mr Milroy**—You would also notice that special intelligence operations are slightly different from special investigations. In other words, you gather the intelligence from a variety of fields and look at what strategic results you would get by using the coercive powers. But it may be that using the coercive powers in all your areas enhances your intelligence understanding of a particular area. In other areas, of course, you would have the opportunity to examine documents. In particular, with the money laundering, those powers allow the examiners to question people from the financial sector and bankers et cetera. But we could provide those statistics on the 62 to date on what results, if any, were in relation to arrests, as you indicate.

**Senator LUDWIG**—Thank you. Going back to the board, trying to get a better handle on that information flow, do you report back? Is it a quarterly meeting?

**Mr Milroy**—Quarterly, yes.

**Senator LUDWIG**—At that time, do you provide an overview of, say, what is happening to those references and the hand gun program?

**Mr Milroy**—Yes. In addition to that, we provide a monthly report to the board members, which basically relates to our outputs. It covers all of the matters that we have currently been successful in—to do with intelligence, threat assessments, arrests or the use of the coercive powers—so that the agencies involved can understand what the ACC is doing in specific fields. In particular, where we have referred intelligence to partner agencies, it allows the board members to realise just what information we are referring to their agency; it allows them to check on what their agencies do with that information—whereas, in the past, there was no sort of process in place to ensure that there was a follow-up. So that is a monthly process.

There are matters that I would advise the board on out of session where necessary. In addition to that, there is also a committee, as Mr Cornall indicated, under the act for the board to look at the strategic direction and priorities of the ACC, and there is a committee formed of board members who would look at and consider the results of our work in between board meetings. That process is fairly rigorous.

**Senator LUDWIG**—When do I get the board members before the committee?

**Mr Cornall**—Before this committee?

**Senator LUDWIG**—I do not think that requires an answer.

**CHAIR**—It was rhetorical, I think, Mr Cornall.

**Senator Ellison**—It involves other governments; that is the problem—because we have police commissioners and the like.

**Senator LUDWIG**—The budget papers at page 257 show that \$30 million has been allocated over four years to target money laundering and fraud. Is that the project you were talking about?

**Mr Milroy**—Yes.

**Senator LUDWIG**—Is it just the one?

**Mr Milroy**—Yes.

**Senator LUDWIG**—What about identity fraud? Is that a separate one again?

**Mr Milroy**—Identity fraud is an intelligence probe that is funded out of our base funding.

**Senator LUDWIG**—Does that have a name?

**Mr Milroy**—No, it does not.

**Senator LUDWIG**—You will keep the matter separate, I suspect, if I ask.

**Mr Milroy**—We have not allocated a fancy name to that yet.

**Senator LUDWIG**—How is that going? Is that an internal matter or is that a reference? I do not remember it being part of the references that you read out earlier.

**Mr Milroy**—Yes, it was one of the ones where the board are aware that we have been doing an intelligence probe with identity crime and again, of course, we have been working very closely with the federal authorities to enhance our understanding of that particular area.

**Senator LUDWIG**—Looking at the portfolio budget statement at page 260, a performance review will be undertaken during 2003-04. Have you had an opportunity to look at what that review will involve?

**Mr Milroy**—That relates to the development of the organisation. We are looking at a corporate plan that is currently being developed to ensure links to the business plan and the business unit plans of the agency, which again are being developed because we have gone through an interim structure—and linked through to the performance measures that are tied back to the outputs that were agreed to by the government.

**Senator LUDWIG**—So you are going to spend the next while developing a business plan?

**Mr Milroy**—Yes, we are doing that at the present moment. We have a corporate plan in draft and these things will go to the board.

**Senator LUDWIG**—Will that be the entire ACC operation, including the board, or just the ACC without the board, or—

**Mr Milroy**—The ACC.

**Senator LUDWIG**—Will the board participate in the development of business plan?

**Mr Milroy**—We will refer those to the board for information. The board members have actually commented at a session with regard to the first draft corporate plan.

**Senator LUDWIG**—Are there any aspects of your operation that will not be included?

**Mr Milroy**—No, everything will be included.

**Senator LUDWIG**—When will the result be known?

**Mr Milroy**—The result of?

**Senator LUDWIG**—You have got a review of its performance as part of its integrated performance management process, evaluations are planned, so there is a suggestion that the

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review will develop a business model, but you will also then be assessed in terms of your performance, your effectiveness and an integrated performance management process—whatever that means.

**Mr Milroy**—That will be an ongoing process, because we are reporting to the board monthly—as well as at each board meeting—on our performance. Also with regard to the board committee on our strategic direction and priority, we were looking at our performance as well.

**Mr Newman**—Senator, I might add that that will also include our ongoing budget reviews, aligning our business plans to the operational models to support those as well. So it is an internal review process to complement the operational model.

**Senator LUDWIG**—So there is not a date for a review or a performance to finish. It is ongoing, in that sense.

**Mr Newman**—It would be ongoing. We would see this built in as part of the performance management of the organisation on an ongoing basis.

**Senator LUDWIG**—Is there a business model that you follow?

**Mr Newman**—The model, as Mr Milroy has outlined, is one where we are making sure that we align essentially our business unit plans—that is, bring it down to the operational levels—to our overall business plan and our strategic plan, and linking that to the performance measures we outline in our corporate plan and to the output statement for the government. At the other end of the spectrum, we are also making sure that we try to align that to individual work plans of our staff, so that they can understand the context in which they are operating as well.

**Senator LUDWIG**—So you would get the board to do a workshop to come up with a strategic view.

**Mr Newman**—No. As Mr Milroy has indicated, we are developing it.

**Senator LUDWIG**—What can you tell me about the co-location with the AFP in Melbourne? Where are you up to? You have co-located in Melbourne?

**Mr Milroy**—We have actually co-located in Melbourne. We are also co-located in Canberra and in Perth. Where we are co-located in those areas, you end up with a national law enforcement centre.

**Senator LUDWIG**—Are you intending to co-locate in any other locations? Are there plans for Brisbane or—

**Mr Milroy**—The lease in Brisbane has a few more years to run; the lease in Sydney, where we are leasing in the private sector, comes up in two years—which will have to be reviewed. We are doing a review anyway, because the type of work that we are undertaking is requiring us to revisit our accommodation arrangements—in particular the establishment of investigation teams on specific floors. We are revisiting all of that at the present and looking at where we can make savings. We will take into consideration our requirements in Sydney, our rental arrangements and what may also be available.

**Senator LUDWIG**—But no decisions have been made yet.

**Mr Milroy**—No.

**Senator LUDWIG**—What can you explain about the co-location in Melbourne? The last time we were here I did not really get a clear picture and I thought I would try again to see if I could work it through with the new organisation. As I understood it at the last round, Mr Bradley told the committee that the cost incurred by the former NCA in co-locating with the AFP in Melbourne came to \$3.6 million. At that stage no determination had been made as to whether that would be the subject of what I understood to be a loan, but I am happy to get clarification on that. The question now is whether there has been a decision made on that. As I understood it, that \$3.6 million was used out of the NCA's budget to effect the co-location with the AFP. It was not budgeted, as I understood it, out of the NCA, and therefore it was a reduction in real terms of money available or cash-in-bank of the NCA. I think Mr Bradley indicated, but I am happy to be corrected, that it was effectively something that could be repaid. When you then took over the operation of the ACC, was that inclusive or exclusive of that debt of \$3.6 million? Does someone still owe you \$3.6 million for the co-location or has that been absorbed in your operation now?

**Mr Newman**—It has been absorbed into our operation. As you would appreciate, in the transitional period some lower operational activity allowed us to accommodate that \$3.6 million. There is no debt as we see it at this point in time. There would be no expectation of the agency that we would receive that. We were able to accommodate that with our cash reserves at that point.

**Senator LUDWIG**—So you ended up footing the bill for the co-location.

**Mr Newman**—Essentially yes, but not to the detriment, we believe, of any of our operations at that time.

**Senator LUDWIG**—You spend \$3.6 million on co- location that you otherwise would have spent on operational work. That is right, isn't it?

**Mr Newman**—When I say operational work, it could have been covering the whole gamut of the organisation. In terms of staffing, we did not recruit during some phases of the transition period, which meant we did not have the same staffing bill et cetera. That all offset some of the costs of this.

**Senator LUDWIG**—What happened to the Department of Finance and Administration? Do they write to you to say they are not going to give you \$3.6 anymore or they are not going to foot the bill for the co-location?

**Mr Newman**—I would need to check that. I will take it on notice—

**Mr Cornall**—I think I can advance this. Because the organisation was able to absorb the expenditure, there did not seem to be any point in pursuing the loan with Finance, which would have to be repaid in any event. That was the advice that Mr Bradley gave the board at a meeting earlier this year when he was the acting CEO and the board accepted that advice. The matter was simply not pursued with Finance.

**Senator LUDWIG**—Is there correspondence from Finance about the matter, Mr Newman?

**Mr Newman**—I would have to take that on notice.

**Mr Cornall**—I do not know. That would have been with the ACC or the NCA. I have not seen correspondence, but that was the substantive outcome.

**Senator LUDWIG**—All right. But if there is correspondence that explains the transaction, it would be helpful if you could make that available to the committee. Is it usual for the NCA or that organisation to underwrite the AFP's co-location?

**Mr Cornall**—I do not think it was the AFP's co-location costs, it was the NCA's costs of establishing its offices within the AFP's premises. So it was clearly an NCA cost when it was incurred.

**Senator LUDWIG**—In terms of staffing, last time I did get the impression that there was a considerable amount of uncertainty, so I am happy to be corrected if I have taken away the wrong impression. The impression I got was that at that point people were very concerned about their ongoing employment. What can you tell me about the transitional arrangements in terms of whether there was a turnover rate of the NCA as distinct from the ACC, whether of all those employees transferred over or any were lost in the process and whether some non-ongoing employees were not continued? How were those sorts of issues dealt with in the transition?

**Mr Milroy**—There were no terminations. I think the total number of staff at January, which includes secondees, is basically comparable to the number we have today. Yes, there have been some staff who have left to pursue other careers. In relation to the issue of non-ongoing staff, we have had meetings with the union to try to overcome this issue. Forty-six per cent of the APS staff were non-ongoing, and we have begun a program with the union's agreement. We have been advertising positions for the last three or four weeks, and we will continue to do so across a number of skilled areas, to effectively reduce the non-ongoing positions from 46 per cent to 28 per cent. That allows non-ongoing staff to apply for ongoing positions and also of course allows us to recruit external to the organisation.

**Senator LUDWIG**—Do you have a matrix that is available to the committee of your current staffing and those who have left—for argument's sake, the seniority or the position since 1 January—or is it the case that no-one has left?

**Mr Milroy**—Yes, people have left. I can take that on notice and provide details from 1 January. There is a variety of levels from directors through to APS positions. We can give you that on notice.

**Senator LUDWIG**—I take it that your annual report, when it comes up, will include the matrix of staffing levels?

**Mr Milroy**—That is correct.

**Senator LUDWIG**—I suspect if you are preparing a business plan, you already have that as well. If that could be made available to the committee, providing it does not give away any trade secrets, it would be appreciated. If it does, then perhaps you could deal with the Chair and work out a compromise, if you would not mind.

**CHAIR**—We do not want anything tabled that should not be presented to the committee, because it all must be received in public—being an estimates submission.

**Mr Milroy**—Of course.

**Senator LUDWIG**—Do you have worked-out rates, turnover rates or sick leave rates or indicators that would suggest what the morale is like? How do you determine what the morale of your organisation is?

**Mr Milroy**—Basically, because I was aware of the staff issues that they had to go through leading up to 1 January, I spent some considerable time talking to all of the staff from all levels. There has been quite a lot of consultation—basically on a weekly basis. The unions have been very complimentary to the organisation for the consultation process we have put in place. We have also involved a cross-section of all staff in helping to develop the new organisation. That is in relation to the integration and development program we have in place which crosses over all parts of the requirements to build a new organisation. Staff are participating in that process. In relation to the staffs' concerns, particularly those who were worried about their positions—those whose contracts expired on 30 June—we have taken the action I indicated before to speed up that process to allow people to have the opportunity to apply for ongoing positions.

Generally, I think there has been an improvement in the morale. We have recently introduced a new interim structure, with greater emphasis on using the skills more effectively, and the staff have contributed to that process. I believe the board's decision on 13 May, with a menu of work for the next 12 months, has clearly indicated that the organisation has a place in law enforcement. I have even received individual emails from general staff members indicating their satisfaction so far with the process.

There is a lot more work to be done in relation to the culture. We have three organisations which have merged and they have to move down and perform new work in a different area, but they have all been encouraged to participate. There is also an extensive consultation program in place. But, of course, you cannot always please everybody.

**Senator LUDWIG**—Do we have the annual report yet—in case there are questions?

**Senator Ellison**—Do you mean today?

**Senator LUDWIG**—Yes.

**Senator Ellison**—We can get you a copy right now.

**Senator LUDWIG**—I thought it had been tabled. Chair, the only question I have is, if there are matters that are now in the NCA report that I want to address to the ACC, when might I do that?

**CHAIR**—I imagine at the next set of estimates.

**Senator Ellison**—We can come back.

**Senator LUDWIG**—I will be able to quickly determine that.

**Senator Ellison**—I thought it would have been tabled by today. We will come back later this afternoon or on Friday, if necessary.

**Senator LUDWIG**—Thank you, Minister. That may not be necessary. If I can have an opportunity to have a quick read, probably during my lunch break—

**CHAIR**—I think we are seeking a copy for you now.

**Senator LUDWIG**—I will be able to provide an answer by, say, 2 o'clock as to whether there are matters I wish to address.

**CHAIR**—That would be helpful. Mr Milroy and Mr Newman, thank you very much for assisting the committee this morning. As we have just indicated, there may be some questions that arise out of the tabling of the NCA annual report. We would appreciate you remaining close by until we get some idea of that process.

**Proceedings suspended from 10.51 a.m. to 11.00 a.m.**

**Australian Law Reform Commission**

**CHAIR**—I welcome Professor David Weisbrot and Ms Rosemary Adams from the Australian Law Reform Commission and seek questions in relation to the budget estimates of the Australian Law Reform Commission.

**Senator KIRK**—On page 382 and page 383 of the PBS the commission warns that, due to increased salary and rental costs in Sydney, it may have to reduce staff. It estimates that it will lose a full-time commissioner and a legal officer in 2004 and a further position in 2006-07. Is that correct?

**Prof. Weisbrot**—It might be easiest if I summarise our budget position. We spend about 62 per cent of our budget on salaries, about 14 per cent on rent and the rest on a range of things like travel, printing, stationery, computer equipment, web access—all of that grab bag. Our rental expenses go up by a fixed rate of about four per cent each year under our new lease, which is fairly standard in the Sydney CBD. Our salaries go up by about three to four per cent under the enterprise bargain that we have struck with staff. We are renegotiating that, but it should be in roughly the same band. CPI on those other factors goes up by whatever the budget figure is—about two per cent. So it is about a 10 per cent increase each year.

As you can see from the appropriations in recent times, the budget has been going up by two per cent, nought per cent, four per cent, 1½ per cent, 1.65 per cent—those sorts of figures. It is in that gap that the crunch comes. Until it bites a bit harder, the absolute staffing levels probably are not completely indicative, because we have made some decisions ourselves about how to allocate that. We are operating with four commissioners, whereas in times recently there have been three or two. We also have our legal staff skewed towards the top end—they are mainly senior legal officers which, in our award, also comprehends principal legal officers in the Public Service. We find that using more senior staff is a much more efficient way for us to operate, given that we do applied research rather than theoretical research.

We have also in recent years used our expert advisory committees a bit more heavily and, I think, sensibly. There are obviously certain expenses involved in that as well but that would substitute for some absolute staffing. The general message is that we have an adequate staffing complement to do the work we are doing at the moment; however, that has pushed our budget deficit last year and in the approved year forward to about \$180,000 each year. We are able to absorb that from our accumulated reserves for some more years with the little bits of increase we are getting, but at some stage down the track something has to give.

**Senator KIRK**—You say on page 383 of the report:

To achieve a balanced budget in 2004-05, given the forward estimate of revenue, the Commission will have to reduce staffing levels further. It is estimated in 2004-05 a fulltime Commissioner and one legal officer will be lost, and in 2006-07 a further position will be lost.

Is that the estimation at this point?

**Prof. Weisbrot**—That is right. Essentially we are working backwards from the figure, which would be a couple of hundred thousand dollars, and saying that is about the equivalent of a full-time commissioner and a staff member. That is to achieve a balanced budget at that time, yes.

**Senator KIRK**—On the same page, it says:

The Commission currently has the lowest staffing level since 1983.

Is that the case?

**Prof. Weisbrot**—That is right. Again, as I mentioned earlier, though, we could take the same budget resource and spin out a larger number of people, but we would prefer to operate on a more senior staffing profile. For example, if we had one fewer commissioner and a couple fewer senior legal officers and put that money into junior legal officers, we would get more people. I think that the complement that we have at the moment is appropriate for dealing with two significant references at a time. Again, if we got below that core, we would have to look at making some adjustments, whether that was dealing with fewer references or whether it was perhaps having slightly more generous time lines. Part of the reason we need a significant staffing level is that we are unlike some previous generations at the commission. When they did projects, they took seven or nine years. We are now tending to do all of our projects in a year or two, or two and a bit years. Obviously you need some staffing to accommodate that. If the time lines are a bit generous, that would allow us to operate on a little bit lower budget. We would also in future have to review other activities. We put out the journal *Reform* twice a year. If our budget was leaner, we would have to review that and perhaps do it once a year. There are conference commitments and those sorts of things.

**Senator KIRK**—Thank you. You have mentioned that, in the past five years, the number of positions has reduced from 29 to 22, but I understand from the explanation you have just given that that has more to do with the way the positions have been organised rather than being an actual reduction. Is that correct?

**Prof. Weisbrot**—There has been an actual reduction in effect, but it is more to do with the way we organise it. We could take that same corpus of money and, I am sure, achieve 29 staff members but I do not think that would be the most efficient way for us to operate.

**Senator KIRK**—When you are talking about these projected reductions in staff that you are looking at over the next three to four years, you say:

These reductions in staffing levels would challenge the ability of the Commission to maintain its current output levels—either in terms of the number of references handled simultaneously or the timeframes in which they are completed.

That follows, I suppose, from what you said a moment ago—that you would be looking at reducing the number of references or expanding the time frames. Is that correct?

**Prof. Weisbrot**—That is right, yes. At the moment, we are handling two significant references at a time, and that is achievable. Also, as I say, we are doing them in pretty tight time limits. If you look at the size and, even more importantly, the quality of the reports, you need some personnel to be able to manage those in the time limits.

**Senator KIRK**—So you would say that the reductions in sizing over the last five years has not had a significant impact on the output of the commission in relation to references and other matters?

**Prof. Weisbrot**—No, I do not think it does to date. Mostly what we were warning of is the logical conclusion of a budget crunch if it is not remedied some time down the track.

**Senator KIRK**—Could you just inform the committee what the two references are that you are working on at the moment?

**Prof. Weisbrot**—We just completed the protection of human genetic information reference. That report will be launched later this week. One of the two new references is essentially a follow-on from that. A shorthand version of the title would be ‘gene patenting and human health’. We are looking at the implications of intellectual property rights held over genetic materials and genetic technology for further research on the delivery of clinical services. The other reference is on classified and security sensitive information and its handling in legal proceedings.

**Senator KIRK**—How many staff do you have working on each of those references? How does that divide up?

**Prof. Weisbrot**—There are two full-time commissioners on each plus about four or three legal staff on each. Then of course we use our librarians and project assistants, and others are harnessed to that effort as well.

**Senator KIRK**—What is the largest number of references that the commissioners have had to juggle at any one time in the past?

**Prof. Weisbrot**—There were 14 in 1985.

**Senator KIRK**—How did the commission handle that? Was it because it had large numbers of staff or was it because, as you said, the time frame was much greater in which to report?

**Prof. Weisbrot**—The staffing complement was a bit larger, it was 33 and there were five full-time commissioners and 12 part-time commissioners. Interestingly there were only 14 legal staff, which is more or less what we have got now or just slightly larger than we have now. I think principally how they handled that was again by juggling a whole lot of references but progressing with them relatively slowly. The references that were completed at that time were recognition of Aboriginal customary law, which I think took nine years from the beginning to completion. I can give you the exact figures for the others: privacy was 7½ years; evidence, eight years; insolvency, five years. So it is a different way of handling them. I am not being critical of them. They were handling a large number of very important references with roughly the same staff we have now, slightly more. But obviously to do that amount of work they spread it out over a much longer period.

**Senator KIRK**—In view of the foreshadowed reductions to staff that we have spoken of, do you think that the commission will be able to continue to cope with two references at a time or will it be looking at reducing the number of references?

**Prof. Weisbrot**—We can cope with that for several more years, but it would roughly be around the third year out that we would start to have to discuss it with the Attorney. My preference would be not to reduce the number of references but to have slightly more generous time frames in which to do them. But that would be something to discuss at that time.

**Senator KIRK**—Did you say the average time frame at the moment is 12 months or 18 months?

**Prof. Weisbrot**—They vary. Gene patenting is about a year or just over a year. The security sensitive one will be just under a year. Protection of human genetic information, which is actually a vast reference, was just over two years—two years and a few months. The judiciary act was about 18 months. These are rough figures off the top of my head; they are in the annual report. Marine insurance was just over a year, so yes we are handling them in those sorts of time frames.

**Senator KIRK**—So you are saying that the time frames may well have to blow out somewhat given the foreshadowed reductions in staff numbers in the next couple of years.

**Prof. Weisbrot**—If that happens, yes.

**Senator KIRK**—You mentioned the production or publication of the journal *Reform* and that it is published twice a year. What other services does the commission provide and how will they be impacted upon by these savings or reductions that might be occurring at the commission?

**Prof. Weisbrot**—The journal is the primary method of public education. We also do a lot of public speaking. We basically do not say no, so we talk to primary schools, Rotary clubs and professional associations. Obviously for community groups and so on we are bearing the expense of travel and preparation and staff time. We have devoted a lot of attention and resources to the website. For example we used some budget resources to back capture all of the commission's previous reports so that they are now available on the web and are available in the most convenient format for most people, which is PDF, but also in other formats that are accessible for visually impaired people and others. Those are the services that I guess we just do not think about at the moment, we just do them and do them the best way we can. We would have to be a little bit less resource intensive in those areas.

**Senator KIRK**—In terms of priorities, which of the services you have just mentioned would have to go first? Would it be the *Reform* journal, perhaps publishing only once a year, or would you cut back on the public education program? Have you thought that far forward and how you would juggle it all?

**Prof. Weisbrot**—It is not just a matter of denying reality; it is several years in advance, and we have not had to make those hard decisions yet and hopefully will not have to. Again, it may be that some of those things could be done in other ways. At the moment we do use some staff members to devote significant time to the production of *Reform*. It may be that that could

be done on a more pro bono basis by a committee of academics or others who would want to assist us. So we would try to be creative in maintaining the services but maybe in a slightly less budget intensive way.

**Senator LUDWIG**—Page 382 of the PBS, section 3, is an analysis of budgeted financial statements. It states:

The Commission has sought and received approval from the Minister of Finance for an operating loss for consecutive financial years ...

That is, two years—

These losses have been met from reserves held by the Commission.

What is the extent of the reserves held by the commission? Where is that in your budget statement?

**Prof. Weisbrot**—It is at the bottom of page 385. It is the last set of figures. You can see three lines up that the net increase in cash held is the negative figure, and that reduces our reserves from \$1.2 million to \$1.05 million. The estimate for this year—which has been accepted by Treasury—is a negative \$183,000, which would bring us down to \$867,000.

**Senator LUDWIG**—And then you have got nothing for those out-years?

**Prof. Weisbrot**—That is how the system works. Because we have not had Treasury approval for any further deficits, we are forced to assume balanced budgets for those years. You can do the extrapolation. If we are going backwards by \$183,000 a year, starting from \$867,000, we would have basically four years of reserves before we would be genuinely in the negative.

**Senator LUDWIG**—What was the purpose initially of the reserves?

**Prof. Weisbrot**—I am not sure there are purposes; it is just efficient cash management by the commission and saving for a rainy day. Part of that, for example, would be the closure of the Canberra office. The commission always operated out of Sydney offices from the early days of Michael Kirby. There was a period when the president and deputy president, however, were Canberra based, and so they opened a Canberra office. We paid separate rental and had to have some separate staff to manage that. None of the commission has been Canberra based for three years now, and so we saved several hundred thousand dollars by closing that office and, instead, coming down to Canberra when we need to. It is those sorts of savings.

**Senator LUDWIG**—It is not for ongoing supplementation of your budget, is it? That is not the intention of it. If you are saving for a rainy day and drawing down on it to supplement your current spending, they are at odds with one another because you are then not saving for a rainy day anymore, are you? You are actually using it to supplement your budget.

**Prof. Weisbrot**—It is certainly drizzly at the moment.

**Senator LUDWIG**—Have you asked the Attorney-General whether there is sunshine tomorrow, or to give you a weather report?

**Prof. Weisbrot**—The purpose of our providing a full description of our position in the budget papers is to alert the government to the situation, and then obviously they have to balance that out across the portfolio.

**Senator LUDWIG**—My colleague asked about the impact upon your work, and you were clear in your answers. However, I am curious about the fact that you also make a lot of papers and prepublications available on your web site. Has that been impacted upon in any way? Are you doing fewer of those publications as a consequence of the tight funding that you are now faced with?

**Prof. Weisbrot**—No. We have not even thought about that, because that is a natural part of how we operate. In the ordinary run of things, when we get a reference we produce an issues paper which we then distribute free because it is part of the community consultation program. It is free in hard copy and on the web. That provides some general background information about the nature of the reference and asks people in the community a series of questions about how these things should be studied.

**Senator LUDWIG**—I have read them. They are very helpful.

**Prof. Weisbrot**—Then we produce a discussion paper, which is in a sense a draft report—it is a much more scholarly document. It contains the proposals which would be akin to draft recommendations. Then we consult on that and receive submissions. Then we go to a final report. It would be difficult for us to do a law reform effort. We do not do cabinet minutes straight to advice. We use that iterative process, and we will continue to do that. It would not be sensible to charge for community consultation documents. We do charge for final reports. However, they are distributed free to anyone who participated in the reference—anyone who has made a submission or is otherwise a participant—and they are also freely available on the web. We probably have reduced our income a little in terms of sales of reports because of their availability on the web site.

**Senator LUDWIG**—Has there been a request by government for you to consider a cost recovery model or to improve your cost recovery model?

**Prof. Weisbrot**—No.

**CHAIR**—Thank you. Professor, you indicated that you want the parliament to be alerted to the situation that the ALRC faces. I can certainly assure you that the committee is alerted to the situation that the ALRC faces. Thank you very much for your assistance.

[11.23 a.m.]

### High Court of Australia

**Senator KIRK**—What is the status of the High Court's consultations on proposed changes to the way special leave applications are determined?

**Mr Doogan**—The consultations with the profession have been completed and the court at the moment is giving consideration to what it might or might not do. The number of self-represented litigants continues to rise and, at the end of the last financial year, 40 per cent of litigants were self-represented. In the current financial year through to the end of April, that figure has risen to 49 per cent of all civil special leave applications filed. The expectation is that it will continue to rise. As a result of that continuing trend, the types of responses that are being considered are: making oral hearings discretionary; returning to a requirement for litigants to be represented by counsel; considering the issue of fees because, as we have previously discussed, the vast majority of self-represented litigants pay no fees; and finally,

requiring people who are seeking exemption from the payment of fees to come armed with some form of certificate from counsel indicating that, in the opinion of counsel, there is an arguable case. The aim of such an alternative would be to try and eliminate those vast numbers of applications that simply have no legal merit.

**Senator KIRK**—Regarding that increase from 40 per cent to 49 per cent in the last few months, what types of cases are the persons involved with? Are they primarily migration cases?

**Mr Doogan**—No. The 49 per cent are all civil matters. They could be migration, workers comp, personal injury or any other type of civil issue.

**Senator KIRK**—Do you have a breakdown of the types of issues?

**Mr Doogan**—No, I am sorry, we do not.

**Senator KIRK**—What is the intention regarding these various options that you are considering? Is it to produce some kind of paper with the various options outlined in it? How is a decision going to be made as to which of the various options, if any, will be adopted by the court?

**Mr Doogan**—Essentially, I think it would result in one of three responses. The first response would be no change, maintaining the status quo and watching the trend continue. The second response would be to deal with the matter by amending the rules of court. If there were an issue involving fees, it would be dealt with in the regulations, as it would be outside the court. But the issue of discretionary oral hearings or the imposition of a requirement for counsel would certainly be dealt with through the rules.

**Senator KIRK**—The rules of court. What exactly is the process here? All of these options are going to be outlined. You said that there had been some consultation with the profession. What other bodies, if any, do you intend to consult before making a firm decision as to the direction the court is going to take?

**Mr Doogan**—It was not proposed to consult beyond the Australian Bar Association and the Law Council of Australia, as those bodies represent all the individual state and territory bar associations and law societies.

**Senator KIRK**—What has been the nature of the consultation? Have you sought a submission from them or have you just had verbal discussions with them?

**Mr Doogan**—We have done both. They had been asked to consider the special leave position. It is my understanding that the Law Council consulted the various constituent bodies that make up the council. I should update, from the previous occasion, the trends. From 1 July 1992 through to 30 April 2003, 3,096 applications for special leave have been considered. Of that 3,096 over that more than 10-year period, only 23 self-represented applications resulted in a grant of special leave. Of that 23, only 10 have resulted in a successful appeal. If you look at the total workload and the successful result, 10 out of a total of 3,096 special leave applications in that period have been successful. The success rate is very low.

**Senator KIRK**—Not all of those 3,096 were self-represented though, were they?

**Mr Doogan**—No, they were not.

**Senator KIRK**—What number of the 3,096 were self-represented?

**Mr Doogan**—Of the 3,096 over that period, 600 were self-represented. But look at the trend. At the beginning of the period, in round figures, five per cent of the applications for special leave were filed by self-represented persons. In the current financial year, that number has increased to 49 per cent in civil matters.

**Senator KIRK**—Could you provide on notice those annual figures you have just detailed to us?

**Mr Doogan**—Certainly.

**Senator KIRK**—Thank you. You said that you had consulted the ABA and the Law Council and had asked for written submissions from them in relation to their thoughts about the various options that you set out. Is that right?

**Mr Doogan**—Essentially, the main focus of the discussion has been on whether to make oral hearings discretionary.

**Senator KIRK**—Have you received written feedback from them?

**Mr Doogan**—The feedback from the profession generally is that they would like to see oral hearings continue.

**Senator KIRK**—Have you canvassed with them the other options, such as the requirement for representation and changes to fees?

**Mr Doogan**—No, we have not.

**Senator KIRK**—Is it the intention to ask them their views about those things?

**Mr Doogan**—No, not at this stage.

**Senator KIRK**—So you are taking it one by one. Is that the process?

**Mr Doogan**—It is really a matter that is being discussed within the court by the seven justices of the court. That is essentially the range of options.

**Senator KIRK**—When will the final decision be made? Will it be made with the judges? Is that the intention?

**Mr Doogan**—Yes, it will be made with the judges, and I would expect it to be made in the next few months.

**Senator KIRK**—You talk about how some of these changes would be implemented and you mention that some of them would merely require changes to the rules of court, such as the discretionary requirement for an oral hearing. Is it correct that that would be something that could be changed in the rules of court?

**Mr Doogan**—Yes. The only change that would require a change to regulations would relate to fees, because the fees regulations list the various categories of exemption from the payment of fees.

**Senator KIRK**—But at present there is no proposal to increase fees before the judges—

**Mr Doogan**—No. The issue of fee increases is the prerogative of the government. The regulations are not dealt with by the court.

**Senator KIRK**—What about the question of fee waivers? Is that also covered by regulation?

**Mr Doogan**—Yes, it is.

**Senator KIRK**—Are there any matters that would have to involve legislation or changes to legislation?

**Mr Doogan**—I refer you to the Law Reform Commission report dealing with the judicial power of the Commonwealth. That was, as you know, a review of the Judiciary Act. There is a list of recommendations in it. Paragraph 19-6 on page 57 of that report recommended:

The *Judiciary Act* should be amended to confer on the High Court an express power to determine applications for special leave to appeal on the basis of written papers without oral argument, irrespective of the parties' consent.

**Senator KIRK**—Has any serious consideration been given to that, that you are aware of? That would take changes to legislation. That is what you are suggesting.

**Mr Doogan**—Yes, it would take changes. I think that is a matter for the Attorney and the department.

**Senator KIRK**—I thought I might ask the minister whether any consideration has been given to that recommendation.

**Ms Leigh**—There are two matters that I could mention, just for background, in relation to High Court fees. Under the regulations, they adjust according to the CPI every two years. There has been correspondence between the Attorney and the Chief Justice in relation to specific recommendations from the High Court on this issue. The Attorney first wrote to the Chief Justice in October last year asking for information on the issue the court perceived in relation to self-represented and unmeritorious applications and asking for any proposals by the court. The letter from the Attorney followed on from an appearance by the Solicitor-General in the High Court in which he undertook to raise the court's concerns with the Attorney. Since then there has been correspondence between the court and the Attorney, and then between the court and the department, providing further information. We most recently had more information back from the court in April about the exact detail of their suggestions and how it would compare with previous practices in the court, and that is now under consideration in the department.

**Senator KIRK**—What was the nature of their suggestions? Can you outline that for the committee?

**Ms Leigh**—Mr Doogan has already mentioned the general proposals. I should say, though, that the correspondence did not cover all of the possibilities Mr Doogan has mentioned; it was more specifically in relation to the fees aspect.

**Senator KIRK**—You mentioned that we are looking at a couple more months until something is concluded on this. Is that correct?

**Mr Doogan**—Yes, I expect so. It is a matter of fitting in the time between cases to get the seven judges together to talk about these issues.

**Senator KIRK**—And the ultimate decision will be made by the judges?

**Mr Doogan**—Yes. We now have copies of the statistics I was referring to. Rather than taking it on notice, we can table them now. There are two tables. One deals with applications for special leave filed over the last several years, showing percentages of represented and unrepresented in both civil and criminal cases and as a total. The second goes between 1 July 1992 and 30 April 2003, showing the distinction between represented and unrepresented and the results.

**Senator LUDWIG**—You have been doing this for some time. Where to, when the figures become unmanageable—or are they unmanageable at this point in time?

**Mr Doogan**—Where to? It is coming to a head right now with the continuing trend of growing numbers of self-represented litigants and the continuing trend of the majority of them having no legal merit and, as such, being largely a waste of time for the judges when there are so many other matters coming before the court for their attention. I think we will be at a watershed in the next few months in deciding whether or not, or how, to change the relevant rules of court.

**Senator LUDWIG**—Do you workshop that? How does the outcome come about?

**Mr Doogan**—Following consultation with the profession, the outcome arises from discussion between the seven judges and myself.

**Senator BOLKUS**—You mentioned that there had been correspondence between the Attorney and the court in respect of fees. Was that about the concept of a fee increase, or has a specific proposition been put to the bench?

**Mr Doogan**—The history of it was that two judges in two different cases made a reference to litigants in person. Arising from that, the Solicitor-General drew it to the attention of the Attorney, who wrote to the Chief Justice. In response, the Chief Justice suggested that consideration might be given to reverting to the position as it was in the early nineties, when the list of exemptions that are now contained in the regulations did not exist. At that time there were provisions in former order 72, rules 12 and 13, of the High Court Rules. Rule 12 provided that the court or a justice had discretion in a particular case for special reason to direct that fees not be taken. Order 72, rule 13, provided that, in cases where it appeared to the Attorney-General that payment of a fee would, owing to the exceptional circumstances of the particular case, involve undue hardship, the Attorney had the discretion to reduce or remit fees in that particular case.

**Senator BOLKUS**—Can you tell us who those judges were in the cases you referred to?

**Mr Doogan**—Yes. In one case it was Justice Gaudron and in the other it was Justice McHugh.

**Senator BOLKUS**—I get from your comments that they were suggesting the introduction of the capacity to not levy fees or to remit fees and they were not discussing the imposition of fees, the level of fees to be imposed or increases in those levels.

**Mr Doogan**—It was drawing attention to the fact that, prior to the regulations being introduced, the two rules that I have just referred to were the only provisions for the remission or waiver of fees and that, once those two rules were eliminated and then replaced by the High Court fees regulations and the introduction of several categories of exemption, that is

when the blow-out started; that is, it has gone from five per cent of special leave applications being by unrepresented persons through to the current figure as at 30 April of 49 per cent in civil cases. In absolute terms it has gone up to a very large number. We are talking about 10 cases of special leave applications brought by unrepresented persons in 1992-93 increasing to over 600 cases up to this current year.

**Senator BOLKUS**—I do not suppose in the research that you have done any consideration has been given as to how many of those 600 may have in the past qualified for legal aid?

**Mr Doogan**—No, but I can tell you the number that were waived by unrepresented persons.

**Senator BOLKUS**—And that was?

**Mr Doogan**—In 2001-02, in 168 unrepresented special leave applications, fees were waived compared to 29 unrepresented cases where they paid fees. In the annual report for the year there is a table dealing with the waiver of fees during the financial year. The category of the exemption relating to legal aid was 28 out of 536. So the vast majority of waiver applications that are successful relate to persons who are holding a social security concession card, are claiming financial hardship or are imprisoned.

**Senator BOLKUS**—So there is a fair chance that they are the sorts of people who would have qualified for legal aid under the pre-existing legal aid scheme some six or seven years ago?

**Mr Doogan**—I cannot comment on that.

**Senator BOLKUS**—I also asked whether any of the correspondence canvassed the level of fees. You are not at this stage discussing with the government changing the level of fees in the High Court?

**Mr Doogan**—No. This precedes my time at the court but my understanding is that several years ago the court concluded that it was really for the government of the day to decide on the level of fees. The fees in question that are paid do not go into the court's budget; they go straight into consolidated revenue. They are collected by the court but paid into consolidated revenue.

**Senator BOLKUS**—Can you give us an indication of how many of the cases before the court relate to migration applications?

**Mr Doogan**—I can, but before we move off the issue of self-represented applicants I want to clarify something. I was looking at the wrong column at one stage when we were talking about the move through to the number of special leave applications decided. I mentioned a figure of 600. That in fact was a total figure. For the year to date there have been 71 decisions in special leave applications, compared to 10 in 1992-93. So it is seven times the number.

**Senator BOLKUS**—Of those 71, how many have been successful?

**Mr Doogan**—Four out of the 71. The tables that have been tabled set it out quite clearly for the full period. What would you like me to tell you about the migration applications?

**Senator BOLKUS**—Start with the number of claims filed in respect of migration matters this current financial year.

**Mr Doogan**—In the current financial year to 30 April, 956 migration matters have been filed out of a total of 1,408. That means that 67 per cent of all matters filed in the current financial year to 30 April have been migration matters.

**Senator BOLKUS**—Do you have the same figure for the number of matters adjudicated upon?

**Mr Doogan**—No, I do not. I can give you an idea of the overall migration position as of 26 May—yesterday. We have a total of 602 matters that are in various stages of being processed administratively. We expect that approximately 800 will be filed between now and Friday.

**Senator BOLKUS**—Eight hundred extra?

**Mr Doogan**—Yes. However, it does not involve judicial time. It involves administrative time only. Those 800 matters will be automatically remitted to the Federal Court as a follow-on to the decisions in Muin and Lie. Also, about 6,000 potential cases are sitting in limbo at the moment as a consequence of those decisions. I cannot be any more precise than this, because the figure that I just gave you—the 800—is the number that we have been informed by a law firm will likely be filed this week. The 6,000 is a residual number, taking into account the assumption that what we have been told will occur—namely, that around 800 will be filed this week.

**Senator BOLKUS**—Have you set up some mechanism with the Federal Court and A-G's to try and manage how you handle this sort of flood?

**Mr Doogan**—Yes, there is in the sense that we work closely with the Federal Court at an administrative level, keeping them informed of the state of play as we know it from month to month.

**Senator BOLKUS**—So 800 go substantially back to the Federal Court. I suppose you would have the same expectation in respect of the extra 6,000 or so or whatever eventuates. Is consideration being given to whether there is a need to run one or two of these cases in the High Court to set a precedent for a number of them?

**Mr Doogan**—Those cases are a flow-on. They were originally listed as schedules in the Muin and Lie cases. As a result of the decisions in those two cases, the solicitors have been progressively filing documents for individual cases. That is one category. Earlier in the year there was a decision in the case known as S157/2002 which concluded that, in the case of jurisdictional error, various provisions did not apply. The result of that was that, in the week after the decision was given in the matter of S157, two call-overs were held—one in Sydney and one in Melbourne. From those call-overs, 577 cases were remitted to the Federal Court. Ninety-nine were discontinued and 13 were stood over to another day.

**Senator BOLKUS**—Do you have any idea as to how many of these cases may be listed as holding operations until Immigration, for instance, works out the implications of the cases you are talking about?

**Mr Doogan**—No, I do not. All I can say is that we are aware that, as each of the decisions is given in these various migration cases, discussions then take place between the solicitors for the department and the solicitors for the applicants or appellants, as the case may be.

**Senator KIRK**—Mr Doogan mentioned the ALRC report and the recommendations made in relation to the Judiciary Act. You said paragraph 19-6 related to the High Court being able to dispose of special leave applications on the papers. Is that a correct summary?

**Mr Doogan**—It was listed as 19-6 in the list of recommendations on page 57.

**Senator KIRK**—I thought Ms Leigh was going to provide some information on that. I did not hear her address it.

**Ms Leigh**—In relation to the special leave on the papers?

**Senator KIRK**—Yes.

**Ms Leigh**—As I said yesterday, we were aware of that issue and the court's interest in that issue. Chief Justice Gleeson gave a speech recently where he outlined the court's interest in that issue. So the department is aware of it and has been giving some very preliminary consideration to it. But really it is a matter for the court and, as Mr Doogan has outlined, the court has been consulting on that proposal.

**Senator KIRK**—If we could move on then to the judicial complaints protocol, we heard yesterday that a proposal was put together by the Attorney-General's Department and forwarded to the various courts for a protocol, for dealing with serious complaints against federal courts, as occurred whenever it was, 12 months or so ago, against Justice Kirby. When did the High Court receive that proposal from the Attorney-General's Department?

**Mr Doogan**—I do not think I can answer that precisely. The Attorney-General's letter to the Chief Justice was dated 17 December. I am aware that he subsequently responded to that; I just cannot tell you the precise date. Perhaps I should explain what was in the response.

**Senator KIRK**—Please do.

**Mr Doogan**—The first point was that the members of the court considered that, if there was any dispute about this protocol, it was likely to end up with the High Court for consideration. As such, the court was unwilling to express an opinion on the nature of the protocol lest it be taken to have prejudged the issue.

The second aspect is that the current Chief Justice, prior to being appointed as Chief Justice in the High Court, had spent almost 10 years as Chief Justice of New South Wales. In that capacity, he was President of the Judicial Commission of New South Wales and so had a lengthy period of time experiencing complaints that came to that commission about judges. I think, essentially, his experience over that 10 years showed that most complaints received were regarded as major complaints by the individuals making them but, again in the scheme of things, the vast majority of them were not what you would call major.

The lesson to learn from that is really to say that it must be made clear that there is a distinction to be drawn between a complaint which could lead to action by the parliament to dismiss the judge from office. Putting that to one side, and comparing the vast range of complaints that actually come in—they are usually things such as the person was unfriendly, the judge was unfriendly, I did not get sufficient time to put my case or the person was rude—the implication is that it should really be made clear that it relates to 'offences', if you like, which might lead to dismissal from office.

**Senator KIRK**—Under the terms of section 72 you mean, misconduct, misbehaviour, incapacity?

**Mr Doogan**—Yes.

**Senator KIRK**—Am I correct in understanding that the High Court's response was, in effect, no response, because it was considered that this could be a matter that may come before the court down the track and therefore it declined to provide a response to the Attorney?

**Mr Doogan**—Yes; it declined to provide an opinion on the nature of the protocol.

**CHAIR**—Are there any other questions?

**Mr Cornall**—Just one point in passing: Senator Bolkus made a reference to whether or not cases six years ago or thereabouts might have received grants of legal assistance. An application for legal assistance must pass both a financial assessment, in terms of whether the person qualifies for assistance on a financial criterion, and the merit principle; in other words, there must be an arguable case to present. The High Court's last annual report makes the point—and Mr Doogan made the point again today—that the vast majority of these cases have no merit.

**CHAIR**—Thank you very much for making that point. If there are no further questions for the High Court: Mr Doogan and officers, thank you very much for your assistance this morning.

[12.01 p.m.]

#### **Federal Court of Australia**

**CHAIR**—We will move directly to the Federal Court. I welcome Mr Soden and invite questions in relation to the Federal Court.

**Senator KIRK**—I understand that on 6 March the Attorney announced the appointment of Justice Bennett to the Federal Court.

**Mr Soden**—Yes, it was a very well-received appointment.

**Senator KIRK**—Another female appointment?

**Mr Soden**—Yes, indeed.

**Senator KIRK**—I understand that she fills the vacancy caused by the resignation of Justice Katz. Is that correct?

**Mr Soden**—That is true.

**Senator KIRK**—When did Justice Katz resign his commission?

**Mr Soden**—Some time ago—long enough for me not to have it clear in my memory. It think it was early 2002.

**Senator KIRK**—March 2002?

**Mr Soden**—Yes. March 2002, I am reminded.

**Senator KIRK**—Perhaps I could ask the minister or the department why it was that it took the Attorney 12 months to appoint a replacement for Justice Katz.

**Senator Ellison**—That is a matter for the Attorney. I will take that on notice. I do not have any detail in relation to that, but I will get back to the committee on that.

**Senator KIRK**—Thank you, Minister. Is it normal for a vacancy to exist for 12 months in that way?

**Senator Ellison**—I am not aware of the time that it has taken with other appointments. Ms Leigh might have some information which might assist us.

**Ms Leigh**—I could mention that the appointment immediately preceding the appointment of Justice Bennett was that of Justice Selway. He was appointed to the Federal Court in Adelaide in November last year. That appointment was in advance of the retirement of Justice O'Loughlin, who retired in January this year.

**Senator KIRK**—And before that?

**Ms Leigh**—I would need to go back to my files to check appointments before that, Senator. I just brought the information on the most recent ones.

**Senator KIRK**—Perhaps you could provide that to us.

**CHAIR**—Senator Kirk, I think it would be worth clarifying over what time frame you want that material provided. I would hate to see Ms Leigh going back to the inception of the Federal Court.

**Senator KIRK**—That could be interesting.

**CHAIR**—It could be, but it could also be a waste of time, so perhaps we could ascertain a time frame for which you want that information.

**Senator KIRK**—I think five years would be adequate for my needs. What effect has the 12-month vacancy after Justice Katz's resignation had on the workload of the Federal Court? Did it put pressure on the court?

**Mr Soden**—I am sorry but I cannot be precise about the effect other than to say that the workload that Justice Katz would have done had to be picked up by the other judges in Sydney. I recall that at the time he became ill and subsequently resigned there was a reallocation of the cases from his docket to other judges. But if you are thinking about effect in terms of what possible delay might have occurred in respect of the other judges' dockets, that has never been calculated. It would probably be impossible to do now. There was of course a degree of concern about the extra work for the other judges, which was relieved upon the replacement of Justice Katz.

**Senator KIRK**—I want to move on to the judicial complaints protocol, the matter I raised a moment ago. When did the Federal Court receive a proposal from the Attorney-General's department for a protocol dealing with serious complaints against federal judges?

**Mr Soden**—Again I do not have the precise date at the forefront of my mind but I know that it was received at the same time the other courts received their correspondence. So I am working on the assumption that we received it at about that time, give or take a day or two.

**Senator KIRK**—In December last year.

**Mr Soden**—Yes, shortly before Christmas last year.

**Senator KIRK**—What is the progress of that? Is it still being considered?

**Mr Soden**—It has been under consideration by all of the judges of the Federal Court.

**Senator KIRK**—How long is that process going to take if it is being considered by all of the judges?

**Mr Soden**—It is likely, I expect, that the court will be in a position to give a view in the very near future. One of the events that affected the time was a full judges meeting of the court which occurred earlier this year—the end of March. It was an occasion for all of the judges to have an opportunity to discuss the protocol and other considerations. Following that judges meeting there will be a refinement of the court's response and I expect it would be provided to the Attorney-General in the very near future.

**Senator KIRK**—It is going to be a joint response from all of the judges? It will be a court response rather than individual judge responses?

**Mr Soden**—I cannot say because I just do not know.

**Senator KIRK**—Has the Attorney-General's department followed up on the response since the request was made in December last year?

**Mr Soden**—Yes, they have. I had a discussion with officers of the department earlier this year to clarify, from my perspective, some of the issues to assist the judges in their discussion of it. They have been following up when they might receive a response. It would have been only in the last couple of weeks that I indicated that it was getting closer and of course it is much closer now.

**Senator KIRK**—You said the time frame would be in the next month or so.

**Mr Soden**—It could be expected within the next month, yes.

**Senator KIRK**—Can you provide the committee with the usual statistics that we seek from you on the court's migration workload—that is, numbers of matters filed, numbers of matters remitted from the High Court, numbers of matters referred to the Federal Magistrates Court and numbers of matters finalised. Do you have those figures available for the committee?

**Mr Soden**—I do. I would like to table a document which has most of that information that you just mentioned together with an indicative graph. Once you have seen this document, I would like to make mention of what the graph means. What is not included in that graph are details of the matters remitted to the FMS. I can easily mention the details, which can be clarified from the FMS itself. If you look at which of the courts—of either the Federal Magistrates Court or the Federal Court—is dealing with the majority of first instance or new applications it is clearly the Federal Magistrates Court, arising predominately from the numbers of matters remitted from the Federal Court to the Federal Magistrates Court. Up to the period ending 30 April 2003 there have been 716 migration matters transferred to the Federal Magistrates Court and 553 transfers this financial year.

**Senator KIRK**—You said that you were going to provide some information about this.

**Mr Soden**—That graph indicates the quarterly and monthly filings. There is a point where it hit a low mark in January 2003. That coincided with the decisions of the High Court that

were mentioned earlier this morning in relation to the jurisdiction. You will see that the trend line was indicating a downward trend up until the decisions of the High Court, which did make it clear that jurisdiction could be exercised by the Federal Court and the Federal Magistrates Court. Since that time—if you look at the April 2003 point—there has been a huge increase. If we look at that again later this year, I would expect that that curve would be taking an upward climb. All of the figures indicate that the total number of applications coming in are going back to what they were prior to the uncertainty about the jurisdiction.

**Senator KIRK**—That is as a consequence of the S157 decision?

**Mr Soden**—Predominately, yes.

**Senator KIRK**—Perhaps you could assist me with the numbers or percentages. What sorts of numbers are we looking at there? I can see it is a very steep rise. What kinds of numbers are we talking about?

**Mr Soden**—If you go down to the bottom of that page, it shows the quarterly figures. I think you will see the large difference between the April 2003 and the January 2003 figure. At the bottom of the document there is the information about the remittals coming from the High Court, which are not included in that graph. If they were included in that graph, it would not be a true indication of the general trend.

**Senator KIRK**—Of the cases that are being remitted to the Federal Court, can some be remitted back to the Federal Magistrates Court?

**Mr Soden**—Yes, they can—not all, but some.

**Senator KIRK**—What sort of percentage of those cases have been remitted to the Federal Magistrates Court?

**Mr Soden**—I might ask Mr Phillip Kellow to answer that. For the record, I am not accompanied by Mr Gordon Foster today. I am accompanied by Mr Phillip Kellow, Deputy Registrar, and Ms Anne Hicking, the court's Chief Financial Officer.

**CHAIR**—I did note that when the officers arrived at the table, Mr Soden. The information we had otherwise, though, was that Mr Foster was coming. Thank you for clarifying that.

**Mr Kellow**—Of the applications coming to the court—not the remittals, which I will come back to in a minute—we are transferring about 58 per cent. The remittals are still being case managed within our court to try to identify those that would fall within the Federal Magistrates Court jurisdiction. The only registry that is well advanced on it is Victoria. The indications are that about 40 per cent of the matters that have been remitted from the High Court may go to the Federal Magistrates Court, but there is a fair bit of work going into, firstly, identifying whether the Federal Magistrates Court have jurisdiction and, secondly, whether it is appropriate to make that transfer. I think over the next couple of months we will have a clear indication, as the matters are looked at more closely in Sydney and Adelaide, as to what proportion will go down to the Federal Magistrates Court. Whatever way you look at it, they are significant numbers.

**Senator KIRK**—You mentioned that in Victoria things are moving faster than in the other two capital cities. Is there a reason for that? Is the case management system more effective in that registry?

**Mr Kellow**—They had fewer cases—about 99 cases—remitted to them. New South Wales had about double that and Adelaide had around 370 cases in broad terms.

**Senator KIRK**—It is just a matter of the sheer numbers.

**Mr Kellow**—Yes. I think in Adelaide we have had to develop a different way of trying to manage that number of remittals.

**Senator KIRK**—I also had some questions in relation to unrepresented litigants. Could you provide the committee again with the usual statistical update on unrepresented litigants in the court? Do you have that information available?

**Mr Soden**—Yes. Again, I qualify these percentages with the comment that people can become represented when they are not unrepresented. It all depends on the point at which you look at the data available as to capturing accurate data. At the end of the March quarter this year, 32 per cent of the cases commenced involved persons who were self-represented. Nineteen per cent were in an unknown category. You could add 19 to that or a portion of 19. I would say roughly about a third of the applications coming into our court involved unrepresented parties. Although I do not have the precise details, I can indicate that a large proportion of that third involves migration matters.

**Senator KIRK**—Could you provide the committee with that.

**Mr Soden**—We can take that on notice. I do not think we have it here. We will take it on notice and give that precise proportion.

**Senator KIRK**—Would it be fair to say that the figures that you have just mentioned to us are increasing, or are they staying at about the same level—say in the last 12 months?

**Mr Soden**—Fairly constant in the last 12 months, driven primarily by the migration component.

**Senator KIRK**—Has the court thought about any new strategies for assisting in dealing with self-represented litigants?

**Mr Soden**—I think I mentioned on the last occasion that we had a self-represented litigant strategic plan which involved a number of issues. I can mention what they are. One, of course, is improving the information that we get so that we know more about what is happening. That will happen with the implementation of the new Casetrack computer system. We have been configuring that in recent times, and that will give us much more precise information about represented litigants. These are the strategies in our plan.

We are also in the process of reviewing our rules, forms, brochures and guides to ensure that they are written in clear language and are simple to use. There are a number of different activities happening there. In respect of the rules, we have had under way for some time an overarching review of all of our rules, and we are going to include in that review matters concerning how the rules might better be used to deal with issues concerning litigants in person. In terms of the forms, that is also covered by the rules to some extent. Our forms are usually prescribed by the rules. In the last couple of weeks, we have been having a look at our brochures and guides with the assistance of a plain language expert to ensure that our brochures and guides are more likely to be understood by those who do not have a legal background or legal training and can help them through the process.

The other thing I think I have mentioned before—and it is included in our strategies—is special training for our front line people, our counter staff, on how to manage litigants in person. We have a special training package that we are developing. They do get some training, but we are focusing on some of the special needs. That can include how to deal with people who might have a difficulty in their approach to these sorts of matters, special training on how to assist people who have a problem and training on how to manage themselves in dealing with difficult people.

The other emphasis that other courts have already mentioned is how we might use our rules and procedures better to deal with cases that are clearly hopeless to start with or even vexatious. We are approaching our relationship with self-represented litigants from a number of aspects, as I have just mentioned.

**Senator KIRK**—So there are no firm proposals to amend the rules or procedures of the court at this stage?

**Mr Soden**—No specific proposal. We do have some rules in existence at the moment that can be used in this context. Someone might come to the counter with a document that is clearly inappropriate and the registry can seek a direction of a judge for the document to be refused. That provision is in the rule and is used. It can prevent something being done unnecessarily and avoid costs to the other party.

**Senator KIRK**—There are no proposals for increases to fees or removing exemptions for fees?

**Mr Soden**—No proposals have been developed. There have been some discussions within the court about the relationship between fees and self-represented litigants. The problem that Mr Doogan just mentioned is also a problem in the Federal Court—that is, an automatic waiver of fee enables a matter to be commenced without any merit examination of the application in the first place. So we are having a look at how we might overcome that problem. There are some overseas examples of how that has been approached where the issue has been larger and more impactful because of the volumes, particularly in US and UK courts. We are having a look for comparative solutions to that issue.

**Senator KIRK**—Your strategies for dealing with unrepresented litigants is really an ongoing process of review—no firm proposals have emerged from it?

**Mr Soden**—There is one specific matter that I have been reminded of. We did suggest to the Attorney General's Department, which is having a look at the fee regulations at the moment, that there ought to be consideration given to an amendment to the regulations that would provide that, where a person has had a fee waiver in the last 12 months, there should not be another automatic fee waiver without the leave of the court. In other words, you cannot keep coming back. If you have had a fee waiver in the last 12 months, the regulations should be changed to require that the court, in effect, approves another fee waiver. At the moment it does not have the authority to do so.

**Senator KIRK**—Has there been a firm recommendation to that effect?

**Mr Soden**—Yes, there has. I am not sure of the status of that. It appears to have been adopted, but that is just one small component.

**Senator KIRK**—Minister, are you aware of the status of that recommendation?

**Senator Ellison**—No, I am not. We are just inquiring now.

**Ms Leigh**—That suggestion from the Federal Court is under consideration by the department. We have had discussions with Mr Soden about it and about exactly how the Federal Court envisages that that would be formulated. It is at a very preliminary stage of consideration.

**Mr Soden**—I would not want it to be thought that that suggestion is the solution to the other issues that we have been discussing. It was just one idea that was mentioned that was thought to be beneficial.

**Senator KIRK**—I have a few questions on the case management system. You mentioned at the last round of estimates—and earlier in your answers—that you planned to have the Casetrack system operational by June or July of this year. Is that still on track?

**Mr Soden**—No, the time frame has slipped a bit.

**Senator KIRK**—Why is that?

**Mr Soden**—It is as a result of some more work that needed to be done that was not foreseen at the time I mentioned a June-July commencement date. Since my last appearance here, we engaged a specialist project manager to assist the Family Court in implementing Casetrack in that court. When we had the benefit of the experience of that person, we could see that much more needed to be done than we had thought initially. It has been very helpful in that it has enabled judges and staff to focus on a number of practices and procedures that may not be necessary—they could be avoided or automated by Casetrack—that we had not foreseen until we got right into the implementation of the project. I do not think we are going to implement the system on a pilot basis for some months yet or that we are going to be able to say when it will be implemented until late June. We do not see that as a delay that has been a negative result. It has been a good opportunity to reconsider some ways in which we could do our work differently.

**Senator KIRK**—What sort of time frame are you looking at then—by the end of the year?

**Mr Soden**—That is the time frame that the project manager has been suggesting we should work towards—yes, by the end of this year.

**Senator KIRK**—Why was it decided to bring in a specialist project manager? Was it because things were not proceeding according to the timetable?

**Mr Soden**—No. We have some experience within, but implementing a computer system in a large national organisation is a very big job and you need a specialist—ideally, a specialist who has achieved in a similar environment. We are very happy with the project manager we have employed.

**Senator KIRK**—What was the additional cost of bringing in a specialist project manager?

**Mr Soden**—It is being done within the budget.

**Senator KIRK**—How many years has it been since the decision was taken to replace FEDCAMS? What year was that decision taken?

**Mr Soden**—It was a while ago, and I cannot be precise about which year it was. The decision was taken in the ordinary course of events for a number of reasons in order to avoid FEDCAMs not being available—in other words, it falling over through its age and lack of functionality. It would have been a few years ago that a decision was taken to replace FEDCAMs.

**Senator KIRK**—But in the meantime FEDCAMs has been operating?

**Mr Soden**—It is working well. It is an old system, it works well, but it is just not a system that we can develop easily. It will never be able to enable the interface with the people who use the court in the way that we would wish in the future. It will not be maintained because it is a very old software system and the expertise in that area is diminishing.

**Senator KIRK**—The case management system in Victoria was mentioned before and we heard about them trying to work out which matters could be remitted to the Federal Magistrates Service. When this new system eventually comes into effect, will it make that process quicker?

**Mr Soden**—That process that was mentioned—the case management system—is the actual process that is used by the judges to manage the cases to identify the legal issues.

**Senator KIRK**—So that is a different system altogether?

**Mr Soden**—It is a procedural system, not an IT system.

**Senator KIRK**—Finally, I want to ask some questions about the native title case load. I understand that the court's forward estimates indicate that its appropriation will fall slightly in 2005-06 when the court's additional native title funding ceases. Is that correct?

**Mr Soden**—There is a forecast for that to decline, yes.

**Senator KIRK**—What is the extent of the decline?

**Mr Soden**—I think it will reduce from \$4.053 million to \$2.974 million. That was intended to coincide with the decline in the number of on-country hearings taking place. That drives most of our native title related costs.

**Senator KIRK**—Are the projections of the court's native title case load on which that funding was based still accurate?

**Mr Soden**—Those projections were done a couple of years ago. There was an initial review of those projections, managed by the Attorney-General's Department, last calendar year. I think it was decided that it was too early to come to some conclusions at that time about what the future was going to be because the High Court had not delivered some of the decisions it gave—such as Yorta Yorta and, of course, Ward.

We have not as yet looked carefully at what the future workload requirements for 2004-05 will be. We will be working on that in the 2003-04 financial year. The hump of work that we do in native title has been moving along in a time frame and—depending on some of the attitudes arising as a result of decisions like Yorta Yorta and Ward and how many on-country hearings need to take place—I expect that that work will move into the future and we will probably need to look at extra resources in 2004-05 and some extra resources beyond 2004-05 to do the native title work.

You might be wondering what has happened with the money so far. The money that we got in the past was used for native title hearings that have been much longer, more intensive than originally anticipated. I can give you one good example. The Wongatha claim—which is in the goldfields areas in WA—was estimated to go for 40 days when we did our initial projections some years ago for funding. It has already gone 66 days and it is part heard. It is taking much longer. We are consuming resources intended for trials—but it is now being used because some trials cannot proceed—for a lot of what is called preservation of evidence where we are taking evidence on country in matters prior to the trial commencing where there is a risk that the evidence might be lost with elderly persons and the time it takes to prepare these trials. Rather than the resources being spent on the actual trial, we are spending resources on country, taking evidence for the future.

**Senator KIRK**—So it is not so much the caseload; it is more the resources involved in the cases that represent the increases.

**Mr Soden**—Yes.

**Senator KIRK**—In relation to those projections of the caseload, you are saying that there may not need to be any reconsideration of that, but more the resources that go into it. I am just concerned about the forward estimates that have been made in relation to the appropriation for the court.

**Mr Soden**—I think it is fair to say that the forward estimate right at the moment is uncertain—uncertain as to whether it is enough or not enough. We will know in the next few months the way in which the cases will be dealt with after Ward and Yorta Yorta and the amount of resources they might consume, and that will help us calculate what we would need in 2004-05 and beyond.

**Senator BOLKUS**—Someone mentioned, amongst all the immigration cases, that there might have been a question with the jurisdiction of the federal magistracy to hear cases remitted either by the Federal Court or from the High Court to the Federal Court. Is that something that has been pleaded in any of the proceedings?

**Mr Soden**—I cannot answer that; I just do not know. On the last occasion I mentioned that there was a degree of uncertainty about whether the magistrates had jurisdiction prior to 1 October 2001. I do not know whether that issue has been considered very carefully, or judicially considered, but everyone seems to be working under the assumption that, if the action was commenced prior to 1 October 2001, the magistrates do not have jurisdiction. I think that is being used as a guide for whether a remittal can be made.

**Senator BOLKUS**—Is that the only question of jurisdiction?

**Mr Soden**—That is the only issue I am aware of.

**Senator BOLKUS**—In terms of this high number of cases, how do you manage them? Obviously the overwhelming proportion would be raising the same issues. How does the court intend to work out which ones you can bundle together, if in fact you can, and run a test case in respect of some of the issues?

**Mr Soden**—There are a number of initiatives. In those places where we have a bundle of cases coming from the High Court—a good example is Adelaide—one judge has been

managing all of those cases. One legal representative is appearing in all of those cases and, of course, the minister is represented by, in effect, one person on the other side. They are going through all of those cases, attempting to categorise them into certain categories that will mean that some might be withdrawn as a bundle of cases; others might need to proceed. We are going through that process at the moment rather than just doing them one after the other. A similar set of management processes is taking place in both Melbourne and Sydney.

**Senator BOLKUS**—Do you have any projection at this stage as to what proportion of the overall number of cases could be handled in this way?

**Mr Soden**—No, I do not. I have not seen the proportions coming back or information about the different proportions from either Adelaide, Melbourne or Sydney, although I must say that the indications are that a large proportion, whatever that turns out to be, will need to be heard.

**Senator BOLKUS**—So that means you will need extra resources.

**Mr Soden**—We have been working on the assumption that we will deal with that within our existing resources. In respect of Adelaide, for example, we have been looking at what we might be able to do there by sending a judge for a week or two. Of course, some of these matters can be dealt with by magistrates of the Federal Magistrate's Court and there have been remittals to magistrates. Adelaide is a good example of the overall process. We are looking at the time within which the magistrates can do it, the time within which we can do it; what opportunities for extra judges we can put in Adelaide for a short period of time. But I must say we are looking at it within our existing resources.

**Senator BOLKUS**—How many cases does the Federal Court conclude or finalise a year?

**Mr Soden**—I do not have the exact figure off the top of my head, but it is 4,300-odd. I would have to refer to our annual report.

**Senator BOLKUS**—So there is a fair chance that you could knock off most of these cases within two years?

**Mr Soden**—They do not take long to hear. When they are ready to hear—as long as we do not get an extraordinarily large number in the future or so long as this trend does not continue with these large numbers coming back from the High Court, we are talking to the Federal Magistrate's Court and anticipating dealing with it within pretty much existing resources, so far as our court is concerned in any event.

**Senator BOLKUS**—I will just move on to unrepresented litigants. You would have heard part of the evidence from the High Court in respect of the social profile of some of these. Do you have similar stats indicating what proportion may be on benefits, may be unemployed and so on?

**Mr Soden**—Yes. I will just get our annual report. We report quite extensively in our annual report, and I do not have the information for this financial year at this stage. But last financial year, by way of comparison—there is a lot of information on one page, rather than having me go through it, it might be just as easy if I tabled this page—it shows the number. For example, I will just mention one. Under the regulation that provides for a waiver in relation to pension

or health card or prison inmate, there were 1,112 in the last financial year; 880 in that same category the year before. That involved nearly \$690,000 in waived fees. All of that is set out there.

**Senator BOLKUS**—Of that 1,112, for instance—1,112 out of how many in the full year?

**Mr Soden**—That was 3,887 waivers. It is all set out here. Just for the record, it is page 96, financial statement note 15.1 of the 2001-02 annual report. There will be similar information in our forthcoming annual report.

**Senator BOLKUS**—Thank you very much.

**Senator LUDWIG**—Do you have the requirement or the ability to do ADR—alternate dispute resolution—from the Federal Court?

**Mr Soden**—Yes, we do.

**Senator LUDWIG**—How often do you use that?

**Mr Soden**—Quite extensively. Again, there are numbers in our annual report. This year, there will be upwards of about 400 matters referred to ADR. Essentially it is mediation and it is done more frequently in some places compared with others. I will give you one good example. You might recall that the Federal Court undertook a mediation in the *Tampa* matter—and that was by one of our deputy registrars in Melbourne—which produced an interim agreement, I understand.

**Senator LUDWIG**—Are there specific areas that you can do it in? Is there any area that you cannot do it in?

**Mr Soden**—There is no area that we cannot do it in.

**Senator LUDWIG**—Is it used for frequently in some areas than in others and, if so, what are those areas?

**Mr Soden**—It is used more frequently in the general jurisdiction of the court, which is trade practices, intellectual property, bankruptcy, human rights, workplace relations. It is not used in the migration jurisdiction—or very rarely. It is not excluded from being used. It has turned out to be not effective in terms of time and cost. It is also used in the native title jurisdiction, not in respect of the substantive native title issues but very effectively in respect of issues about overlapping claims, proper applicants et cetera.

**Senator BOLKUS**—One final point: your sub-regulation 2(4)(c), waiver on the basis of level of income, what is the level of income that applies in these circumstances?

**Mr Soden**—I will have to take that on notice. My understanding is that it is just general capacity to pay.

**Senator BOLKUS**—If you could come back to us with that information that would be great.

**CHAIR**—There being no further questions, I thank Mr Soden and the officers for assisting the committee this afternoon. We are very grateful for that assistance.

**Mr Soden**—Thank you.

[12.41 p.m.]

### Federal Magistrates Service

**CHAIR**—I welcome Mr May from the Federal Magistrates Service.

**Senator KIRK**—On 22 May the Attorney-General announced that the government would be appointing four new federal magistrates. Is that correct?

**Mr May**—That is correct.

**Senator KIRK**—In which locations?

**Mr May**—I understand that the Attorney's press release indicates that the appointments will be made in south-east Queensland—by which I understand the Attorney means Brisbane and servicing the Gold Coast and Sunshine Coast—Melbourne, Adelaide and Newcastle.

**Senator KIRK**—I understand that funding of \$4.4 million over four years was announced in the budget to fund two of those magistrates. Is that your understanding?

**Mr May**—The budget papers showed a reallocation of the funding of the Federal Magistrate Service. A dividend has been paid to government this year and government has then allocated funding in the appropriation bills over the next four years.

**Senator KIRK**—That is for two of the magistrates?

**Mr May**—For two of the positions.

**Senator KIRK**—Where is the funding coming from for the other two magistrates?

**Mr May**—The other two will be funded from moneys that will be transferred from the appropriation of the Family Court as each of those appointments replace Family Court judicial positions that are currently vacant.

**Senator KIRK**—My understanding is that two Family Court judges will not be replaced and the funding will be transferred to FMS. Is that correct?

**Mr May**—Justice Robinson died last year in Adelaide and her position will not be replaced. Justice Frederico in Melbourne has recently retired and his position will not be replaced in the Family Court.

**Senator KIRK**—Has the Magistrates Service been informed how much will be transferred to its budget from the Family Court's budget.

**Mr May**—That is yet to be negotiated.

**Senator KIRK**—When is that likely to be finalised?

**Mr May**—I would imagine that it will be finalised in budget estimates.

**Senator KIRK**—At the estimates hearing in February it was said that the review of the Federal Magistrates Service had been completed but that the report had not been finalised. Has the report now been finalised?

**Mr May**—The review is a matter being conducted by the Attorney-General's Department, the Department of the Prime Minister and Cabinet and the Department of Finance and Administration. I should pass that question to the department, Senator.

**Ms Leigh**—The review is not yet finalised. It is very close to completion.

**Senator KIRK**—How close?

**Ms Leigh**—Extremely close.

**Senator BOLKUS**—Does that mean we can ask for a copy?

**Ms Leigh**—It has not gone to the Attorney as yet. We did undertake at a previous estimates hearing that when it went to the Attorney we would also put to him the request from this committee for a copy, and we will do that.

**Senator KIRK**—So the review has been completed.

**Ms Leigh**—No, it is just being finally completed within the department before being submitted to the Attorney.

**Senator KIRK**—I understood that in February it was said that it had been completed but not finalised.

**Ms Leigh**—I suppose it depends what terminology you use. All of the meetings of the working group of the three departments that are responsible for signing it off and the reference group that was advising that group have been completed and we have now received all of the input. So in that sense the review has been completed, but the actual final text is just being finalised.

**Senator KIRK**—And that will be in the next few weeks?

**Ms Leigh**—I think I could probably be that optimistic, yes.

**Senator KIRK**—Can the committee be provided with a copy when that is finalised?

**Ms Leigh**—That is a matter for the Attorney. We will put that to the Attorney when we put the review to him.

**Senator KIRK**—Are you able to advise the committee about any of the problems or needs that were identified in the review?

**Ms Leigh**—I think it would be premature of me to do that when the review has not yet gone to the Attorney.

**Senator KIRK**—As part of the review, was any attempt made to estimate the average cost of pursuing particular kinds of matters in the Federal Magistrates Service?

**Ms Leigh**—I do not think it was that level of detail.

**Senator KIRK**—Why was that level of detail not pursued, given that the FMS is meant to be a cheaper alternative than other processes?

**Ms Leigh**—There is a question about how you assess exactly whether it is providing that cheaper service. We are aware, of course, of the costs of the Federal Magistrates Service itself in terms of the cost of engaging a magistrate as opposed to the cost of engaging a judge. Then there is the question of the cost to clients, and information we have is that matters in the Federal Magistrates Service, as was intended, are able to progress quickly, so that necessarily means that it is cheaper for the clients who are bringing matters to the service.

**Senator KIRK**—So there was really no assessment made in that sort of quantitative sense as to whether there have been any significant savings made as a result of the FMS. Is that what you are saying to me?

**Ms Leigh**—I think you can look at it in terms of the volume of matters being handled by the FMS, but along the lines that I have just outlined.

**Senator KIRK**—Those matters will be detailed in the report, no doubt.

**Ms Leigh**—Certainly the objective of the report was to look at whether the Federal Magistrates Service had achieved its objective, and that was to provide a quick, user-friendly, inexpensive service in relation to less complex matters.

**Senator KIRK**—Does the FMS operate any kind of night court or conduct evening sittings?

**Ms Leigh**—That would be a matter for Mr May.

**Mr May**—No, we don't, Senator.

**Senator KIRK**—Are there any proposals to do so?

**Mr May**—When the court was first established there was some brief discussion about that possibility. I suppose we could say that the court does often conduct what might be called a night court because some federal magistrates have sat very late on occasions. It is not unusual in Brisbane for the court to be sitting through to about 7 p.m., but that is not the establishment of a night court. The court will sit as and when it is required to in order to do the work that it has before it, but we have no current proposal to establish weekend courts or night courts.

**Senator KIRK**—I understand that the Chief Magistrate made that suggestion about the night court—

**Mr May**—She did, at the time when she was the Chief Magistrate nominee—I think that is the best way to describe her position at that time.

**Senator KIRK**—Has she pursued that option with you since being appointed?

**Mr May**—We have had no further discussions about the establishment of a night court.

**Senator KIRK**—Ms Leigh, I wondered whether, as part of the review, there was any consideration of extending the hours of the sittings.

**Ms Leigh**—No, that particular matter was not covered in the review.

**Senator KIRK**—Even though it was a recommendation or a suggestion by the Chief Magistrate?

**Ms Leigh**—It is really a matter for the court how they would describe that. I recall the general possibility being floated by the Chief Federal Magistrate, but I do not think it really ever took on any greater status than that. I do not think it ever became a recommendation.

**Mr May**—I think it is fair to say that it is an idea that is not at the top of the tray in terms of priorities for the court.

**Senator KIRK**—Could you give me an estimated cost of the review to date?

**Ms Leigh**—The main costs of the review were in officers' time. As I have indicated, there was a working group comprising our department, the Department of the Prime Minister and Cabinet and the Department of Finance and Administration. The courts were all invited to attend meetings of that working group, and did so. In addition, there was a reference group, which comprised officers of our department, the Department of the Prime Minister and Cabinet and the department of finance, the Chief Federal Magistrate, the CEO of the Magistrates Service, a judge of each of the family and federal courts and a consultant, Mr Des Semple. I can tell you what we paid Mr Semple, but apart from that it would be a matter of officers' time.

**Senator KIRK**—Perhaps you could take that on notice and provide us a breakdown of the officers' time as well as the amount paid to the consultant.

**Ms Leigh**—I could give you now details of the costs paid to the consultant. We paid a total of \$5,592.50. That comprises fees of \$4,500, disbursements of \$556.82 and the GST of \$535.68. Those disbursements covered airfares and taxis. The fees covered the meetings and the work done in preparing those meetings and providing comments on drafts in between meetings.

**Senator KIRK**—Do you have any estimate of the cost of the officers' time? Can you do those sorts of calculations?

**Ms Leigh**—I could not do that off the top of my head.

**Senator KIRK**—Could you take it on notice?

**Ms Leigh**—I could take it on notice. In terms of the other departments, I would be dependent on those departments being able to provide that information.

**Senator KIRK**—How was the consultant chosen?

**Ms Leigh**—Mr Semple is an expert in this general area and he had previously, for example, chaired the Family Law Pathways Advisory Group. He had been a member of the Family Law Council and the chair of that body. So he was recognised as having some expertise in this area.

**Senator KIRK**—Did he provide you with a report?

**Ms Leigh**—No, his role was to participate in the reference group meetings and to provide comments on the drafts of the review as they were developed.

**Senator KIRK**—You talked about the cost and about the other departments being involved. I think you mentioned the Department of the Prime Minister and Cabinet and DOFA. Is that correct?

**Ms Leigh**—That is correct.

**Senator KIRK**—Was the cost shared amongst the three departments, or was it borne mostly by A-G's?

**Ms Leigh**—The Attorney-General's Department paid for the consultant and each department bore its own costs in terms of officers' time. There would also have been the travel costs. One meeting of the reference group was held in Melbourne, and the travel costs would have been borne by the officers' departments.

**Senator KIRK**—My next lot of questions are in relation to additional jurisdictions being given to the Federal Magistrates Service. I understand that the government recently passed laws conferring copyright jurisdiction on the FMS.

**Ms Leigh**—That is correct.

**Senator KIRK**—Mr May, what is the capacity of the service to absorb this new jurisdiction?

**Mr May**—We were consulted about this prior to the jurisdiction being conferred and considered that the court, as it was then constituted, would have the capacity to take some small part of the copyright work, based on what we knew of the work that was within the system. We have, in a sense, a release valve in that we can always refer matters back to the Federal Court, or matters come through the Federal Court based on our capacity, so we can manage new work coming in. In Sydney in particular, we have two federal magistrates who are based in the Federal Court building—the Queen’s Square building—and who do the majority of their work in the general federal law areas, and their view was that they had capacity to take on that new jurisdiction. It is not shaping up at this stage as being a jurisdiction that will produce an enormous amount of work. One application was filed on the first day that we had the new jurisdiction, and our view at present is that, with the existing resources and the resources that have been announced, we will certainly have the capacity to deal with that jurisdiction. Our more pressing issues lie in the area of migration rather than jurisdictions about copyright.

**Senator KIRK**—Perhaps I could ask Ms Leigh whether or not there are any proposals to confer additional jurisdictions on the FMS, in particular Workplace Relations Act jurisdiction.

**Ms Leigh**—The areas where the government has announced that it is considering conferring additional jurisdiction on the FMS are: some areas of corporate insolvency, consumer protection matters in relation to financial services, matters under the manufacturers liability provisions of the Trade Practices Act, and also increasing the monetary limit under the Trade Practices Act from \$200,000 to \$750,000. The government has also announced that it is looking at whether to confer jurisdiction in less complex intellectual property matters.

**Senator KIRK**—You said that there has been an announcement made that it is being considered. Is that what you said—that these matters are just being considered?

**Ms Leigh**—It has been announced that they are under consideration; that is correct.

**Senator KIRK**—Is there any time frame as to when a decision is going to be made in relation to those jurisdictions?

**Ms Leigh**—In relation to the intellectual property matters, there is an advisory council on intellectual property, which is within the DOCITA portfolio. It is examining a wide issue, including the possibility of giving this jurisdiction to the Federal Magistrates Service. I understand that that council is expected to report in June, so that is the time frame. In relation to the other areas I mentioned, the department, jointly with the Department of the Treasury, issued a discussion paper on those areas and we have had discussions with the Federal Court and the Federal Magistrates Service, as well as with the Department of the Treasury and the Law Council, on those proposals. We are in the course of finalising a draft of legislation in

relation to those matters, in relation to corporate insolvency, consumer protection matters and financial services. The next step would be for the Attorney to provide those drafts to the states and territories to seek their views and then, obviously, progress after that will depend on receipt of those views.

**CHAIR**—This might be a useful place to adjourn, Senator Kirk, unless you have only a minute of questions left.

**Senator KIRK**—Seeing as there is another minute, I think I will take it; thank you. I just wondered about the capacity of FMS to absorb these additional jurisdictions that are being mentioned.

**Mr May**—Our current view, based on what we know of those jurisdictions, is that there is capacity where the work is likely to arise. As I have said, there is the capacity within the court to balance its workload. This is work that is currently within the system in the sense that it is in the Federal Court, so the balancing mechanism allows us to take on the new jurisdiction without necessarily swamping ourselves with new work.

**Senator KIRK**—So additional resources may be necessary?

**Mr May**—That really depends on an examination of the workload when you have the jurisdiction. If it turns out that a significant part of those jurisdictions is work that is suitable for a lower level court, that might be an argument in favour of a reallocation of resources either within the system or by the provision of new resources to the system. But at this stage it is too early to call.

**Senator KIRK**—Could you provide the committee on notice with the usual statistics on the number of migration matters in the court and also the number of unrepresented litigants?

**Mr May**—I will take that on notice.

**Ms Leigh**—I would like to make one final comment. There are other areas under consideration but, as I have indicated, the ones that I have stated are the ones the government has made public.

**Senator BOLKUS**—Mr May, does the service itself keep an analysis of what it costs per case to consider and process certain cases? If so, can you come back to us with any information you might have reflecting an assessment of the costs of processing different types of cases? You can take this on notice.

**Mr May**—I will see what I can do. I will take that on notice.

**CHAIR**—Mr May, thank you very much for attending and assisting the committee today.

**Proceedings suspended from 1.01 p.m. to 2.00 p.m.**

#### **Family Court of Australia**

**CHAIR**—I invite the officers of the Family Court to come to the table. I welcome, Mr Foster and Ms Filippello. We are resuming our consideration of Attorney-General's portfolio budget estimates.

**Senator KIRK**—I understand that on 22 May the Attorney-General announced that judges in Melbourne and Adelaide would not be replaced and that funding would be transferred to

the Federal Magistrates Service to fund the appointment of a magistrate in each city. Is that correct?

**Mr Foster**—Yes, that is correct.

**Senator KIRK**—When was the Family Court first advised of the decision not to replace judges?

**Mr Foster**—The Acting Chief Justice, Justice Ellis, received a telephone call from the Attorney-General last Wednesday afternoon and I received a telephone call from the Attorney-General's office late that afternoon as well.

**Senator KIRK**—Was that 22 May or the Wednesday of what week?

**Mr Foster**—The Wednesday of last week; I am not sure what that date is.

**Senator KIRK**—It was the 21st, I think. So that was the day before the announcement.

**Mr Foster**—It would have been the 21st.

**Senator KIRK**—Had the Family Court provided any advice to the Attorney-General that the judges in Melbourne and Adelaide did not need to be replaced?

**Mr Foster**—The normal process or the accepted process over the last couple of years has been that, when there is a judicial vacancy, we have been asked to provide information which, in our view, would support the reappointment of another judge. In these cases, we were asked to do that, and we did so.

**Senator KIRK**—What was the nature of the advice that you provided?

**Mr Foster**—It is primarily about workloads, delays—the activities of the court.

**Senator KIRK**—Could you provide the committee with a copy of that advice?

**Senator Ellison**—This involves the Attorney, and I think I should take it up with the Attorney first. I will take that on notice and see what the Attorney says as to whether we can release that.

**CHAIR**—Thank you.

**Senator KIRK**—Could you perhaps just give us a summary of the nature of the advice that was provided? You said it related to workload and resources.

**Mr Foster**—It was primarily about filings and what the delays in the courts are, waiting periods et cetera. It was to do with the general workload of the various courts.

**Senator KIRK**—What is the workload of the two courts? Do you have any figures or statistics for us?

**Mr Foster**—Yes, I do. In Adelaide, from the financial year 1999-2000 to the current year—and we have estimated the full year—there has been a reduction of 15 per cent in the number of final orders. That number has gone from 2,743 in 1999-2000 to the estimate for this year of 2,332. In relation to interim orders in Adelaide from the period 1999-2000 to the current year, there has been a 23 per cent reduction in workload, from 4,103 interim matters to 3,176. In relation to Melbourne for the same period of time, there has been a reduction in final orders of 28 per cent, from 4,534 to 3,248. Interim orders in Melbourne for the same period

have gone from 5,453 to 3,773, a reduction of 31 per cent. In comparison, the national average is a 24 per cent reduction in final orders and a 28 per cent reduction in interim orders. So in Adelaide the reduction has been less than the national average and in Melbourne the reduction has been slightly more than the national average.

**Senator KIRK**—I appreciate that you cannot provide us with the advice given to the Attorney-General, but was it the advice of the Family Court that the two judges did not need to be replaced? Were there any conclusions in relation to that?

**Mr Foster**—We were not asked that specific question. We are only ever asked to provide details about the workload. I guess the government decides whether they will appoint a judge or magistrate based on the information and data provided by us and, I guess, the FMS.

**Senator KIRK**—Could you remind the committee how the vacancies in Melbourne and Adelaide arose?

**Mr Foster**—Certainly. In Adelaide, it was as a result of Justice Robinson retiring on 19 June last year. In Melbourne, it was as a result of Justice Frederico retiring on 27 April this year.

**Senator KIRK**—I believe that Justice Robinson passed away.

**Mr Foster**—She retired first. She unfortunately passed away after she retired.

**Senator KIRK**—I see. What has been the impact of the vacancies on waiting times in the registries in those two cities?

**Mr Foster**—I will answer that in a general sense first. Some 13 months have been lost in terms of judicial time from the time that Justice Robinson retired on 19 June to now. So there has been a significant reduction in judicial waiting time or sitting time lost during that period. Because of the reduction in the workloads, the significant delays that the court is now experiencing are in relation to interim work. In the trial work, the court standard for final matters is that 75 per cent will be completed within six months. In Adelaide, there has been a change in system, and our figures are showing that, in Adelaide, it is 3.8 months from pretrial notice to hearing date, which is in effect less than the standard.

But there is a pool system running in both Adelaide and Melbourne, and these figures do not take into account the pool system that has been established. I am still trying to identify exactly what the delays are under this new system. For instance, in Brisbane there are something like 1,200 matters sitting in the pool system, but the report on the standard is that they are actually meeting the standard because they are reaching that in 4.3 months rather than the six-month period. To provide more detail, I would need to take that on notice to give you exact figures because we do have to actually measure the impact of the number of matters that are sitting in the pool.

**Senator KIRK**—If you could, that would be very helpful because there is a lot of information there.

**Mr Foster**—Certainly.

**Senator KIRK**—How many Family Court judges are there in both registries, Adelaide and Melbourne?

**Mr Foster**—Currently, there are four judges in Adelaide. I did not bring the number of judges for each individual registry. I only have the total number of judges and where there were vacancies.

**Senator KIRK**—Perhaps you could provide that to us on notice.

**Mr Foster**—But, certainly, there are four in Adelaide, and—I would not like to say for certain—there are either 11 or 10 in Melbourne. I would like to take that on notice.

**Senator KIRK**—Thank you. So that is four down from five.

**Mr Foster**—That is right.

**Senator KIRK**—There has been about a 20 per cent reduction.

**Mr Foster**—Yes.

**Senator KIRK**—You are saying that, at this point in time, it is difficult to establish whether or not there has been a significant impact upon waiting times as a consequence—and I am looking at Adelaide in particular—of the reduction of one judge.

**Mr Foster**—That is right, yes.

**Mr Cornall**—The department's figures show that there are 12 judges in the Melbourne registry, including the Chief Justice, a judicial registrar and a band 2 registrar.

**Mr Foster**—That is why I would say it was 11 because we would not count the Chief Justice as being a judge in the Melbourne registry.

**Senator KIRK**—Thank you. When do you think you are going to be able to make some sort of assessment as to the impact on waiting times in the registries? You say that, at this stage, it is a bit too early, but in Adelaide Justice Robinson has been departed for almost a year. At what point do you think you are going to be able to make some sort of assessment?

**Mr Foster**—We actually have a project going to look at what we believe are the number of judges that we need to produce the work that we have across the country. That work is expected to take about two months. That is in the bigger picture. But I am sure that we could produce some figures about Adelaide and Melbourne in a much shorter time frame than that.

**Senator KIRK**—If you could take that on notice, that would be good.

**Mr Foster**—We will take that on notice as well; thank you.

**Senator KIRK**—Given that no doubt these vacancies are now permanent vacancies, there is no question that there is going to be an impact upon waiting times and the output of the court. Could you tell me whether the judges who previously held the positions that we have been discussing undertook any outreach as part of the Family Court circuit program?

**Mr Foster**—In both cases, both of those judges did circuit work. I know Justice Frederico almost had Ballarat as his own circuit arrangement. Justice Robinson in Adelaide—because there are judicial circuits to Mount Gambier and Broken Hill—would have been part of that circuit process. The answer is yes; they both would have undertaken and did undertake circuit work.

**Senator KIRK**—What is happening now in Ballarat, Mount Gambier and Broken Hill? Who is servicing those areas?

**Mr Foster**—They are still being serviced by the number of judges who are there in those places. But the court also, because it is a national court, will move a judge from one location to another to meet workload peaks. For example, if there is a problem in Brisbane and there needs to be some extra judicial resources, the Chief Justice and the judge administrators would consider sending a judge from, say, Melbourne or Sydney, to Brisbane to assist. That happens for a whole range of different reasons and quite frequently.

**Senator KIRK**—What about to the outlying areas such as the regions that we have just been discussing?

**Mr Foster**—That would mainly be the judges that are attached to that registry and the support. So they would do that work and other judges might come in and assist in the principal registry.

**Senator KIRK**—Do you have any figures on whether, for example, in South Australia's Adelaide registry any of the other judges have now been going to Mount Gambier and Broken Hill since Justice Robinson retired?

**Mr Foster**—Certainly Justice Robinson would not have had those circuits for her exclusive use. The circuits are normally arranged through the administrative judge. In this case it would be Justice Dawe in Adelaide now. I do not know what arrangements she puts in place but generally it is shared around so different judges would go at different times. For instance, we have got a special matter from the Pitjantjatjara and I think Justice Burr is going to Coober Pedy to hear that matter fairly shortly. It depends on who might be available and who has been in recent times, so that it is shared around.

**Senator KIRK**—Do you keep figures on the breakdown of where the judges travel on the circuits in that manner?

**Mr Foster**—Those figures would be available.

**Senator KIRK**—Can you take that on notice?

**Mr Foster**—Yes, certainly. Over what period of time, Senator?

**Senator KIRK**—I would like to see what has occurred in the last 12 months in relation to those two areas, Melbourne and Adelaide.

**Mr Foster**—Okay.

**Senator KIRK**—As a consequence of the departure of the two judges, will there be a reduction in the number of circuits?

**Mr Foster**—I do not think so; not significantly. We have just finished doing a review of our circuits. The Chief Justice has said publicly on many occasions that he and the court are committed to maintaining services in rural and regional Australia. Certainly from my perspective the court will make itself available. Whether there is work to go to the circuit is another question. What happens is that we allocate days in various locations around the country and then make a decision about whether there is sufficient work to justify the judge attending. If there is not, then the court will not go there. But there is certainly no deliberate attempt to withdraw any services from circuit arrangements. Wherever possible we try, with mediators and DRs, to actually increase the range of our circuit reach.

**Senator KIRK**—You said there had been a review into the circuits recently.

**Mr Foster**—There is an internal review every year and each admin judge does that in each state to look at what their circuit commitments and arrangements are. It is very much an internal review; a look at where they are going to see whether the same things apply this year as did last year basically. It is not a formal review as such.

**Senator KIRK**—I have some questions in relation to registrars as well. Has the Family Court been advised of how much funding will be transferred and how much it will retain in 2003-04 in relation to registrars?

**Mr Foster**—We are yet to initiate discussions with the FMS and the department about that. We have only just found out that the judges are being replaced by magistrates and any surplus funding could be utilised for the employment of registrars. It is a bit early for us to say how many and where they might be et cetera.

**Senator KIRK**—When do you expect that to be finalised?

**Mr Foster**—I think Mr May might have said the details in additional estimates, but we would need to have that sorted out in a fairly short period of time because the positions for magistrates have already been advertised, as you would be aware.

**Senator KIRK**—As I understand it, the Attorney-General indicated in his announcement that the funding retained by the court could be used for senior registrars. Are you aware of that?

**Mr Foster**—Yes, I am.

**Senator KIRK**—Can you tell the committee how much it costs to employ an SES band 2 registrar?

**Mr Foster**—When the band 2 registrar resources were transferred to the FMS as part of the establishment of the FMS I think the figure was \$237,000 all up costs for the employment of a band 2 registrar.

**Senator KIRK**—Approximately how many registrars could be employed with the funding that is going to be retained?

**Mr Foster**—As I said, it is a bit early to say but at least one and possibly more.

**Senator KIRK**—So that will be a matter that will be determined down the track?

**Mr Foster**—We will need to negotiate how much money has to transfer under this new arrangement.

**Senator KIRK**—How many SES band 2 registrars does the court currently have?

**Mr Foster**—We have got eight and at this stage we will be going to three as from 1 July.

**Senator KIRK**—What is the reason for the reduction to three?

**Mr Foster**—We have ongoing funding for two and with the agreement of the Attorney-General, we employed an additional one in Adelaide. We used funding that was previously used for a judicial registrar in Melbourne to maintain that position. We now have funding for three ongoing positions, and it will depend on the outcome of our discussions with the FMS and the department about how much is left over as to how many more we can employ.

**Senator KIRK**—What is going to happen in the interim, given that you are going to be down by five registrars whilst this matter is being determined?

**Mr Foster**—Until the advent of the FMS most interim applications were dealt with by registrars. As of July this year, \$4.3 million, representing 18 registrars plus 27 support staff, will have been transferred to the FMS from the Family Court. That leaves only three positions of registrar remaining in the Family Court. They are in Brisbane, Adelaide and Melbourne. Over the period since the implementation of the FMS the number of interim applications lodged in the Family Court has declined from 23,600 to 17,000-odd projected for this year. In short, that means that our workload from applications for interim orders has declined by 28 per cent, but the resources to hear those matters have declined by nearly 86 per cent. So now there is no alternative for us in most circumstances other than to delegate that work upwards. That means it has to be heard by judicial registrars or judges.

So, even allowing for the fact that we have three registrar positions at the moment, we are finding it very difficult to meet our timeline, which provides that 90 per cent of interim applications are to be dealt with within three months. Currently, year-to-date, it is taking almost seven months to reach that 90 per cent figure. So there is a quite significant blow-out in the time taken to deal with the interim workload. Obviously, the appointment of additional band 2s would go some way to assist with that, but there will still need to be a rearranging of workloads amongst the different layers of the judiciary or the court to deal with it.

**Senator KIRK**—Amongst the judicial registrars and the judges in particular?

**Mr Foster**—Yes.

**Senator KIRK**—How is that going to work in a place like Adelaide or Melbourne, where you are down one judge in both registries? If work is being delegated up in the way you have just described, is that not going to put significant pressure on those judicial officers?

**Mr Foster**—Ultimately, it will. We can only deal with the resources we have available to us.

**Senator KIRK**—So would it not be helpful to have another judge in both those registries?

**Mr Foster**—The appointment of judges is a matter for the government.

**Senator KIRK**—Perhaps I can ask the minister whether there is any consideration of replacing those two judges in the Adelaide and Melbourne registries.

**Senator Ellison**—No.

**Senator KIRK**—I will move to the question of councillors. How many full-time equivalent councillors are currently employed by the court?

**Mr Foster**—We have 85.25 FTEs. That includes the six Indigenous Family Consultants, of whom two are in Cairns, two are in Darwin and two are in Alice Springs. We intend to maintain that level of staffing.

**Senator KIRK**—Are there any vacancies at all?

**Mr Foster**—That is the figure as at 15 May, so I assume there are no vacancies. But with 85-odd FTEs there are obviously ins and outs at all sorts of times. I could not categorically say that there is not a vacancy right this minute, but we are running full to quota.

**Senator KIRK**—I was going to ask whether or not the number is expected to change over time but, from what you have said, people go in and out. Does the number of full-time equivalents remain fairly static?

**Mr Foster**—It is our expectation that it will stay at 85.25.

**Senator KIRK**—Do you expect that the changes announced by the Attorney-General on 22 May will impact on the court's counselling work?

**Mr Foster**—They will not impact on the FTE numbers. Certainly, the court will continue to provide the same number of reports tomorrow as it does today. I guess it will depend on whether the FMS want more or fewer reports as to what impact it might have on the counselling service. The option is always open to the FMS to buy their reports from somewhere else if we cannot provide them as they do now. If we cannot meet their demand they buy them from somewhere else.

**Senator KIRK**—They go outside. Does that happen very often?

**Mr Foster**—That is a question that you would have to put to the FMS.

**Senator KIRK**—You outlined some of the registries where the counsellors are located, do you have a full list of where those counsellors are throughout Australia?

**Mr Foster**—Can I table that for you?

**Senator KIRK**—Sure.

**Mr Foster**—The list does not include the six Indigenous Family Consultants that I mentioned; two in Cairns, Alice Springs and Darwin.

**Senator KIRK**—Do those figures that you have just provided indicate how many full-time equivalents there are in each registry?

**Mr Foster**—Yes, they do.

**Senator KIRK**—Has the Family Court developed a circuit schedule for 2003-04 as yet?

**Mr Foster**—I have a report which shows the various country locations where the mediation circuits are held. I do not have the dates of those with me, but I have the locations and I could table that document if that would be helpful.

**Senator KIRK**—Thank you, that would be helpful. When and how far in advance is the circuit schedule determined?

**Mr Foster**—It depends a bit on workload so there is some flexibility in it. We are committed to go to certain places and it will depend on what the workload is. Often when you send a counsellor, that means that the workload comes in so, for instance, if we go to Coober Pedy, we will advertise that we are coming and then people will come to see the counsellor.

**Senator KIRK**—Do you have statistics on the locations visited, the number of circuits per annum and each location duration per circuit—to do with circuits, generally, of the courts? Do you have the breakdown of the locations and days visited?

**Mr Foster**—I do not have that with me.

**Senator KIRK**—Could you take that on notice for us?

**Mr Foster**—Yes. Is this just for mediation circuits or circuits generally?

**Senator KIRK**—I am now talking about circuits for the court itself; judges, registrars—

**Mr Foster**—Deputy registrars and mediators.

**Senator KIRK**—Yes, from the last 12 months would be adequate for our purposes.

**Mr Foster**—It may take a while to have that put together.

**Senator KIRK**—Could you update the committee on the roll out of project Magellan?

**Mr Foster**—Certainly. In January this year the Attorney General confirmed his commitment to lifting the restrictions of the Legal Aid funding guidelines for Magellan cases which was an essential precondition to implementation across all states and territories. We now have a national implementation committee chaired by Justice Dessau and that committee is overseeing the national roll out through local committees. The first listing of cases under the Magellan approach will be in Adelaide, Canberra, Melbourne and Townsville from July this year. Cases are being identified as we speak. Brisbane has been awaiting the appointment of replacement judges which has now taken place so work will commence on establishing Magellan in Brisbane as well. In New South Wales, negotiations with the Department of Community Services have delivered a memorandum of understanding, but the court is awaiting a final response from that department in relation to implementing Magellan. So in New South Wales we still have not done it but we have gone as far as developing the memorandum of understanding.

**Senator KIRK**—What is the likely timetable in New South Wales if you have got the MOU?

**Mr Foster**—It is really going to depend a little bit on our further discussions with the department. We are anxious to do it. There is not disagreement but there are different views about where the pilot might be held, whether it might be in Parramatta or in Newcastle, so we are still working through that. It is a bit difficult to actually put a definitive start date on it, but it is part of the national project.

**Senator KIRK**—That will cover all the registries, will it?

**Mr Foster**—The bigger registries, yes.

**Senator KIRK**—When is it expected to be operational Australia wide?

**Mr Foster**—As I said, there are a whole range of registries starting in 2003. In Brisbane we now have a replacement judge starting in July, and both legal aid and the relevant department in Brisbane are keen for that to proceed. That should happen quickly. The last place is really New South Wales. I would be surprised if Magellan was not national in the latter half of this calendar year.

**Senator KIRK**—On the question of security, has the Family Court reviewed the security of its premises in recent times?

**Mr Foster**—I guess we are continually reviewing our security arrangements. We spend about \$2.2 million per annum on security. That is made up of the marshal's office budget, because the marshal of the court has direct responsibility for security. We have a contract with Chubb security services to provide guarding personnel, and that is about \$1.89 million. They

control access to court buildings during staff hours, monitoring public areas—airport type security—in most locations. We have airport type security in Melbourne, Dandenong, Sydney, Parramatta, Newcastle and Townsville but no such services are available at other permanently staffed registries, including Brisbane, Adelaide, Darwin and a number of others.

**Senator KIRK**—What is the reason for that? Why is there airport type security in some registries and not others?

**Mr Foster**—It has been an iterative process of whatever the court can put resources into it. The Attorney-General's Department has now instigated a security review of the Commonwealth courts in which we are participating. I guess decisions will need to be made once that review is completed about these other locations which do not have what we would consider appropriate security arrangements.

**Senator KIRK**—Perhaps I could ask the department about the nature of this review into security in the courts. Mr Foster mentioned that it has begun. Perhaps you could give us some further details about that, Ms Leigh.

**Ms Leigh**—The Attorney asked the department to work with the four federal courts to examine their security needs, to look at both whether existing resources are allocated in an optimal way and whether there are any new risks that have not previously been identified.

**Senator KIRK**—When is that review likely to be completed?

**Ms Leigh**—We are working on it at the moment and it is already under way. The assessment is currently being made at the various registries of the various courts. I expect it to be completed in the next few months.

**Senator KIRK**—In your view, Mr Foster, it would be prudent to extend the security arrangements across the board in the way that you have described: airport style security?

**Mr Foster**—Yes, I think it would be prudent to have appropriate security arrangements in place in all of our courts, not just some. That is obviously the intent of the review that has been instigated.

**Senator KIRK**—When you talk about security, you are talking about security at the front entrance of the building.

**Mr Foster**—We also have the AFP provide services in many of our locations. There is a memorandum of understanding between the court and the AFP which is quite a longstanding document. It includes provision for an AFP presence in each registry of the court in theory. In practice that does not happen because of resource implications, I guess, with the AFP. The AFP officers are present in court buildings during business hours in Sydney, Parramatta, Dandenong and Adelaide, and at other major registry locations there are procedures in place where the AFP will respond if we have a problem.

**Senator KIRK**—So that is four out of how many registries where you have AFP presence?

**Mr Foster**—We have 11 major registries, if you like, and then others in various regional areas where we rely on the state police to assist us if we have any difficulties.

**Senator KIRK**—Does that happen very often?

**Mr Foster**—It does not happen a lot, no. In most cases, people can talk down any serious issues, and our staff are quite experienced. We have counsellors and general staff at all these locations. They are used to dealing with people who are a bit agitated and anxious about what is happening to them. Hopefully they respond in an empathetic way.

**Senator KIRK**—Are your staff trained in that way?

**Mr Foster**—Not specifically in that regard, although we have identified that training in terms of dealing with difficult customers and troubled customers is an issue. It is certainly on our program to train people in that regard. We have done a lot in terms of structures of registries. We are, wherever possible, introducing client services areas where people can come in, sit down and talk to somebody rather than having to stand up behind bulletproof glass and all the other in-your-face type security things. We have found, for example, in Melbourne, Dandenong and Townsville, where we have introduced this new approach, that the temperature has come right down—significantly. But, to be fair, in those places there is screening at the front door before people come in.

**Senator KIRK**—And that is by security officers?

**Mr Foster**—It is by Chubb.

**Senator KIRK**—Finally, I want to move on to the judicial complaints protocol. Could you advise the committee as to when the Family Court received a proposal from the Attorney-General's Department for this protocol dealing with serious complaints against federal judges?

**Mr Foster**—It was just before Christmas last year.

**Senator KIRK**—And is that still being considered by the court?

**Mr Foster**—It is. The chief justice intends to respond. To my knowledge, he has not as yet, but certainly it is his intention to respond to that letter.

**Senator KIRK**—So it is the intention of the chief justice to respond on behalf of the court?

**Mr Foster**—He has discussed it with the administrative judges in the court. I am not really sure whether it is a straw poll of all judges in the court or if it will be a response from the chief justice and the administrative judges, and they might liaise and consult with the judges in their particular registries.

**Senator KIRK**—So you do not have any idea of the time frame for that? He has not given you any indication?

**Mr Foster**—No, I do not think so.

**Senator KIRK**—Did the department follow up looking for a response to the proposal in the past six months?

**Mr Foster**—Yes, they did. They wrote to me in February this year and provided some more information. Obviously, I passed that on to the chief justice.

**Senator KIRK**—They are all the questions I have.

**CHAIR**—If there are no more questions on the Family Court, I thank Mr Foster and Ms Filippello for their assistance this afternoon. The committee appreciates it.

[2.39 p.m.]

### **National Native Title Tribunal**

**CHAIR**—I see that the officers of the National Native Title Tribunal have come to the table. Yesterday, we indicated that we wished to have the officers from the department relevant to this output here. I see that Ms Power is here. Senator Ludwig, do you have questions in relation to the National Native Title Tribunal and output 1.7?

**Senator LUDWIG**—With respect to the spending on native title, it was \$293,467 less than projected out of a total of roughly \$5½ million budgeted for expenditure in 2002-03. By the look of it, there is a significant underspending there. What would account for that?

**Mr Doepel**—We would have to describe the year that we have been in as one that has been a year of some hiatus in the system. The major external event for participants in the native title system has been the High Court's bringing down of significant judgments in the Ward matter, the Yorta Yorta matter and a couple of other cases. In some of our output areas activity has gone down, very much I think while people have been examining what they are to make of these High Court decisions and the impact that the now quite authoritative statements—particularly in Ward and Yorta Yorta—will have on the practice of pursuing and mediating applications. That permeates throughout the system. Not only does it affect the taking stock of the position of native title applicants, their representatives and advisers but also, with the Yorta Yorta case, where there were major statements about the nature of connection, it would be fair to say that state governments will need to reassess their approach to connection evidence and perhaps revise their connection policies and protocols.

In a sense that has dampened for some of this year the level of activity in some parts of our operation and elsewhere in the native title system as a whole. However, it would be anticipated that, as the effects of those decisions are understood in an operational sense for participants in the system, there would be a return to some activity coming into the next financial year.

**Senator LUDWIG**—I guess my next question is partly for the department. What happens when an underspend occurs? Is that held depending on the nature of the underspend, or is it carried over as an amount?

**Mr Kennedy**—In the normal course of events, the surplus would remain with the agency. That would result in some cash surplus. Then, depending upon circumstances and perhaps the government's intentions, an agency could apply to use that cash surplus in a following year, which would result in recording a deficit—and there is a process to go through getting approval for that. Alternatively, it may be the case, as in this particular case, that a dividend is paid and moneys are returned to the budget.

**Senator LUDWIG**—So, in this instance, the money was returned to the budget?

**Mr Kennedy**—That is correct.

**Senator LUDWIG**—What happens in the next year? Is a lesser amount budgeted or is the same amount budgeted?

**Mr Kennedy**—The same amount is budgeted, and I will have to leave that up to the tribunal, but generally speaking, at this stage, given perhaps some certainty about future

workloads, the normal forward estimate would apply and the situation would be reviewed through the year.

**Senator LUDWIG**—Can Ms Power help me with that? Is there a review under way?

**Ms Shugg**—As you know, there is a review under way of funding in the native title system. It is almost finalised but has not quite been finalised yet.

**Senator LUDWIG**—Has that taken into consideration what Mr Doepel has spoken about—in other words, the particular cases that have come through, the impact of those cases and also what state governments might have to take into consideration in dealing with native title claimants in the future?

**Ms Shugg**—It is taking into account all of those factors and other factors that have been brought to the table by the participating agencies. The review is being undertaken by the Native Title Coordination Committee, which has members from the tribunal, the Federal Court, ATSIAC, the Department of the Prime Minister and Cabinet and ourselves. It takes account of the issues being brought forward by all of those players in the system.

**Senator LUDWIG**—You said it is soon to be released. Is there a release date, or has a draft been prepared and it is sitting in the minister's office?

**Ms Shugg**—No, Senator. It has not quite been finalised yet. It is a report to the Attorney and other relevant ministers, and it would be up to them as to whether or not it is released.

**Senator LUDWIG**—So it has not been presented to the minister as yet.

**Ms Shugg**—No.

**Senator LUDWIG**—How long has that been going for now?

**Ms Shugg**—I was not around when it started, but I think it was started in mid last year.

**Senator LUDWIG**—Somewhere around that time is my recollection. I guess we will have to wait for the report before we start talking about outcomes. Could we go back to the nature of the matters that are currently before you. Are there new matters that are now arising in the tribunal, or are they parts of matters that are long tales or older matters?

**Mr Doepel**—It is a mixture of all that. There are old matters that have been in the system for some time. Some areas of workload have receded—such as the future act workload in the Northern Territory, because the accumulation of exploration of other tenements has been dealt with under the Commonwealth system. There is anticipated additional workload arising in Queensland, as the Queensland government from 1 July uses the Commonwealth system for dealing with future act matters. There are some major developments in two or three states towards broader agreement-making across regions or parts of the state involving state government and a number of representative bodies and peak bodies of respondents.

There is also another area of activity which we have identified, and it has certainly come through in our contact with stakeholders; that is for us, as an institution uniquely placed in the system to make a considerable contribution to the knowledge infrastructure of participants—possibly over and above what we have done in the past. That would include assisting with capacity building about the system and about the legal parameters of the system—certainly

since the bringing down of the major High Court decisions—so that people can now press on with the work.

Like all the workloads before the tribunal, the picture shifts from quarter to quarter, depending on a range of external factors. I will give you one good example. Within this financial year we had expected something like seven or eight determinations of native title to occur in the northern Queensland area, and possibly some 10 Indigenous land use agreements to be concluded and perhaps lodged with us on the coat-tails of those determinations. However, only a couple of weeks ago a major question of law was heard by the Federal Court on the effect of public works on native title, which would have an impact on all those determinations. Naturally the key parties in those processes have put progress in those matters on hold until the legal question has been determined. So we think sometimes we are streaking ahead, but at other times we see things like this slowing down the overall progress of resolution of matters for some time.

**Senator LUDWIG**—The percentage of work that is referred to mediation and does not end up in the court process proper: do you keep statistics on that?

**Mr Doepel**—If you will bear with us for a moment, we have probably got the figure here in our briefing notes of the number of matters out of the total that are formally in mediation before the tribunal. Probably the best thing to do is to give you the overall number of matters that are formally in the system—that is, on the joint records of the court and the tribunal. There might be a slight variation according to the court and tribunal's accounting method, but 639 claimant applications are in the system at the moment, of which some 329 have been formally referred by the Federal Court to the President of the NNTT for allocation to mediators.

**Senator LUDWIG**—What happens to the remainder?

**Mr Doepel**—There are a number of outcomes with those. I can give you a figure of 267. That is the number which are not yet in mediation. There are a couple of other categories there for accounting purposes, but 43 where mediation is complete or has formally ceased before another point in the process has been reached and 267 not yet in mediation.

**Senator LUDWIG**—Do you have any figures for this year to indicate what percentage per annum of your total work is resolved through mediation as distinct from going through formal processes. In other words, do you find that mediation is more successful? I do not want to make a judgment call on this, but what are your findings?

**Mr Doepel**—I am just thinking of a figure that might reveal that. We could look at the number of determinations this year and the number that were litigated determinations for the year so far—

**Senator LUDWIG**—Yes.

**Mr Doepel**—and the number that were consent determinations as a result of mediation. We will see if we have that with us, and that might come towards answering the question.

**Senator LUDWIG**—Thank you.

**Mr Doepel**—Mr Chevis will look for that.

**Senator LUDWIG**—All right. I have another question to the department while Mr Chevis does that, now that I have a better understanding of litigation. At what level does the Attorney-General's Department get involved if it wants to intervene in a matter or if it wants to represent a claimant or intervener or defendant? Does it deal with it at the determination stage, at the mediation stage or at the court level? For instance, at what stage would it decide if to do that in the Native Title Tribunal?

**Ms Power**—The department is generally notified of a claim that is being lodged. When we are notified of the fact that a claim has been lodged, we would generally undertake a process of checking through Commonwealth property interests across the Commonwealth. If there is a Commonwealth interest identified within the claim area then we would generally join as a party at that stage. That is normally how we become a party to a proceeding.

**Senator LUDWIG**—Right. What is the process it would take if you were not a party but chose to intervene in the proceedings to represent someone? Do you know if this has occurred?

**Ms Power**—The Attorney-General has a right to intervene under the Native Title Act; he always has a right to intervene in proceedings. I am not aware of him having used the right to intervene. The Commonwealth can also become a party to proceedings if the notification period has ended and we subsequently decide that we should become a party to proceedings. I could not describe to you a hard and fast rule as to the point at which that occurs, but obviously if we become aware that we are going to join a matter we try to do it as early as we possibly can.

**Senator LUDWIG**—In the last 12 months how many would you have become a party to in this area, where it is not Commonwealth property that is involved?

**Ms Power**—I think I would have to take that on notice, but I cannot think of any.

**Senator LUDWIG**—All right, perhaps you could have a look. You do not recall any time when the Attorney-General has intervened as of right?

**Ms Power**—No. That is correct.

**Senator LUDWIG**—Has there been a time when the Commonwealth has joined because of a property interest?

**Ms Power**—Yes, there would be a number of matters that we have joined this year because a property interest has turned up when we have done our regular searches—but I would have to take on notice how many that was.

**Senator LUDWIG**—What role does the Commonwealth play in those matters? I am just trying to understand the role that the Commonwealth would then take in regard to that property. How many has it agreed to in terms of a consent determination and how many has it opposed? How many have been subject to mediation, finalised in mediation or been subject to a court process and defended?

**Ms Power**—I think I would have to take that question on notice.

**Senator LUDWIG**—I am happy for that to be taken on notice.

**Ms Power**—I could describe in general terms, though, that under the act the Commonwealth, in a formal sense, would be joined as a respondent because the Commonwealth would not be the applicant in the sense that the Commonwealth is not making a claim to have native title recognised—so the Commonwealth would be a respondent. That is perhaps as far as I can take your question without getting the numbers that you have asked for.

**Senator LUDWIG**—I am happy for you to take that on notice. It covered a lot of territory in a short time. How are you going with that other thing, Mr Doepel? If you do not have it there, I would be happy for you to take it on notice and get back to us.

**Mr Doepel**—I would like to give you more detail and a breakdown, but the Attorney in a media release coinciding with the budget noted that, to 28 April this year, there had been 26 consent determinations out of a total of 45 determinations. I would need to break that 26 down, because it may include a handful of determinations in nonclaimant applications. I will take that away and give you a table that shows how it has broken down over perhaps the last couple of years.

**Senator LUDWIG**—That would be helpful. Could you also look at the cost imposed? Do you have a record of the cost attributed to defending the matters? Do you use in-house barristers and solicitors, or do you use externals, like the Government Solicitor's office or someone else?

**Ms Power**—We always use the Australian Government Solicitor to represent the Commonwealth in native title proceedings, and barristers, of course.

**Senator LUDWIG**—Then you will also be able to break down that by per cost?

**Ms Power**—Yes.

**Senator LUDWIG**—That would be helpful. Thank you very much.

**CHAIR**—Mr Doepel, I thank you and your officers for attending estimates this afternoon. Ms Power and Ms Shugg, thank you for coming back after yesterday's hearing. We appreciate your assistance.

[2.57 p.m.]

#### **Office of the Federal Privacy Commissioner**

**CHAIR**—I welcome the witnesses to the table.

**Senator LUNDY**—I have some questions that relate to the Australian Communications Industry Forum, regarding the development of ACIF's revised industry code on calling number display—or C522. A revised version of that was publicly released in February this year. Are you familiar with that?

**Mr Crompton**—Yes. We provided some input to it.

**Senator LUNDY**—What was the nature of that input, and did you express any concerns to ACIF regarding the adequacy of privacy protections, particularly in relation to the potential provision of silent and calling line identification blocked numbers to ISPs?

**Mr Crompton**—We learned relatively late in the piece that CLI had in fact been available for quite some time, whereas many people and organisations, including ourselves, thought

that the change to the code was introducing CLI. That it had been going for some time was a new piece of information. Our concerns at that point then switched to how aware of that fact the Australian community were and what effort was being made by the code proponents to increase and measure levels of awareness. We have taken that up with the code proponents in fairly clear terms to see how that can be improved over the life of this current version of the code. There is another complication in the code that people need to be aware of, which adds to the difficulty of that education campaign. That is that there is a difference between calling number display and CLI. Again, some of the debate has been more difficult than it might have been had we all had the same understanding of those two different procedures.

**Senator LUNDY**—With respect to the calling line identification, it has come to my attention that Telstra does not respect the code in relation to callers who dial into Telstra's MegaPop service—and I am sure it relates to calling line identification block numbers as opposed to the other one you mentioned, which was caller number display. MegaPop enables an ISP to have one nationwide log-in number. Apparently, in the Telstra newsletter distributed with bills, dated December 2002 to February 2003, it notes in fine print that Telstra's line blocking service, which I presume would deal with calling line identification, is not available for calls to 000, understandably, but also not available to MegaPop national access service. This effectively does not allow calling line identification blocking to work on calls made to ISPs. So, although people might think that it is blocked, it is not. Are you aware of this situation?

**Mr Crompton**—The Electronic Frontiers Association brought that to my office's attention a few weeks ago.

**Senator LUNDY**—Do you think it breaches the code?

**Mr Crompton**—At this stage, I am not sure. I must admit that my first reaction when EFA brought it to my attention was that I think the statement that you read out may again be confusing CLI and CND. But, without further digging, I could not be sure of that.

**Senator LUNDY**—When you say 'confusing caller line identification and caller number display', can you elaborate on what you see as the distinction between the two and what the implications would be in this scenario with the MegaPop service?

**Mr Crompton**—We are very rapidly reaching the limits of my technical capabilities here.

**Senator LUNDY**—You have to be an expert in all things.

**Mr Crompton**—We try hard. Quite seriously, if you did want a considered reply, it may be actually better for us to take the questions on notice and then give you a more considered written reply. In summary terms, I think CLI essentially is a deeper process that is unavoidably required for such activities as proper billing and other processes, whereas CND is more at the customer level: 'Does my phone number display on your mobile phone?', which can be brought up or brought down, depending on whether you have exercised your right to suppress calling number display. There are very clearly needs for ISPs to have access to things like CLI for billing, for fraud control and so forth. The real issue is what further uses are made of that information. As I understand it, the code does provide some protections in that area for the further use of CLI information.

**Senator LUNDY**—Can you confirm that you are currently investigating this issue?

**Mr Crompton**—I would like to take that question on notice, because I am not sure that I can give a clear answer.

**Senator LUNDY**—You said that it has been brought to your attention. I assume that the Privacy Commissioner is at least doing some research into it.

**Mr Crompton**—There are always a very large number of issues on our books at any one time. Yes, we are aware of quite a lot more things than we are probably investigating. The deputy commissioner, I think, has something to add.

**Mr Pilgrim**—As part of the code process or our involvement in the code process, as the commissioner said, we have been looking at that particular issue. Some of the comments that we made, as part of the code process, were to seek that there was better information going out to the community, to allow the community to be more aware of the CLI implications. We also sought to have, as the commissioner has indicated, clear reference made as to the uses for CLI and to have some of those limited. Our processes from here, having commented on that, is that we have also advised the authority that we would like to keep, if you like, a watching brief over how that goes between now and the next time that the code is to be reviewed.

**Senator LUNDY**—Is that ACIF?

**Mr Pilgrim**—That is correct. In answer to your question as to whether or not we are investigating, strictly speaking, we are not investigating, but it is an issue that we will be keeping a watching brief over to see how it is implemented.

**Senator LUNDY**—Are you able to tell me whether or not the details that are potentially gathered at the MegaPop are being used for any purpose other than that for which they are supposed to be used and that privacy is being respected? Are you in a position to say that, or are you effectively saying that you are happy for ACIF—the self-regulatory industry body—to manage that situation? It seems to me that it at least warrants investigation, because you have no idea what Telstra are doing with it—have you?

**Mr Crompton**—Particularly under current circumstances, a large part of our investigative effort relies upon acting on the complaints we receive rather than initiating investigations. As the deputy commissioner was saying, we will probably be revisiting the issue at the time of the next code review rather than before then.

**Senator LUNDY**—If you do not get a direct complaint from a citizen about this, does that disable your ability to conduct an investigation?

**Mr Crompton**—It does not disable our ability to investigate, but complaints received are a good indicator of the level of concern in the community over an issue. Lack of complaint is taken, at least to a degree, as the opposite—namely, it may in fact be an indicator that the issue is out there but not concerning many people. The corollary to that is the question of whether people are aware that this is happening, which is why we are trying to make sure that a proper education arrangement is in place.

**Senator LUNDY**—That is obviously where I am heading with this. Telstra have gone to the trouble of publishing the fact that it is not protected by a blocking service, so my suspicious mind immediately says that they have done that for a reason. Because of the way

this kind of information is used, people might not have a clue where a marketing pitch—from another part of Telstra, perhaps, or from one of Telstra's partners—is coming from. They are never going to be able to track that back, so the unlikelihood of a complaint relating specifically to this is fairly easy to assume—you are not likely to get complaints. Is that perspective factored into your considerations of whether or not to launch an investigation?

**Mr Crompton**—It certainly should be a consideration, yes.

**Senator LUNDY**—Please take on notice the issue of whether or not you launch an investigation. I certainly urge you to do so, because it has come to my attention from more than one perspective. Obviously the EFA have their concerns but it has been brought to my attention by another party as well, so that might be just the tip of the iceberg.

**Senator LUDWIG**—Mr Crompton, you would probably like to launch a number of investigations in a number of areas, wouldn't you? But you do not have any money to do that, do you? That is the truth of the matter, isn't it?

**CHAIR**—Which of those three questions would you like Mr Crompton to answer, Senator Ludwig?

**Senator LUDWIG**—I am happy for him to take the time to go through all of them, but the last one is to the minister.

**Mr Crompton**—Yes, clearly further investigation would be possible if we had more resources—perhaps in the area Senator Lundy was talking about or, for example, in the area of spam, which is another thing that concerns many people. A spam inquiry, in particular, may take a lot of resources to do because it is such a complex area. Again on spam, we are simply having to respond to complaints received rather than take a more proactive approach. We hear rumours of other marketing practices that in other circumstances might bear further investigation but, again, we have not been looking into them at this stage unless we receive a complaint.

**Senator LUDWIG**—At successive estimates hearings, we have explored funding issues of the Privacy Commissioner. We were following the increased levels of complaints—I will ask you about that shortly—and the extension of the Privacy Act into the private sector, and I have a couple of questions in that area as well. As I recall it, the department indicated that it would look seriously at the Privacy Commissioner's need for additional funding. The budget does not reflect that, though, does it?

**Mr Crompton**—The resourcing provided in the budget reflects minor adjustments for various cost indices and so forth, but additional funding for additional activity was not provided.

**Senator LUDWIG**—What happened to the additional funding?

**Mr Cornall**—As indicated when the subject has been discussed before, we said that we would discuss it with Mr Crompton. We did that. The department supported an application by Mr Crompton for further funding, but that was unsuccessful in the budget process.

**Senator LUDWIG**—What happens now? Do we hear from Mr Crompton in the next three estimates before the next budget that the same issues arise? That is unless we think something

is going to happen and the complaints are going to drop off. Is there any indication that that is going to happen?

**Mr Cornall**—The statistics that we have—and I am assuming these are correct—indicate that the hotline inquiries in 2001 and those projected for the end of 2002-03 are at roughly the same level, that the written inquiries are down and that the complaints received are significantly up. The increase appears to be significantly in the complaints area. There appears to be some sort of stabilisation of the hotline inquiries, and written inquiries have gone down.

**Senator LUDWIG**—It is fair to say that, if there was an increase in complaints, they require investigation, report, follow-up and checking, so they would be normally resource intensive, wouldn't they—if you had to do that work associated with them?

**Mr Cornall**—Mr Crompton and Mr Pilgrim could explain that.

**Senator LUDWIG**—I thought you were justifying why they were not entitled to an increase.

**Mr Cornall**—It was a decision of government as to the budget allocation. As I say, we supported the application for additional funding. I did go to Sydney with a view to looking at files, but, due to the provisions of the act, it was not possible to do that with a view to seeing if there were any suggestions of efficiencies or process that the department could add. We endeavoured to do that without success because of the prohibitions in the legislation itself.

**Senator LUDWIG**—What is the current workload of the Privacy Commissioner, Mr Crompton?

**Mr Crompton**—I do believe Mr Cornall has summarised the situation quite succinctly. In the lower workload areas, particularly the written inquiries area, there seems to be some flattening out, possibly even a marginal tailing off, but in the area of complaints received the rate is at least sustained, if not climbing marginally. I always want to take a very cold look at those sorts of numbers rather than getting too worried about it, but my perception is that we now have a rough idea as to where the new plateau of activity is, and it is going to be around the 1,000 complaints per year area. We now have to reallocate resources and keep in place the reallocation we already have in place. We have been very grateful to the department for the effort it has put into both seeking some funds for the office and seeing if there were any areas for efficiency improvement that can be made. I do not think any office should ever claim that it is always efficient. It is always important to look at where there are more areas of efficiency. We now have the answer from that process. At the moment at least, we are still looking for some areas of efficiency. Not much has been found so far. Resources are not forthcoming. We therefore will continue to plan to operate sustainably within the resources that we have, and the budget papers show that that is exactly what we are doing.

**Senator LUDWIG**—If you made a complaint today, what are the chances of it being dealt with within six months?

**Mr Crompton**—As we indicated previously, it depends on the nature of the complaint. In other words, we look at a complaint for the severity of its potential impact. Impact in the credit area or for somebody who seems unable to rent a house anymore can be quite severe, and we would try to get to those complaints quite quickly. But, if a complaint does not show

up through what we call our triage process as needing earlier attention, it will go into a queue which at the moment is six months long, which means that a standard complaint may wait six months from the time of receipt to the time the file is opened.

**Senator LUDWIG**—What was the promise when you first set up? Did you make a promise or a compact with the public that you would try to address these issues within a reasonable time? Six months does not seem reasonable to me.

**Mr Crompton**—I do not recall our making any statement like that at the time. The deputy commissioner, who has been in the office a bit longer than I have, may recall something that I do not; but I do not think that we have ever done anything like that.

**Mr Pilgrim**—I cannot recall any public comment about an exact time either. We have certainly been working on reviewing our complaints handling system since we were advised that the jurisdiction would be extended to the private sector, and we have been modelling ourselves on ADR best practice. We have undertaken reviews looking at our processes and measuring ourselves against other organisations with the aim of trying to resolve complaints once they are opened within three months, but we did not at that stage foresee a backlog of quite this size.

**Senator LUDWIG**—Complaints have not plateaued, so they are still increasing—is that right?

**Mr Crompton**—The graph I have suggests that the number is very close to plateauing out at about 1,000 a year.

**Senator LUDWIG**—The six months will become standard if they are plateauing at this point, because there is no way to eat into the total. If you make a complaint today and it is not triaged as urgent—and that is for you to decide—then it will sit there and wait and wait, and the people will give up, lose interest or lose faith in the Privacy Commissioner. That would be a reasonable expectation of someone waiting six months for a matter to be answered.

**Mr Crompton**—Unfortunately, yes.

**Mr Pilgrim**—You are probably aware of the normal processes. We do of course make contact with a complainant immediately on receipt of a complaint to advise them of the status. I know that being in a list is not necessarily going to address their concerns, but we certainly do not leave them in limbo waiting for six months to find out what is going to happen; we write to them immediately to say that we have their complaint and that it will be in the queue and we give them some indication of when it might be dealt with.

**Senator LUDWIG**—Do you have a letter that says that it will be six months before their complaint is addressed?

**Mr Pilgrim**—I would have to check its exact wording but we do have a standard letter that goes out to advise them that the complaint has been received and will be dealt with. I am not sure whether it stipulates six months.

**Senator LUDWIG**—It would not be truth in advertising if you did not tell them, would it? It would be helpful if the committee could have a copy of that letter.

**Mr Pilgrim**—Yes.

**Senator LUDWIG**—As I understand the remarks you have been making, you have had to deal with the most pressing part of your workload, and that seems to be complaints—correct me if I am wrong. That may be starting to plateau but it has a six-month tail, so you have to bring in resources from other areas. What other areas—like your auditing process—does this mean are now not being addressed?

**Mr Crompton**—Audit is certainly one of the areas where we have had to readjust the level of activity. As it has turned out, we have conducted, or will have conducted by the end of the financial year, one or two more audits than we indicated last time; but we have still had to significantly reallocate staff who would have been auditing into the complaints area, and that has reduced the number of audits we have been able to undertake. We have had to reduce the level of assistance we give organisations and business groups in areas that concern them and, similarly, government agencies now get less assistance than they would have previously. Those are the major direct impacts.

**Senator LUDWIG**—How many audits do you now conduct per year?

**Mr Crompton**—I would prefer the deputy commissioner to take over at this point.

**Mr Pilgrim**—We can give you figures for the life of the act, if you want them that far back; but, to give you an indication, in the current financial year, as the commissioner has indicated, we will have commenced seven audits. Last financial year we did 14 and the year before that we did 24 audits. It is important to bear in mind that our audit function relates only to the information privacy principles for the Commonwealth, credit and some telecommunications audits and TFN audits. Our audit function does not extend to the private sector as far as the national privacy principles are concerned.

**Senator LUDWIG**—No. Of the seven that have started, how many will finish during the financial year? Will you finish all of those?

**Mr Pilgrim**—I suspect at this stage that, yes, we should have completed all of those seven audits to the write-up stage by the end of this financial year.

**Senator LUDWIG**—Has there been an indication from government as to whether or not those auditing programs will extend to the private sector as well?

**Mr Crompton**—It was a conscious decision of government at the time the legislation went through the parliament. It is clearly an issue that could be raised in any future review of the Privacy Act, but it has not been discussed lately that I am aware of.

**Senator LUDWIG**—What about enforcement work: do you do any of that? Perhaps ‘enforcement’ is not the right word to use, but I guess you understand the concept of what I am seeking.

**Mr Crompton**—We clearly do have, if you like, an enforcement function. Because of the Brandy High Court decision, the point to which we can take an investigation is to make a determination to settle a matter. Any further procedures are a matter for the courts rather than us, as set out in our act and in similar legislation elsewhere. We have run our investigation process as a successful alternative dispute resolution process for some time now, and to this point every single time we have found that some action is required by the responding party the responding party has agreed to do so without us having to go to the point of enforcement.

So in that sense our enforcing process is literally untested, but untested at this stage for the right reason, namely, that all the responding parties have chosen to agree with the position we have reached.

**Senator LUDWIG**—Can you recommend payment of damages?

**Mr Crompton**—Yes.

**Senator LUDWIG**—Has that been done in the last 12 months?

**Mr Crompton**—Yes. Again, the deputy commissioner will be able to answer those questions more clearly than I can, I suspect.

**Mr Pilgrim**—The answer is that, yes, there has been resolution of complaints where the respondent has agreed to pay a certain amount, depending on the case, and that has resolved the matter in many cases.

**Senator LUDWIG**—Do you have an indication of where that is not paid? It is only a recommendation; you cannot actually refer it to the Federal Court for enforcement. Or can you?

**Mr Pilgrim**—It is part of our processes. If there is going to be a financial settlement, in nearly all cases that I am aware of there would be a deed of settlement signed by both parties to accept the amount. Again in the majority of cases—I would say almost all of them—it is transferred via our office as part of our process. So we certainly get to see that the amounts have changed hands by way of the settlement.

**Senator LUDWIG**—Did anyone default? Has anyone changed their mind after the event?

**Mr Pilgrim**—I am not aware of anyone having defaulted. As far as I am aware, where the settlement has been one of financial involvement all the amounts have been paid. I am sure that if the claimant had not received the amount they thought they were going to get they would bring it to our attention and we would seek to follow it up for them.

**Senator LUDWIG**—Could you take it on notice to give me an overview of just how many and how much. Perhaps you can help me with this without my having to resort to reading the Privacy Act itself: is there a compulsory part of that? If there is a recommendation by the Privacy Commissioner for an order awarding damages, can it be enforced?

**Mr Crompton**—Again it comes back to the Brandy decision that I mentioned before. We can reach the point of writing a determination, which can therefore be in the clear language of a determination. But should one of the parties not abide by the determination then that is the point at which we have to hand it over to the courts. Constitutionally they can rehear the issues as a de novo process. The act has some elements to encourage the courts to be streamlined in that area, for example by taking all of the evidence and so forth that we have taken to that point as a certificate of evidence to encourage the court not to rehear previously known and determined facts. The point is that when it comes to enforcement it is properly under the Constitution something for the courts to do.

**Senator LUDWIG**—I understand. If we look at the small business area, the last time you were here we discussed the number of leaflets that were distributed to small business. Have you had any feedback from that?

**Mr Crompton**—Not a lot.

**Senator LUDWIG**—I mean in terms of the program.

**Mr Crompton**—The material keeps on being downloaded from our web site and individuals are able to get pamphlets and so forth from us. We have been working with the Office of Small Business on some supplementary help for small business by way of trying to draft what we call FAQs to go on our web site to look at slightly more specific questions. But it does not seem to have generated a lot of work for our office overall. I do not know whether the deputy commissioner has more to say on that.

**Mr Pilgrim**—No, I have nothing to add to that.

**Senator LUDWIG**—Do you have any feedback in relation to the successful rollout of the privacy principles in small business?

**Mr Crompton**—In a written answer that we gave to a question from the last committee, we gave some statistics on the level of inquiries and so forth that we were receiving. I am not aware of any dramatic change since that point.

**Senator LUDWIG**—In terms of your bottom line, your ability to be a watchdog over privacy matters is diminishing. Would that be a correct statement? I am talking about the ability to watch and deal with privacy.

**Mr Crompton**—To the extent that we are handling more complaints, our activity as a watchdog in specific areas has actually increased because we are able to handle more people's complaints, but it has been at the expense of being able to offer more widespread help through, say, information sheets, FAQs or other consultative processes because we have to reduce our activity in those areas.

**CHAIR**—Mr Crompton and Mr Pilgrim, thank you very much for attending and assisting the committee this afternoon. We will now move to the Human Rights and Equal Opportunity Commission. I invite Ms Goward and officers of the commission to come to the table.

**Senator Ellison**—Madam Chair, I notice that we have the Human Rights and Equal Opportunity Commission appearing now and then we have the Office of Film and Literature Classification and there are three hours until the dinner break. I just wondered if we should let ASIO know that the prospect is looking like they may have to be here before dinner.

**CHAIR**—You will be pleased to know, Minister, that that has already been done.

**Senator Ellison**—Silly me—I should have known.

**CHAIR**—And don't forget that the Office of Film and Literature Classification provides endless hours of interest for us at estimates—and I am looking forward to that too.

[3.28 p.m.]

### **Human Rights and Equal Opportunity Commission**

**Senator BOLKUS**—In another hearing a few weeks ago we asked about the incidence of complaints. Do you have any statistics showing the overall incidence of complaints in the last financial year or maybe over the last four or five financial years in categories? If you cannot do it now, you can take it on notice.

**Ms Clifford**—For this financial year, the 2001-02 financial year and the year previous to that, the numbers of complaints that have been received have been constant—around 1,200 complaints per year. Also, the number of complaints that have been finalised is almost identical at around 1200 each financial year.

**Senator BOLKUS**—And in terms of their categories?

**Ms Clifford**—This financial year to date there is the same number of complaints as the 2001-02 financial year. The types of complaints are fairly unchanged: around 40 per cent that are lodged are under the Disability Discrimination Act, 31 per cent under the Sex Discrimination Act, 15 per cent under the Racial Discrimination Act and 14 per cent under the Human Rights and Equal Opportunity Commission Act. That is this financial year to date and they are almost exactly the same, as I said, for the previous year. I am sorry that I do not have the break-ups for the year before that with me, but I think they are much the same.

**Senator BOLKUS**—Could you take the figures for the previous four years on notice?

**Ms Clifford**—Certainly.

**CHAIR**—Ms Goward, I see from your press statement of 14 May in reference to national paid maternity leave that you make some observations in respect of the future of this process. Is there any ongoing role for you as Sex Discrimination Commissioner and for the Human Rights and Equal Opportunity Commission in continuing this public discussion? If so, what do you think that is?

**Ms Goward**—I think that the role of the commission is to continue to identify the issues for women and for families, to be available when governments or opposition parties seek advice on how best to implement such a scheme and be prepared to be part of a consultative process, to provide information to the government of the day and, as asked, to illuminate and educate the public about the importance of a measure like paid maternity leave.

**CHAIR**—Have we had a major forum on the issue in the parliament, to your recollection?

**Ms Goward**—Not that I am aware of, other than the inquiry into the Democrats' bill.

**CHAIR**—That is an opportunity for the commission, and you as Sex Discrimination Commissioner, to expand the debate and the argument within this forum.

**Ms Goward**—If there were a parliamentary inquiry of some sort, yes.

**CHAIR**—Even if there were not an inquiry, just a public forum in this building in which members of the government and the opposition could participate.

**Ms Goward**—I have spoken at the Parliamentary Library on one occasion.

**Senator LUDWIG**—Has the commission provided the report of its *National Inquiry into Children in Immigration Detention* to the Department of Immigration and Multicultural Affairs?

**Ms Roberts**—The commission completed its hearings in relation to the report in December of last year. It has produced a draft report which currently consists of 18 chapters and is approximately 220,000 words long. As the inquiry has been conducted under section 11(1)(f) of the Human Rights and Equal Opportunity Commission Act, Commissioner Ozdowski is required to provide a draft report to DIMIA and ACM and is then required to

formally consider their responses prior to finalising the report. Due to the size of the draft report, after discussions between Commissioner Ozdowski and the secretary of DIMIA it was agreed to transmit the draft report in two parts. Draft chapters 1 to 7 were given to DIMIA and ACM on 7 April this year and chapters 8 to 18 on 15 May this year. It is anticipated that DIMIA's and ACM's comments on the draft report will be received by HREOC by close of business on 27 June.

**Senator LUDWIG**—There have been no comments by the department in relation to either part yet?

**Ms Roberts**—No, but they have not been required to comment yet. Their comments are due at the end of June.

**Senator LUDWIG**—Why were you persuaded to allow it to be separated into two parts?

**Ms Roberts**—I understand that, given the length of the report, it was thought that since chapters 1 to 7 had been completed in draft form it was better to provide them sooner rather than later so that DIMIA and ACM could be considering those chapters while the final chapters were still be worked on by HREOC. That way it was hoped that it would not be necessary for DIMIA or ACM to have an extended length of time to consider all 18 chapters if they had been provided at the one time.

**Senator LUDWIG**—After the comments are received from the department in mid-June, how long does it then take until the report is finalised? Does it then go back to the Attorney-General?

**Ms Roberts**—No, it is anticipated that the next step will take about seven weeks for the commission to consider DIMIA and ACM's comments and then finalise the report. Barring any unforeseen complications, it is anticipated that the final report will be sent to the printers on 15 August. The report would then be transmitted to the Attorney-General on 12 September, which will permit its parliamentary tabling by the end of the parliamentary sittings this year.

**Senator LUDWIG**—Has the program 'About Woomera' broadcast on *Four Corners* recently had any impact on your inquiries?

**Ms Roberts**—It is the commission's view that since some of the matters raised in that program have been considered by the inquiry, and given that the draft report is currently with DIMIA and ACM for its comments, it would be inappropriate for the commission, at this stage, to make any comment in relation to the allegations made in that program or to give any indication as to what its findings might be in relation to those allegations.

**Senator LUDWIG**—Did it raise matters or contain evidence that you would like to further consider or investigate?

**Ms Temby**—We will take that on notice. The commissioner is not with us today; we will ask for his comments.

**Senator LUDWIG**—So you do not think it will impact on the reporting dates?

**Ms Temby**—I really cannot comment.

**Senator LUDWIG**—All right; I will leave it there. Before we go to Senator Kirk, I understand that Professor Tay's term as president ends on May 31. I would like to express thanks from me and, I suspect, from the committee and wish her well at this difficult time.

**CHAIR**—Of course.

**Ms Temby**—Thank you very much.

**Senator KIRK**—Could you tell us whether there are any aspects of the budget that concerned you as Sex Discrimination Commissioner?

**Ms Goward**—What we were obviously interested in was the response to the paid maternity leave final report and that was not forthcoming. Unfortunately, in the meantime, a lot of Australian families had thought perhaps it was, so there was some bedding down of phone calls and people who had expected to be able to start to apply for paid maternity leave. Other than that, it is not something that is within my purview to make an observation about. It is a political process and governments of the day make their decisions about how they best spend their money.

**Senator KIRK**—I am holding the statement that you issued on 14 May, setting out your disappointment at the decision not to support working families with any form of national paid maternity leave. Did you say that people telephoned the office after the budget?

**Ms Goward**—Before the budget, we had requests from people for forms because I think there was perhaps an understanding or an expectation that there would be paid maternity leave available.

**Senator KIRK**—I notice that you said in this statement here that you received many requests for application forms from women anxious to apply for the benefit. Do you keep statistics on the number of requests?

**Ms Goward**—No, we do not.

**Senator KIRK**—What sorts of numbers of requests are we talking about: one a day?

**Ms Goward**—I would have said no more than a dozen or so, but you know that every phone call reflects broader expectations.

**Senator KIRK**—Has the government indicated to you whether it intends to proceed with the national scheme of paid maternity leave? Has it given you any indication, formally or informally?

**Ms Goward**—No, but I think publicly it has indicated through the budget that it is aware of the issue of work and family generally and that it has not been ruled out.

**Senator KIRK**—I understand that the Prime Minister last year indicated that he had established an interdepartmental task force chaired by the Department of Prime Minister and Cabinet on work and family. Have you been contacted or consulted at all by the task force?

**Ms Goward**—I have had informal consultations with the chair of the task force.

**Senator KIRK**—Have you been asked to make a submission or anything of that description?

**Ms Goward**—No. I think my paper on paid maternity leave was probably considered to be a submission.

**Senator KIRK**—So you have had several meetings with the chair?

**Ms Goward**—Two or three.

**Senator KIRK**—Who is the chair?

**Ms Goward**—Geoff Whalan, who is the deputy secretary in the Department of Prime Minister and Cabinet.

**Senator KIRK**—Was it only in relation to paid maternity leave that you had discussions, or were there other matters?

**Ms Goward**—Whilst obviously the consultations we conducted for paid maternity leave had that as a focus, it is inevitable that consultations would raise more widely than that. Some women, for example, said that they felt that child care was a more pressing matter for them than paid maternity leave, and so I think in that context Mr Whalan was interested to know where he thought women in the consultations would have ranked other issues.

**Senator KIRK**—Any other issues: flexible working hours?

**Ms Goward**—The obvious candidates for consideration in a work and family package.

**Senator KIRK**—Can you list any of the other candidates?

**Ms Goward**—Part-time work, flexible hours, child-care affordability and availability, particularly for the under-twos, and return to work programs for women who have been out of the work force for more than a couple of years so that their work skills were no longer relevant or up to date.

**Senator KIRK**—You said you were not invited to make any formal written submission to this task force other than the paid maternity leave document.

**Ms Goward**—The document I suspect was seen as a submission. An IDC does not necessarily take submissions from outside parties. It is, after all, a process for cabinet rather than necessarily for public consumption, so that did not surprise me, nor did I press it.

**Senator KIRK**—Were any minutes taken during the course of the meetings, or was it purely informal?

**Ms Goward**—Notes of further ideas and further work and things to think about.

**Senator KIRK**—On the question of pregnancy related discrimination, you would be aware that there is still legislation before the parliament dealing with pregnancy related discrimination. The committee is keen to remain informed and up to date on the level of pregnancy related complaints coming before the commission. Could you provide the committee with an update of such complaints that have recently been made to the commission?

**Ms Clifford**—Perhaps I can help you a little bit, more just with the pregnancy related complaints. I think last time we were here we provided some information for you with regard to the complaints to date. Unfortunately I would have to take the exact number on notice again, but from my viewing of the complaints that come through it would look as if it is

almost on target, which is exactly the same as last year. I think you were looking to see whether there had been an increase, and I think the information that we provided to your question on notice last time was that the current complaints of pregnancy discrimination were 30 per cent and in the year 2001-02 they were 29 per cent of the complaints under the Sex Discrimination Act.

**Senator KIRK**—So your estimate would be that it has remained at about 30 per cent.

**Ms Clifford**—I would think they will be round about exactly the same.

**Senator KIRK**—Do you have any breakdown of how those particular complaints were resolved or whether they were resolved?

**Ms Clifford**—Again, some of the matters that have been received to date have not been finalised. Of the complaints in 2001-02 of pregnancy discrimination, 52 per cent were settled through conciliation; 20 per cent were terminated because there was no reasonable prospect of conciliation—there may well have been attempted conciliation—16 per cent were withdrawn by the complainant; nine per cent were terminated for other reasons, such as that they were either lacking in substance or they were over 12 months old when they were lodged; and three per cent were closed because they had been concurrently lodged with a state equal opportunity commission.

**Senator KIRK**—Do you have up-to-date figures for this financial year?

**Ms Clifford**—I do not have the up-to-date figures but I can certainly take that on notice.

**Senator KIRK**—Is it your impression that the same level of resolution of complaints is occurring this year?

**Ms Clifford**—I would be very surprised if there was much variation at all.

**Senator KIRK**—Do you have any figures on how many of the complainants had representation, whether legal or otherwise, in order to pursue their complaints?

**Ms Clifford**—Of the pregnancy related complaints that were received between 1 July 2002 and 14 February 2003, 36 per cent were represented and 64 per cent were unrepresented. For the previous year, 2001-02, 38 per cent were represented and 62 per cent were unrepresented. So, again, the figures are very similar and I would be surprised if there was much variation in the rest of this financial year but I would be happy to update those figures.

**Senator KIRK**—My final question relates to the commissioners generally, so I am not sure if I am going to get an answer, given that only the Sex Discrimination Commissioner is here. As I said, I have access to the statement put out by Ms Goward. Did any of the other commissioners put out any statement analysing the significance of the budget for their area of portfolio responsibility?

**Ms Temby**—No.

**Senator KIRK**—Could someone tell me, then, in the absence of any statement, whether the other commissioners were concerned about any aspects of the budget?

**Ms Temby**—Could I take that on notice and refer back to the commissioners?

**Senator KIRK**—Sure.

**CHAIR**—For the record, both Commissioner Jonas and Commissioner Ozdowski apologised that they were unable to attend today's estimates hearings. I also note, as Senator Ludwig did, that this would have been the last estimates that Professor Tay would have been able to attend in her term. So, on behalf of the entire committee, please convey our thanks for her extensive assistance to this committee during her term. We have been very grateful on every occasion for her input in our hearings on legislation and the other work the committee does, and we wish her the very best for the future.

**Senator Ellison**—Thank you, Madam Chair. The government joins you in those remarks.

**CHAIR**—We look forward to welcoming the new president on a future occasion.

[3.49 p.m.]

#### **Office of Film and Literature Classification**

**CHAIR**—I welcome Mr Clark and Mr Hunt.

**Senator LUDWIG**—The online censorship regime, Internet classification and freedom of information are obviously central to your area. I understand that the government is trying to amend the FOI legislation in relation to the ABA. What is the OFLC—the classification board—doing? Is there cooperation? My understanding is that it is not working at the moment. Can you help us with that?

**CHAIR**—Sorry, Senator Ludwig, I know Mr Clark is looking quizzical, and I am also not sure what you were seeking there.

**Senator LUDWIG**—When the OFLC classify the web page for the ABA, does the OFLC receive a copy of the web page from the ABA—for example, on a floppy disk or paper—or do the OFLC classifiers view the web page on the Internet?

**Mr Clark**—We do not classify it on the Internet. We would usually receive a floppy disk under current practice. I think that we received that information electronically in the past but not at the moment.

**Senator LUDWIG**—How do you view the content to be classified?

**Mr Hunt**—We have two methods that we have used in the past. One is live access to the ABA's server to view the information in a simulated online environment; the second method is by delivery of that content on disk to the office, which we then view by displaying it on a computer terminal in a simulated online environment.

**Senator LUDWIG**—Can it fit on a floppy disk? They only have two megabytes of information. If there is a graphic in there, it will not fit on a floppy disk, will it?

**Mr Hunt**—No, we use CD-ROMs, DVD-ROMs, floppy disks—whatever storage media will take the data.

**Senator LUDWIG**—What is the turnaround time?

**Mr Hunt**—It varies, but we aim for a five-day turnaround time in most cases. If there is a peak load for any reason, we negotiate that with the ABA.

**Senator LUDWIG**—Mr Clark, in February you said that the OFLC did not receive URLs from the ABA. Your response indicated that OFLC did not receive the names or titles of the Internet content either. Is that correct?

**Mr Clark**—Yes, that is correct, we receive a reference number from the ABA; we do not receive the URL.

**Senator LUDWIG**—What is on the reference number? How does that help?

**Mr Clark**—Mr Hunt will be able to describe that better than I can.

**Mr Hunt**—It is quite a simple system. It is just the letters ‘ABA’; the year, for example, ‘2003’; the month, for example, ‘05’; and then a two or three digit number after that, as required. It is basically just a reference number that can be taken back to an approximate date.

**Senator LUDWIG**—What is the current status of the proposals to make Internet classification decisions available through the online classification database?

**Mr Clark**—The agreement that we have referred to in the past was completed yesterday. That agreement provides for us to publish our classification decisions on a web site, but it will not have the URLs; it will have the reference number from the ABA.

**Senator LUDWIG**—What does that mean for your operations from here on in? Does that mean you have now got an agreement with the ABA?

**Mr Clark**—Yes, it does mean that.

**Senator LUDWIG**—Is that agreement available to the committee?

**Mr Clark**—We can make that available.

**Senator LUDWIG**—That would be helpful. So now you do not need to receive them on disk?

**Mr Clark**—Mr Hunt completed the agreement, so I will hand the question back to him.

**Mr Hunt**—The agreement allows us to receive the information in three ways at the moment and other ways as required, if we negotiate those out. One of the three ways is on disk—any sort of disk; another way is by using a secure online link that we have used in the past but which at the moment is not serviceable; and the third way is by using a secure form of email, which we have not developed yet but we have provided for it to happen in the future.

**Senator LUDWIG**—Can you describe that secure form of email?

**Mr Hunt**—We have a system for our commercial applicants to provide an electronic application and we would be looking for the ABA to use that to lodge an application electronically and provide a secure link to their server where we could view the information in a simulated online environment. The big thing we have to work out is the security of that link. We have not established the detail of that yet.

**Senator LUDWIG**—When is that likely to be done?

**Mr Hunt**—I am afraid I am not that good on IT but I would hope it would be within the next 12 to 18 months.

**Senator LUDWIG**—So it is a reasonable lead time.

**Mr Hunt**—It is a reasonably long time. I understand that the ABA is doing some work on their entire technology systems—so it is waiting for that. These things can sometimes take quite some time.

**Senator LUDWIG**—When will the decisions themselves become available online?

**Mr Hunt**—Provided our IT manager presses the right buttons, I would expect decisions from now to be online at the end of the month.

**Senator LUDWIG**—How current will they be—will you do them daily, or as they are made or weekly?

**Mr Hunt**—When the decision is made and the file is closed off, it is an overnight update.

**Senator LUDWIG**—Alright, so then people will be able to access your website and check on online decisions and there will be a database there of past history?

**Mr Hunt**—As we mentioned last time, we still have not got an answer on the technicality of pulling up the past decisions because it is an alteration. The way our system—

**Senator LUDWIG**—Forgive me, I assumed that included past decisions. You still do not have past decisions?

**Mr Hunt**—No.

**Senator LUDWIG**—What is the problem there?

**Mr Hunt**—Our system and our database were not designed to drag up the past. I have not got a complete answer from our IT people yet but it would appear to be a massively expensive exercise if we do it—but we are still exploring it.

**Senator LUDWIG**—Have you got any current FOI requests relating to online classification?

**Mr Clark**—No, we do not.

**Senator LUDWIG**—Does your budget funding for the next year and the out years take into account the developments that you are now talking about. In other words, has it been included in both the next budget year and the out years.

**Mr Clark**—Do you mean the new IT system?

**Senator LUDWIG**—Yes, and how much is it likely to cost?

**Mr Clark**—We have factored that into it notionally. Can I take the cost on notice? I do not think I can give you an exact answer on that. We have not actually got to the point of getting specific costs—it is a notional cost that we have at the moment.

**Mr Hunt**—Creating a new IT system is something we will be doing over the next couple of years anyway. We had not looked in any detail at the notion of past decisions that have not been put on the public access database being made available in that manner. That is something that again would have to be considered when we put together a specification for the system. At this stage we have not even drawn up a specification but we would expect our current system to have a life of over two years before we would have something else in place.

**Senator LUDWIG**—Going to page 418 of the PBS, if we look at section 3 which is an analysis of the budgeted financial statement—you have budgeted for a zero operating result. Does that mean that you have got no reserves for a rainy day?

**Mr Clark**—We do not carry reserves as such.

**Senator LUDWIG**—Right, I just heard that another agency was carrying them for a rainy day, so I was just seeing who else might be carrying them for a rainy day.

**Mr Clark**—We are a very slim organisation.

**Senator LUDWIG**—I think the other one is heading that way too. Looking at the statement, you have got ‘a reduction of funding due to government, discontinuing in the capital use charge.’ How much is that? Is that the figure of \$133,000?

**Mr Clark**—Do want page 418, Senator?

**Senator LUDWIG**—That is the capital use charge. Mr Kennedy does not seem to be about.

**Mr Hunt**—It is primarily the discontinuation of the capital use charge.

**Mr Clark**—It is the first time, Senator, that we have not had the business manager here.

**CHAIR**—Mr Kennedy is here, Senator. He is right behind us, so to speak.

**Senator LUDWIG**—I do not know what we did before you, Mr Kennedy.

**Mr Kennedy**—My apologies.

**Senator LUDWIG**—We are back to the capital use charge. The OFLC’s budget on page 418 of the PBS refers to a reduction for the capital use charge. We do not need to deal with that again. I was just trying to establish what and how much the reduction was. The PBS then states:

An offsetting increase in funding for economic parameter adjustments.

I have not come across that one recently.

**Mr Kennedy**—Which page, Senator?

**Senator LUDWIG**—It is on page 418 of the Office of Film and Literature Classification budget statement.

**Mr Clark**—I would like to take that on notice.

**Senator LUDWIG**—I think Mr Kennedy might be able to help us. There is a reduction of funding due to the government discontinuing the capital use charge. We know what that is, but I was just looking at isolating the amount of that.

**Mr Kennedy**—On page 419, near the bottom of that table, there is—

**Senator LUDWIG**—I have got it—the \$222,000.

**Mr Kennedy**—That is correct, yes.

**Senator LUDWIG**—So the total revenue is estimated to be \$5.996 million—a decrease of \$133,000. So \$222,000 accounts for that?

**Mr Kennedy**—That is correct, yes.

**Senator LUDWIG**—Or two per cent from the 2002 to 2003 estimation?

**Mr Kennedy**—There will be an indexation adjustment on top of it, which will account for—

**Senator LUDWIG**—Do others have to do an indexation adjustment?

**Mr Kennedy**—It applies to all budget funding for all agencies.

**Senator LUDWIG**—The next dot point states:

- An offsetting increase in funding for economic parameter adjustments.

Is that English for something?

**Mr Kennedy**—I do not wish to take away from officers here from the OFLC, but it is really simply a way of trying to explain the movement in appropriations from 2002-03 to 2003-04. Because there is a reduction, it is simply trying to say that there are two things happening in terms of the movement and there is a reduction for the capital use charge, which is \$222,000. There is the balance of the net adjustment, and the parameter increases would reduce that impact of the reduction for the capital use charge by about \$90,000-odd. So it is simply trying to establish the net effect of those factors.

**Senator LUDWIG**—The economic parameter adjustments might have been called carryovers before? No, we are not going to go there again.

**Mr Kennedy**—No, we will not go there. It is indexation. It is adjustments for movements in general price.

**Senator LUDWIG**—I can understand that. So the total expenses are estimated to be \$5.996 million; so there is an increase of \$89,000?

**Mr Kennedy**—That is correct, yes.

**Senator LUDWIG**—How much was the offsetting increase? That was \$90,000? I am just trying to add them up, or can't you do that?

**Mr Kennedy**—It is probably in one way simpler to refer to the total appropriations because that is where the capital use charge comes out.

**Mr Cornall**—If you take the figure that is on page 419, which is \$6,129,000—

**Senator LUDWIG**—Yes.

**Mr Cornall**—If you take off the capital use charge, which is \$222,000—

**Senator LUDWIG**—Yes.

**Mr Cornall**—And then you add back the \$89,000, I think you will find you come out at \$5.996 million.

**Senator LUDWIG**—Yes. It is not actually demonstrated on that table on page 419, is it—the \$89,000?

**Mr Cornall**—No.

**Senator LUDWIG**—You have to go to page 418 to get the number.

**Mr Cornall**—But if you take off the capital use charge and then add back the \$89,000, you get to this figure.

**Mr Kennedy**—That is correct, yes. That is what this is trying to say.

**Senator LUDWIG**—That is helpful. Are they all this easy?

**Mr Kennedy**—These are relatively easy changes.

**Senator LUDWIG**—That is all I have, thank you. I could not quite add that up, but now I follow it, I think.

**CHAIR**—If there are no further questions for the Office of Film and Literature Classification, I thank the officers for assisting in our deliberations.

[4.07 p.m.]

#### **Australian Security and Intelligence Organisation**

**CHAIR**—As Mr Richardson from the Australian Security and Intelligence Organisation comes to the table, I will provide some information in relation to the timetable.

First, Mr Richardson, I thank you very much for coming up early to assist the committee. I know that you were advised to come at a later time today, so we are very grateful for your assistance in that regard. At least it gets you and your area addressed earlier in the day.

In relation to the program, in terms of time, we have a fairly formal arrangement with the Australian Federal Police. The committee will adjourn at the end of the questioning of ASIO, depending on how long that takes, and resume at 7 p.m. with the Australian Federal Police. That has been checked with the commissioner and he is available to attend.

**Senator Ellison**—There is no chance of the AFP starting before dinner, I think.

**CHAIR**—Not that I am aware of. Not on their part and also not on the part of senators. Unfortunately we will be left with a slightly longer break than otherwise scheduled. We will then begin with the Australian Federal Police at 7 o'clock and go until the conclusion of that examination this evening. That will then conclude consideration of budget estimates for the Attorney-General's portfolio.

**Senator LUDWIG**—Could we start with the portfolio budget statement? As I understand it, ASIO has now received both a departmental equity injection of \$9.129 million and out-year impact budget measures as well. Is that part of the \$9.129 million?

**Mr Richardson**—The nine is part of the bigger total.

**Senator LUDWIG**—You did not receive any loans or other capital injections?

**Mr Richardson**—No.

**Senator LUDWIG**—So there has been an increase in your bottom line of \$9.129 million.

**Mr Richardson**—We have received an additional \$24.5 million over the next four years and there is \$9 million this year of capital injection. We have received a significant net increase in our bottom line.

**Senator LUDWIG**—I think that goes without saying. How do you then intend to use that money for the next four years? I just want a reasonably tight overview. I understand what you can and cannot say, so I will not even pre-empt what you will tell me.

**Mr Richardson**—It is a mix of an expansion of our overseas liaison, an increase in our analytical and collection capability and also funding to enable us to do vetting, security assessments, in the civil aviation area.

**Senator LUDWIG**—What does that mean exactly? Perhaps you could tell me what you intend to put in place?

**Mr Richardson**—At the moment, there are no security assessments done in respect of most people working in sensitive parts of airports. It is proposed that security assessments will now be undertaken in respect of some people working at airports.

**Senator LUDWIG**—I do not have Customs with me at the moment but I understand that Customs do require security clearances or checks in this area with people entering airports and in secure areas.

**Mr Richardson**—I think you will find that might be a police check. It is not a security check.

**Senator LUDWIG**—I see; so it is different again. That would be the normal CrimTrack check, for argument's sake.

**Mr Richardson**—Normally, you go to the police for a criminal check and you go to ASIO for a security assessment.

**Senator LUDWIG**—So what does that entail? Do you know how many people are involved in that?

**Mr Richardson**—I can get you the figures but, for the most part, that work will be done electronically. My understanding of the proposed arrangements is that we will receive the details from the AFP and we will provide back to the AFP the outcome of the security assessment. For the most part, that assessment will be a check against our electronic database.

**Senator LUDWIG**—Is that the existing database or are you going to develop a new database?

**Mr Richardson**—It would be our existing database but we need a capital injection to put in place the new equipment which would enable us to link with the AFP, and the like, and link that to our database.

**Senator LUDWIG**—And that is \$1.859 million to get that up and running?

**Mr Richardson**—That is right.

**Senator LUDWIG**—And when will that be in place?

**Mr Richardson**—The aim is to have it in place in the second half of this year. In other words, the first half of the new financial year.

**Senator LUDWIG**—What can you tell me about the \$2.610 million for capital 'to sustain and enhance ASIO's counterterrorism capabilities'?

**Mr Richardson**—That relates to analytical and collection capability.

**Senator LUDWIG**—And the \$0.7 million is for funding in changes in technology and updating some of your equipment?

**Mr Richardson**—That is right.

**Senator LUDWIG**—And is the \$2.21 million ‘investments in technical capabilities’ different from the \$0.7 million?

**Mr Richardson**—Yes. It is for different types of equipment, and the like.

**Senator LUDWIG**—Is that new equipment that will be used by ASIO in an investigative role? Is that hardware?

**Mr Richardson**—It is hardware.

**Senator LUDWIG**—And then ‘\$1.75 million to enhance counter terrorism’—they all sound the same to me. That is what I am trying to differentiate. They leave out a technical word or add it here or there.

**Mr Richardson**—That is right. It falls within the broad rubric of our analytical and collection work.

**Senator LUDWIG**—You are not conducting any internal reviews at the moment, are you?

**Mr Richardson**—Of what?

**Senator LUDWIG**—Yourselves—capability reviews, reviews of staffing?

**Mr Richardson**—We have reviews of that kind going on all the time.

**Senator LUDWIG**—I must ask the department how many reviews they have going across the A-G’s department at some stage. Mr Cornall, every time I ask an agency, they seem to be having a review. Is this something that you require?

**Mr Cornall**—No, it is not. It is all their own work.

**Senator LUDWIG**—Have you tried to count up how many reviews? I do not know, I have been sitting here two days and I have lost count because we have gone past more than 20 I am sure.

**Mr Cornall**—A lot of them, I think, are internal management reviews. They are not formal reviews using consultants and producing written reports so there is a use of the term in two different ways. I think that they are basically normal management processes but they are calling them a review, but it is not, as I say, a formal review involving consultants.

**Senator LUDWIG**—Do you have any formal reviews going on, Mr Richardson?

**Mr Richardson**—We would be fairly typical, I think, of most organisations across government in the sense that we have an audit and evaluation committee, on which we have a representative from the Australian National Audit Office, that has a continuous program of reviewing different activity within the organisation in terms of its efficiency—whether certain financial and accountability requirements are being met. I think the senior management of any organisation need that as a reassurance. Also, if you are looking at improving your organisation or making changes in any way, I think that you need that. We have a human resource committee, we have an information technology committee, we have a range of other committees and they always have work in progress to ensure that we are doing what we do as

effectively as we can and determine whether there are areas in which we ought to be doing better.

**Senator LUDWIG**—What security level is Australia at in terms of its present security environment? I think that we have asked this of you before and, from what we understood, it was causing some complexity in the answer. It is not so much that I am trying to establish a black and white answer, because I am not going to get it.

**Mr Richardson**—We have threat levels and the overall threat level for Australia at present is medium. It was raised to medium following September 11 as a precaution. Within the framework of a medium threat level, the special alert announced by government on 19 November last year remains in place because the information that gave rise to that alert has not yet been resolved and the alert will remain in place until it is. Below the overall national threat level, there is threat assessment advice provided across a range of areas, for instance in the area of energy production, civil aviation, and chemical, biological and radiological attacks. So you have an overall threat level for the country, but below that you have threat levels specifically targeted in respect of certain sectors, events and individuals.

**Senator LUDWIG**—There are how many threat levels in total?

**Mr Richardson**—There is very low, low, medium and high and we are at medium.

**Senator LUDWIG**—But within that level is it a 3-D picture in the sense that you then have that broken down into other areas which then are assessed independently? When you say they are below those—I am just trying to understand.

**Mr Richardson**—They are assessed independently.

**Senator LUDWIG**—So overall Australia is at a medium level and within that medium level we then have areas which are separately assessed.

**Mr Richardson**—Yes.

**Senator LUDWIG**—Is there an assessment level for those?

**Mr Richardson**—Yes.

**Senator LUDWIG**—For argument's sake I will not use a hypothetical example but what can you tell me about one that we could use as way of describing it?

**Mr Richardson**—The overall threat level for Australia is medium. We independently assess foreign interests in Australia and the assessed threat level for US interests in Australia is currently high.

**Senator LUDWIG**—Right, so you still use the same threat level within the individual assessment area?

**Mr Richardson**—I am not sure I understand the question.

**Senator LUDWIG**—Well for that particular issue, the threat level then is high.

**Mr Richardson**—That is right.

**Senator LUDWIG**—So if there is another area, you use the same levels but you can move them?

**Mr Richardson**—That is right.

**Senator LUDWIG**—But would there be any individually assessed as low even though we are all medium in that sense?

**Mr Richardson**—Yes. You have a national threat level but that does not mean that every single institution and every single individual in the country is at medium threat. There may be individuals and there may be institutions that range from high to very low and that is important if you are going to make rational decisions about your deployment of your protective security resources.

**Senator LUDWIG**—That is helpful; I understand a little bit better now. You said that change came in after September 11. In respect of the war in Iraq, did the threat levels change again or was an individual assessment made on various areas and they changed as a consequence?

**Mr Richardson**—No. As stated by the Prime Minister in answer to a question in parliament on 24 March, the overall threat level did not change as a result of the war in Iraq. Threat levels in respect of some foreign interests in Australia were raised because of the war and threat levels in respect of Defence facilities in Australia were raised because of the war. Also, threat levels in respect of some Australian interests overseas, especially in the Middle East, were raised because of the war.

**Senator LUDWIG**—That makes sense. In addition to what we have already asked in respect of Mr Hicks and Mr Habib, have you had contact or has ASIO renewed contact with them since February?

**Mr Richardson**—No, we last saw Mr Hicks and Mr Habib in November, I believe.

**Senator LUDWIG**—I would have asked you that last time you were here.

**Mr Richardson**—That is right, yes.

**Senator LUDWIG**—So nothing has changed since then?

**Mr Richardson**—We are currently visiting them again.

**Senator LUDWIG**—Can you tell me when that is?

**Mr Richardson**—At present.

**Senator LUDWIG**—What is the purpose of the visit at present?

**Mr Richardson**—It is following up the inquiries we made of them in November.

**Senator LUDWIG**—What were those inquiries?

**Mr Richardson**—About their activities, relationships and connections.

**Senator LUDWIG**—Is the investigation ongoing? What would you describe it as?

**Mr Richardson**—For us it is an ongoing intelligence investigation.

**Senator LUDWIG**—Does it have a purpose? Can you explain that?

**Mr Richardson**—Certainly. The purpose is to enable us to better understand al Qaeda's links and connections both within Australia and between Australia and other countries—and also relationships between individuals who have been involved with al Qaeda.

**Senator LUDWIG**—So there are ASIO officers at Guantanamo Bay as we speak.

**Mr Richardson**—That is right.

**Senator LUDWIG**—How long have they been there for?

**Mr Richardson**—Just a couple of days.

**Senator LUDWIG**—How long is their visit for?

**Mr Richardson**—I think it is two or three days.

**Senator LUDWIG**—How many officers are involved?

**Mr Richardson**—Three.

**Senator LUDWIG**—Were they accompanied by any consular staff, aid workers or anyone else, or was it just ASIO officers?

**Mr Richardson**—It was just ASIO officers.

**Senator LUDWIG**—Was it part of their brief to inquire about the health of Mr Hicks and Mr Habib?

**Mr Richardson**—Yes. While they are not undertaking the visit for welfare purposes—they are undertaking the visit for intelligence purposes—they will as a matter of course talk to those responsible for Guantanamo Bay about their wellbeing and they will as a matter of course take an interest in their wellbeing.

**Senator LUDWIG**—Will you advise the families of the outcome in relation to that?

**Mr Richardson**—We will advise others in government who have contact with the families.

**Senator LUDWIG**—Have you been advised as to whether or not they have formed an impression of the health of Mr Hicks?

**Mr Richardson**—No. We have had no communication with them in the time they have been at Guantanamo Bay.

**Senator LUDWIG**—What do you need to find out more specifically from Mr Hicks or Mr Habib?

**Mr Richardson**—It is really what I said before.

**Senator LUDWIG**—You cannot say what sorts of questions are being asked?

**Mr Richardson**—Well—

**Senator LUDWIG**—I understand. I withdraw that. When will the outcome of the visit be available?

**Mr Richardson**—The outcome of the visit is for our purposes. We do not publicly advise what information we have or have not obtained. However, certainly in terms of any information that may be relevant in respect of their wellbeing, that, as a matter of course, is passed on through the proper authorities to the families.

**Senator LUDWIG**—What can you tell me about Jack Thomas, the person held in Pakistan? On 25 May, there was a *Sydney Morning Herald* report that ASIO interviewed Mr Thomas. Is that accurate?

**Mr Richardson**—That is accurate. We have interviewed him on a number of occasions since he was taken into custody by the Pakistani authorities.

**Senator LUDWIG**—The *Sydney Morning Herald* report seemed to suggest that Mr Thomas had ‘tainted’ statements later provided to the Australian Federal Police, rendering them inadmissible for criminal prosecution in Australia. Is that something that—

**Mr Richardson**—That claim in the *Sydney Morning Herald* was utter nonsense.

**Senator LUDWIG**—You refute that?

**Mr Richardson**—It is simply plain rubbish.

**Senator LUDWIG**—Inaccurate perhaps?

**Mr Richardson**—It is rubbish.

**Senator LUDWIG**—How do you come to that conclusion?

**Mr Richardson**—The burden of the article in last Saturday’s *Sydney Morning Herald* was that, as a result of interviews conducted by ASIO, the AFP was unable to properly conduct interviews for law enforcement purposes. That is simply not true. For a start, the interviews conducted by us were the result of a deliberate decision by Commissioner Kelty and me. Consistent with the way other countries work, it is important in a situation like that to first ascertain information of an intelligence nature before launching formal proceedings which might have law enforcement consequences.

**Senator LUDWIG**—How many people visited Mr Thomas and what agencies were they from?

**Mr Richardson**—I am aware of Thomas being accessed by consular officials, ASIO officers and AFP officers, either separately or together. The interviews that ASIO conducted, which were the subject of the reference in the *Sydney Morning Herald*, were interviews at which both ASIO and AFP officers were present and in which ASIO led the questioning. It was not questioning under caution; in other words, it was questioning for intelligence purposes with no law enforcement consequences.

**Senator LUDWIG**—What was the purpose of the questioning?

**Mr Richardson**—When an individual is picked up in the circumstances of Mr Thomas, the first interest is in ascertaining whether that individual has any information which might stop an incident happening, whether that person has information of terrorist planning and whether that person has information which might prevent harm to others. That is the first interest you have. That is an interest you have which sits above a law enforcement investigation.

**Senator LUDWIG**—Can you explain to us what the outcome of those interviews was?

**Mr Richardson**—I cannot explain in detail, except to say that they were very productive.

**Senator LUDWIG**—So there is little more we can ask you in relation to that issue.

**Mr Richardson**—I cannot put any more on the public record.

**Senator LUDWIG**—We will not ask any further then.

**CHAIR**—As there are no further questions in this area, Mr Richardson, thank you very much for assisting the committee this afternoon; we appreciate it. As I said, we also appreciate your changing your schedule to appear at this time.

As I indicated earlier, the committee is now in a position whereby the next business that we are able to consider will occur at 7 p.m., a combination of factors prevailing. I apologise for

the lengthy break, but at least it means that we will have completed all of the portfolio budget estimates for Attorney-General's by the end of the evening.

**Senator Ellison**—Thank you for that, Madam Chair.

**Proceedings suspended from 4.34 p.m. to 7.02 p.m.**

**Australian Federal Police**

**CHAIR**—Ladies and gentlemen, we will reconvene this session of the Legal and Constitutional Legislation Committee budget estimates with consideration of the portfolio budget statements and budget estimates for the Australian Federal Police. I welcome Commissioner Mick Keelty and officers of the Australian Federal Police to this evening's hearings and welcome back the minister and the secretary of the department, Mr Cornell. I appreciate, Commissioner, your assistance in coming here at seven o'clock, notwithstanding the fact the scheduled time was half past seven. We will begin with questions in this area from you, Senator Faulkner, so I am advised.

**Senator FAULKNER**—I wonder if I could ask you, Commissioner, about AFP representation in Indonesia in the latter half of 2001. First of all, how many Australian Federal Police officers were involved in the people-smuggling group at the Australian Embassy in Jakarta?

**Senator Ellison**—Madam Chair, I might at the outset ask Senator Faulkner to establish the relevance of this to budget estimates 2003-04. There might be a comparison between representation of police then and now, but I raise what I raised yesterday. This is budget estimates 2003-04 and we have allowed a fair degree of breadth in questioning, but there are limits to that. I put that to the committee at the outset. If they are questions relating to matters which are irrelevant, there is always the *Notice Paper*. Perhaps Senator Faulkner has a way of tying it into the budget estimates. We will see.

**CHAIR**—I take your point, Minister. It is a matter that the committee discussed yesterday on more than one occasion. Senator Faulkner, we have endeavoured to address at least the periphery of most of the issues relating to budget estimates and any assistance in that regard would be appreciated, of course.

**Senator FAULKNER**—I can assure you that all my questioning will be consistent with the precedents that have been established in this committee and many others in their consideration of all estimates rounds over a long period of time. Of that you can be assured.

**CHAIR**—Commissioner, is there a response to at least the initial question from Senator Faulkner?

**Mr Keelty**—I do not have the answer to that with me tonight. I can get an answer.

**Senator FAULKNER**—Thank you, Commissioner. Of course, this matter has received some public exposure because of the publication of a recent book by David Marr and Marian Wilkinson called *Dark Victory*. You may or may not have had that drawn to your attention. Was AFP officer Leigh Dixon based in the Australian Embassy in Jakarta in the latter part of 2001?

**Mr Keelty**—Yes.

**Senator FAULKNER**—Is Mr Dixon still there?

**Mr Keelty**—No.

**Senator FAULKNER**—Is Mr Dixon still an officer of the AFP?

**Mr Keelty**—Yes.

**Senator FAULKNER**—I do not know Mr Dixon's rank or I would address him more appropriately, but is he a federal agent?

**Mr Keelty**—A federal agent, yes.

**Senator FAULKNER**—Mr Dixon is still a federal agent working for the AFP?

**Mr Keelty**—Yes. I understand he is due to finish with us, but I have not got the date in front of me.

**Senator FAULKNER**—Does that mean that he is retiring from the service?

**Mr Keelty**—No, he is taking up other employment.

**Senator FAULKNER**—But he is leaving the AFP?

**Mr Keelty**—That is correct.

**Senator FAULKNER**—Are you able to say to this committee, Commissioner, what Federal Agent Dixon's involvement was in the people-smuggling disruption program in 2001, as the AFP representative in the embassy?

**Senator Ellison**—Madam Chair, I appreciate that Senator Faulkner may have read a book recently—and we have all read books—but there has been a select committee which inquired into this aspect. This matter was raised at previous budget estimates in November and February. I really do not think that budget estimates centres around whether someone has read a book or not. We have budget estimates 2003-04 here, and I think that we should maintain some sort of relevance to the reason we are here.

Senator Faulkner says there is a precedent for these committees. I have also seen precedents where chairpersons have required that questions have some semblance of relevance to budget estimates. That is what we are here for. We have allowed a fair degree of latitude. A person's involvement in late 2001 in the anti people-smuggling operation in Indonesia is not relevant to budget estimates, especially when you have had all these chances to go through this, not just a select committee, but a previous estimates committee. We have to draw a line somewhere, Madam Chair.

**CHAIR**—Minister, I have indicated to Senator Faulkner that the committee has—at your prompting and at my prompting—on previous occasions in the last two days considered the relevance of matters being raised specifically with respect to budget estimates. I understand the point that you make. I also understand the point that Senator Faulkner makes. This committee has, at least in the period of my chairmanship, endeavoured to accommodate a breadth of issues and interests to facilitate its better operations. I have not been involved in any other Senate inquiries on these issues myself, but to the extent that we have examined these matters at great length in two previous sets of budget estimates, as you indicate, I really

would, Senator Faulkner, seek the application of your questions to the budget estimates 2003-04.

**Senator FAULKNER**—I intend to ask my questions in accordance with the longstanding procedures and precedents that have been established in the Senate, and I can assure you I will not be asking questions that are outside those parameters. I do not really understand why the minister is making this point, given the nature of the questions being asked.

**Senator Ellison**—I have made them before in relation to this committee. The fact is that you cannot expect witnesses to bowl up with information, within their own personal knowledge, of events over two years ago. They have come armed to answer questions about estimates.

**Senator FAULKNER**—Regularly officials are asked at these committee meetings to deal with issues that span back many more years than just two. In a committee I have been in today, events of seven years ago were being canvassed at some considerable length. You would probably have us all drag out a crystal ball and look at what might happen in the future. I want to look at a few issues that have happened in the recent past, as well as some that are going to happen in the future and some current policies.

**CHAIR**—Senator Faulkner, I do not think there is any suggestion that anybody should be attempting to adopt a crystal ball approach to this or any other committee matter.

**Senator FAULKNER**—I just want to get on with my question.

**CHAIR**—I do take the minister's point, Senator Faulkner. We have had no effort to make any reference at all to the budget estimates for 2003-04 so far in this brief period of questioning of the Australian Federal Police. I think it would be appropriate and relevant to do that.

**Senator FAULKNER**—I do not. With respect, having attended the Finance and Public Administration Legislation Committee for two days, no-one has asked a question that has been prefaced by reference to the budget estimates and no-one should be expected to. That is not the way these committees work. With respect, I suggest you go and have a look at the standing orders and guidance that we have available to us in relation to these committees. I realise you may not know how they have operated but you do not want to fall for the first attempt by a minister who for some unknown reason does not appear to want certain questions asked. I intend to ask them. I am going to ask them. I am not going to be stopped from asking them.

**Senator Ellison**—Do not expect an answer.

**Senator FAULKNER**—I would ask the minister at the table to be as cooperative as the commissioner has been in answering them. We would be halfway through if—

**Senator Ellison**—The question will be taken on notice.

**Senator FAULKNER**—What question will be taken on notice?

**Senator Ellison**—The one that was asked when I raised an objection.

**CHAIR**—The question of answering is a matter for the witnesses and the minister. With respect to your freely given and gratuitous advice in relation to the application or otherwise of

the standing orders and the scope of questioning, I have had more than ample opportunity in several periods of estimates over the recent past—probably while these questions have been asked—to examine and re-examine those. I am particularly well acquainted with them, happily for all of us.

I would ask Senator Faulkner that in the process of asking your questions this evening, and any questions asked by other members of the committee, we do at least at some stage canvass the budget estimates 2003-04. If that is regarded as an unreasonable request from the chair in relation to the examination of budget estimates—as they are referred to and listed in every program available in the Senate, to my knowledge, for this period of two weeks—then I will note that down as an unreasonable request on the chair's part. Senator Faulkner.

**Senator FAULKNER**—Yes. Does the interagency people-smuggling group at the Australian Embassy in Indonesia still exist, Commissioner?

**Mr Keelty**—I do not know, Senator.

**Senator FAULKNER**—I wonder if there is an officer who might be able to assist me. I would like to ask whether the group is in operation and whether there is any AFP representation on it.

**Senator Ellison**—That is a valid question.

**Senator FAULKNER**—They are all valid questions. Let's just get on with it.

**Mr Keelty**—Senator, I do not have the answer but if the deputy does, I will ask him to intercede.

**Senator FAULKNER**—Thank you.

**Mr Keelty**—I can tell you that there are two officers in Jakarta, currently posted there as liaison officers. In the absence of being corrected by any of my staff, Senator, I do not know if that task force still exists in Jakarta.

**Senator FAULKNER**—I am drawing a distinction, Commissioner, between AFP officers working out of the embassy and those who may be working elsewhere. I was focusing my questioning on those working in the embassy in Indonesia. What is the current situation?

**Mr Keelty**—There are two liaison officers in Jakarta.

**Senator FAULKNER**—Have we had a situation where at times those liaison officers, or representatives of the AFP, have been seconded to the INP? This does happen from time to time, doesn't it?

**Mr Keelty**—Not seconded to the INP, Senator. The closest we would get to that is working in joint task forces, as we are with the Bali investigation, or conducting training courses but not as a secondee to the INP.

**Senator FAULKNER**—But working closely with the INP.

**Mr Keelty**—That is correct.

**Senator FAULKNER**—I understand the distinction you draw about secondment. In terms of involvement on groups like the interagency people-smuggling group in the Australian

Embassy in Jakarta—or, for that matter, other similar groups—what is the procedure for reporting mechanisms back to your office or the AFP here in Canberra?

**Mr Keelty**—Normally any LO, if we are talking about today, would report back to a director or commander of International here in Canberra. Previously they did report to what was described as a regional coordinator but that system has been done away with. Now the senior liaison officer reports directly to the Director, International in Canberra.

**Senator FAULKNER**—When did that reporting process change, approximately?

**Mr Keelty**—At a guess, in the last 18 months; certainly in the last 12 months, Senator. If it was any longer than that I will let you know.

**Senator FAULKNER**—Thanks for that. What was the reason for that change in reporting arrangements?

**Mr Keelty**—It was world wide. We had a number of regional coordinators in charge of or responsible for a number of LOs across a number of countries. We discovered that was probably less efficient than we wanted, so we corrected it and had direct reporting back to Canberra.

**Senator FAULKNER**—It is an efficiency thing, basically.

**Mr Keelty**—That is right.

**Senator FAULKNER**—Efficiency and effectiveness of the operation.

**Mr Keelty**—That is right, Senator.

**Senator FAULKNER**—At the end of the day do the key issues come across your desk, or other senior officers, or does it depend on the nature of the issue, its sensitivity and so forth?

**Mr Keelty**—Normally I would not know the day to day operation or reporting of the LOs. It comes back to the Director, International, who has a general manager or assistant commissioner in charge of him. Then that assistant commissioner or general manager International reports to the deputy commissioner. There might be current operations where I am briefed regularly on a particular operation but it would be extraordinary matters that are brought to my attention.

**Senator FAULKNER**—What about people-smuggling issues? I appreciate that has a priority. You have said in previous committee hearings that it has a priority in terms of the work of the AFP and I understand that. Do matters arising out of those sorts of operations or issues tend to come across your desk or might it go to a more junior officer?

**Mr Keelty**—Normally it would go to a more junior officer. It would only be if an extraordinary event occurred, like a major arrest or a major outcome.

**Senator FAULKNER**—What is the status of the DIMIA-AFP joint strike team? Is that still in operation?

**Mr Keelty**—Yes, it is, Senator. It is staffed by a permanent team of 15 officers, 10 from the AFP and five from DIMIA.

**Senator FAULKNER**—That is in Canberra?

**Mr Keelty**—That is right, Senator.

**Senator FAULKNER**—From memory, that is pretty similar to when we last heard evidence from you. It was a team of about that size at that time. It has been a pretty constant level of staffing resources going in there.

**Mr Keelty**—That is correct.

**Senator FAULKNER**—Has its role evolved at all over a later period of time? Have priorities changed?

**Mr Keelty**—They have now been working on targets that have been developed out of the intelligence that has come forward from the previous operations. This went from a peak 18 months to two years ago and there is a lot of residual intelligence. They have been working principally on the brief of evidence in relation to people such as Abu Quassey and the more recent arrest in Sweden of a person by the name of Ayoub.

**Senator FAULKNER**—I do not expect you to have this information at your fingertips, but if you do you can provide it. Could I ask you to take on notice whether you are able to indicate to the committee whether any AFP officers were present at a meeting at 0800 hours at the Jakarta Embassy on Wednesday, 13 June 2001, which was a briefing by Ambassador Smith and the interagency people-smuggling group; if so, the number of officers and who they were.

The details of this meeting have been provided to me in a recent answer to a question on notice that I asked in relation to the Department of Immigration and Multicultural and Indigenous Affairs. Specifically, that meeting is mentioned in answer to that question on notice. The reference is L&C 328. I assume you do not know the answer to that question—and I would not expect you to—and I ask you to take that on notice.

A version of events at this meeting has been recently reported in a book that has just been published. It indicates that Federal Agent Dixon of the AFP gave a rundown of Australian work with the Indonesian National Police to attack the people-smuggling syndicates, the success of this and so on. I do not want to mislead you in any way. I think it is possible that Federal Agent Dixon may well have been at that meeting.

It is also reported, Commissioner, that Federal Agent Dixon was allegedly concerned about the direction of the discussion at that meeting. I wonder if at some stage subsequently, or perhaps quite recently, you have asked for any briefing on that meeting or those events. I am not asking you what the content of that briefing might be. I am asking the process question of whether further information or briefing was sought by you.

**Mr Keelty**—Yes, Senator, if I have got the incident as the correct incident, I was unaware of it. I am not sure how it emerged, whether it emerged from discussions with Marian Wilkinson—I think that is how it emerged, but I stand corrected on that.

**Senator FAULKNER**—It does appear that might be the case from what I have read.

**Mr Keelty**—I have spoken to Federal Agent Dixon about that but that was many months after the event. I was unaware of it prior to that.

**Senator FAULKNER**—Thank you for that. This event took place in June 2001. Would you be able to say to us when you spoke to Federal Agent Dixon about it?

**Mr Keelty**—I would have to check my diary to give you the exact date.

**Senator FAULKNER**—Could you take that on notice?

**Mr Keelty**—Yes, Senator.

**Senator FAULKNER**—Again a process question on this: hearing what you say about having spoken to Federal Agent Dixon about these matters, can you say to the committee whether you asked for any written brief, record of meeting or other minutes or recorded material on this issue, or was this just a discussion between yourself and the federal agent?

**Mr Keelty**—I had a discussion with him, but as I understand there was a report made available to his reporting group.

**Senator FAULKNER**—What was Federal Agent Dixon's reporting group at the time?

**Mr Keelty**—It was, I think, through a regional coordinator who may have been based in Bangkok. In any event his account of what occurred was reported back to the position then known as the Director, International which was, as I recall, the most senior position in International at the time.

**Senator FAULKNER**—So to your knowledge there is just that minute. Do we call it that? What is the correct terminology?

**Mr Keelty**—Yes. A brief that came down to Canberra.

**Senator FAULKNER**—There was just that one formal brief on this issue that you are aware of.

**Mr Keelty**—That I am aware of, yes, Senator.

**Senator FAULKNER**—It does appear there was sensitivity about this because a journalist was asking questions. Would that be fair?

**Mr Keelty**—That is right. I certainly know of no other report.

**Senator FAULKNER**—Can we nail down when that brief was dated?

**Mr Keelty**—If I could take that on notice, Senator, please.

**Senator Ellison**—Madam Chair, it might help, in view of the detail and time that has elapsed since these events took place, if Senator Faulkner could provide written questions. It is obvious that to expect the commissioner to remember is totally unreasonable—to recall detail of this sort—and he should place them on notice.

**Senator FAULKNER**—I think you probably misunderstand.

**Senator Ellison**—Or on the *Notice Paper*.

**Senator FAULKNER**—I am not going to. I am more than happy for the commissioner, as you have heard, to take any question on notice. He has been able to answer many of my questions. Some he has not and I have not expected him to and he has taken them on notice. I think you misunderstand. I do not think the brief or the meeting that the commissioner and Federal Agent Dixon had was as long ago as you think it was. In fact it may have been last year. That would be right, would it not, Commissioner? You have just been asked about the date of the brief.

**Senator Ellison**—That is right.

**CHAIR**—And the Commissioner has taken that question on notice.

**Senator FAULKNER**—He has taken it on notice.

**Senator Ellison**—Madam Chair, it is obvious that Senator Faulkner is going into some of the detail, despite being irrelevant to budget estimates 2003-04, and it could not possibly be reasonably expected that the Commissioner of Police could recall this offhand and give that evidence. There should be notice given of these sorts of questions and they can be replied to.

**CHAIR**—I appreciate the point that you make, Minister. It is appropriate to inquire, Senator Faulkner, whether it is possible to provide the questions you are asking of the commissioner—given the length of time that has elapsed since the events to which you refer—in writing to place on the *Notice Paper*.

**Senator FAULKNER**—As you would appreciate, Madam Chair, answers to questions beget other questions and I think we are going reasonably well. Frankly, I thought we were going reasonably quickly. I do not think the events are too far in the dim distant past at all and, as you have seen from the commissioner's answers, he is perfectly able to answer most of the questions I have asked. The one or two he cannot, he has taken on notice, and I think that is a fair thing. I will just bat on.

**CHAIR**—Thank you for your assistance, Senator Faulkner.

**Senator FAULKNER**—My pleasure. Are you able to say to the committee, Commissioner, in relation to the discussions you had with Federal Agent Dixon, whether that included the issue of piracy?

**Senator Ellison**—Now we are going to the substance of the matter, which Senator Faulkner said he was not concerned with. He was concerned with the process. The question of the substance of this—

**Senator FAULKNER**—You were objecting to my process questions.

**Senator Ellison**—Not as much as I am objecting to the substance questions, Senator Faulkner, because I can tell you that—

**Senator FAULKNER**—The process questions are all right now, are they?

**Senator Ellison**—where there are operational matters which may be discussed—and it has been a precedent of this committee and others—we do not go into those questions. This is not another certain maritime incident investigation. It is budget estimates 2003-04. If you are going to do a re-run of what we had last year—a Senate select committee and questions which were generously allowed on previous occasions—I am going to object again, Madam Chair. These questions have gone on for half an hour.

**Senator FAULKNER**—I appreciate you maybe, for some reason, do not want questions asked.

**Senator Ellison**—You can put all other questions on the *Notice Paper*.

**Senator FAULKNER**—I am not going to put them on the *Notice Paper*, I can assure you.

**Senator Ellison**—That's too bad! Everything will be taken on notice, Madam Chair.

**Senator FAULKNER**—Minister, as I understand it—and you tell me if I am wrong—a meeting at the Australian Embassy in Jakarta is not an operational matter for the Australian Federal Police, is it?

**Senator Ellison**—I am not here to debate it.

**Senator FAULKNER**—You tell me.

**Senator Ellison**—Madam Chair, I have made it very clear—and if Senator Faulkner does not understand, he should know better—that Australian foreign missions often have operational discussions at embassies about all sorts of things, mostly national interest matters, affecting this nation. We do not divulge those details, and we will not be on this occasion.

**Senator FAULKNER**—This is a meeting involving Minister Ruddock at the Australian Embassy in Jakarta, at which I believe—

**Senator Ellison**—You can ask Minister Ruddock the question.

**Senator FAULKNER**—I cannot actually.

**Senator Ellison**—You can. You can get one of your colleagues to put it in the *Notice Paper* in the House of Representatives. That is the way to do it.

**Senator FAULKNER**—I can put it on the *Notice Paper* myself, but I cannot ask Minister Ruddock the question. What I can ask is—

**Senator Ellison**—Ask him tomorrow when I am representing him.

**Senator FAULKNER**—The AFP was just one of the agencies present, let me assure you. Unfortunately, we have had in the last couple of weeks the publication of material, none of which has been in the public arena before and, I point out to you, has not been subject to questioning in any committee of this parliament or in the parliament before. This is the first opportunity that has arisen to ask these questions. If you actually read the material—and you have no intention of doing so, which is fair enough, you are entitled not to read it—it is extensively footnoted with AFP references and a whole range of things. It seems to me perfectly reasonable that they be matters subject to questioning here.

**CHAIR**—Senator Faulkner, the point that the minister makes, which you do not accept, is that the purpose for which this committee is held is for the discussion of budget estimates 2003-04.

**Senator FAULKNER**—I do accept that.

**CHAIR**—That is why we bring along the chief operating officer and the acting chief financial officer of the AFP on these occasions. Perhaps it is just to have them sit there and say nothing, but I do not think that is the case. What the minister has indicated is that, in relation to the detailed matters that you seek to raise, it would be of assistance to the commissioner and to the committee if you could provide those questions in writing. You have indicated you are not prepared to do that.

In relation to the operational matters that you choose to raise, the minister has indicated that it would be helpful if we could avoid bringing into the public discussion matters which are inappropriate because of their operational nature. You have indicated that you are aware of that practice and I think you indicated that you would try to assist in that case. I do not think

the minister is unreasonable in suggesting that we should be turning our minds to the budget statements. If you do, Senator Faulkner, then I guess we agree to disagree.

**Senator FAULKNER**—We obviously do agree to disagree. I think you need to understand that since the recent publication of this material—literally within the last couple of weeks—things are said in the commissioner’s name, and I do not know how they appear in a book. I do not know if they are accurate or not. The commissioner has indicated that he has been approached by one of the authors of this book himself, and that was frank advice and is hardly surprising. Hundreds of people spoke to the author of this book. Given that these things are here in black and white and some are said in the commissioner’s name, it is not an unreasonable thing for a committee of the Australian parliament to address, as well as a journalist to address.

**CHAIR**—I did not suggest for a moment that it was unreasonable either, with respect, Senator Faulkner. My point is that a myriad of documents, books, journals and otherwise are published from day to day in this nation—

**Senator FAULKNER**—That is right.

**CHAIR**—being a nation of great literary activity.

**Senator FAULKNER**—Not all of them about the internal workings of the AFP.

**CHAIR**—Not all of them require the Senate budget estimates committee’s attention.

**Senator FAULKNER**—This one does, because this one mentions the internal workings of the AFP and a range of other agencies.

**CHAIR**—So you say, Senator Faulkner.

**Senator FAULKNER**—Yes, so I do say. I want to quote something to you, commissioner, from page 33 of this book:

Dixon did not tell his police commissioner, Mick Keelty, about this worrying exchange at the time, though Keelty did learn of it from Dixon much later and expressed concern.

Commissioner, do you have any idea how such an alleged expression of view on your part may have appeared in this recent publication? Could you assist us with that? You may not be able to, but if you can I would appreciate it. It may not be accurate—I do not know—and you may care to comment on that.

**Mr Keelty**—You alluded to the fact that the author had spoken to a number of people. I spoke to one of the authors, Marian Wilkinson, with our media person by telephone. I do not recall the date, but it was around the early to middle part of last year. I might have that wrong, but we did have a conversation. I do not have the details of that conversation now, but I remember the incident. I think the first I became aware of the alleged incident involving Federal Agent Dixon was through, in fact, that conversation with Marian Wilkinson. I recall asking questions at the time as to how she would have had the detailed knowledge that she had of the meeting.

**Senator FAULKNER**—It is not unreasonable, by the way, for you to talk to journalists and the like. You have to do that as part and parcel of your responsibilities, and I appreciate that. I understand that. It sounds to me as though the decision you took in speaking to her and

having present one of your media liaison officers or officials was a good decision to make and a good safeguard in the circumstances, and I would acknowledge that. Can you say whether this is true, commissioner, that you ‘did learn of it from Dixon much later and expressed concern’? When these things are printed, if they are not accurate, this is an excellent opportunity to correct the record, if it needs correcting.

**Mr Keelty**—I do not know if I expressed concern then. I think I expressed more concern when I found out from Marian Wilkinson about the incident, because until that point in time I had no knowledge of it. It is not untrue to say that I expressed concern; it is a matter of the point of time at which that occurred. Of course, after I learned of that, I asked for Dixon to provide details of what, in fact, occurred.

**Senator FAULKNER**—I would point out that the other process issue here is a footnote. I know other people are not as obsessional as I am about these things and probably do not read footnotes; I do. In footnote 4 of chapter 3 of this book it is stated:

The account of this conversation comes from senior AFP sources who were privy to Dixon’s briefing of his commissioner.

I think you will understand that, when one reads that footnote, a senator might be taken aback a little. It might not be accurate; it may not be right. Can you assist us?

**Mr Keelty**—No. Could I ask you to read that again, please, Senator?

**Senator FAULKNER**—Yes. This is footnote 4 to a paragraph about the meeting in Jakarta. At the end of the paragraph and Mr Dixon’s role, there is this footnote:

The account of this conversation comes from senior AFP sources—

I interpolate here ‘sources’ plural—

who were privy to Dixon’s briefing of his commissioner.

**Senator Ellison**—Madam Chair, even in the most base tribunals, when something is put to a witness they are given the opportunity to look at what is being put. A paragraph has been mentioned. We do not know what is in the paragraph.

**Senator FAULKNER**—I am happy to hand up the book.

**Senator Ellison**—If that can be shown to the commissioner, he can then consider his response. But he will not be answering anything here tonight—nor will any other official—which is put to him and which is in writing and not shown to him. That is a basic rule of fairness. Can I ask for a ruling from you, Madam Chair, on that?

**Senator FAULKNER**—No need to ask for a ruling. Let me hand the book to the commissioner.

**Senator Ellison**—Good. Let’s get our procedures right.

**CHAIR**—Let me just clarify something, Senator Faulkner, because apparently you have a book with you.

**Senator FAULKNER**—Yes.

**CHAIR**—We have a limited time and a limited opportunity to—

**Senator FAULKNER**—We would have been through by now if we had just asked the questions and be done with it. Senator Ellison has—and I understand why; I used to do it—

**Senator Ellison**—It is fairness—

**Senator FAULKNER**—No, it isn't.

**Senator Ellison**—In fairness to the witness.

**CHAIR**—I might in fact finish my sentence, if you don't mind, Senator Faulkner. We have a limited time and a limited opportunity to examine the matters that are appropriately before the committee this evening. I was seeking your guidance as to whether we would have to go through all of the footnotes in the book that you have and all of the paragraphs, or whether you had some more limited application in mind.

**Senator FAULKNER**—I will ask my questions and that, I think, is rather—

**CHAIR**—As chair, I am seeking some guidance as to what you are expecting to pursue.

**Senator FAULKNER**—Look, if you and the minister stop interrupting, we will be through very soon. To assist the commissioner, Madam Chair—

**CHAIR**—So you are unable to give me some guidance, Senator Faulkner?

**Senator FAULKNER**—page 298 in this booklet—

**CHAIR**—Senator Faulkner, I am seeking some guidance on how long you think this will take.

**Senator FAULKNER**—The more you interrupt, the longer it will take.

**CHAIR**—I note your point. Thank you.

**Senator FAULKNER**—But not too long. Okay? To assist you, commissioner, the sentences from the book I was quoting are on page 33 and the footnote is on page 298, if that assists.

**CHAIR**—Senator Faulkner, watching the Commissioner of the Australian Federal Police examining a book that you have handed across the table because you happen to be reading it, I find this to be an entirely inappropriate approach and use of budget estimates and would seek that, if you have specific questions which come from the text of this book, you record those questions and place them on notice to the attention of the Australian Federal Police.

**Senator FAULKNER**—I have no intention of placing questions on notice, except when it is required.

**CHAIR**—This is an entirely inappropriate method of questioning, Senator Faulkner.

**Senator FAULKNER**—That is your view. It is entirely appropriate. I just want to ask the process question about whether others were privy to the conversation.

**CHAIR**—When we come to your next question, Senator Faulkner, will the commissioner have to hand back the book so that you can find the next question, and then you give it back to the commissioner so that he can read the paragraph which is relevant?

**Senator FAULKNER**—He can pick it up and read it at his leisure and at some stage at the next round of estimates he can give it back to me. Okay?

**CHAIR**—That is very kind of you, Senator—and not at all amusing.

**Senator Ellison**—Madam Chair, Commissioner Keelty has had a chance to have a look at it now and can respond.

**CHAIR**—Thank you, Minister. Commissioner?

**Senator Ellison**—That is what happens when you treat a witness fairly.

**Mr Keelty**—Senator, that is not right, or cannot be right, because there was no-one present when Dixon spoke to me. I also note, Senator, when you passed the book to me, that there is another footnote. I do not know what it relates to, but footnote 25 says:

AFP Commissioner Mick Keelty in a written response to questions from the author—

I do not ever recall writing to the author.

**Senator FAULKNER**—I cannot comment on that. I did not intend to ask you about that.

**Mr Keelty**—I am trying to put it into context—that I think there has been some liberty taken in the footnotes.

**Senator FAULKNER**—There may well be, of course.

**CHAIR**—It puts into context the difficulty the commissioner faces, Senator Faulkner, in this context. I would suggest and, in fact, would indicate that I intend to rule that I do not want the commissioner to be put in the position of answering questions across the table based on you passing him the odd footnote and the odd paragraph from material he has not had an opportunity to read.

**Senator FAULKNER**—Why don't you then ask the minister to be quiet and we will just get on with it.

**Senator Ellison**—I haven't said anything!

**Senator FAULKNER**—You asked for the material to be handed to the commissioner. Are you that ignorant you don't even know what you're doing?

**Senator Ellison**—I am staggered by that.

**CHAIR**—Entirely fairly, in fact, Senator Faulkner, the minister asked for the material to be—

**Senator FAULKNER**—You, in fact, minister, asked for that to be handed to him. It has been handed to him.

**Senator Ellison**—Yes. He asked for it.

**Senator FAULKNER**—The commissioner has indicated—

**Senator Ellison**—You don't like the answer.

**Senator FAULKNER**—I just got an answer.

**CHAIR**—I am indicating, Senator Faulkner, that I am not prepared to see any further questions put to the commissioner in that manner.

**Senator FAULKNER**—Well, I will ask the questions I want to ask, Chair. I am really not very interested in your view of them. They will be absolutely in order.

**CHAIR**—I don't care, Senator Faulkner, whether you are interested in my view of them or not.

**Senator FAULKNER**—I do not require, nor I would have thought any reasonable person—either a senator in this place or any observer of the parliamentary process in this country—would expect any senator to in any way modify important questions on the basis of some prejudice that the chair might happen to hold. I will ask the questions I want to ask in the way I want to ask them. I would like to do it quickly. I thought I would have been out of this committee room by now, but the more you and the minister interrupt the longer it will take.

**CHAIR**—You can reflect on the chair as much as you wish, Senator Faulkner. Putting yourself in the position of a reasonable person is an unusual position for you to choose, I would have thought. But I am indicating that I will not be allowing the commissioner to answer any questions put to him in the format that you have just adopted this evening.

**Senator FAULKNER**—I will put the questions I wish to put to the commissioner.

**CHAIR**—And I will rule them out of order if you ask them in the same manner.

**Senator FAULKNER**—Let's see what happens if you rule them out of order. I look forward to that.

**Senator Ellison**—So do I.

**Senator FAULKNER**—If I were you, I would think very carefully before I took that course of action.

**CHAIR**—If I were you, Senator Faulkner, I would stop providing gratuitous advice to the chair.

**Senator FAULKNER**—A more experienced senator than you would think very carefully about taking that course of action.

**CHAIR**—Patronising behaviour and intimidation may work in other committees, Senator Faulkner, but not in this one.

**Senator FAULKNER**—Thank you. Do I now have the call to ask the questions I wish to ask?

**CHAIR**—No. You have the call to ask questions that are in order.

**Senator FAULKNER**—Thank you very much. In relation to the matters we have been trying to canvass, Commissioner, apart from the brief that was generated by Federal Agent Dixon—the conversation you had with Federal Agent Dixon—are you aware of any other AFP activity around that meeting; in other words, any other complaints, any other communications or concerns? That is what I am keen to know: whether the engagement you had—I am not talking about journalists here, by the way; I am talking about AFP or government agency involvement, not from journalists or the like. I just wondered if you are aware of any other communication that the AFP has had on this issue, either internally or from another government agency.

**Mr Keelty**—Not off the top of my head, Senator, but can I take that on notice and check our records.

**Senator FAULKNER**—Yes. Thank you very much. I have asked you at a previous hearing, Commissioner, about the cancellation of the AFP-INP protocol in September 2001. You would recall that issue we canvassed previously. The status now, I understand, is that it is back to a good or better than good working relationship. That is true, isn't it?

**Mr Keelty**—That is correct, Senator. We entered into a new memorandum of understanding between ourselves and the Indonesian National Police. I think it was in June last year.

**Senator FAULKNER**—You have been to Indonesia on a number of occasions and visited there in September 2001 to try and sort out those issues in relation to the protocol. That is correct, isn't it?

**Mr Keelty**—Yes, Senator.

**Senator FAULKNER**—It is true that occurred about five days after the protocol was cancelled?

**Mr Keelty**—I would have to check on that, Senator. It was in a period not too long after it had been put aside by DEPLU, the Indonesian Department of Foreign Affairs.

**Senator FAULKNER**—What has never been quite clear to me is whether that was an anti people-smuggling protocol. That was the focus of it, wasn't it? I have assumed that but I think that, just for the record, you might indicate that to us.

**Mr Keelty**—There was an existing memorandum of understanding with the INP and the protocol was developed out of the memorandum of understanding specifically to deal with people-smuggling. That is my recall.

**Senator FAULKNER**—Effectively, after your visit and after these issues settled down, is it fair to say that it was agreed that the elements of the disruption program would continue on a case by case arrangement? It is shorthand but is that a fair summary of the situation?

**Mr Keelty**—Yes, Senator, from my recollection.

**Senator FAULKNER**—You might recall that about a year ago I asked question on notice 132 at the hearing of 28 May 2002. You were asked if you could provide a copy of the original MOU and protocol with the INP. I received an answer to that question which said:

The content of the documents is formed with the input of both the AFP and the INP. As such the documents are not solely the property of the AFP and, therefore, can't be released without the express permission of the Indonesian National Police at this stage.

I wonder if you are able to indicate whether or not there has been any change to that situation. In other words, I wondered if someone had sought the permission of the INP for release of that material.

**Mr Keelty**—No, Senator. I do not think there has been a catalyst to then carry through to a direct request of the Indonesians.

**Senator FAULKNER**—This is the MOU dated 5 August 1997 and the protocol under the MOU dated 15 September 2001. This has been an issue; it is a question on notice that has been hanging around for basically a year now, so I wondered if we could move it along a bit.

**Senator Ellison**—There was not a question: would the commissioner go and ask permission of the INP? The question was, ‘Are you able to provide it?’ The commissioner said, ‘No, it’s not our prerogative without their permission.’

**Senator FAULKNER**—I am aware of that, so what I have asked is whether the AFP had asked the INP for permission to release those two documents. The commissioner said no, they had not done it. I understood the spirit of the answer I received was that this is not just a matter for the AFP; it is also a matter for the Indonesians.

**Senator Ellison**—And the government of Australia. There are two governments involved. We will take it on notice.

**CHAIR**—Thank you, Minister.

**Senator FAULKNER**—My question is: could you indicate to the committee, given there has been no movement on this, if the AFP could seek permission of the INP, if that is required, for the release of the MOU on the protocol?

**Mr Keelty**—Yes, Senator.

**Senator Ellison**—We will take that on notice because we will have to check with the Minister for Foreign Affairs as well.

**Senator FAULKNER**—I also asked previously about the issue of tracking devices in suspected illegal entry vessels. Comparatively recently, on 23 November 2002, possibly as a result of my questioning, you were quoted in the *Melbourne Age* as saying:

SIEVX was not tracked by anyone in the AFP.

I wonder if you could, just for the record here, confirm that is the case, that it did appear in the *Melbourne Age*. Would you be able to confirm that for the benefit of the committee?

**Mr Keelty**—Yes, Senator. As I recall, that was not your question of me in the line of questioning in May last year or whenever it was.

**Senator FAULKNER**—It was one of the questions I had intended to ask. You are right to make that point. I asked a broader question in relation to the placement of tracking devices in suspected illegal entry vessels, in the broad. I did not, as you quite rightly say, identify the vessel that has now become known as SIEVX. Yes, you are absolutely right.

**Mr Keelty**—I can confirm to you that, to the AFP’s knowledge, there was no tracking device placed on SIEVX, because we did not know the departure point of SIEVX.

**Senator FAULKNER**—Are you able to now deal with the broader issue of whether tracking devices were placed in some suspected illegal entry vessels?

**Mr Keelty**—I think I have said before that how we operate, the methodology that we use, is something that we do not publicly discuss. Because the specific question was put to me by a journalist on that occasion and there was some consternation about whether we had a tracking device on SIEVX, I took the line of answering that question. If we had had a tracking device on SIEVX, it would have indicated that we knew where SIEVX departed from. Of course, first and foremost we did not know where it departed from; secondly, it was only after it departed that we knew where it was, on the water.

**Senator FAULKNER**—Yes, but my concern goes to having a specific answer on SIEVX and no answer in relation to the broader issue. I think you understand the distinction. I think it is perfectly fair to give the unqualified answer you have in relation to SIEVX, but, in the context of my broader question, I am afraid that that loses some credibility; particularly, at the time there was a suggestion that there was to be some public interest immunity.

**Senator Ellison**—Madam Chair, that is it. That is the claim of the government and we make it on that basis. It is operational and it goes to methodology. The one question does not; the other does.

**CHAIR**—And you have made that observation before, Minister, as I recall.

**Senator Ellison**—That question will not be answered, for those reasons.

**CHAIR**—Thank you, Minister.

**Senator FAULKNER**—Can you explain, then, Minister, why, on the one hand, the commissioner—or you, or whoever is responsible—asked for public interest immunity in relation to a broad question about tracking devices on suspected illegal entry vessels when, on the other hand, clear statements can be made about SIEVX?

**Senator Ellison**—Answering ‘No’ to SIEVX, which is truthful, as the commissioner has said, does not disclose whether or not certain methodologies are employed. It is much like someone asking whether there was electronic surveillance on a person; you say, ‘No’; and then the next question is, ‘Do you engage in electronic surveillance?’ We are not going to answer that, because it reveals operational matters. The first question does not reveal any operational aspect whatsoever. It does not even reveal whether or not you have the capacity to do it. The second one does. That is why, for a very obvious reason, we are not about to disclose that, and that is the end of it, Madam Chair.

**CHAIR**—Thank you, Minister. Any further questions, Senator Faulkner?

**Senator FAULKNER**—Yes. Let me ask for the record again, Minister, whether tracking devices were placed on asylum seeker vessels by the Indonesians, in the knowledge of the AFP?

**Senator Ellison**—I think that is a little different from the question you asked to begin with. That was whether there were tracking devices employed, and the commissioner answered that appropriately. I am of the view that his response is appropriate, for the reasons I have outlined. You have now asked another question.

**Senator FAULKNER**—Yes.

**Senator Ellison**—And that is whether there were tracking devices used by the Indonesians. That is something which is not within my knowledge. Madam Chair, that is something I will just take up with the commissioner. That will be taken on notice, Madam Chair.

**CHAIR**—Thank you, Minister. Senator Faulkner.

**Senator FAULKNER**—Thank you. As you have taken that question on notice, could I ask whether tracking devices were placed on asylum seeker vessels by the Indonesians at the request of the AFP or supplied by the AFP?

**Senator Ellison**—Again, that is indirectly the same question as the first one Senator Faulkner asked, and that concerned what the AFP does, as opposed to the other question, which concerns what the Indonesian police do. That one we have taken on notice. This is in the same category as the one that we have declined to answer on the basis of public interest immunity. We are not about to disclose what the AFP's modus operandi is in relation to what it does, and what it does via anyone else, if it does do that.

**CHAIR**—Thank you, Minister. Senator Faulkner.

**Senator FAULKNER**—You might also, then, take on notice, Minister—

**Senator Ellison**—I have not taken that on notice. I have said we will not answer it, for those reasons. There is only one question we have taken on notice, and that is your question as to whether the Indonesians did place tracking devices on these vessels. I have said in relation to the two questions as to whether the AFP did it or the AFP caused the Indonesians to do it that those are both declined on the basis of public interest immunity. That goes to operational matters, for the reasons I have outlined, in relation to what the AFP may or may not do.

**CHAIR**—Senator Faulkner, your next question?

**Senator FAULKNER**—Yes, I have a number, but hopefully will not be too long now. I want to ask a question about the interviews of survivors of SIEVX, if I can. I would hope, Minister, that you would treat this very seriously. There has been quite a bit of media debate about this issue. Could I ask if the AFP interviewed survivors from the SIEVX in Jakarta on 22 or 23 October 2001? I believe it did, and that has been reported, but just for the sake of the record could that be clarified, please.

**Mr Keelty**—I do not know that we interviewed in the sense of a witness statement or similar, Senator, but my recollection is that there was a telephone conversation. Either a survivor or somebody who was close to a survivor spoke to Federal Agent Dixon in the office in Jakarta, but it was not a witness statement per se. As I recall, it was a telephone conversation.

I stand corrected on that, Senator. It appears we did not speak directly to the person, but it was through the Indonesian national police. It was not with Federal Agent Dixon. I have just been told it was with Federal Agent Kelsey.

**Senator FAULKNER**—When we say the AFP interviewed survivors, I appreciate that at these interviews I would certainly expect the actual dialogue to be conducted by Indonesian speakers. That would be correct, would it not? The issue is not whether the AFP was directly involved but whether it may have been present or have knowledge of them, as opposed to directly conducting an interview. I do not want to get caught here on a technicality that the AFP were in fact not directly conducting the interview, if you understand the distinction I am drawing. I would not expect they would have. I would have thought it would have been done by Indonesian speakers.

**Mr Keelty**—I am not sure that that survivor was an Indonesian. Therefore it might not have been Bahasa.

**Senator FAULKNER**—Yes, fair enough.

**Mr Keelty**—I do know that there are 26 people whom we have since interviewed, one of whom is the person who made that phone call. We now have a formal statement from that person. But the date you mentioned, I think, was 23 October.

**Senator FAULKNER**—That is what I thought the date was. I had read a report of 23 October.

**Mr Keelty**—The information I have is that there was a phone call on or about the 22nd to our federal agent in the office in Jakarta.

**Senator FAULKNER**—I thought I may have said the 22nd or 23rd. If I said the 23rd, I apologise for that. I am pleased that that date has been clarified.

**Senator JACINTA COLLINS**—Mr Keelty, did you just say that you now do have a formal statement?

**Mr Keelty**—Yes, Senator, that is correct.

**Senator JACINTA COLLINS**—As at what date?

**Mr Keelty**—I do not have the date but it is in relation to the brief of evidence against Quassey and in relation to the brief of evidence against Daoed. He has been tracked down.

**Senator FAULKNER**—The two SIEVX survivors I am aware of—and your point about the Indonesian language is correct—are Ali Hamid and Karim Jaba Hussein or, a shortened name, Abu Amad.

**Mr Keelty**—I do not have the names in front of me, Senator.

**Senator Ellison**—Madam Chair, I would remind the committee that we are in the process of seeking the extradition of Mr Daoed from Sweden and that he faces charges in relation to this matter. We are now talking about witness statements. I say to the committee that I think we have gone as far as we can without now transgressing what, hopefully, will be a prosecution in Australia and the subject of proceedings. If this was any court proceeding or prosecution in Australia, we certainly would not be asking the police who we had obtained statements from.

**CHAIR**—I appreciate that advice, Minister. This is a matter we raised in discussion with Senator Collins yesterday and I think it is a point well made. I am sure the commissioner will indicate the extent to which he is able to go in this regard.

**Senator JACINTA COLLINS**—Can I say at this stage that I think it was our understanding yesterday that the commissioner would be the best person to be able to judge where such matters might be compromised and to inform the committee as such.

**CHAIR**—That may be your view, Senator Collins. I do not think it detracts from the point the minister made, which is that these matters are at a particularly sensitive stage.

**Senator JACINTA COLLINS**—No, I am not arguing with that point.

**CHAIR**—Commissioner, if there is any information you can provide the committee we would gratefully receive it. If there is not, on the basis of the matters the minister has raised and your own concerns, then so be it.

**Mr Keelty**—The witness who made the telephone call through an IOM employee has been tracked down and is a potential witness in the Daoed matter, so it would be inappropriate to talk about the evidence that person might give.

**Senator Ellison**—And their identity.

**Senator FAULKNER**—That is fair enough.

**CHAIR**—Thank you, Commissioner.

**Senator FAULKNER**—I accept we need to be careful about that. It is important, and certainly most reasonable people would hope any action we were able to take against any of these people smugglers would be successful, so I will be very sensitive about that issue. The process issue here is one that has some notoriety, and it does not go to the substance of statements or the like. It goes to the issue—and you may be aware of this, Commissioner—of whether survivors were shown photographs of the suspected illegal entry vessel SIEVX. I do not know if this issue has been raised.

**Senator Ellison**—Madam Chair, I must object to that question most strongly, because that, no doubt, will be an issue that could be taken by defence counsel. I must say there are a number of reasons for that objection, not the least of which is that evidence given in privileged circumstances can be objected to in subsequent proceedings. In any event, process is one of the basic aspects relied on by any defence lawyer. You can rule out evidence by objecting to process. It is not just the substance, the identity. Process is very much an issue which is taken up in criminal trials and I really object to this question on that basis.

**Senator FAULKNER**—If you had just waited until I finished, I do not think you would.

**Senator Ellison**—You asked a question on identification of the boat.

**Senator FAULKNER**—No, let's try it for size. I do not expect you to know this at this committee hearing, Commissioner. The issue that has been raised that I am interested in is not the witness statements or the like. It is if there were AFP agents involved in the interview or seeking of statements or telephone conversations et cetera in relation to survivors from SIEVX. I may be interested in whatever the statements are, but the point of my questioning goes to the involvement, if any, of AFP officers. I do not expect you to have that knowledge at your fingertips. What I wondered is whether you could please take that on notice, taking account of the serious concerns in relation to prospective extradition proceedings, and at an appropriate stage respond to the committee.

If there is an issue in relation to this that arises because of the imminent proceedings, you might indicate that in a response to the committee. In doing so, you might care to seek some internal agency advice on that matter. But, be clear, my interest here goes to the reports of the involvement of Australian federal agents in the interview process with the survivors. I cannot imagine that offends the principles we are speaking of but, if it does, you might let me know.

**Mr Keelty**—Yes, Senator.

**Senator FAULKNER**—Depending on the nature of those answers, we might need to follow them through at a later stage—and, for that matter, a range of other answers. I think you would agree, Minister, the question is unlikely to offend the principles you have outlined, which are important ones. But if it does, no doubt the commissioner can tell us.

**Senator Ellison**—I am sure the commissioner will. As I said, Madam Chair, we are very mindful of our intended prosecution on this matter.

**Senator FAULKNER**—But be mindful of the fact that my questions go to the role of the AFP.

**Senator Ellison**—The role of the AFP is one of the most often referred to aspects in defence.

**Senator FAULKNER**—You have heard the question in its entirety.

**CHAIR**—The question has been taken on notice and the commissioner has undertaken to examine that and answer to the best of his ability in the circumstances in light of the impending extradition proceedings.

**Mr Keelty**—Madam Chair, can I just correct the record? It has been brought to my attention that the telephone call I referred to in answer to Senator Faulkner's question, which was made by a survivor through an IOM employee, was to Federal Agent Glen McEwen and not Federal Agent Kelsey as I had indicated.

**CHAIR**—Thank you for making that correction, Commissioner.

**Senator FAULKNER**—The federal agent, I assume, is one of the federal agents based in the Jakarta embassy. Would that be right?

**Mr Keelty**—That is correct, Senator. He was with Federal Agent Dixon in Jakarta.

**Senator JACINTA COLLINS**—Mr Keelty, is he the AFP liaison officer that was discussed with respect to the cable?

**Mr Keelty**—He is the one who took the phone call. Sorry, Senator?

**Senator JACINTA COLLINS**—The position, as I recall it, was described as an AFP liaison officer.

**Mr Keelty**—Yes, he was a liaison officer but Federal Agent Dixon was a liaison officer at the same time, so I am not quite sure which did what.

**Senator FAULKNER**—For completeness of the record, are you able to say from whom this phone call was taken?

**Mr Keelty**—It would be known, Senator, but I do not have the name here.

**CHAIR**—Perhaps I misunderstood the minister's point earlier, which related to people who may be witnesses in this process, and that may be a relevant name. Both the minister and the commissioner had indicated that in that case it would not be appropriate to place it on the public record, Senator Faulkner. Is that not the case? Did I misunderstand that?

**Senator Ellison**—No, perfectly on point.

**CHAIR**—Thank you for clarifying that, Minister.

**Senator FAULKNER**—If it is the case, no doubt the commissioner can tell us. All the commissioner has said to us is that there is a phone call.

**CHAIR**—Yes. I thought that question had been asked and answered. That was my position.

**Senator FAULKNER**—Yes, to do with who received the phone call.

**CHAIR**—Asked and not answered, in fact.

**Senator FAULKNER**—I think we understand its nature.

**Senator Ellison**—Any more questions?

**CHAIR**—Senator Faulkner?

**Senator FAULKNER**—Does Senator Collins have some questions on this issue? I will let Senator Collins take a bit of the bowling for a while.

**CHAIR**—Do they pertain to the budget estimates, Senator Collins, by chance?

**Senator JACINTA COLLINS**—Most certainly they do. They follow questions related to the previous budget estimates, to which we have had responses that require further questions.

**CHAIR**—Do they?

**Senator JACINTA COLLINS**—Yes, they do.

**CHAIR**—I wait with interest then.

**Senator JACINTA COLLINS**—To further the process, I in fact put some questions on the *Notice Paper* in relation to a suggestion Senator Ellison was making that we might be able to do to forward some of these matters. I want to deal with the response to one of those in part, which relates to previous estimates hearings, regarding the issue of radio communication from SIEVX. Mr Keelty, you would be aware of question 1381 on the Senate *Notice Paper* to which I recently received a response.

**CHAIR**—Do you have a copy of that?

**Senator Ellison**—Yes, I have a copy here. I answered that question.

**CHAIR**—Okay.

**Senator JACINTA COLLINS**—Mr Keelty, can I take you back to the actual question that refers to, a question on notice from a certain maritime incident. I would like to read to you the question concerned there:

Does the AFP have ex post facto knowledge from talking to survivors? Are there survivor reports that there was communication between SIEVX and the mainland?

Can you explain to me, with respect to those questions, how the AFP determined that the question was narrowed down to the issue of distress calls?

**Mr Keelty**—Yes, Senator. The answer was not prepared by me personally but I did tick off on the answer. It was the context of the questioning that you were making beforehand. When we went back through *Hansard* it was thought the question you were asking related to distress calls.

**Senator JACINTA COLLINS**—Mr Keelty, I could understand if the AFP's original response to my questions was misinterpreted as relating to distress calls. I would have hoped that would have been clarified by the question as it was later framed on notice, which made no reference to distress calls. But I am concerned, from this answer to the most recent questions that I put on the *Notice Paper*, that the AFP still seems to be attempting to reframe

my question in the most limited form to justify why a full answer was not given, now that we are aware of the information that came forward in the cable that was finally released.

**Senator Ellison**—Madam Chair, we do not want to mislead here and I think Senator Collins should be careful not to. In the context of that *Hansard* of 11 July—and again we are going back to not an estimates hearing but a certain maritime incident. The question was—

**Senator JACINTA COLLINS**—Later raised in estimates, Minister.

**Senator Ellison**—This is what it all went to: the issue may well be that a distress call had been made but was not conveyed further than a certain point. Answer: yes, and I will undertake to give a reply to Senator Cook on what our knowledge is, ex post facto or otherwise. That was the point that was taken on notice. Let us get things straight. The question to me, 1381, concerned why that did not reveal that a survivor's statement disclosed that there was radio contact between the crew of SIEVX and Abu Quassey at a time when there was apparently apprehension about the ability of the vessel to remain afloat, implying a distress call? I gave an answer which answers that very clearly. When you look at the answer that was given by Commissioner Keelty, he answers the question. The question was:

Does the AFP have ex post facto knowledge from talking to survivors? Are there survivor reports that there was communication between SIEVX and the mainland?

The answer was:

The AFP has interviewed five survivors from SIEVX and, of those, four statements have been taken. These are out of a possible approximately 45 survivors who have since been relocated to various countries since the sinking in 2001. Efforts, however, are continuing to obtain statements from as many survivors as possible. In addition the AFP is in receipt of hearsay accounts of information. In those accounts there have been no specific references to radio distress calls. One statement has referred to the presence of a radio being on board the ship.

That covers the issue. What Senator Collins is doing is grasping at straws here to say, 'Why didn't you talk about a cable which was subsequently released by Prime Minister and Cabinet and to which questions relate?'

**Senator JACINTA COLLINS**—Which detailed radio communications.

**CHAIR**—Let the minister answer.

**Senator Ellison**—I have answered the question.

**CHAIR**—Please let the minister complete his answer, Senator Collins.

**Senator Ellison**—I can tell you right now that we are not going to play semantics all night. That question was asked and answered, and it is clearly explained in question No. 1381. That is the end of the matter.

**Senator JACINTA COLLINS**—It might be the end of it for you, Minister, but I am still asking questions on this matter. I am to some degree satisfied, now that Mr Keelty has alerted me to the fact that he himself did not frame this answer, because I am most concerned about how this answer has been framed. It indicates, for instance—

**Senator Ellison**—Well, it—

**Senator JACINTA COLLINS**—Can I finish my comment now, Minister—that it is apparent from the transcript at the time the question was taken on notice that Senator Collins was already aware of the communication, as she referred specifically at the time of her understanding from survivor reports that there was communication between SIEVX and the mainland.

**Senator Ellison**—Which you said in *Hansard*.

**Senator JACINTA COLLINS**—That was why I was asking the question, Minister, and that was why the question taken on notice says:

Are there survivor reports that there was communication—  
not distress calls; communication—  
between SIEVX and the mainland?

Through you, Minister, if the response back to the Senate was limited to its most limiting nature, then that comes back to you. My concern is if the AFP itself is not responding to questions of this committee in a more fulsome way.

**Senator Ellison**—Madam Chair, the question has been answered.

**Senator JACINTA COLLINS**—Yes, the question has been answered. Mr Keelty was not responsible for this answer.

**Senator Ellison**—There has been more than ample reference to the cable that Senator Collins has referred to. In subsequent questions, it was tendered to the committee, and the whole aspect of the question from that day, 11 July—and I again repeat, in another select committee—was around a distress call.

**Senator JACINTA COLLINS**—And subsequently in this committee, Minister.

**Senator Ellison**—Madam Chair, we are now going into a select committee and what went on in a select committee.

**Senator JACINTA COLLINS**—No, subsequently in estimates committees, Minister.

**Senator Ellison**—We are not going to go down the path of regurgitating the evidence given at a select committee. I have objected to some of the questions that Senator Faulkner has put. Some of them have related to contemporaneous actions and situations. This is squarely going down the path of a select committee which was held last year. Please can we stick to budget estimates? This question has been answered; it relates to not budget estimates but a select committee, squarely.

**CHAIR**—You will note, Minister, that I sought some assurance in relation to estimates matters at the beginning of Senator Collins's questions and Senator Collins has directed, as I understood it, a question to the officers which related to a matter on which you had provided an answer. You have clarified your approach to that answer. In the latest iteration that Senator Collins has made, I did not identify a further question, so shall we move to the next question?

**Senator JACINTA COLLINS**—Yes, I am happy to move to my next question.

**Senator FAULKNER**—All answers are provided through the minister, aren't they?

**Senator JACINTA COLLINS**—Yes, but it is not often, Senator, that the agency or the department indicates they were not responsible for it.

**CHAIR**—I am not sure we need to have an exchange across the table. If you would rather ask a question, Senator Collins, then please go ahead.

**Senator JACINTA COLLINS**—Thank you. One final question I have on the issue of radio contacts at this stage, which arises from further information provided to the Senate after the certain maritime incident inquiry was concluded—more relevant to perhaps the cable, the most recently released advice that went to the Prime Minister on 23 October; only very recently released, Minister—is whether the AFP can explain why there were two media reports on 23 October, shortly after the sinking of the SIEVX, indicating that there had been a distress call made. They were quoting Jean-Philippe Chauzey, the IOM spokesman in Geneva, on the Monday night in Geneva on 22 October. One was a CNN report and the other one was an ABC AM report. I quote Jean-Philippe:

... the captain reported that the boat was having major engine problems and the boat was taking water ...

**CHAIR**—Senator Collins, can I seek some clarification. What are you reading from?

**Senator JACINTA COLLINS**—I am reading from some references to some quotes that I just mentioned, from the AM program and from a CNN program dated 23 October.

**CHAIR**—I have indicated before that, if the commissioner is to be expected to answer questions from material that is read into the record from external material such as that, I would appreciate it if you had a copy of it made available to him.

**Senator JACINTA COLLINS**—If the commissioner needs to take it on notice on the basis that I am reading one, two, three, four, five, six, seven—

**CHAIR**—There is no need to count.

**Senator JACINTA COLLINS**—about 10 words, I am happy for him to take it on notice on that basis.

**Senator Ellison**—He is allowed to see the context in which they are made.

**Senator JACINTA COLLINS**—Yes, I am happy for that as well.

**Senator Ellison**—It is another basic aspect of fairness when questioning a witness.

**Senator JACINTA COLLINS**—And I am happy for him to take it on notice on that basis, too. All I am saying is that I am aware from two programs on 23 October that Jean-Philippe Chauzey, the IOM spokesman in Geneva, was quoted as having indicated that a distress call had been made by the captain, reporting that they were having a major engine problem and that the boat was taking water. On the basis of what has subsequently been provided in relation to this incident, I am asking if the AFP can inform us further.

**Senator Ellison**—That will be taken on notice. We will have a copy of the context in which that statement is made.

**CHAIR**—Thank you, Minister. Thank you, Senator Collins.

**Senator JACINTA COLLINS**—I move back now to the issue of Abu Quassey in the context of the discussion that we had yesterday, Minister. One question raised yesterday was

whether there was any attempt to arrest Abu Quassey en route to Egypt, which I think we left pending on the basis of whether it compromised any operational matters or whether it was a matter more appropriately dealt with by the AFP.

**Senator Ellison**—I think there was an operational aspect to this. We said it was best to put it to the AFP and see if they could answer it, that is correct, but I did not say, either way, whether it could be.

**Senator JACINTA COLLINS**—No, I am not suggesting that, Minister. I am just re-presenting the question on that basis.

**CHAIR**—I am sorry, Senator Collins?

**Senator JACINTA COLLINS**—No, it is okay. The commissioner is considering the matter.

**Mr Keelty**—If I understand the question, Senator, it is whether or not we attempted to arrest Quassey between Jakarta and Cairo. The answer to that is no, because we were unaware of when he departed Jakarta.

**Senator JACINTA COLLINS**—We had no prior indication that that was occurring?

**Mr Keelty**—The AFP did not, to the best of my knowledge.

**Senator Ellison**—We had, I might add, placed alerts in 41 countries, at 41 possible points of transit.

**Senator JACINTA COLLINS**—Minister, yesterday A-G's indicated that they had instigated an extradition request to Egypt in relation to Abu Quassey. Are you able to detail for us the charges that that relates to? Is it similar to Mr Daoed?

**Senator Ellison**—Yes, we can give you the details of that. We will lay our hands on them shortly, but do you want to continue with other questions?

**Senator JACINTA COLLINS**—Fine. I understand Abu Quassey is being held in Egypt until 15 June. From yesterday, I also understand that we are not aware of precisely what charges he is being held under. My query is this: do we understand what arrangements might apply beyond 15 June or what actions are being taken to ensure that Mr Quassey will be held beyond that date?

**Mr Keelty**—Senator, I have a different date. I have a date of 16 June.

**Senator JACINTA COLLINS**—The suggestion I think I had, Mr Keelty, was that he might be free on 16 June.

**Mr Keelty**—Beyond that, could I come back to you on the second part of that question, unless the department has something?

**Senator Ellison**—We are just trying to find those charges for you.

**Mr Cornall**—Senator, my recollection is that these charges were detailed by Ms Blackburn yesterday.

**Senator JACINTA COLLINS**—Yes. They were the charges to Mr Daoed. I am asking if they are similar—

**Senator Ellison**—You are asking about Abu Quassey, aren't you?

**Senator JACINTA COLLINS**—Today I am, yes.

**Senator Ellison**—Yesterday was Daoed.

**Mr Cornall**—The briefing note in respect of Mr Quassey mentions charges under three warrants relating to breaches of section 232A and section 233(1)(a) of the Migration Act.

**Ms Frost**—That is correct, Senator. The charges relate to sections 232A and 233(1)(a) of the Migration Act 1958. I also understand that there were charges relating to money laundering offences.

**Senator JACINTA COLLINS**—The money laundering applies here as well.

**Ms Frost**—Yes.

**Senator JACINTA COLLINS**—Thank you. Have we got any further on the issue of what might happen to Mr Quassey post 15 June? Am I correct in my understanding that Mr Quassey is being held in Egypt only until 15 June and can you inform me of what arrangements, if any, are in place to deal with his pending freedom as of 15 June?

**Mr Cornall**—Senator, my briefing notes say that he has been remanded in custody in Egypt until 15 June 2003. The notes go on to say that this period can be extended for a further 45 days.

**Senator JACINTA COLLINS**—Would I be correct in understanding that that relates perhaps to the Egyptians determining what charges they may well pursue in relation to Mr Quassey?

**Ms Frost**—Senator, the information I have available to me is that that is correct.

**Senator JACINTA COLLINS**—Which partly explains why today we are still unaware of precisely what those charges may be.

**Senator Ellison**—Yes.

**CHAIR**—Because the Egyptians are still pursuing that.

**Senator JACINTA COLLINS**—Yes, that is what I am seeking to clarify.

**CHAIR**—That is my understanding of the officer's evidence.

**Senator JACINTA COLLINS**—Mr Keelty, a question that I was asking yesterday—which may compromise operational matters—which I have deferred until today related to the two brothers that were assisting Mr Daoed in relation to the SIEVX, allegedly. One of those brothers was imprisoned by the Indonesians at the same time as Mr Daoed under the name Miythem Kamil Radhia and released at around about the same time, also into the care of the UNHCR, and, I understand, given refugee status elsewhere. Was there a provisional warrant against this man as well? Senator Ellison raised the question of whether it might compromise operational matters if that information was made available.

**Mr Keelty**—Yes. Similar to the activity in relation to Daoed, we purposely did not herald what we were going to do there until after the event occurred. I would ask, Senator, for your forbearance in allowing us to keep the operational detail confidential at this stage.

**Senator JACINTA COLLINS**—Another related issue is the Mandaean travellers on the SIEVX who were part of the group that departed the vessel prior to it sinking and a claim that some of these Mandaeans are now in Australia. Are you aware of that?

**Mr Keelty**—No, I am not, Senator.

**Senator JACINTA COLLINS**—That is fine, I will take it up with Immigration. Do you know when the AFP may have been involved in interviews of the Indonesian fishermen that rescued the SIEVX survivors?

**Mr Keelty**—I do not have that here with me tonight, Senator. If it does not fall into the caveat of future prosecution, I ask if I could take that on notice and get that answer for you.

**Senator JACINTA COLLINS**—Another question I have which follows from that is this. What detail was taken as to the location at which the survivors were rescued as a consequence of those interviews? The final matter is in relation to the issue of SIEVX ownership, which I am in a little quandary over. There was an answer to question No. 58 from the AFP—this was about November last year—which indicated that some of the information about where the vessel sank, I think, was obtained by the Royal Australian Navy from the company found to have owned SIEVX. I subsequently asked Defence what investigations they had undertaken into the company that owned SIEVX and they claimed that no such investigations occurred. I will be following this through further with the Navy next week, but on the basis of that answer from the Navy could you advise me, from the AFP end, why the Navy might be denying that any investigation into the company that owned SIEVX had occurred?

**Mr Keelty**—I am advised that we do not know who the owner of SIEVX is, but are continuing inquiries, because it still forms part of the brief in relation to Daoed and Quassey.

**Senator JACINTA COLLINS**—This answer was to question No. 58 from estimates, so it was around about November estimates—

**Senator Ellison**—Madam Chair, we were having a big argument about the ownership of a certain vessel we seized the other day and the country that is allegedly involved with it; the ownership of the vessel could well be a matter for the proceedings.

**Senator JACINTA COLLINS**—I appreciate that, Minister. All I am seeking to do is get an explanation about some information provided in the past.

**Senator Ellison**—By the Navy, yes.

**CHAIR**—By the Navy?

**Senator JACINTA COLLINS**—No, this was provided by the AFP.

**CHAIR**—I am sorry, I misunderstood you.

**Senator Ellison**—But you say that the Navy said they did not do it and the AFP said they did.

**Senator JACINTA COLLINS**—No, what I am saying is that the AFP answered a question of mine from November 2002, which was, ‘Please detail the nature of investigations to ascertain where precisely SIEVX sank?’ I am advised that information was also obtained by the Royal Australian Navy from the company found to have owned SIEVX. I then asked Defence if they could advise what investigations occurred in relation to the company that

owned SIEVX, and was advised recently by the Royal Australian Navy that there were no investigations by them into the owner of SIEVX.

**CHAIR**—I understand the point that you are now making, Senator Collins. It was not clear to me before. Mr Keelty, are you able to answer that or would you rather take it on notice?

**Mr Keelty**—Yes, Senator, I see the dilemma. Could I take that on notice so that I can clarify that?

**Senator Ellison**—If we can, we will. If it is a problem for any impending prosecution, we will—

**CHAIR**—Senator Collins's question does not go to the name or the identity of the owner of the vessel.

**Senator Ellison**—There was an inquiry made.

**CHAIR**—It goes to the discrepancy between the questions.

**Senator Ellison**—Yes.

**CHAIR**—If that could be clarified for Senator Collins, that would be helpful.

**Senator JACINTA COLLINS**—Some of the issue here may simply be the language. I used the language about what investigations had occurred. When the AFP said to me 'information obtained by the RAN from the company found to have owned SIEVX', you may have meant something else—I do not know—but I am giving you the opportunity to clarify that.

**Senator Ellison**—It may be that the question can be answered in a way which does not prejudice any prosecution and sorts out your problem.

**CHAIR**—We will have an abundance of clarity by the end of it though.

**Mr Keelty**—Senator, that was our belief at the time, and that may have changed subsequently. That is the advice I am getting now, but I will confirm that with you.

**Senator JACINTA COLLINS**—Thank you, Commissioner. That concludes my questions.

**CHAIR**—Thank you, Senator Collins. In relation to continuing questions for the Australian Federal Police, Senator Greig? Do your questions pertain to estimates, Senator Greig?

**Senator GREIG**—All estimates.

**CHAIR**—A common answer!

**Senator GREIG**—Thank you, Chair. I want to pursue the issue of trafficked women and sexual servitude and resources, funding and some issues that go with that. I am not sure whether the commissioner himself gave this answer or whether a representative of the AFP did, but it followed from a question that Senator Ludwig asked on 10 February this year. To assist, I can refresh your memory of Senator Ludwig's question:

In respect of people trafficking, have there been any investigations into people trafficking over the past two years? If there have, withstanding operational requirements, can you provide some details of that?

The answer given at the time by the AFP was that the AFP considered the deportation of witnesses before investigations are completed as one of the general difficulties associated with investigating cases involving sexual slavery and sexual servitude. Yet very recently Minister Ruddock has claimed the opposite. He said that potential witnesses are not deported before they can assist an inquiry. Which is the more correct, the answer given on 10 February by the AFP or the answer given by Minister Ruddock?

**Senator Ellison**—Can we have a copy of the statement made by the commissioner on 10 February, just to see the context in which it was made? You have asked us to compare two statements. I am not being obstructive, Madam Chair.

**Senator GREIG**—Surely, but the moment I hand my notes over I lose the rest of my questions.

**Senator Ellison**—We don't want that! We can perhaps move onto another question whilst we get a copy made. It is on *Hansard*, isn't it?

**Senator GREIG**—Yes.

**Senator Ellison**—Can we get a copy of *Hansard*?

**CHAIR**—Yes. 10 February, did you say, Senator Greig?

**Senator GREIG**—Yes.

**CHAIR**—We can do that even faster. Why don't you ask some more questions and we will organise that.

**Senator Ellison**—If we can answer some other questions, we will come back to that.

**Senator GREIG**—Yes. I can accept that some of these questions may be better placed on notice and answered in that way. Minister, could you tell us how many investigations of trafficked women or allegations of trafficked women have been foiled in that way—in other words, did not proceed—because the witnesses were deported before any thorough investigation could take place?

**Senator Ellison**—We will have to take that on notice.

**CHAIR**—Senator Greig, do you have a page reference for your earlier quote?

**Senator GREIG**—No, I am sorry. I just have 10 February.

**Senator Ellison**—Was it a question by you to Commissioner Keelty?

**Senator GREIG**—No, it was Senator Ludwig.

**CHAIR**—Thank you. Please go on, Senator Greig.

**Senator GREIG**—Thank you. On the same issue, Minister, another obstacle to investigating these cases, according to the AFP's then answer to Senator Ludwig, was that witnesses had stated that they had willingly entered into contracts to work as prostitutes. Given that consent to originally enter into a contract is irrelevant under Commonwealth law—whether or not the crimes slavery and sexual servitude have been committed—how can that issue present itself as a general difficulty to the investigation of instances of slavery and sexual servitude?

**Mr Davies**—These issues are very complex, obviously, and every case is different, so we cannot talk in categories of what might happen. There is a difficulty at times when the women will not state that they are in a situation of servitude or, in fact, state that they came here knowingly. That can be an issue if we are talking about the law of contract. It is very difficult because we cannot talk about individual cases, but there are issues for the law in the sense of what the women admit to, what their circumstances are, what they believed at the time of coming here or entering into a contract—be it overseas or in Australia—or when spoken to at a later time, and what they say the circumstances of their being in Australia are. It really is on a case-by-case basis. The AFP has at this time been involved in 23 investigations, and 11 of those are still current. It is complex. One of the big issues in any case is the willingness of the individual to give evidence or to cooperate. They will often cooperate but they will state that they are here in the circumstances because that is what they agreed to. The status of the person as a potential witness is obviously crucial to whether there can be a prosecution. That is one of the difficulties.

**Senator GREIG**—I accept that. But there is no question, is there, that it is the case that the contracts which some of these women claim to have been locked into are not valid as arguments under Commonwealth law in terms of their investigation? The answer to Senator Ludwig from the AFP on 10 February was:

Witnesses stated that they had willingly entered into contracts to work as prostitutes.

That was argued as being one of the obstacles to investigation—because they had willingly entered into contracts. But under Commonwealth law such contracts are null and void, so my question is how could that be a valid response from the AFP? How could that be an obstacle, given that it is not valid?

**Mr Davies**—If the women are saying that they are not coerced or not in a position of servitude and that they are here under conditions that they agreed to, it makes it very difficult under the law to put together a case. That would seem to be the issue.

**Senator GREIG**—That would be separate, though, from an argument from the AFP that a contract was the reason for an obstacle or difficulty, wouldn't it, rather than the women themselves saying that they were consenting to their situation?

**Mr Keelty**—By way of clarification, I think the answer of 'difficulties in prosecutions' was alluding to the fact that if somebody enters a contract to come to the country to work as a prostitute—whether that was by coercion or not—it then makes the prosecution of the person who brought them here problematic because of the existence of the contract. It is a type of loophole that has obviously been developed by the people who bring them here. Does that help you?

**Senator GREIG**—I think so. But the contract itself is not recognised by the AFP as having any validity, is it?

**Mr Keelty**—I agree, but the existence of a contract becomes a difficulty in terms of the prosecution.

**Senator JACINTA COLLINS**—Even if it is an invalid contract?

**Mr Keelty**—That is right, because the court would have to rule, one way or the other, whether the person knew prior to coming to Australia that they were going to come to Australia to work as a prostitute or whatever. It was highlighting one of the difficulties or complexities of the attempt to secure successful prosecutions in this area.

**Senator GREIG**—Commissioner, do you think there is any bias against accepting the testimony of witnesses of sex workers as being credible? One of the stumbling blocks to investigating these crimes sometimes is the social stigma attached to the women, attached to the work.

**Mr Keelty**—Not necessarily, Senator. It is a difficult area because obviously what the witness believes then affects the credibility of the witness in terms of the prosecution. If someone enters into a contract, to prove that that contract was entered into through threat, promise or inducement is problematic. To get a view about how the person perceived prostitution itself can also be problematic. I am not saying it is impossible, but in terms of presenting evidence to secure convictions it can be difficult.

**Senator GREIG**—Do you have any feeling or evidence that there is a sense of disbelief sometimes in terms of prostitutes or alleged prostitutes being unreliable witnesses in a general sense?

**Mr Keelty**—I am not trying to be difficult. I am not sure that I understand the question. But remember, too, that they are coming into jurisdictions within Australia that have legalised prostitution. They are coming to work in systems that are otherwise made legal. The whole arrangement is difficult from a criminal prosecution perspective.

**Senator GREIG**—Answers that the AFP have given previously to estimates make it very clear that there have been no prosecutions for slavery or sexual servitude under Commonwealth laws certainly since they were introduced in 1999. Does the AFP propose to improve its investigation or prosecution record? Is there some kind of advocacy to the minister in terms of how we could more effectively address this issue?

**Mr Keelty**—The answer is yes. We take no comfort in the fact that these prosecutions are difficult to launch. For the record, we have commenced 23 investigations since the introduction of the Commonwealth legislation in 1999; 12 of those resulted from formal referrals from DIMIA and the remaining 11 are current investigations that were generated internally by the AFP. Where we have difficulty with the law we will often come back and talk within the department, but right at the moment there is a joint DIMIA-AFP group looking at the problems of prosecution and whether we can enhance it somehow.

**Senator Ellison**—Madam Chair, I might get back to the question that Senator Greig asked earlier.

**CHAIR**—Thank you, Minister.

**Senator Ellison**—What Senator Greig was doing was asking the commissioner to explain the difference between what the commissioner had said in question on notice No. 102 and what Minister Ruddock said. Mr Ruddock was saying that if anyone had been trafficked or there was evidence of it, then it was referred to the AFP before they were dealt with, and what the commissioner said here—and this was quoted by Senator Greig—was:

General difficulties associated with these cases include witnesses stating that they willingly entered into contracts to work as prostitutes, and witnesses being deported before investigations are completed.

If I understand Minister Ruddock correctly—and I will come back to the committee if I have this wrong—what he was saying was that the department of immigration endeavoured to refer matters to the Australian Federal Police if there was evidence of trafficking, and we have just heard of 13 referrals by the department of immigration, but of course the difficulty is that if someone wants to return you cannot stop them. In fact, even if a criminal justice stay visa is granted, the person can change their mind and leave Australia.

**Senator GREIG**—How often does that happen, Minister?

**CHAIR**—Is your question how often is a criminal justice visa granted or how often do they change their mind?

**Senator Ellison**—A criminal justice visa has been granted, as I understand, recently in one case.

**CHAIR**—One?

**Senator Ellison**—But there were some others that were granted, which I will take on notice.

**CHAIR**—It is possibly a matter for tomorrow anyway, Minister.

**Senator Ellison**—But what is quite possible is that you could have a person who is here illegally, indicates that they have been trafficked but then wants to leave, and if they want to leave voluntarily you cannot detain them; they leave the country. That could be more than possible. Where DIMIA is more than keen to prosecute the case, the person leaves. That is just one difficulty which I believe has been alluded to by Minister Ruddock. There have been referrals by the department of immigration to the AFP. As I have said, we have just heard of 13 referrals, I think. I see the two statements as both being capable of standing in the circumstances, because of the situation where a person might say, 'Look, I've given you evidence as to trafficking, but I want to go, and I'm going.' I will take it on notice if there are any instances where that has happened and tomorrow when Immigration is here I will expand on this answer on behalf of Minister Ruddock if I have left anything out.

**Senator GREIG**—Thank you.

**CHAIR**—Thank you, Minister.

**Senator GREIG**—I think that answers my next question. I was going to say, Minister, that, certainly to the point where I had done my homework, there had been six matters that had been investigated by the AFP in the last two years relating to the act. Perhaps this is a follow-up to your statement. Can you tell us what was the fate of each of the victims involved, how many were granted criminal justice visas—I think you have answered that by saying, to date, just one—and how many were offered witness protection and victim support?

**Senator Ellison**—That we will have to take on notice, and if we can give it tomorrow when Immigration is here, we will endeavour to do so.

**Senator GREIG**—Thank you. Minister, do you know how many women were counselled and offered appropriate support, to encourage their cooperation with the AFP, and were all of these victims detained under immigration law?

**Senator Ellison**—How many were counselled?

**Senator GREIG**—And offered support that was seen as appropriate, to encourage their cooperation with the AFP, and is it the case that all of these women, all of these victims, were detained under immigration law?

**Senator Ellison**—I certainly cannot answer the last one. We could take that on notice and I think we could answer that tomorrow. As to how many were counselled and how many were offered support, was that by the AFP or DIMIA?

**Senator GREIG**—AFP.

**Senator Ellison**—That will have to be taken on notice as well.

**Senator GREIG**—Minister, can you advise what reassurances, if any, were given to these women that if they testified either they or their family would not face persecution?

**Senator Ellison**—Again, by the AFP?

**Senator GREIG**—Yes.

**Mr Keelty**—I do not think we have got to the point where they have testified, but perhaps I am misunderstanding your question, Senator. Would it be fair to say that your question is how many have claimed in interviews? They would not have got to the point of testifying if there has not been a prosecution.

**Senator GREIG**—In questioning these women, has the AFP gone out of its way to advise these women of certain things, including the prospect that if they were to testify they wouldn't suffer as a consequence in terms of persecution subsequently? In answer to one of your earlier questions you said—and you have given an undertaking to provide fuller answers tomorrow—that some of these women do return to their countries of origin and it appears to be their decision to do so. Is there any evidence to suggest that there was pressure on them to do so from the traffickers themselves as a means of avoiding these women giving evidence against the traffickers? Is there some way of measuring that? Do we have any evidence to suggest that that may be a factor in this?

**Mr Keelty**—We can certainly provide you a statistical response to that, and we will endeavour to do so in terms of how many people who have been interviewed as potential witnesses have raised that as an issue with us in the context of human trafficking and sexual servitude.

**Senator GREIG**—Thank you. This is again perhaps a question best taken on notice. In relation to each case of trafficked women that the AFP has thus far dealt with, could you please advise whether the AFP interviewer was male or female and, along with the sex of each potential witness and victim, how many women could comprehend and speak fluent English.

**Mr Keelty**—In relation to the first part of that question, the policy is that a person in these circumstances would be interviewed by a female or at least have a female present during the interview. I will have to take the second part on notice.

**Senator GREIG**—Commissioner, is there any specific training that AFP officers are required to undergo with particularly sensitive interviews, such as vulnerable women, many of whom may not speak English?

**Mr Keelty**—That forms part of the learning and development of our recruit training process in our investigator training. It is not only women in these circumstances or young persons in these circumstances; there are other circumstances where women and young children and people of a non-English-speaking background are interviewed by police in relation to a whole range of offences. Part of the core training of investigators in the organisation is how to deal with these witnesses and also how to access assistance for witnesses in terms of some of the welfare agency services that they can access. That does occur, and it occurs in a whole range of offences, not just this one. I do not want to downplay this one and I understand this is particularly sensitive.

**Senator GREIG**—Commissioner, I understand specialist sexual assault police investigators have been established in state police forces, specifically in recognition of the difficulties in acquiring testimony from victims of sexual violence. Is the AFP considering that as an option with regard to improving its record on encouraging victims to cooperate with investigations, particularly into people trafficking?

**Mr Keelty**—Senator, we have a section within our community policing element and we cross-train on dealing with similar issues, whether they be national or community. We also have a sexual assault and child abuse team that is specially trained to deal with these matters, so we have the expertise within the organisation and we access it on a case by case basis.

**Senator GREIG**—What liaison is there between the federal and state police in terms of child abuse and child assault allegations?

**Mr Keelty**—It would be on a case by case basis. As I recall, there is a national group that looks at these sorts of issues, where the heads of the sexual assault and child abuse sections—or their equivalents in the states—meet regularly to discuss issues such as trends and also accessing assistance. I can provide you with some details on that, if you would like.

**Senator GREIG**—What do you mean by ‘accessing assistance’?

**Mr Keelty**—For example, welfare assistance or psychological support and networks; support networks generally.

**Senator GREIG**—Commonwealth provided, do you mean? Is that a federal function?

**Mr Keelty**—Sometimes they might not be Commonwealth, they might be within a state, but I can provide you with more detail of that.

**Senator GREIG**—I am trying to get a picture of how the Federal Police involve themselves in what I gather is largely dealt with at a state level.

**Mr Keelty**—We would do it as part of our community policing role here in the ACT, so we would be meeting with other state and territory police agencies.

**Senator GREIG**—Minister, my understanding is that people trafficking has not been identified as a priority concern under the recently established TCCC or Transnational Crime Coordination Centre. Has there been a shift in that in terms of policy or advocacy?

**Mr Keelty**—Senator, I do not think that is right. We have specifically placed officers in Cambodia, which is a source country for sexual servitude. We have been working with the Cambodian police to establish their own transnational crime centre, to reflect our concern in this regard. Obviously we have a similar set-up in Thailand, which is another source country, and we have outpost officers in other source countries such as Vietnam. We are very much aware of the difficulties and the problem and are trying to deal with it at source in-country with some of the law enforcement agencies, particularly in Cambodia.

**Mr Davies**—In the sense of the specific teams that we have referred to in Thailand and Cambodia, other liaison officers within the South-East Asian region, in particular, have as part of their charter that this area of work is a core element of their business. As the commissioner said, in addition to trying to deal with it offshore, we in the Transnational Crime Coordination Centre in Canberra have a targeted development coordination team consisting of three people. That team is obviously not meant to take on this task, but is to drive the strategy for the AFP and coordinate our actions nationally, to ensure that we look into these matters in all our offices around the country to coordinate with state and territory police, because obviously they have to be an important element of this as well.

This is a matter that is necessarily going to have to involve a whole of government approach, but clearly there is a state and territory obligation as well. As you may well have seen from the news recently, Victorian and New South Wales police are about to embark on scoping exercises in their jurisdictions. We have already linked in with Victoria to ensure that we are a part of that—building on their scoping exercise and trying to add value to that, if we can—and are about to touch base with New South Wales, but they have not appointed an officer yet. As soon as they have somebody appointed to conduct that scoping exercise, we will again be linking in to work with them.

At this stage we are also working with the Australian Crime Commission in a scoping exercise to do, jointly, what we could not do individually. The Australian Federal Police will be looking offshore and trying to build intelligence and feed that back through the Australian Crime Commission, which have already embarked on this mission and are working closely with the states and territories with regard to looking at the issues, the scope of the problem and how we might best tackle it. They are looking at it from the national perspective. We are looking at it internationally and are working literally on a daily basis in that development.

**Senator GREIG**—Did the authorities in either Victoria or New South Wales make any approach to the AFP before they embarked on their own state based reviews and investigation?

**Mr Davies**—If I understand it correctly, Victoria is really the only one that we can say has moved ahead, because it has named officers in this regard. I understand we may well have been a part of that in Melbourne, but will have to take it on notice to confirm that that was the case.

**Senator GREIG**—Finally, Commissioner, I would like to raise one particular case with you, which was only brought to my attention in recent days. I have the permission of the solicitors to raise the matter. I do not expect you to be fully across this, but I will read from the memo. Two women are being represented by a firm of solicitors in Sydney—solicitors, conveyancers and attorneys. ‘The two women concerned’—and I am reading here from the

lawyer's note—'are former citizens of Uzbekistan and they allege that they were trafficked into entering into Australia to undertake an air crew training program'—that is, as flight hostesses—but upon arrival were forced to work as prostitutes at gunpoint and under the threat of physical harm.'

The two women concerned were interviewed by Federal Agent Guy Newling in Sydney, who is also a DIMIA liaison officer, I understand. The legal team are very anxious to obtain a video copy of the interview which was conducted and tape-recorded by Agent Newling. I am advised that Agent Newling spoke to the lawyers concerned a few days ago and suggested that he was in Canberra undertaking a course, but that the tapes were in his Sydney office. As of yet, they have not been able to access the tapes. The clients concerned have a Refugee Review Tribunal hearing on 2 June, which is only a week away. As a result of their false imprisonment and forced sexual slavery, these women understandably fear persecution and discrimination in their native country, Uzbekistan. They have written to me in the hope that I might be able to draw the case to your attention and perhaps assist them in obtaining a criminal justice stay visa.

Commissioner, is there any chance that by no later than tomorrow you might be able to have a word with Agent Newling, with a view to encouraging him to forward the taped interview which was requested three weeks ago, so that it can go to the lawyers as a matter of urgency?

**Mr Keelty**—Yes, Senator, I will follow that through. I should indicate though that normally when somebody is interviewed they are given a copy of the tape at the time. There is no reason that is before me right now why that would not have been the case, so there might be a communication problem. In any event, I will chase it down and get an answer back to you.

**CHAIR**—Thank you very much, Commissioner. In relation to matters such as that, I know that the commissioner and his officers are always ready to be of assistance to members of the parliament with whom such issues are raised. They do not have to wait for committees such as this for matters to be raised in an appropriate fashion with the AFP. Thank you for your acknowledgment of that tonight, Commissioner. Senator Ludwig, do you have anything further on this area?

**Senator LUDWIG**—I just want to follow up a couple of questions that arise out of Senator Greig's questions. In relation to the sexual servitude and the sex slave industry, if there is such a thing: the AFP normally works in teams. Have you set up a task force or a team to deal with this?

**Mr Davies**—That is the purpose of the target development coordination team within the transnational crime team.

**Senator LUDWIG**—I understood what you said there, that there were three people to coordinate.

**Mr Davies**—At the moment we take each one of these very seriously. We have taken on board every one of the 24 matters that have been referred to us. Eleven of those have actually been self-generated. The other 13 have been referred externally. As much as we take each one of these very seriously, the reality is that we have had 24 since 1999, so we would not be in

the habit of setting up a permanent team. What we would be doing is trying to ensure we have the right strategies, the right liaison in place with government and other departments. When we thought there were issues, we would refer those immediately to the appropriate jurisdiction and a team would be put to it.

There is no way a matter such as this would not be taken on board under our case categorisation prioritisation model. A team would be allocated according to the needs: obviously the size of the case, the amount of people we might need to swing onto it, the amount of witnesses, et cetera. There would not be a permanent standing team, if that is the point of your question, but we would certainly put a team around an investigation such as that as soon as we had it on board.

**Senator LUDWIG**—In terms of the activities of the AFP in this matter, would you categorise it as disruption activities, investigative activities, or would you wait for complaints to arise in the area in order to deal with it?

**Mr Davies**—Obviously we will take complaints that are referred but, as I said, of the cases we have had we have self-generated 11. We are working to build intelligence. To do that we are reliant largely on DIMIA and also state and territory police. They would largely have control or policing responsibilities for brothels within their jurisdictions. That would normally be a local jurisdictional issue but matters such as sexual servitude obviously are not. They are of national and international magnitude and that is why we have an involvement.

**Senator LUDWIG**—Have you undertaken any disruption activities in that area?

**Mr Davies**—We are now working very closely with DIMIA in trying to do that. I would not want to go into great detail here but we have some plans in place now to do that on a national basis. What is intended will form an activity of disruption but also will give us a snapshot, I would hope, of where things might sit within the sex industry.

**Senator LUDWIG**—This is a little bit more sensitive, I suspect, but does the AFP pay non-AFP staff for information or to undertake tasks related to that industry or that work?

**Mr Davies**—We would, if the circumstances were right, through the informants system.

**Senator LUDWIG**—How would that arise? What can you assist the committee with in that? I am just trying to understand the process involved in how you go about investigating these matters or disrupting the matters, if that is the choice you undertake.

**Mr Davies**—I am not sure any of the matters we have investigated have come about in the sense you are talking about. The reality is always there that if somebody within the community, whatever their capacity—whether they are from overseas or Australia, whether they are working in the sex industry or outside—were to come forward with intelligence or with information that would seem to indicate that there were people involved in sexual servitude or with activities in certain jurisdictions, then we would move to do that. If that meant information was of such magnitude that it might ultimately end up in payments to that individual who would be registered as an informant within our strict guidelines, then that would be the case.

**Senator LUDWIG**—Have any been undertaken in that area? Have any payments been made to informants?

**Mr Davies**—I would have to take that on notice, Senator.

**Senator LUDWIG**—If it has, could you detail the amounts?

**Mr Davies**—Certainly.

**Senator LUDWIG**—You mentioned there were a number of outposts. There was Vietnam and then there was also the work undertaken in Cambodia and Thailand. There were teams tasked with the investigative work in a number of other locations. Are you using all of your outposts or are there some you do not use, perhaps because of their location?

**Mr Davies**—All our overseas posts would have been made aware. This goes back some time, I think to about February of last year. There was an occasion where the LOs in a conference were told the importance of this matter of sexual servitude or human trafficking. People were to take on board the need to work closely with local authorities to signify the importance of this area of activity to Australian law enforcement and to try to ensure that the matters were receiving appropriate attention in their particular areas of operation. We would be seeking to get any information or exchange intelligence, et cetera, with agencies.

**Senator LUDWIG**—The annual report indicates some overseas posts but on page 189 of the budget statement there is mention of a feasibility study to place AFP liaison officers in overseas locations. Is that distinct from what might be considered outposts in the AFP's annual report? If so, what locations are being considered? What are the factors taken into consideration to determine the placement of an AFP liaison officer in an overseas location? Could you detail those if you are able.

**Mr Keelty**—Senator, I can give you a summary of where we are with that. The AFP international network now comprises 62 sworn and unsworn members of the AFP. They are deployed as part of an increased presence. Forty-two of the AFP officers are at 23 posts in 22 countries. Two are located here in Canberra and look after the Pacific Islands nations. Three are attached to Interpol, two in Lyon and one in Bangkok. Five AFP advisers provide training or police advice to foreign law enforcement agencies in Asia and the Pacific. Seven have been identified for the initiation of the feasibility studies you spoke of in the new locations. Three of those seven are for counter-terrorism roles: one in Washington, one in Kuala Lumpur and one in London. The other locations are in New York, Beirut, The Hague and Bangkok.

**Senator LUDWIG**—Are they all for counter-terrorism?

**Mr Keelty**—No. The ones in New York, Beirut, The Hague and Bangkok—

**Senator LUDWIG**—I was not sure of The Hague.

**Mr Keelty**—Sorry, Senator. My notes do not flow. The New York office is for placement with the UN. The position in Beirut is to confirm our position in the Lebanon. We have a position in The Hague. Most of the foreign law enforcement agencies in the Northern Hemisphere are represented in The Hague, so one posting allows us significant liaison across a number of law enforcement agencies, commonly grouped as Europol. There are additional positions in Bangkok.

**Senator LUDWIG**—Is that the seven? I think with Washington it is—

**Mr Keelty**—I think I have given you a furphy with the seven. They are in feasibility studies, plus three.

**Senator LUDWIG**—I am happy for you to take that on notice, if you want to clarify that—where they are located now, where they are going to be located and the main purpose of the particular activity and what factors were taken into consideration to determine their prime location.

**Mr Keelty**—The seven feasibility areas are Bali, Belgrade in Yugoslavia, Chiang Mai in Thailand, Dubai in the United Arab Emirates, Ho Chi Min City in Vietnam, Mandalay in Myanmar and Pretoria in South Africa. As I mentioned, there are three counter-terrorist positions—one in Kuala Lumpur, one in London and one in Washington. The process by which we make these decisions is through the crime management strategies and intelligence assessments, but we will give you proper details of that process.

**Senator LUDWIG**—Is that a new process?

**Mr Keelty**—No. It has been the process we have used for a long time, in terms of determining the need, the demand, to be in a certain location, whether that be dictated by a crime trend or by demands for investigations or inquiries in a particular area.

**Senator LUDWIG**—What are the time lines for the study and then a decision on whether to proceed?

**Mr Keelty**—Normally it is six months before we make a decision to totally commit to a location.

**Senator LUDWIG**—Have any of those that you read out been committed to as yet?

**Mr Keelty**—Yes, Senator. Chiang Mai is about to be opened; Ho Chi Minh City is to be opened next month; Belgrade will be opened formally later this year; Bali was due to open, coincidentally on the week of the bombings, but will now be confirmed; Mandalay is not open yet because we are waiting approval from the Burmese authorities to have a second position in Burma—the second person is there, but they have not been deployed to Mandalay as yet; Pretoria is now confirming that will be opened up later this year, as I understand.

**Senator LUDWIG**—Those all have a positive decision to proceed. Are there any that are still pending?

**Mr Keelty**—No, Senator, not to my knowledge.

**CHAIR**—Where is the New York one, Commissioner?

**Mr Keelty**—New York is the UN, with the Australian—

**CHAIR**—That is confirmed, not pending?

**Mr Keelty**—That is confirmed. It will open in July.

**CHAIR**—Thank you.

**Senator LUDWIG**—There seem to be more than seven, don't there?

**Mr Keelty**—No, there aren't. I can guarantee that. Bali, Belgrade, Chiang Mai, Dubai, Ho Chi Minh City, Mandalay and Pretoria are the seven. Then Kuala Lumpur, London and Washington are the additional three counter-terrorist positions.

**CHAIR**—Of course, the commissioner is not privy to your issue with No. 7.

**Senator LUDWIG**—No. I am not going to go there. We are having a lot of trouble with No. 7.

**CHAIR**—It has been a bad day with seven.

**Senator LUDWIG**—In relation to the Australian Hi-Tech Crime Centre, can you detail the resources that have been allocated to this centre, how many staff intend to operate there, and the main purpose?

**Mr Keelty**—Yes, Senator.

**Senator LUDWIG**—Is that the name of it?

**Mr Keelty**—It is the Australasian Hi-Tech Crime Centre.

**Senator LUDWIG**—Who named that?

**Mr Keelty**—The Australasian Police Ministers Council, Senator. In a decision in November last year, it was agreed by the Police Ministers Council that the AFP would host it. It will formally open in July this year. It is run by a board of management, comprising all police commissioners, and we have met three times since the decision by the Police Ministers Council. The AFP is the primary contributor of funding of \$1.7 million per year as of 2002-03, new measures out of the e-security funding. We will provide initial staffing of 15, which will include investigators, technical specialists, intelligence analysts and support staff. At our last meeting with the state and territory commissioners, which was on 13 May, I have agreement from the state and territory police services to provide secondees to the centre. Your question was about funding, I think.

**Senator LUDWIG**—And its main purpose.

**Mr Keelty**—It is to provide a national coordinated approach to combating serious, complex and/or multijurisdictional high-tech crime, especially those beyond the capability of single jurisdictions. It is to assist in improving the capacity of all jurisdictions to deal with high-tech crime and to support the efforts to protect the national information infrastructure. It will also be an adjunct to the requirement we have as a member of Interpol for a 24-hour response capability to referrals of high-tech crime matters from overseas.

**Senator LUDWIG**—How do you define ‘high-tech’ crime?

**Mr Keelty**—It is an extension of the old term ‘e-crime’. It will largely deal with computer crime but it recognises that high-tech crime can also be committed through new technology being exploited by criminal methods. For example, in March this year, a number of financial institutions were targeted by an organised online fraud, an operation in which customers were deceived into disclosing their Internet banking credentials. A job that they have currently is an investigation into one of the major banks in Australia whose webpage had been unlawfully accessed. It is a whole raft of crimes committed through technical means.

**Senator LUDWIG**—When will that be operational?

**Mr Keelty**—It is operational now, in a sense; it will be fully operational by July of this year.

**Senator LUDWIG**—Who will have access to it?

**Mr Keelty**—Entities from law enforcement agencies. There is a private enterprise partnership, as well as access to other Commonwealth government departments.

**Senator LUDWIG**—What will be the protocols to deal with private industry as a partner to accessing AFP operational procedures and the like?

**Mr Keelty**—I do not have the protocols in front of me, but one of the issues with high-tech crime is it is not dissimilar to undisclosed fraud. We had a firm belief when establishing this centre that we needed to get into partnership with private enterprise, such as the Internet service providers; otherwise it would have been very difficult for us to receive referrals. We are working very closely with AusCERT to ensure that we are grappling with the issue of high-tech crime and making sure that it is being reported.

**Senator LUDWIG**—We might come back to it at a stage when perhaps you can help us with how that interface is going to work. We might follow that up next time when you are confronted with the issue of how you keep your matters separate from private industry and vice versa. I suspect they also have privacy matters.

**Mr Keelty**—Yes, Senator.

**Senator LUDWIG**—In terms of the national drug strategy, there are news reports today at least that the AFP has captured another 75 kilograms of heroin from an allegedly Korean ship. Given the size of the haul and reports in the media about the increase in the growth of heroin in Afghanistan, do you think we are now witnessing the end of the so-called heroin drought? If that is the case, what does that mean for Australia and how does the AFP respond? There is also another issue I want to ask you about that: what can you tell me about that haul?

**Mr Keelty**—I will start with the last question first. The report of the additional seizure today is correct. That makes a total of 125 kilograms of heroin allegedly imported by the vessel the *Pong Su*. That matter is currently before the courts, Senator. Persons have been charged and are remanded to appear on 11 July 2003. If I can take a step back from the detail of that to say that the origin of the heroin is believed to be Burma. Getting back to the first part of your question, in relation to the heroin shortage that we experienced through 2001-02, I think I have mentioned here before that this was something that was declared by the United Nations to be unique to Australia and to be directly linked to law enforcement interdiction.

Our analysis suggests that the shortage was affected by the disruption in importation of syndicates by the AFP. There was an issue about Afghan heroin. Afghan heroin has not been seen in Australia for some time. In fact, I know there were some public comments about this, but in Victoria the last Afghan sourced heroin was seized in the 1980s. It means that our central supply still is from South-East Asia, principally from Burma and the Golden Triangle. In terms of overall seizures, we still are on a decline with heroin and on a major rise in methamphetamine, which we predicted about 18 months ago would be the trend.

**Senator LUDWIG**—What is your response to that? You say there is no production coming out of Afghanistan or at least, as far as you are aware, since the 1980s. You understand it might be coming out of Burma. What is the AFP's response?

**Mr Keelty**—That Australia is not a source of Afghan heroin. That is not to say that Afghanistan is not producing heroin. It is. By volume, Burma has the largest area under production for opium. I do not have the figures in front of me but its yield per plant is much lower than that of Afghanistan. That is a roundabout way of saying, whilst we have large volumes coming out of South-East Asia, it is principally because it has the largest area under production for opium. There are thousands of tonnes coming out of Afghanistan.

**Senator LUDWIG**—That is what I understood. I was wondering why you then said the 1980s.

**Mr Keelty**—I was talking about Victoria. I think the last figure I had was 87 per cent of heroin that comes to Australia is sourced out of South-East Asia. There is some heroin produced in South America as an alternate crop to cocaine. We know that through the National Heroin Signature Program. The obvious point is that the Afghan heroin generally is exported to Europe and North America.

**Senator LUDWIG**—So we haven't seen it on our shores, or at least you haven't?

**Mr Keelty**—We have not seen it in quantities on our shores for many years.

**Senator LUDWIG**—Do you monitor its production over there through intelligence?

**Mr Keelty**—Yes. Each year we receive a report from the United Nations Office on Drugs and Crime, I think they call it now. We actually get the yields for Afghanistan, South-East Asia and for South America.

**Senator LUDWIG**—Do you use that to identify whether or not there is a potential import that might come from that area, for argument's sake, if there has been an increase in production or a decrease in another area?

**Mr Keelty**—Yes, we do.

**Senator LUDWIG**—What is the latest advice? Is there an increase in production coming from Afghanistan? The basis of the question is, I guess, are you then choosing whether or not to respond to that?

**Mr Keelty**—The majority of the heroin is still produced in Burma and the Golden Triangle countries. The heroin we receive in this country mainly comes from that source. Even though there is increased production in Afghanistan, it will not manifest itself necessarily unless we pick it up through the National Heroin Signature Program or we get proactive intelligence of an operation coming out of Afghanistan. That is not beyond the pale; that is one of the reasons we have a liaison network in place.

**Senator LUDWIG**—In respect of Mr Hicks and Mr Habib detained in Guantanamo Bay, has the AFP interviewed them or had contact with them since I last asked the question of you?

**Mr Keelty**—No. We have actually finished with Mr Habib. We last interviewed Mr Habib I think in May last year. I think we have actually been spoken to since then.

**Senator LUDWIG**—It is really only a case of whether there have been any updates since then.

**Mr Keelty**—No, and we have not spoken to Mr Hicks since May last year.

**Senator LUDWIG**—Are you aware of the ASIO presence in Guantanamo Bay?

**Mr Keelty**—Yes.

**Senator LUDWIG**—What can you tell me about that?

**Mr Keelty**—Obviously that is an issue ASIO is pursuing with Mr Hicks. Our outstanding matters with Mr Hicks are, as I understand, not related to the reason why ASIO is there interviewing him.

**Senator LUDWIG**—Can you tell me then whether or not ASIO are interviewing Mr Hicks on the basis of questions you want answered and that you will then talk to ASIO about? Is it a separate investigation by ASIO, or are we now falling into operational areas?

**Mr Keelty**—I have not discussed with ASIO the purpose of their current visit to Mr Hicks. Our dealings with Mr Hicks are now isolated to one aspect and ASIO is aware of that aspect. Should that arise as part of their interviews, I am sure they will share that information with us.

**Senator LUDWIG**—I don't suppose you can tell us what the issue is?

**Mr Keelty**—No, I do not think I can, Senator.

**Senator LUDWIG**—In relation to Mr Jack Thomas, the Australian citizen detained in Pakistan, there was a report in the *Sydney Morning Herald* on 25 May that suggested final interviews with the AFP there were tainted by the officers from ASIO. What can you tell me about that?

**Mr Keelty**—I do not think that is correct. Our interview of Mr Thomas was not tainted by ASIO. Our purpose of interview is entirely different to ASIO's and ours needs to be under quite different circumstances to ASIO's. Whatever we do needs to comply with the admissibility rules of evidence in Australia. The outputs of the interview are quite different.

**Senator LUDWIG**—But the AFP were present when ASIO interviewed Mr Thomas?

**Mr Keelty**—That is correct.

**Senator LUDWIG**—Did the AFP then separately interview Mr Thomas?

**Mr Keelty**—That is correct. When we interviewed him, we interviewed him under a more formal caution to comply with the Crimes Act provisions. We offered the opportunity for a solicitor to be present and all the protocols that would apply to a person as if they were interviewed here in Australia.

**Senator LUDWIG**—What comes to my mind is: were any of those questions that were asked by ASIO in front of AFP officers then utilised again? I am only thinking this through now but is that where the suggestion of tainting may have come from? I am just trying to understand why the *Sydney Morning Herald* would be running that view. Is that a possibility? Do you know whether or not you have considered that issue?

**Mr Keelty**—I have not spoken to the journalist and the journalist did not inquire of us in a formal sense, although I know of the article. I am just not quite sure whether it presumes to quote AFP sources. The issue of tainting is quite wrong. It shows a misunderstanding by the journalist of the purpose for which we are there. Quite clearly, in the national interest, with a person in that sort of situation the primary reason to be there is to ascertain whether there is an

imminent attack where there could be loss of life or damage to property about to take place. That is very important in these sorts of situations, particularly given the alleged background of this particular individual but generally speaking the background of these individuals. I think the journalist has made a leap of logic without properly understanding what the real issues are, so I do not give any credibility to that article whatsoever.

**Senator LUDWIG**—Perhaps we can put it to bed this way: you are you not concerned about the admissibility of the evidence here in Australia if it was to be utilised or required to be used?

**Mr Keelty**—I am. We are concerned about the admissibility but—

**Senator LUDWIG**—Not in respect of—all right, I will let you finish.

**Mr Keelty**—The real issue here is what is paramount in terms of the output? If the output is a prosecution, then certain parameters and certain protocols have to be adhered to. If the output is a disruptive or preventive measure—and this happens normally even in this country, not so much with terrorism but quite often you will have a person say a lot of things to you as a practitioner before you issue a caution. You say, ‘Hang on, now we need to issue a caution,’ and the interview post-caution and the interview pre-caution is quite different. The reasonableness is always there but certainly the voluntariness is up to the individual and that may alter.

**Senator LUDWIG**—Where is that matter up to? What can you tell me about that now?

**Mr Keelty**—On 5 May the Pakistani authorities formally advised that they did not propose to charge Thomas under Pakistani law. They have requested assistance to facilitate his deportation back to Australia.

**Senator LUDWIG**—How does that occur? Do we have arrangements with that country?

**Mr Keelty**—I think those discussions are taking place, Minister.

**Senator LUDWIG**—Is it an extradition as such or a deportation by Afghanistan?

**Senator Ellison**—Deportation by Pakistan.

**Senator LUDWIG**—My error.

**Senator Ellison**—It is a deportation by Pakistan. Your question was: were our discussions with Pakistan in relation to the deportation? Is that right?

**Senator LUDWIG**—Yes.

**Senator Ellison**—There are discussions ongoing at the moment with Foreign Affairs in Pakistan. I understand there are some sensitive issues surrounding this. I really cannot provide much more information than that. Suffice to say that Mr Thomas is keen to return to Australia, as I understand it, and his family want him returned to Australia. We are interested to see him in Australia.

**Senator LUDWIG**—Is there a hiccup?

**Senator Ellison**—I think it is just logistics, more than anything.

**Senator LUDWIG**—As to who pays?

**Senator Ellison**—No, just how it is done.

**Senator LUDWIG**—In what sense?

**Senator Ellison**—You see, we are dealing with another country. When you are dealing with another country you have to come to arrangements as to the deportation. We each have our own way of dealing with it, so that is an aspect we are just going through at the moment.

**Senator LUDWIG**—Perhaps you could reflect upon it and have a look at what you can tell us.

**Senator Ellison**—Yes. When you have two governments dealing with each other, it is inappropriate to divulge—

**Senator LUDWIG**—Yes, I can understand that.

**Senator Ellison**—You may embarrass one of the parties. That is a principle of foreign affairs when dealing with international governments.

**Senator LUDWIG**—I think I am learning to understand that when Foreign Affairs are involved we—

**Senator Ellison**—What are you meaning about Foreign Affairs?

**Senator LUDWIG**—I stopped and I will not go there myself.

**Senator Ellison**—I was going to say: when you do, tell me.

**CHAIR**—You can always come to our estimates next week, Senator Ludwig.

**Senator LUDWIG**—I might do that.

**CHAIR**—Most illuminating.

**Senator LUDWIG**—In respect of a matter that was on the news tonight, has the AFP agreed to investigate the now defunct Woomera Detention Centre? What can you tell me about that?

**Mr Keelty**—A referral has been received from Senator Brown. There is also a referral from the department of immigration and multicultural affairs, I think. We are doing preliminary inquiries in respect of both referrals. Without getting into semantics as to whether it is a full-blown investigation or preliminary inquiry, at the moment it is a preliminary inquiry. Senator Brown delivered a letter to my office on 20 May. On 23 May it was forwarded to our Adelaide office. On 27 May I think Senator Brown indicated that he thought the matter was being treated as a formal investigation. We have spoken to Senator Brown today, just to clarify that we are still in the preliminary stages. As I say, I do not want to get into the semantics. Obviously, to get into a preliminary inquiry, you have to make some inquiries to see whether there is any substance to the allegations; most importantly, whether any offence against Commonwealth law has been committed.

**Senator LUDWIG**—At this point in time, because it is an ongoing investigation, you are constrained from sharing anything more with the committee about this?

**Mr Keelty**—That is correct, Senator.

**Senator KIRK**—I have some questions in relation to the certified agreement. I wonder if you can update the committee on progress in negotiations on the AFP certified agreement.

**Mr Keelty**—Yes. We continue with our work with the Australian Federal Police Association. We have been trying to finalise a document. It is now at a stage where I have written to the minister on 23 May and given him a briefing on the document. I have also written to the ACT Minister for Police and Emergency Services to give him a summary of the document. We are hoping that the certified agreement will be put to employees during the next month.

**Senator KIRK**—What allowance, if any, has been made in the AFP's budget to accommodate any implications that may flow from the certified agreement?

**Mr Keelty**—We have not been funded specifically for the certified agreement. We have had it independently costed by a consultant. What we will be doing is offsetting the cost of it through accessing increased composite hours and other productivity improvements generated through workplace flexibility.

**Senator KIRK**—What was the estimated cost of the revised certified agreement from the consultant?

**Mr Keelty**—Twenty-nine million dollars over the life of the agreement, which will be three years.

**Senator KIRK**—You say that amount is going to be found through productivity changes in the workplace?

**Mr Keelty**—That is correct.

**Senator KIRK**—No impact upon staff or personnel?

**Mr Keelty**—No, not that is foreseen at the moment.

**Senator KIRK**—What are the productivity changes you are looking at making in order to save this amount? It is a large amount.

**Mr Keelty**—There are a number. I might get the chief operating officer to elaborate beyond these. The first one is that we are reducing the 22 grade salaries. Bear in mind that the employees do not know this yet, so I am not sure how much detail I should go into. Perhaps I will let the chief operating officer talk in more general terms.

**Mr Van Dam**—Senator, the areas we have canvassed in the agreement cover the classification structure. We are looking at reducing a quite stratified internal classification structure down to a broad-banded structure. We are proposing a range of changes in the arrangement of hours of work to bring in some flexibilities around the way people can accumulate hours and draw down on hours of work. In the course of that we are looking to make some changes to areas that exist in TOIL—time off in lieu of overtime—arrangements, so around the hours of work.

We are looking at introducing a couple of areas where we may utilise allowances in lieu of time off accrual as a more effective means of achieving outcomes that are beneficial to both ourselves and our association. In the ACT policing context, which is not strictly covered by this committee because of the arrangements with the ACT government, we are looking at

introducing new flexibilities that will apply in the shift-working environment. We are looking at methods by which we can free up the capacity to roster according to work requirements, or more effectively roster to work demands on a day to day basis. We are introducing—

**Senator KIRK**—Sorry, I was just going to say in view of the time you can perhaps take that on notice and provide the committee with the information.

**Mr Van Dam**—I am happy to do so, Senator.

**CHAIR**—That will at least avoid explaining these matters to the personnel over the estimates process as well.

**Senator LUDWIG**—I take it that you are consulting with the association in respect of these changes.

**Mr Van Dam**—We believe the document we propose to put to staff will be jointly endorsed. It will come forward as an AFPA-AFP proposal.

**Mr Keelty**—On that point, Senator, we established a working group comprising AFPA executive and our own executive members to formulate the document. The AFPA has been party to its development all the way through.

**Senator LUDWIG**—I have recollections of the last time.

**Mr Keelty**—I have recollections of the last time and I was determined that would not be repeated here. Of course, that is part of the problem with this current certified agreement. So much of it has been left to interpretation and that is where some of the high cost has been involved. In terms of some of the savings we will have, Senator Kirk, it is through clarity and interpretation.

**Senator LUDWIG**—I will ask you that in three years time.

**Mr Keelty**—Ask me in 12 months, Senator.

**Senator KIRK**—More generally in relation to the budget, I note there was a very minor increase in funding for the AFP. I wondered whether or not that was in line with your expectations or did the AFP pitch for more funding?

**Mr Keelty**—That funding was in line with our expectation. It was an increase of \$27 million over the previous financial year. We are midstream through a number of programs, so we are still fulfilling those programs. We are quite happy with the budget as it stands.

**Senator KIRK**—The money that has been provided should be sufficient to complete the projects you have referred to?

**Mr Keelty**—Yes, Senator.

**Senator KIRK**—At page 176 of the portfolio budget statements there is a line under the heading 'Planned infrastructure works'. It states:

In addition, in the near future the AFP will be aiming to consolidate its administration accommodation leases in Canberra in order to provide an enhanced and cohesive response to service delivery requirements of clients and stakeholder agencies.

When I read that I wondered what it meant and whether or not the AFP has any plans to move office in Canberra.

**Mr Keelty**—Yes, Senator. I have a program of expiring leases and one of the things that I want to do is consolidate the properties that we have become involved in. Since the Australian Protective Services became an operating division of the AFP, we occupy 10 separate sites here in Canberra and I want to consolidate that in line with the projected finalisation of leases across all the properties in which we are involved. We lost the indoor firing range during the Canberra bushfires, so we have to replace that. Thankfully, the Department of Defence is assisting us at the moment with an outdoor range, but as you can imagine at this time of the year, with young recruits, it is obviously not the best of circumstances. We also have to retrain on a very regular basis to enable people to maintain their firearms licences, so there is consolidation of some of these functions planned for our site at Majura.

**CHAIR**—We assume Defence just tells their guys to toughen up!

**Mr Keelty**—They're not good enough to use our Glocks!

**CHAIR**—I'm not going there!

**Senator KIRK**—In relation to this consolidation of the various properties, have any funds been set aside or earmarked to allow this move to take place?

**Mr Keelty**—Yes, there are.

**Mr Van Dam**—Senator, if it is okay, I might defer this to the person who was acting as the CFO at the time we put the documentation together. In short, we have in our capital budget moneys that have been specifically earmarked previously for injection in accommodation. We will be looking at utilising some of that funding for the purposes of this activity, but I will defer to Mr Jones on the detail.

**Mr Jones**—Essentially, we have set aside from our cash at bank funding moneys that we can put towards the future consolidation of our longer term property strategy. On page 176 of the portfolio budget statements, you will notice that we have purchased land and buildings at Majura. The idea there is to consolidate some of our specialist functions at that site and perhaps, with opportunities in the Canberra market, look to a headquarter building that might be identified that is suitable for our needs towards the expiry of our current leases.

**Senator KIRK**—What savings, if any, have you identified as flowing from these changes to the leasing arrangements of the AFP?

**Mr Jones**—We certainly anticipate that there will be some savings that will flow, as you would expect, from consolidating 10 sites into approximately two sites. There would be savings in energy, security guards, security systems et cetera. It is not possible at this time to quantify what those savings would be, but we would certainly expect savings to arise.

**Senator KIRK**—On page 185 of the budget statements, under measures affecting outcome No. 1, there is mention of continued funding to support the offshore disruption of transnational criminal threats. Could someone perhaps provide more detail for me on the nature of this work?

**Mr Van Dam**—I would be happy to attempt to answer that for you, Senator. These measures on page 185 collectively represent funding that otherwise would have lapsed, but with which programs the government has decided to continue. They are a little difficult to interpret individually, because they are an integral part now in the sense of broader programs. To take them specifically, my understanding is that the overseas liaison network money referred to on page 185 is specifically to continue some increased presence in Beijing, Hanoi, Rangoon and Bogota. It enables us to do that. The enhanced technical capacity pays for a team of people engaged in technical support to AFP investigation activity. I am trying to recall the specific program. It supports some of the cooperation activities, as covered here.

**Mr Keelty**—The Law Enforcement Cooperation Program, LECP.

**Mr Van Dam**—Yes.

**Senator KIRK**—In which countries is this focused? You mentioned China.

**Mr Van Dam**—The overseas liaison officer network funding is specifically supporting Beijing, Hanoi, Rangoon and Bogota.

**Senator KIRK**—What is the nature of the criminal threats that are seeking to be addressed here?

**Mr Keelty**—It would be a whole raft of crimes, from narcotics trafficking and people trafficking. I am trying to think of the post that Mr Van Dam read out, but all of the elements of crime. Obviously places like Bogota and the like are very specific. Bogota is, quite clearly, to do with narcotics trafficking. Some of those overseas posts have a readily identifiable area of interest, whilst others are very multifaceted and transnational in nature.

**Senator KIRK**—In relation to an activity that occurred today—the antiterrorism practice activity both here and in Sydney—could you tell the committee how much that cost in both locations?

**Mr Keelty**—That is run under the auspice of the Protective Services Coordination Centre, Senator. We can give individual costs for our agency, but I am not sure that we have that figure here tonight.

**CHAIR**—Perhaps that could be taken on notice and a response supplied.

**Mr Cornall**—We will take that on notice.

**CHAIR**—Thank you, Mr Cornall.

**Senator KIRK**—Generally, I wondered whether the AFP believes that Australia is now at an increased risk of terrorist attack following the war in Iraq.

**Mr Keelty**—We have a heightened level of alert, but a medium threat level. There may be some specific areas where it is heightened, but by and large the threat level has not changed overall since September 11.

**Senator KIRK**—You said that in some areas there might be a heightened alert. Are you able to identify those?

**Mr Keelty**—Yes, Senator. There are some missions that might require a higher level of resourcing by us. Included in that is the APS role, such as the US Embassy and the like. Overall, as I say, the threat level remains medium.

**Senator KIRK**—Is the AFP keen to ensure an ongoing presence in South-East Asia?

**Mr Keelty**—Yes, we are. The output of having been in South-East Asia, as I said before in answer to questions by Senator Ludwig, is one of the contributing factors—not identified by the AFP but identified by the UN—as to why Australia has experienced a heroin shortage over the last couple of years. Quite clearly, our work in Indonesia has been very successful with the Indonesian National Police in exposing significant terrorist cells and, from the discussions here tonight—our focus on the exploitation of women and children—it is clear that we need to maintain a presence in many parts of South-East Asia.

**Senator KIRK**—When you say ‘many parts’, in which countries in particular are you intending to maintain a presence?

**Mr Keelty**—If I can put it this way: we do not intend to close any posts. We are only expanding on posts.

**Senator KIRK**—How many officers are there now in the region and how many are you intending to maintain there?

**Mr Keelty**—I thought I may have given that answer to Senator Ludwig. There are 42 officers in 23 posts in 22 countries. In addition, there are three officers attached to Interpol, one of those in Interpol Bangkok, two in Interpol Lyons. If it would assist the committee, I could give you a table that shows where all the overseas liaison people are posted, and separate them from the future deployments.

**CHAIR**—That would be very helpful, Commissioner.

**Senator Ellison**—Madam Chair, at this point, I notice that 11 o’clock is approaching. I wonder if we will be able to complete the AFP’s evidence tonight. I am trying to get an idea of that.

**CHAIR**—That has been my hope and my understanding.

**Senator LUDWIG**—We will not spill over to the Friday. We will finish tonight. If I need to put questions on notice, I will.

**Senator Ellison**—Thank you, Senator Ludwig.

**Senator LUDWIG**—I think that was the undertaking we had earlier. I did not understand that the program might be limited considerably, but that is the Senate for you.

**Mr Keelty**—Senator, I can table those posts tonight.

**CHAIR**—Thank you, Commissioner. We will accept those.

**Senator KIRK**—Could you comment on reports that you would like to keep a regional flying squad based initially in Indonesia?

**Mr Keelty**—Got to get an aeroplane first! Senator, that was again by the same journalist, in fact, if I recall: a leap of logic. Whilst we have deployed to Indonesia, the Philippines, and now to Saudi Arabia, each of those has been as a direct result of an incident occurring and

dialogue between ourselves and the host law enforcement agency. We would not ever deploy to a country without the host country inviting us there or working with us in cooperation to deal with an incident. We would not unilaterally be going anywhere without first seeking the cooperation and invitation of the host nation.

**Senator KIRK**—So it has never occurred before and it will not happen in the future?

**Mr Keelty**—Not while I am commissioner.

**Senator KIRK**—Mr Keelty, could you perhaps expand upon a proposal that you made at a recent conference for the establishment of an international terrorist court.

**Mr Keelty**—It was an academic statement, in the sense that it was proposing whether, from an academic perspective, there was a solution to the current dilemma of people being held in places like Guantanamo Bay for what seemingly would be *ad infinitum*, and whether we have appropriate structures in place to deal with some of the issues that we are currently dealing with. For example, in a trial here for the offence of disclosing secrets by a Commonwealth employee, it became problematic to conduct the trials because of the need to give security clearances to defence counsel in the first place and then there was the issue of allowing highly classified documents to be provided to a jury.

The statement was made simply to have an open discussion by all interested parties, including civil liberties groups as well as jurists, to see whether there was a better system. It was very much in an academic context and not in terms of criticism of current policies or current issues that are taking place in some parts of the world.

**Senator KIRK**—How far have you expanded upon this idea? Have you thought about how it would operate, where it might be based, the sort of involvement that Australia would have in this court? Or was it purely an academic notion?

**Mr Keelty**—It was really as part of an open discussion forum in answer to questions at a conference where I delivered a paper. We are not the policy makers; we are only, at best, contributors to policy. Nevertheless, it is an issue that is current and I am not sure that anyone has the solution at this point in time. In fact, I recall the director of the FBI, on his visit to Australia in March of last year, made a very similar comment: he did not think the FBI would ever be excluded from the process by which people would be incarcerated. He talked about the changed circumstances for the FBI, in that their focus was now very different because they were used to putting briefs of evidence together, making an arrest and having a prosecution. Of course, September 11 changed that. What I was doing was simply making the point that if the systems are adequate, then they are adequate, but if they are not then perhaps it would be a useful exercise to get interested parties together to discuss what might be more adequate. That becomes more complex as people flee to other jurisdictions.

**Senator KIRK**—Have you received very much feedback about your ideas, positive or otherwise?

**Mr Keelty**—I received a very positive reaction from the audience but not much of a reaction when I arrived in Canberra, I have to say.

**Mr Cornall**—I would like to say on that point that Commissioner Keelty was exploring ideas in a broad way, but they are not government policy.

**Senator LUDWIG**—I think that was clear. I want to deal with a matter that I asked about earlier. I might have missed it, but in respect of the Woomera preliminary investigation that is now being conducted, did you mention that there was a reference from DIMIA? I was not clear about that.

**Mr Keelty**—I did say that. I was briefed on that yesterday, I thought—or today.

**Senator LUDWIG**—I saw the issue of Senator Brown, but I was not sure of the issue of the reference from DIMIA itself.

**Mr Keelty**—Senator, it has just been clarified. Apparently it has not been formally referred by DIMIA but it is under consideration for referral.

**Senator LUDWIG**—In fact, you cannot tell me much more about that. I have been following the proceeds of crime with you for some time. Can you tell me how many times that legislation has been invoked and the procedures available to you under the act? I am happy for you to take that on notice, if you need to. I am looking for a snapshot of the last time we looked at this piece of legislation. Do you have amounts that have been recovered under it as well?

**Mr Keelty**—Since the commencement of the act on 1 January this year, just over \$3 million worth of assets have been restrained, forfeited or sought under pecuniary penalty order in the first quarter of this year.

**Mr Davies**—That is the figure for the first quarter. I sought an update this afternoon and it is now over \$10 million. We consider that there will be an increase in that because there are a number of matters under consideration or being progressed through the DPP for civil and criminal based asset orders before the courts. There has been an appreciable result of matters this year from the new process.

**CHAIR**—Back to you, Senator Kirk.

**Senator KIRK**—You may want to take this on notice. I would like details of the amount of time and the associated costs of posting APS officers to protect overseas embassies and consulates in Australia.

**Ms Fagan**—We will need to take that on notice. There is a contractual arrangement with the Department of Foreign Affairs and Trade.

**Senator KIRK**—Perhaps also, when you take it on notice, you could let us know whether or not the services are provided on a cost recovery basis.

**Ms Fagan**—Yes, Senator, they are. We will give you the details of the costs when they are worked through.

**Senator KIRK**—Also, I was interested as to whether or not there has been any upgrade or increase in the services since the Iraq war.

**Ms Fagan**—Senator, that is another contract. It is administered through the PSCC. The PSCC has called on extra staff guarding from the APS. The figure I may have with me but, if you can just bear with me, I will check or take it on notice.

**Senator KIRK**—Take it on notice. Is the AFP involved in any way in the accreditation of private policing services in Australia?

**Mr Keelty**—No, Senator.

**Senator KIRK**—At page 193 of the budget statements, the second paragraph reads:

The AFP is increasingly called upon to assist neighbouring law enforcement agencies with institutional strengthening to enhance their capacity to address trans-national crime.

I wonder how the AFP has responded to these increasing calls from neighbouring countries to assist them.

**Mr Keelty**—Senator, largely that relates to the South Pacific and also East Timor.

**Senator KIRK**—Which countries in the South Pacific?

**Mr Keelty**—We have some advisers in the Solomon Islands, in Fiji and in Vanuatu.

**Senator KIRK**—Thank you. Finally I have some questions in relation to output 1.4. How many officers are in the air safety officer or sky marshal program?

**Ms Fagan**—We have budgeted for 110. We are approaching that capacity now, with another group in training at the moment. We have not revealed the numbers in detail because that will reveal capacities.

**Senator KIRK**—What is the cost of this program?

**Ms Fagan**—Off the top of my head I think it is \$110 million over four years.

**Senator KIRK**—Perhaps you can provide the detail on notice.

**Ms Fagan**—That is the right amount and then divide it up over the four years of the program.

**Senator KIRK**—Have any officers started to fly on international flights?

**Ms Fagan**—No. They are domestic operations at this stage, although the minister has been to Singapore and Indonesia to discuss international operations. We also have discussions ongoing at the moment with the US as far as operational protocols.

**Senator KIRK**—Any time frame for when that is likely to occur, or when discussions have concluded?

**Ms Fagan**—There are two dimensions. There are the operational protocols that need to be settled and then there are bilateral relationships that also need to be settled, which involves a number of departments and agencies.

**Senator KIRK**—Any idea about the sort of time that is likely to take?

**Ms Fagan**—It has been expedited as a priority. I know it was one of the key initiatives for the minister and we are progressing it as soon as we can.

**Senator KIRK**—Is the AFP aware of any evaluations of similar sky marshal programs in other countries?

**Ms Fagan**—Yes, Senator. I am aware of approximately 24 operating in different countries. Ours compares very favourably. In fact, part of the discussions in the US involve other countries coming into the US to share experiences and knowledge in relation to our program and theirs. There is quite a collaborative effort of operational detail being shared.

**Senator KIRK**—You mentioned 24 countries in which this has occurred. Is that right?

**Ms Fagan**—Yes.

**Senator KIRK**—Have all of them been generally successful?

**Ms Fagan**—I cannot comment on the details of others.

**Senator KIRK**—My concern was as to whether any of them have stopped and just not continued because of lack of success.

**Senator LUDWIG**—Have you learnt any lessons from overseas experiences and are you applying that here?

**Ms Fagan**—There are two dimensions to that. We consider ourselves at best practice and we have built on some of the better programs around the world, including the Israeli program. I think it is an expanding market, rather than one that is retracting.

**Senator LUDWIG**—What is the impact of SARS on the program?

**Ms Fagan**—It is a domestic program. We do have, through our own internal medical practices, notifications out to staff, whether they be ASOs or people working at airports or in different countries. That has been addressed by that communication through our medical staff.

**Senator LUDWIG**—What about the sky marshals themselves? Have they raised concerns with you?

**Ms Fagan**—Nothing has been raised with me.

**Senator LUDWIG**—Or with the AFP or with their employer.

**Ms Fagan**—No, nothing has been raised.

**Senator KIRK**—In relation to the domestic program, how long has that been going for?

**Ms Fagan**—It started in December 2001. I think it was 27 December.

**Senator KIRK**—Are there any plans to evaluate or review the domestic program?

**Ms Fagan**—There has been an evaluation completed by government, administered by the Attorney-General's Department.

**Senator KIRK**—When was that completed?

**Ms Fagan**—It was presented to government in March this year.

**Senator KIRK**—In terms of aviation passenger security, could you tell us how many explosive-detecting dogs have been assigned to Australian airports?

**Ms Fagan**—It has been expanded from six to 18.

**Senator KIRK**—Could you provide us with a list of the airports at which such dogs are operating?

**Ms Fagan**—Yes, Senator, I can. The capability is in Brisbane, Sydney, Melbourne and was expanded to also include Perth and Canberra.

**Senator KIRK**—There are 18 dogs operating throughout those airports.

**Ms Fagan**—That is right.

**Senator KIRK**—Have many or any been assigned here to Parliament House?

**Ms Fagan**—Yes, Senator, they have. That is funded through the contractual relationship with the Joint House Department.

**Senator KIRK**—How many?

**Ms Fagan**—Two dogs.

**Senator KIRK**—Whereabouts are they located?

**Ms Fagan**—I stand corrected. There are three dogs that have been assigned to work in the parliamentary precinct. They will be kennelled with the other dogs from the Canberra airport and I think the facilities with Customs. I may need to take that on notice to check.

**Senator KIRK**—Are there any plans to increase the numbers at this stage?

**Ms Fagan**—It is open to those that purchase APS services to request an EDC capacity, so that would be one option.

**Senator KIRK**—When did those three dogs come on board?

**Ms Fagan**—Two weeks ago, Senator.

**Senator LUDWIG**—Are they over in the ministerial wing?

**Senator Ellison**—No, we have enough security over there!

**Senator LUDWIG**—You mentioned that the certified agreement for the Australian Federal Police was nearing completion. Is the APS still under the arbitrated award?

**Ms Fagan**—Yes, Senator.

**Senator LUDWIG**—Is there any intention to renegotiate that or to harmonise their arrangements with the AFP?

**Ms Fagan**—We are in the process of bringing forward a submission to government to look at further policy change. When we have that direction, we will address the industrial framework as well. The MX does not expire until October or November 2004, so we have some scope in order to get some proposals to government.

**Senator LUDWIG**—Yes, but you can always go back to the commission if you want to replace it. I am sure where there is a commission there is an opportunity to bring that forward if you need to, anyway, but I suspect you already know that. The issue raised itself in my mind because when you co-locate—when you then start to reduce the 10 locations down to two—you will then be working, I suspect, in closer proximity to the APS and I was wondering whether or not you have addressed or considered one of these issues that you will need to address: the differing working conditions or hours of work or overtime arrangements that might apply to the different staffing that could effectively be working out of the same building.

**Mr Keelty**—Yes, Senator. As part of the integration process and working group, we are looking at those areas of commonality between the skill bases of the APS and the AFP in terms of further integration, bearing in mind that at the moment there is a significant difference between the two. There are some similarities in perhaps the protection area, which is why we created the position of the Executive Director Protection. Audrey Fagan looks after

protection, security and counter-terrorism. She looks after the whole area in which we believe there is a lot of similarity and complementarity in terms of the skill base and the resources.

**Senator LUDWIG**—Who is in charge of the APS directly?

**Mr Keelty**—Directly, it is our general manager for protection, Steve Jackson, who reports to Audrey Fagan.

**Senator LUDWIG**—Thank you. I do not have any further questions in this area.

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

**Senator KIRK**—Nothing further.

**CHAIR**—Commissioner, I thank you, Ms Fagan, Mr Davies and your officers very much for your assistance this evening. That completes consideration of the portfolio budget estimates for the Australian Federal Police for the budget year 2003-04. Mr Cornall, I thank you and your officers for your assistance over the past two days in ensuring that we did complete this session in the allotted time. We are very grateful for that, as ever. A number of questions have been taken on notice over the past two days by you and your officers and tonight, Commissioner, by you and your officers. The return date for those is, as I think I indicated at the beginning of proceedings, Friday, 4 July. We would appreciate any assistance with having those back within that time frame.

**Committee adjourned at 10.44 p.m.**