



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

ENVIRONMENT, COMMUNICATIONS, INFORMATION
TECHNOLOGY AND THE ARTS LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

TUESDAY, 25 MAY 2004

CANBERRA

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SENATE

**ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY
AND THE ARTS LEGISLATION COMMITTEE**

Tuesday, 25 May 2004

Members: Senator Eggleston (*Chair*), Senator Mackay (*Deputy Chair*), Senators Allison, Lundy, Santoro and Tchen

Senators in attendance: Senators Cherry, Eggleston, Faulkner, Harradine, Lundy, Mackay, McLucas, Santoro and Tchen

Committee met at 9.04 a.m.

**COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS
PORTFOLIO**

Consideration resumed from 24 May 2004

In Attendance

Senator Kemp, Minister for the Arts and Sport

Department of Communications, Information Technology and the Arts

Executive

Ms Helen Williams AO, Secretary

Ms Fay Holthuyzen, Deputy Secretary, Communications

Dr Rod Badger, Deputy Secretary, Information Economy

Corporate and business

Mr Frank Nicholas, Acting Chief Operating Officer

Mr Mike Hutchings, Acting General Manager, Information Technology and Facilities

Legal

Mr Don Markus, General Counsel

Finance and budgets

Ms Jennifer Gale, Chief Financial Officer

Telecommunications

Mr Chris Cheah, Chief General Manager, Telecommunications

Mr Colin Lyons, General Manager, Telecommunications Competition and Consumer Branch

Mr Simon Bryant, General Manager, Regional Communications Policy Branch

Mr Colin Oliver, Acting General Manager, International Branch

Mr Brenton Thomas, General Manager, Enterprise, Infrastructure Branch

Broadcasting

Mr James Cameron, Chief General Manager, Broadcasting

Dr Simon Pelling, General Manager, Digital Broadcasting and Spectrum Management

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY
AND THE ARTS

Mr Gordon Neil, General Manager, Licensed Broadcasting

Mr Rohan Buettel, General Manager, Public Broadcasting

Office of the Information Economy

Mr Keith Besgrove, Chief General Manager, Information Economy Division

Mr Ashley Cross, General Manager, Business Environment Branch

Ms Anne-Marie Lansdown, General Manager, Access and International Branch

Mr David Kennedy, General Manager, Strategy Branch

ICT industry and intellectual property

Dr Beverly Hart, Chief General Manager, ICT Industry and Intellectual Property Division

Mr Philip Allnutt, General Manager, ICT Industry Development Branch

Mr Simon Cordina, Acting General Manager, Intellectual Property Branch

Mr James Barr, General Manager, Regional Funding Initiatives Branch

Mr Sceán Kearns, Acting General Manager, ICT Innovation Branch

Arts and sport division

Ms Lynn Bean, Chief General Manager, Arts and Sport Division

Ms Karen Gosling, Special Adviser, Collections and Governance

Mr Kevin Isaacs, General Manager, Arts Support and M2006 Taskforce

Mr Peter Young, General Manager, Film and Digital Content

Mr Paul McInnes, Acting General Manager, Collections and Governance

Ms Sally Basser, General Manager, Sport and Private Sector Support Branch

Ms Kate Cowie, General Manager, Old Parliament House

Mr Andrew Sayers, Director, National Portrait Gallery

Mr Simon Elliot, National Portrait Gallery

Agencies

Telstra

Mr Bill Scales AO, Group Managing Director, Regulatory, Corporate and Human Relations

Mr John Stanhope, Group Managing Director, Finance and Administration

Mr Darian Stirzaker, Head, Channel Management

Mr Don Pinel, Regional Managing Director, Telstra Country Wide, Queensland

Mr Anthony Rix, Head of Service Advantage

Australia Post

Mr Michael McCloskey, Corporate Secretary

Mr Peter Meehan, Chief Finance Officer

Mr Mark Howard, General Manager, Corporate Infrastructure Services

Mr Gary Lee, Group Manager, Letters

Mr Rod McDonald, Group Manager, Human Resources

Mr Terry Sinclair, Group Manager, National Logistics

Mr Mel Jackson, Group Manager, Retail

Mr Matt Pollard, Manager, External Relations

Australian Communications Authority

Dr Bob Horton, Acting Chair

Mr Geoff Luther, Acting Member

Mr Mark Loney, Acting Executive Manager, Corporate Management

Mr John Neil, Executive Manager, Telecommunications Analysis
Mr John Haydon, Executive Manager, Consumer and Universal Service Obligation Group
Mr Darren Hooper, Chief Financial Officer

Australian Broadcasting Corporation

Mr Russell Balding, Managing Director
Mr Geoffrey Crawford, Director, Corporate Affairs
Ms Sandra Levy, Director, Television
Mr Colin Knowles, Director, Technology and Distribution
Mr David Pendleton, Director, Business Services
Ms Sue Howard, Director, Radio

Australian Broadcasting Authority

Prof. David Flint, Chairman
Ms Andree Wright, Director, Industry Performance and Review
Mr Richard Fraser, Content Assessment, Assistant Manager
Mr John Boshier, Director Planning
Mr Giles Tanner, General Manager
Ms Maria Vassiliadis, Manager, Licensing

Special Broadcasting Service Corporation

Mr Nigel Milan, Managing Director
Ms Julie Eisenberg, Head of Policy
Mr Jon Torpy, Chief Financial Officer
Mr Will Berryman, Chief Technology Officer
Mr Shaun Brown, Head of Television
Mr Quang Luu, Head of Radio

Australian Government Information Management Office

Mr John Grant, Acting Australian Government Chief Information Officer
Mr Patrick Callioni, Chief General Manager
Mr James Shaw, Acting Chief General Manager
Mr John Lalor, Acting General Manager, Service Delivery Branch
Mr Tony Judge, Acting General Manager, Corporate and Governance
Ms Robyn Fleming, General Manager, Policy and Strategy Branch
Mr Steve Alford, General Manager, Sourcing and Security Branch

Arts and sport**Australia Council**

Ms Jennifer Bott, Chief Executive Officer
Dr Catherine Brown-Watt, Director, Major Performing Arts Board
Mr Ben Strout, Executive Director, Arts Development
Ms Megan Coombs, Executive Director, Finance and Services

National Library of Australia

Ms Jan Fullerton, Director-General
Dr Warwick Cathro, Assistant Director-General, Innovation
Mr Gerry Linehan, Assistant Director-General, Corporate Services

National Gallery of Australia

Dr Brian Kennedy, Director
Mr Alan Froud, Deputy Director

National Museum of Australia

Mr Craddock Morton, Acting Director
Ms Freda Hanley, General Manager, Collections, Content and Technology
Ms Suzy Watson, General Manager, Operations
Ms Louise Douglas, Acting General Manager, Public Programs and Audience Development
Mr Adrian Brocklehurst, Chief Finance Officer

Australian National Maritime Museum

Ms Mary Louise Williams, Director
Mr Quentin Howarth, Assistant Director, Corporate Services
Ms Joan Miller, Section Head, Finance

National Archives of Australia

Mr Ross Gibbs, Director-General
Ms Jenny Anderson, Assistant Director-General, Corporate

Australian Film, Television and Radio School

Mr Malcolm Long, Director
Ms Reza Bilimoria, Head of Corporate and Student Services

Australian Film Finance Corporation

Mr Brian Rosen, CEO

Film Australia Ltd

Ms Sharon Connolly, CEO
Ms Judith Bowtell, Executive Officer

Australian Film Commission

Mr Kim Dalton, Chief Executive Officer

Australian Sports Commission

Mr Mark Peters, Chief Executive Officer
Mr Brent Espeland, General Manager, Sport Performance and Development
Ms Lois Fordham, General Manager, Business Operations

Australian Institute of Sport

Mr Michael Scott, Director

Australian Sports Drug Agency

Mr John Mendoza, Chief Executive
Ms Anne Gripper, General Manager, Strategy and Support
Mr Kim Terrell, General Manager, Operations

CHAIR—I declare open this hearing. Today we continue the examination of the Communications, Information Technology and the Arts portfolio in accordance with the agenda for these estimates. We begin today with the Australian Broadcasting Authority. I welcome Professor Flint and his officers here today.

[9.05 a.m.]

Australian Broadcasting Authority

Prof. Flint—May I make an opening statement?

CHAIR—Of course.

Prof. Flint—My practice is to attend Senate estimates as often as I can. On the last occasion I had a previous speaking engagement which precluded my attendance. On 11 May, in accordance with the usual practice, my office received a request as to who would attend, and the Senate office was informed that I would be attending with certain officers. Then on 17 May I received a letter from Senator Mackay asking me to attend and to produce certain documents. I replied, saying that I had already done that on 11 May. But, on 17 May, Mr Lindsay Tanner and Senator Mackay issued a press release headed ‘Labor demands Flint appears before estimates’, the core of which was:

Professor Flint has refused to resign from the ABA despite the overwhelming public criticism of his behaviour as ABA Chair.

It continued in this vein, and ended:

He must attend estimates.

I wanted to assure the committee my attendance here is in no way related to that press release, which was given wide reportage in the media. My attendance here is because of my usual practice and out of courtesy to the Senate. Those who wrote the press release knew or ought to have known that I was coming, and it seems to me that when witnesses come before this committee voluntarily they are entitled to the protection of parliament.

Senator TCHEN—The committee should note the dates referred to by Professor Flint in his statement.

Senator FAULKNER—Professor Flint and, for that matter, other witnesses at the table and the minister are entitled to make an opening statement. Professor Flint has made one. It is clear, it contains dates and I think the *Hansard* record will speak for itself, so I do not think you need to note it. It is there in the public record for all to see. I am sure that is why the opening statement was made. Any witness is entitled to do that, and Professor Flint has exercised his rights in that regard, as is appropriate.

Senator TCHEN—I appreciate that. I was doing the same thing you did.

CHAIR—I think that is enough. You have made your point, Senator.

Senator MACKAY—Professor Flint, you indicated that you were not at the last estimates because of a previous speaking engagement. Given, as you indicated in your opening statement, that you are ordinarily required to attend estimates, can you tell us where you were?

Prof. Flint—I am not ordinarily required to attend estimates. I ordinarily attend estimates. I understand, and I note the practice of other heads of agencies, that not everyone attends. However, it is my practice to try and attend out of courtesy to this committee. I was asked to address the Commonwealth Broadcasting Association conference, which I did.

Senator MACKAY—Where was that conference held?

Prof. Flint—It was in Suva, in very bad weather.

Senator FAULKNER—Worse than in Canberra?

Prof. Flint—It was the wrong season to be in Fiji.

Senator MACKAY—I take it you were there in your capacity as chair of the ABA?

Prof. Flint—Yes.

Senator MACKAY—The correspondence that you referred to also asked you to bring along some letters between you and Mr Jones which have received publicity recently. Have you got those with you?

Prof. Flint—There are two letters of relevance. One is the letter of 11 June 1999, which has been widely published. There was an earlier letter, which I will provide to the Senate. That was dated 28 September 1997. It conveyed a copy of the speech which I had given to a media law conference. Those seem to be the only relevant letters which we have been able to find.

Senator MACKAY—What do you mean by ‘relevant’? In whose terms? Is that your definition of relevant? Essentially, we asked you to produce all letters from you to Mr Jones that were written on ABA letterhead. Are they the only two that were written on ABA letterhead?

Prof. Flint—I will take this on notice because there is another letter which it may or may not be appropriate to give to you.

Senator MACKAY—That is really for us to judge. We have asked you to provide all correspondence on ABA letterhead from you to Mr Jones. It is up to us to determine, I guess, whether it is relevant or not.

Prof. Flint—It was a request. I noted that. But I was, as you can see, surprised that you provided such a press release. However, this other letter is being examined and if it can be released it will be released. I have taken that on notice and I will be advised by our legal advisers as to what the status of that letter is.

Senator FAULKNER—On that other letter, you have informed the committee that it is being examined by your legal advisers. Is that an in-house examination by the ABA?

Prof. Flint—Yes.

Senator FAULKNER—Can you indicate to the committee what the date of that letter is, please.

Prof. Flint—I have not got that with me.

Senator FAULKNER—You do not know what the date of it is?

Prof. Flint—I will take that on notice and provide you with the date.

Senator FAULKNER—Can you indicate to the committee whether it is a letter addressed to Mr Jones?

Prof. Flint—It is a letter addressed to Mr Jones. I am told it is dated April 2000—we think.

Senator FAULKNER—I appreciate that. Obviously, if you can be more specific with the date—on notice—we would appreciate it. We appreciate your assistance to the committee of at least indicating the month and the year. So was this also a letter on ABA letterhead?

Prof. Flint—Yes. I should say that it was a letter sent on the authority of the board of the ABA.

Senator FAULKNER—Thank you. I did ask—

Senator MACKAY—This is the April 2000 letter?

Prof. Flint—It was on letterhead.

Senator FAULKNER—I assume this, but let us be clear for the sake of the record: was it a letter signed by you?

Prof. Flint—It was a letter signed by me.

Senator FAULKNER—You indicated in answer to Senator Mackay a moment ago that you could table the other two letters you mentioned in response to Senator Mackay's questions. Could that be done, please, for the benefit of the committee?

Prof. Flint—I will take that on notice and send those to the Senate. The letter of 11 June 1999 is so public that I doubt that you would want another copy, but I can provide that.

Senator FAULKNER—I understand the point you make. I suppose I take the view that when these sorts of things are mentioned it is always helpful if the records of the parliament can be complete. I understand the point you are making. You are saying it has been widely canvassed. What about the other letter that you referred to?

Prof. Flint—That can be provided tomorrow.

Senator FAULKNER—Tomorrow. Is there any reason why it could not be provided today?

Prof. Flint—I do not have it with me.

Senator FAULKNER—Wouldn't it have been the sensible thing to actually bring it with you?

Prof. Flint—I do not have it with me and I will provide it tomorrow. I do not think the work of the Senate will be in anyway delayed by my delay in sending it to you.

Senator FAULKNER—It depends on the content of the letter, you see, because you made what I thought was a reasonable opening statement to the committee indicating that you did not need the advice of Senator Mackay and my colleague in the House of Representatives, Mr Tanner, to be told that you should attend and bring certain correspondence. It turns out that of three identified letters, you are seeking legal advice on one as to whether it can be made public—that may well be reasonable; I do not comment on that. Two of the letters can be made public, one of which you have now said is in the public arena and everyone knows the content of it; fair enough. The other letter you did not bring. I am now less convinced that it was not a reasonable thing to remind you about the requirements of the committee in relation

to the provision of this correspondence. I do not understand, frankly, why the second letter, which is apparently available for tabling, is not here to be tabled today. Perhaps you could explain that.

Prof. Flint—It is not in my file.

Senator FAULKNER—Is it in someone else's file?

Prof. Flint—It should have been in my file; it just is not in my file. I am not trying to hide anything. It is merely a letter enclosing a copy of a speech. I do not think it will cause great interest. It refers to a paragraph in my speech, and I will provide it. If the Senate wishes to see me again regarding the letter, as you know, I am always available if I can be available. I have never hesitated to come before this committee and I am willing to come again if that is necessary.

Senator FAULKNER—You have said it is not in the file; I completely accept that. Is there a hard copy of this letter somewhere?

Prof. Flint—Yes.

Senator FAULKNER—Could it be faxed? There is all this wonderful technology now. Could it be faxed so we could get a copy of it?

Prof. Flint—I will ask that that be done.

Senator FAULKNER—I would appreciate that, because I think whenever a problem like this arises we have always got an answer. We can always find a way around it.

Prof. Flint—If you bear with me for a moment, I will see what can be done. It is now in hand.

Senator FAULKNER—Thank you; that is helpful. You qualified an answer to an earlier question from Senator Mackay referring to 'all the letters that we have been able to find'. You also indicated a moment ago that the letter that we have just spoken about, that it appears we will now get a faxed copy of, was not on file. Does this mean that it is your practice, generally, not to keep a full sent-correspondence file of letters that you have signed as chairman of the ABA?

Prof. Flint—The practice is to record all letters and to keep them in files.

Senator FAULKNER—So why did you use the terminology 'letters that we have been able to find'? Surely, if all letters were kept you would be able to find them all, would you not?

Prof. Flint—We think we have all the letters.

Senator FAULKNER—So there is no insinuation or suggestion that there may be other letters that are missing? I just want to clear that up.

Prof. Flint—There is no insinuation of that; but, of course, these all depend on humans filing letters and there is always the possibility, as we know, of misfiling—of letters being lost or being put in the wrong place.

Senator FAULKNER—But you have procedures within your office for the filing of these letters; it is not done by you. I assume you do not stick them on a file; I presume someone else does, which is perfectly reasonable. Would that be right?

Prof. Flint—Yes, that is the case. As with any office, we keep copies of all letters.

Senator FAULKNER—Would you type some of these letters yourself? They may not be—they may be typed by others. Some people are much more competent in the use of word processing equipment than I am and they type their own letters.

Prof. Flint—I have been known to type a letter, but I usually would write a letter; if I were going to send a postal letter, I would write it.

Senator FAULKNER—Fine. In this instance, I think one of the letters at least was generated on what looks like a word processor, or the equivalent. That is right, isn't it?

Prof. Flint—Yes.

Senator FAULKNER—That was the one you would talk about as being in the public arena—was that typed by you or somebody else?

Prof. Flint—It was typed by my secretary.

Senator FAULKNER—Okay.

Prof. Flint—I am sure it was typed by my secretary.

Senator FAULKNER—I want to be assured that there is not some sloppiness of process in record keeping at the ABA. There are provisions, which I am sure you would be aware of, under the Archives Act and the like. So I can be assured that the document-handling procedures at the ABA, correspondence records and the like are of the highest quality, can I?

Prof. Flint—You can; I am most impressed. When I came to the ABA, I was most impressed by the way in which the office was maintained, the records were maintained and matters were attended to in a very professional way. The staff of the ABA are very professional and I have no doubt that they maintain the records of the ABA to the highest standards.

Senator FAULKNER—Do you handwrite letters on ABA letterhead as well? You did indicate there were some personal letters that you write. Let me take it back a step, to be perfectly reasonable about it: do you write any personal letters using ABA letterhead—typed or in pen script?

Prof. Flint—It would be very rare that I would handwrite a letter on ABA letterhead. I cannot say that I have never done it, but it would be very rare.

Senator FAULKNER—Is that a relevant consideration in your correspondence with Mr Jones?

Prof. Flint—For example, on one occasion I sent something to Mr Laws—I sent him a book. We had had a meeting and he was interested in a particular book that we had been talking about. I sent him that and I would have sent a little personal 'with compliments' slip

with it. That is the sort of thing I should imagine that everybody does when you have a lot of relations and meetings with people.

Senator FAULKNER—I am sure that is the case; I am sure other people do send things with ‘with compliments’ slips on a regular basis. But my question goes to whether you are handwriting letters on ABA letterhead. I wondered if you could inform me if that is your practice; and, if so, if it is relevant to any of the correspondence we are speaking of.

Prof. Flint—It is not my practice, but I cannot say that I have never handwritten a letter on ABA letterhead—and it is not relevant, as far as I can recall, to Alan Jones. Because of the interest in this, I have gone back and I found that I had sent letters to Mr Jones before I went to the ABA. For example, on one occasion he expressed interest in a report we did on youth suicide, and when I sent him the report I probably sent that with a handwritten note. But I cannot say that I actually did that. There was correspondence, certainly, on relevant matters, before I went to the ABA.

Senator FAULKNER—There is a problem here with official record keeping in a sense, isn’t there? Let us say you write a note by hand on ABA letterhead; the question of record keeping practices then arises. One of the advantages of the contemporary practice of generating letters electronically of course is that there tends to be a back-up copy. I assume that would be the case, wouldn’t it, Mr Tanner, with correspondence generated in the ABA? There would be electronic back-ups of all these sorts of things, wouldn’t there? Professor Flint has indicated that there were letters typed by his secretary; there would be electronic back-up copies of those, wouldn’t there?

Mr Tanner—That would be usual, though we actually do not yet have a fully electronic filing system. Generally when a document is created, there would be a backup retained.

Senator FAULKNER—So with a handwritten letter—something in pen script—would you, as a matter of course, ensure a record was kept of such correspondence?

Prof. Flint—If I wrote a handwritten letter on ABA letterhead, I would ask that a photocopy be made and placed in a file.

Senator FAULKNER—So that is your practice?

Prof. Flint—Yes. For example, I might add a PS to a letter that I am sending to somebody, and I ask that that be photocopied and go in the file so that there is a record of that.

Senator FAULKNER—Have you been able to establish why certain of these communications are missing from the file?

Prof. Flint—I did not say that any communications were missing.

Senator FAULKNER—I thought you indicated that the second letter of 20 September 1997 was not on the file.

Prof. Flint—No, I do not have a copy on my file here.

Senator FAULKNER—I see, your file here—but it is on your other file?

Prof. Flint—Yes.

Senator FAULKNER—I did misunderstand you. I am pleased you have clarified that. So there is no suggestion that the ABA files are not complete?

Prof. Flint—There is no suggestion whatsoever. Both of those letters I had completely forgotten. Until first I saw the letter of 11 June on television and the letter of 28 September 1997, I had not recalled that.

Senator FAULKNER—I am glad you clarified that. I think that it is important. Didn't I read somewhere a public statement from you that you could not locate some letters or certain correspondence? I might be wrong in my recollection, but I certainly recall reading that somewhere.

Prof. Flint—I have come to the conclusion that these were letters before I came to the ABA. One in particular was a letter which I wrote after I had chaired a conference at the Australian Institute of National Affairs and Mr Paul Kelly had been talking about international trade. During the course of that, he said that there was a different view on the benefits of international trade, and the person who presented that was very well-researched and very well-informed and people should listen to him. I recall noting that and sending it to Mr Jones, but I suspect now that it was before I went to the ABA. I think it was when I was dean of my law school.

Senator FAULKNER—So in regard to those newspaper articles or the speculation of your statements that you could not locate certain letters, you are able to assure the committee that those letters are not letters generated at the time when you have been chairman of the ABA?

Prof. Flint—That is the best of my recollection.

Senator FAULKNER—In relation to the correspondence in 1999, one of the key dates that you mentioned was 11 June 1999. If I am correct, that is the letter of which copies have been made public. Is that so?

Prof. Flint—That is so.

Senator FAULKNER—Did you keep a response to that letter on file? Let me be clear here: obviously, you have indicated what the procedures are at the ABA in terms of generated correspondence—now I am asking about the responses to those letters that you sign on ABA letterhead.

Prof. Flint—There is a response. That is the subject of an FOI, and that is a matter on which advice is being taken.

Senator FAULKNER—That is the response from Mr Jones, I assume, is it?

Prof. Flint—Yes.

Senator FAULKNER—Are you able to indicate to the committee what the date of that response is?

Prof. Flint—Not now.

Senator FAULKNER—Why is that?

Prof. Flint—I do not have it in front of me.

Senator FAULKNER—Is there further correspondence in what has been described by others as ‘a stream of correspondence’? Are there further letters from either you or Mr Jones?

Prof. Flint—There are two letters from me, and there are responses from Mr Jones.

Senator FAULKNER—There are two letters from you.

Prof. Flint—Yes, the ones I mentioned—28 September 1997 and 11 June 1999.

Senator FAULKNER—Two and only two?

Prof. Flint—Two.

Senator FAULKNER—And the responses from Mr Jones.

Prof. Flint—That is right.

Senator FAULKNER—Of course, the fact that this is subject to an FOI request does not have any bearing, as you would appreciate, on the work of this committee.

Prof. Flint—Yes.

Senator FAULKNER—That is a matter for FOI officers and the ABA, but it is not a matter that we need concern ourselves with here. I do not think it should alter in any way any consideration of this committee. So apart from the fact that there is an FOI request, which I am sure is not relevant as far as this or any other committee of the parliament is concerned, is there any reason why it could not be tabled?

Prof. Flint—It depends on whether or not they are letters to the ABA or whether they are personal letters.

Senator FAULKNER—Sorry; I thought these were responses to letters that you had sent on ABA letterhead and signed as chairman of the ABA.

Prof. Flint—Yes.

Senator FAULKNER—Doesn’t a response to such a letter form part of the records of the Australian Broadcasting Authority?

Prof. Flint—A ruling on that is yet to be made.

Senator FAULKNER—You have used the terminology ‘a stream of letters’. I think you used that publicly, including on the *7.30 Report*. Do the four letters that you have identified correspond to the stream of letters that you have spoken of? Let us be clear at the start. I think ‘stream of letters’ or ‘stream of correspondence’ is your own terminology, isn’t it?

Prof. Flint—I did use that term. I did not say ‘flood of letters’.

Senator FAULKNER—No, and I did not say ‘flood of letters’ either. I said ‘stream’.

Prof. Flint—A stream is a very small trickle.

Senator FAULKNER—Sorry; you have redefined ‘stream’ to be ‘a very small trickle’?

Prof. Flint—That is how I would regard a stream, Senator. When you write a lot of letters, Senator, you do not recall every letter that you have ever written in your life. Some come as a

surprise to you when you see them again. There were letters written before I came to the Broadcasting Authority which constitute part of that stream.

Senator FAULKNER—Yes. There is a definitional problem here. You are not entirely sure whether those letters—and, to be fair to you, you have not categorically stated to the committee—were generated prior to your becoming chair of the ABA. You think that is the case. That is fair, isn't it? That is my interpretation of your comments, but I think it is a fair one.

Prof. Flint—I know some of them were generated before.

Senator FAULKNER—Yes. Some of them. When did you become ABA chairman?

Prof. Flint—In October 1997.

Senator FAULKNER—And there was a letter after you gave a speech at the Sydney Institute, wasn't there? That was a 1999 speech, from memory. That is included as one of these?

Prof. Flint—I think so.

Senator FAULKNER—With respect, 'I think so' is not a good enough answer. We must be precise here. The evidence has to be precise. I do not want to put words into your mouth; I just want a precise answer. It either is or it is not. As you would appreciate, Professor Flint, these are matters that have received a great deal of publicity. I am sitting here at this committee with no particular expertise or knowledge of these matters at all, except what I have read in newspapers—a most unreliable source to depend on at times, I can assure you, as I am sure you would appreciate. I have read that there were four letters in 1999, the first after you did a speech at the Sydney Institute on 25 May. That is when you were the ABA chairman. I think this was canvassed on the *7.30 Report* interview. Was there a letter after your Sydney Institute speech?

Prof. Flint—There was the letter of 11 June 1999, which I assume was the letter after the Sydney Institute speech.

Senator FAULKNER—The Sydney Institute speech was on 25 May so that is possible. That is right, isn't it?

Prof. Flint—That is likely.

Senator FAULKNER—Are you saying that there was no further correspondence in 1999?

Prof. Flint—I cannot recall any further correspondence in 1999, and the files do not show any further correspondence.

Senator FAULKNER—If you had sent such letters they would be on the file, wouldn't they?

Prof. Flint—Yes. They should be.

Senator FAULKNER—They should be on the file. So now the stream of correspondence in 1999 is down to one letter. Is that right? The stream of correspondence in 1999 that you

described on the 7.30 Report—your words, not mine—is now one letter. That is what you are now saying to the committee.

Prof. Flint—I did not say a ‘stream of letters in 1999’; I said ‘stream of letters’. I did not say when the stream began. I recalled the letter I had written, but it must have been before I became ABA chairman and it has probably been destroyed, for all I know. We cannot find it. It is a letter referring to the Australian Institute of International Affairs.

Senator FAULKNER—Mr Tanner, can you tell me what the procedures are at the ABA for holding, recording and archiving such correspondence? Can you outline those procedures to the committee, please.

Mr Tanner—There is not a single system that applies to every document generated in the ABA. We have a filing system. It is a paper based filing system. Official business of the ABA generally gets a file or is put on an existing file, and copies of correspondence that relate to that file are sent. However, there is an amount of correspondence that occurs outside the filing system on one-off matters, responses to questions and those sorts of things. I would expect that members would generate some correspondence which would not fit on any particular file. Whether or not they choose to open a file is something that I have not taken an interest in. In a situation like that I would expect that they would have inside their offices a record of outgoing correspondence. I should say that I have a record of outgoing correspondence myself. There are some bits of correspondence that I send out that it would just be creating enormous amounts of paperwork to be opening a file on.

Senator FAULKNER—As I understand it, there has been a letter of 11 June 1999, which Professor Flint properly says has got a great deal of publicity. It is in the public arena. That is correct, isn't it?

Prof. Flint—Yes.

Senator FAULKNER—Let us go back to the letter that was generated after the Sydney Institute speech. You said you thought it might have been 11 June. Given that the 11 June letter does not mention the Sydney Institute speech in it, it is not an unreasonable conclusion to come to that there might be another item of correspondence. I do not want to jump to that conclusion; I just want to understand what the situation is.

Prof. Flint—If there is, it has not been located.

Senator FAULKNER—But you have said publicly that there was a letter after your speech to the Sydney Institute. What was it doing? Did you enclose a copy of the speech?

Prof. Flint—I should imagine I did.

Senator FAULKNER—So that is a different letter, is it not, to the one of 11 June?

Prof. Flint—It may not be. That may be the same letter.

Senator FAULKNER—So you think that it is likely that you have written a letter to Mr Jones enclosing a copy of the Sydney Institute speech without mentioning the fact that the Sydney Institute speech is enclosed? That would have been ill-mannered of you, would it

not—to just shove a copy of the speech in the envelope and hope for the best? That beggars belief.

Prof. Flint—It is very difficult to recall. Remember, this was well before there was any suggestion that there would be a major investigation. Kerry O'Brien was quite wrong in saying that this was at the time that that investigation looked as though it was going to come on. That investigation was—

Senator FAULKNER—I am not interested in Kerry O'Brien; he is not here at the table. I have often disagreed with Kerry O'Brien and at times I have agreed with him. But he is not at the table. I am not questioning you about Kerry O'Brien's opinions. I do not care about Kerry O'Brien's opinions, frankly; I care about what the facts are.

What I know is that you have indicated that there was a stream of correspondence, which you have now redefined to day as some sort of trickle of correspondence. I know, because of evidence that you have given and because it is in the public arena, that there was a letter from you to Mr Jones on 11 June 1999. That is in the public arena. I also know that you sent to Mr Jones a copy of a Sydney Institute speech after you made that speech in 1999. That is the second matter.

I also know that you are saying that there is now only one letter to constitute the stream of correspondence. I am sorry but all that adds up to a very confused picture. Even in your own words and evidence there are at least two letters, if not more, in 1999—in your own words, it is a stream of correspondence—and you come to the committee and expect us to now accept that the stream of correspondence is in fact one letter. Don't you think that beggars belief?

Prof. Flint—What I expect any member of this committee to understand is that, to ask somebody about letters which, at the time, were not of great moment—to ask somebody to recall seven years later every letter you wrote, out of the many letters we all have to write—is just ridiculous. It is just ridiculous to think that I could possibly remember precisely which letters I sent and which I did not. I must rely on the record. I have no reason to believe that the record is incorrect, but there can be mistakes made—I know that—and there can be misfiling. That is the situation. That is the best of my recollection. I am not prepared—even though I am not under oath—to say something which is untrue. It is the best of my recollection.

Senator FAULKNER—I do not expect you to say something that is not true—and no-one on this committee would. Given the notoriety of this issue, given that at least one member of this committee has asked you to bring correspondence and given that you have made an opening statement that you are well aware of that, I do expect you to be able to respond to what I think are very reasonable questions about some very important issues.

Prof. Flint—Senator, you cannot expect me—you cannot expect anybody—to recollect precisely what letters they wrote seven years ago on matters which were of no moment at that time. It is not possible for me to recall and I am not prepared to imagine what might have happened; all I can say to you is what I know.

Senator FAULKNER—When you yourself have placed on the public record facts in relation to sending a copy of a speech you made at the Sydney Institute in 1999 to Mr Jones, I do expect that to be part of the correspondence record you refer to.

Prof. Flint—I recollect sending that speech. That is the best of my recollection and I cannot recall anything more about the correspondence. If I asked you to recall to which constituents or to which ministers you wrote in 1997 and the way and the order in which you wrote, I am sure you would have the same difficulties that I and any other person would experience. It is just an impossible burden to put on me.

Senator FAULKNER—With due respect, the first thing I would do is check the files, which you have done—that is first thing I would do. But then again I do not think I would be making courageous claims on national television about this correspondence flow if I was not confident that what I was saying was correct. So I certainly would not be saying there is a stream of correspondence and then front up to a parliamentary committee and say there is one letter. I would not be suggesting that there was the letter that we all know about of 11 June that has received public notoriety and another letter that we know of in relation to the speech at the Sydney Institute and say there is one letter.

So there are quite significant differences between your approach and mine. I would also respectfully say to you, Professor, that I would hope my record keeping was far superior to the record keeping at the ABA. And I am not necessarily critical of you about that at all, but I would like to think that if I sent such letters I would have copies of them. That is my response to the point you make. But let's not get bogged down in it. You can understand, I think, why committee members would be concerned in those circumstances. Did you see the newspaper speculation—or not speculation but an article—in the *Australian* newspaper of Thursday, 6 May 2004? Under the by-line of Mark Day this article was headed 'Further letters damage Flint'. It was about—in my words—a stream of letters in 2003.

Prof. Flint—Yes, I saw that.

Senator FAULKNER—Are you able to provide some background to the committee about those particular letters?

Prof. Flint—No letters were sent in 2003 from the ABA by me to Mr Jones.

Senator FAULKNER—So are you suggesting—it may well be the case—that the information contained in that article is totally inaccurate?

Prof. Flint—It is misleading. In 2003 my publishers sent copies of my book and invitations to a launch to a number of people in the media. That year I ran into Mr Jones in an airline lounge and he asked me about it and he asked me for some information on my book. And, although my publisher said he had sent a copy, I sent him another copy with a handwritten note. I sent that to him personally.

Senator FAULKNER—So in this case it is a personal note; you are saying you would not have used ABA letterhead.

Prof. Flint—I did not use ABA letterhead; it was not sent from the ABA; it was sent—

Senator FAULKNER—Are you saying it is a personal note?

Prof. Flint—Yes.

Senator FAULKNER—And it did not use ABA letterhead and therefore one would not expect it to be part of the records of the ABA.

Prof. Flint—That is right.

Senator FAULKNER—I do not, I can assure you, want to go through your complete correspondence files, but because this correspondence with the broadcaster Mr Jones has been in the public eye are you able to indicate to the committee whether on the ABA correspondence file, apart from the letter of 11 June 1999—and I want to be clear here: that is on the ABA correspondence file, isn't it?

Prof. Flint—Yes.

Senator FAULKNER—Is there any other correspondence between you and Mr Jones on file at the ABA?

Prof. Flint—All that is at the ABA is the third letter to which I have referred—

Senator FAULKNER—So this is the April 2000 letter?

Prof. Flint—About April 2000.

Senator FAULKNER—So that is on file.

Prof. Flint—Yes. It was sent at the request of the board of the ABA.

Senator FAULKNER—Yes, I appreciate that. You have indicated that to the committee. So there are only two letters on file: the 11 June 1999 letter and a letter sent on behalf of the board of the ABA around April 2000.

Prof. Flint—And a letter dated 28 November—I said September—1997.

Senator FAULKNER—And a letter dated the 28th. Did you say November?

Prof. Flint—Yes. I had September. It was November.

Senator FAULKNER—I thought you said September.

Prof. Flint—I did say September. It could not have been September because I had not been appointed.

Senator FAULKNER—That is why I was not including it. It seemed to be prior to your—

Prof. Flint—And Mr Tanner has just told me that the letter on which advice is being taken is dated 19 April 2000.

Senator FAULKNER—I think we better get this clear now for the sake of the record. What you previously said was a September 1997 letter is actually a 28 November letter.

Prof. Flint—That is right.

Senator FAULKNER—That is on ABA letterhead and signed by you as chairman?

Prof. Flint—That is right.

Senator FAULKNER—There is the 11 June 1999 correspondence, signed by you and on ABA letterhead?

Prof. Flint—Yes, both of which, I must stress, I had not recalled until I saw them.

Senator FAULKNER—Yes. And there is a letter of 19 April 2000, a letter sent on behalf of the board but signed by you as chairman on ABA letterhead.

Prof. Flint—That is right.

Senator FAULKNER—So in relation to any further correspondence signed by you or sent by you—or on your behalf, if I can make that distinction as well, Mr Tanner, as sometimes happens—there is no other correspondence in your name that was sent to Mr Jones?

Mr Tanner—If we are talking about correspondence sent on Mr Flint's behalf, we have conducted a series of investigations.

Senator FAULKNER—Hang on; in Professor Flint's name. I presume the professor signs most of his own correspondence. But if you, Mr Tanner, for example, have signed something on behalf of him—

Prof. Flint—That hardly ever happens.

Senator FAULKNER—I accept that that is the case.

Mr Tanner—I to my knowledge have never been called on to sign a letter to Alan Jones on the professor's behalf.

Senator FAULKNER—So my question goes to assuring the committee that that is the complete record of correspondence from Professor Flint to Mr Jones held at the ABA—those three letters: 28 November 1997, 11 June 1999 and 19 April 2000. We can be assured of that?

Prof. Flint—Is the question being addressed to Mr Tanner or me?

Senator FAULKNER—It is being addressed to you or Mr Tanner—whoever cares to answer.

Prof. Flint—That is the best of our knowledge.

Senator FAULKNER—With respect, that is not a reasonable answer. I am trying to check what is on the files and what is not. Has anyone checked the files?

Prof. Flint—Yes.

Senator FAULKNER—If you have checked the files, you ought to be able to say whether those three are the only letters, surely?

Prof. Flint—I have asked staff to help, and that is what we have located. That is the best of what we can locate.

Senator FAULKNER—So it has not been an exhaustive check?

Prof. Flint—It was as exhaustive as one can reasonably be. But I could not be 100 per cent sure of anything in these matters.

Senator FAULKNER—Obviously not.

Prof. Flint—I am sure this would apply to all of us. No filing system is perfect.

Senator FAULKNER—Filing systems are imperfect, but I am asking you what exists on the filing system. That is why I think you ought to be able to provide me with a definitive answer. I am not asking whether the filing system is perfect or imperfect; I am merely asking whether the check has been thorough and, hence, whether I can receive a definitive answer as to whether that is the only correspondence on the filing system. So do not redefine the question. It is about the existing filing system, imperfect or not, and the full record of what is on it.

Prof. Flint—Extensive searches lead to that conclusion.

Senator FAULKNER—Lead to what conclusion?

Prof. Flint—The conclusion that those are the letters which I sent to Mr Jones.

Senator FAULKNER—Are you able to indicate to the committee whether responses to that correspondence are also on file?

Prof. Flint—There are two responses, and they are on file. But, as I say, they are being made the subject of a ruling as to their status.

Senator FAULKNER—Both are, are they?

Prof. Flint—Yes.

Senator FAULKNER—We have heard of one. For the completeness of the record, can you indicate, first of all, the dates of those two items of correspondence?

Prof. Flint—I would have to take that on notice.

Senator FAULKNER—Can you indicate to the committee whether they were responses to the letters that you have outlined?

Prof. Flint—They were essentially responses, but in a chatty, personal way.

Senator FAULKNER—To which letters were they responses?

Prof. Flint—I think they were responses in 1997 and 1999.

Senator FAULKNER—You think?

Prof. Flint—Yes, but I would have to take that on notice and let you know.

Senator FAULKNER—And both of these are subject to an FOI request, are they?

Prof. Flint—Yes.

Senator FAULKNER—Mr Tanner, is it right that you are seeking legal advice on this issue?

Mr Tanner—My knowledge of this correspondence proceeds entirely from my role as a potential delegate under FOI. I have seen the three outgoing letters from Professor Flint that are under discussion. I am not aware of what other correspondence exists. I am aware that advice is being prepared on a couple of aspects of FOI—including, I understand, the issue of

the status of the letters from Jones to the chairman. But I am not sure, to be honest, whether that is complete. I would have to check that.

Senator FAULKNER—Is there any reason why that correspondence cannot be tabled at this committee?

Prof. Flint—That would depend on the legal advice as to whether they are letters of the ABA.

Senator FAULKNER—I thought you had indicated to us that they were letters sent in response to letters you sent to Mr Jones on ABA letterhead. Are you seriously suggesting that if someone responds to such a letter it is not part of the official record of the ABA?

Prof. Flint—That is a matter yet to be determined. It will have to be determined soon because time will run and there will possibly have to be consultations with the letter writers as to whether they should be released.

Senator FAULKNER—Aren't these in the files of the ABA, forming part of the record of the ABA and archived with the ABA? Isn't that right, Mr Tanner?

Mr Tanner—If I am the delegate on this, that is an issue I am going to have to form a view on. I would expect to form that view in light of the legal advice and the documents. I have not seen the other letters and I have not seen, or at least I do not recall seeing, the final legal advice. My position here is as an FOI delegate.

Senator FAULKNER—You have sought the legal advice, have you, Professor Flint?

Prof. Flint—Yes.

Senator FAULKNER—In your role as chairman of the ABA or privately?

Prof. Flint—In my role as chairman of the ABA I have asked lawyers to advise on this and I have also set in train a process whereby I am not the delegate. Obviously, I should not be the delegate, although I would quite often be the delegate for these matters. The obvious choice as delegate is the general manager. That advice and those letters will very shortly go to the delegate to make a decision as to what should happen.

Senator CHERRY—Have you made submissions to the lawyer about whether you think they are private correspondence or ABA correspondence?

Prof. Flint—I have asked the lawyers to advise. I have not made submissions, but the lawyers will advise as to whether they are or not.

CHAIR—Senator Cherry has questions on this issue as well. I have suggested to him that, if you are covering ground with Professor Flint which he is also interested in, at the conclusion of your questions he might pursue the aspects of it which are of interest to him. Are you happy with that arrangement?

Senator FAULKNER—Yes. He can interrupt as he sees fit; there is no problem with that. We are always very reasonable about these things, as you know, Mr Chair. Mr Tanner, who authorised the seeking of legal advice on these matters?

Mr Tanner—I understand that the chairman, when asked for the documents by the officers who were responding to the FOI matter, queried the status of certain documents—that is, whether or not they were documents of the authority. I understand advice is being prepared. I should explain that we do not have a designated FOI officer at the ABA. We have a substantial legal section headed by general counsel, and it is an officer in that legal section who, in consultation with her superiors, is preparing advice. I would expect that, as the delegate, the advice would go to me, together with the documents, for a determination. My understanding is that the chairman has raised the query, and I have not at this stage seen the documents.

Senator FAULKNER—What documents are we talking about?

Mr Tanner—We are talking about correspondence—I know nothing more than this—from Mr Jones to the chairman.

Senator FAULKNER—There are those two items of correspondence.

Mr Tanner—I do not even know how many letters we are talking about.

Senator FAULKNER—I am just trying to clarify this.

Mr Tanner—As I understand it, I have seen the outgoing side of what has been found. That is what has been communicated to me.

Senator FAULKNER—The chairman obviously has a separate correspondence filing system. Is that right?

Mr Tanner—That is my understanding.

Senator FAULKNER—Surely you would know—you are supposed to be running the show.

Mr Tanner—As a matter of fact, I do not run the chairman's office or the members' offices or the part-time members' offices.

Senator FAULKNER—Obviously. Who runs the ABA, you or Mr Flint?

Mr Tanner—Mr Flint is the CEO of the ABA. I am the senior public servant employed by the ABA. I am an adviser to the board.

Senator FAULKNER—But aren't you in charge of the administrative procedures—

Mr Tanner—On behalf of Professor Flint I am, but I do not run the members' offices. My staff provide services to the members, but the members constitute the authority. They are not answerable to me. I am a helper, I am a public servant. I am not the CEO.

Senator FAULKNER—But you are providing administrative backup and support to the members of the board.

Mr Tanner—I am. And perhaps, as there is an issue here about the completeness of the authority's records, I should explain that the FOI Act contemplates the situation that an agency may not be able to be certain it has found documents that are sought. It is sometimes the case under FOI that people make requests for documents that either do not exist or perhaps have been lost. Given the media speculation and the uncertainty about how many

documents we are talking about, I had, with the lawyers, already given a direction that, before signing off on this request, I would get the chairman and his executive assistant to fill out a particular form which sits under the FOI legislation assuring me as to what searches have been conducted and where those searches have been done. That is a safeguard which is built into our FOI procedures to ensure that where there is any issue about whether or not correspondence is complete, we can be accountable about the extent to which we have looked. I am not sure that that has yet been given to the chairman. This may be news to him. But that is something I have asked the lawyers to do.

Senator FAULKNER—He can tell us that. He is actually sitting beside you.

Mr Tanner—That is something I would do for any FOI request where there was uncertainty about whether or not all the documents that were in scope had actually been found. Short of going and actually searching in all the various places they could be myself, that to my mind is a fairly thorough system for addressing the issue of whether we found all the documents.

Senator FAULKNER—Professor Flint, have you sighted that form yet?

Prof. Flint—No, I have not.

Senator FAULKNER—There you are. We have been able to assist, Mr Tanner. Professor Flint has not seen the document yet. No doubt he will get to it in due course. Let us hope it is not lost, like a lot of the other things.

Mr Tanner—I have only had the opportunity to speak to my lawyers about this request pretty recently. I became aware that I was the delegate for these FOI requests on Friday. We are in the middle of a process.

Senator FAULKNER—I am just trying to understand the correspondence handling procedures at the ABA. It sounds like—and, Professor Flint, you can comment on this—your own office handles such matters. It is not more broadly a responsibility of—

Mr Tanner—Let me just draw a distinction. If Professor Flint were writing to Alan Jones as part of an investigation where he was requesting some information, that letter would have been prepared for him by my staff, and a copy of the letter would go onto the file of that investigation. Members, to my knowledge, sometimes correspond in their own capacity with third parties. That correspondence is not, to my knowledge, always put on the filing system which my staff run. It is kept in their outgoing correspondence files or in their offices. So there is a distinction here, I guess, between the personal correspondence of a work nature of my members, which I am not called in to assist with, except to provide them with executive assistance and all the normal support that we offer—the backups and those sorts of things—and there is the ongoing work of the authority, where the chairman is working on stuff which my staff run files of.

Senator FAULKNER—But when were you appointed as the FOI delegate?

Mr Tanner—We have a fairly widespread delegation to consider FOI. I decided, in consultation with the lawyers, that I should be the FOI delegate as late as last Friday.

Senator FAULKNER—Last Friday.

Mr Tanner—For the purpose of the group of FOI requests that have come in relating broadly to this correspondence.

Senator FAULKNER—I see. That is a board appointment, is it?

Mr Tanner—No. As I think the chairman has already said, it is not appropriate for him in this instance to be the delegate. I need to consider who would be the delegate and who would be the delegate for the purpose of any request for review. A fairly normal configuration would be that one of my staff, such as Andree, would be the delegate and either I would be the reviewer or the chairman would be the reviewer. In this case, the view I have taken to date is that an appropriate configuration would be myself as the delegate and the deputy chair as the reviewer. I have communicated that to the deputy chair, and I do not consider it to be the kind of issue where I would consult with the board. It is the kind of issue where I would simply make what I think are proper arrangements to ensure the FOI request is handled in a timely way.

Senator FAULKNER—You have indicated to the committee that there are two items of correspondence from Mr Jones—a response to Professor Flint’s letter of 28 November 1997 and the letter of 11 June 1999. Are there any other matters, Professor Flint, that you have sought legal advice on? You sought legal advice on whether those should be made public; are there any other documents you have sought advice on apart from those two letters?

Prof. Flint—Only that third letter of—what is it?

Senator FAULKNER—19 April 2000.

Prof. Flint—19 April 2000.

Senator FAULKNER—Yes. So it is those three letters?

Prof. Flint—Yes.

Senator FAULKNER—You have indicated that, as far as your records there at the ABA are concerned, there is no response on file to the 19 April 2000 letter?

Prof. Flint—I have not seen a response to that.

Senator FAULKNER—There is no response on file to the 2000 letter?

Prof. Flint—There is no response on file.

Senator FAULKNER—Yes. Obviously, you have some separate correspondence files in the chairman’s office—it seems obvious from what we have been told, but let us just double-check that; is that right?

Prof. Flint—Yes—as does every member and as did my predecessors, I am sure.

Senator FAULKNER—Yes. So the responsibility for checking those files, which I think you would accept is important—that it be an absolutely thorough check—who did you task to undertake that role?

Prof. Flint—I asked two members of staff to make a thorough search, and they spent an afternoon looking for letters.

Senator FAULKNER—Are they staff from outside your office?

Prof. Flint—My personal assistant, and another staffer from outside my office.

Senator FAULKNER—I just want to be clear on one issue: we have talked about the limit of the correspondence between you and Mr Jones, and you have indicated to the committee that this is the limit of it—it is on the public record now. If I were to include other communication mechanisms such as emails, faxes and the like, would your answer stand? In other words, have there been communications of any other type with Mr Jones that you might care to bring to the attention of the committee? We have been dealing exclusively with letters as correspondence.

Prof. Flint—Those letters would include letters which have been faxed, I would have thought, because they are treated in the same way as letters—

Senator FAULKNER—Thank you.

Prof. Flint—and I am not aware of any emails sent.

Senator FAULKNER—You also indicated that the number of face-to-face meetings you have had with Mr Jones is also very limited—I think you indicated that to the committee a little earlier.

Prof. Flint—Extremely limited.

Senator FAULKNER—In fact, there were two occasions; is that right?

Prof. Flint—No, there were two occasions before the commercial radio inquiry.

Senator FAULKNER—There were two occasions before the commercial radio inquiry?

Prof. Flint—Yes, that is right. One was at the dedication of a memorial to a deceased athlete; the second was at a launch of a book at Parliament House in New South Wales. Those are the only two occasions on which I saw Mr Jones before the 1999 commercial radio inquiry.

Senator FAULKNER—Could you or Mr Tanner outline the internal processes that took place when you stood aside?

Prof. Flint—Yes. There was a lot of pressure on me to stand aside but I was mindful of the admonition of the High Court in these matters that officers should not lightly disqualify themselves. My decision to stand aside was not based on legal reasons. It was because I knew that, if I ruled against the request that I stand aside, those who wished me to stand aside would take the matter further. They had indicated that they would go to the Federal Court. If we went to the Federal Court, whichever side lost would probably appeal. This would have delayed the commercial radio inquiry by months, if not years, which I decided was not in the public interest. I had taken personal legal advice and I was told that I had a very good chance of defeating the application that I should withdraw, the argument being that my appearance on

the Laws program was in public—it was not a private conversation with a person—and that this would not constitute apprehended bias. In any event, I decided I would stand down.

The hearings resumed on Monday, 8 November 1999, and I immediately announced I would stand down. I gave reasons for that, which are in the record. There was then legal argument. The people who wanted me to stand down wanted to present the reasons why they wanted me to stand down, which I thought was superfluous but I permitted it. Then there was argument put to me that I had no power to stand down and that a mandamus could be sought from the Federal Court to make me stay. I considered that briefly and—for this reason only—because the commercial radio inquiry would drag on for years, all the people involved would have it over their heads and it would be unresolved, I decided it just was not in the public interest to go on. I had seen this happen many times with the old ABT, which was always in the Federal Court through no fault of its own; it was the structure of the act before you changed the act in 1992.

I had two members coming to see me, and they both indicated their willingness to replace me. The advice from counsel, Julian Burnside, was that the single member would continue. I questioned him on that because he had advised me previously that the panel had to have more than one member. I decided that the panel should continue with more than one member and since two members were available I decided that I would appoint both of them—Ms Henderson, who had been appointed under the previous government, and Mr Robinson. It was done on the basis that they would read all the transcripts and watch all the videos of the previous proceedings and catch up. So it was a decision of mine to stand down and it was a decision of mine to appoint two members to replace me. It was not that I thought I needed two people to replace me, but I saw that they were both willing to be available and I thought that they could add value to the process. So that is how this happened. It was a very smooth transition, within a few hours. Later on in the morning the whole matter was proceeding, so little was lost in that transition. That is what happened; that was the machinery.

Senator FAULKNER—Can you explain why you did not disclose your correspondence with Mr Jones prior to the ABA October hearings into 2UE which you presided over? Before you answer that, I am not sure how best to refer to that set of hearings. What is the correct terminology?

Prof. Flint—They were hearings, yes.

Senator FAULKNER—But how do we best describe them?

Prof. Flint—The commercial radio inquiry—which I much prefer to ‘cash for comment’, which I have tried to outlaw.

Senator FAULKNER—That is why I was asking you, just so we know we are talking about the same issues. The commercial radio inquiry.

Prof. Flint—Yes; and it was about the issue of talkback presenters being funded separately by their own sponsors. That was the whole point of that.

Senator FAULKNER—People say ‘cash for comment’ as shorthand.

Prof. Flint—Yes. I think it assumes far too much and it is—

Senator FAULKNER—Anyway, we know what we are talking about, so my question to you is: why did you not disclose the correspondence with Mr Jones prior to those hearings?

Prof. Flint—Before the hearing, I consulted with general counsel at the time and I said that I thought that there were some matters I should disclose—and they were the two times in which I had seen Mr Jones. Also, I had seen the chairman of 2UE, who asked to see me. The general counsel said the best thing to do would be to make a declaration at the opening, which other members then followed me in so doing.

I did not declare the correspondence because I had completely forgotten the correspondence. That is why I have had difficulty in recalling these matters. The first time I had any recollection of the letter of 11 June 1999 was when it was shown on ABC television. I had completely forgotten that correspondence. If I had remembered I would have declared it. Why would I have declared the fact that I had seen Alan Jones on two occasions? The second occasion was also of interest because he launched a book in which I had written a chapter, so it had particular relevance—perhaps more relevance than a rather generous letter that I sent in 1999 commenting on his abilities as a presenter. There are limits to what you can declare and what you remember. If you go to the Pinochet decision in the House of Lords—a much more senior matter than that of the Broadcasting Tribunal—Lord Hoffmann forgot to disclose that he was a director of a charity associated with Amnesty International and that his wife worked for Amnesty International.

Senator FAULKNER—But isn't it fair to say that the correspondence was much more damaging than the two personal contacts you did disclose?

Prof. Flint—I do not think so; others think so.

Senator FAULKNER—Oh really.

Prof. Flint—If you look at the context of the letter, it was well before the inquiry and it was a comment on Mr Jones's ability. Sometimes we commit these things to writing; other times we put them in words. I have praised John Laws's ability as a presenter to other people. He has a mellifluous voice and he obviously has a great following in the rural parts of this country and the cities. We say these things, and on this occasion I put it down writing. But I do not see it as a damaging letter and it was not something that I recall, because we send a lot of letters in our lives.

Senator FAULKNER—Mr Tanner, did the ABA have advice regarding Professor Flint's status as to whether he should have stood down or not? This is a question to Mr Tanner.

Prof. Flint—I am just reminding my friend that there was advice.

Mr Tanner—We had a counsel assisting, Julian Burnside, and he provided advice on issues that were germane; it was not internal advice. I am not actually privy to the detail. Sorry, I will rephrase that. I do not immediately recollect the exact detail of what happened over those days leading up to the chairman's stepping down.

Prof. Flint—I can help you on that.

Senator FAULKNER—I will ask you to help me in the moment, but my question was about internal advice. Is Mr Burnside the counsellor to whom you were referring, Professor Flint?

Prof. Flint—Yes.

Senator FAULKNER—I was asking about internal advice, and that is why I directed my question to Mr Tanner in this instance.

Mr Tanner—The general counsel of the ABA at that time was working with AGS solicitors and Julian Burnside as a team affixed to the hearing. They were off-site and that was where the legal advice to the hearing was coming from. I cannot recollect to what extent our own general counsel was involved in the development of that advice, but Julian Burnside, as a pretty senior counsel, was in the driving seat in terms of legal advice to that hearing.

Senator FAULKNER—I want to be really clear on this. Are you saying that you do not know whether the ABA had advice as to whether Professor Flint should stand down for the commercial radio inquiry?

Mr Tanner—I just do not recall, that is all. I need to take the question away.

Senator FAULKNER—It is a pretty serious issue. I am very surprised that you would not recall such a thing.

Mr Tanner—It is a while ago. I would need to go back—

Senator FAULKNER—It is a while ago. It is a matter of extraordinary public notoriety.

Mr Tanner—That is precisely why I would like to refresh my memory, that is all.

Senator FAULKNER—I would like you to refresh your memory. This is not something that is measured in column inches; the coverage of this could be measured in column miles.

Prof. Flint—But that is not the way lawyers work. They were a team: you have the internal counsel—

Senator FAULKNER—I was not asking you, Professor Flint, on this occasion.

Prof. Flint—I am helping you, Senator.

Senator FAULKNER—I am going to come to you in a moment. On this occasion I deliberately directed my question to Mr Tanner because I wanted his response. I want Mr Tanner on the record at this inquiry deliberately on that issue. I will come to you and, as you have seen, I am perfectly reasonable and I give you every chance to put anything you like on the public record. But I hope you appreciate that this was a question deliberately directed to Mr Tanner.

Mr Tanner—Precisely because the issues were of such public notoriety and, I think, so important to all of the individuals concerned, I would like to refresh my memory as to the sequence and as to what work Julian Burnside did for us at that time. I am not prepared for that question and my memory is not up to extemporising. I was not present on-site really for more than an hour during the entire commercial radio inquiry hearings; I was back as the general manager helping the chairman to run the rest of the show, which is my job. The

primary responsibility for running the inquiry was the general counsel's. I was steeped in the issues—I am a lawyer myself—but I would need to refresh my memory and I am very happy to take that question on notice and to tell you what my understanding is of what occurred once I have done that.

Senator FAULKNER—Thank you for that, but I express again my surprise and concern that you are not able to answer that question at this hearing.

Mr Tanner—Could you repeat the question? What is the—

Senator FAULKNER—I am going to ask Professor Flint now, but you have taken it on notice.

Mr Tanner—The question I am taking on notice is what advice the ABA has sought from lawyers on the particular issue of whether or not—

Senator FAULKNER—I asked whether the ABA had advice that Professor Flint should stand down.

Mr Tanner—Thank you.

Senator FAULKNER—It was not precisely in that form, but the *Hansard* record will show a question with the same intent. Professor Flint, I did want to ask Mr Tanner that question, but now if you can assist us I would appreciate it.

Prof. Flint—If I can explain Mr Tanner's position on this—

Senator FAULKNER—There is no need to explain his position.

Prof. Flint—I think I should for the benefit of the committee because there may be a misunderstanding.

Senator FAULKNER—If you want to.

Prof. Flint—In such a case it would be the general counsel of the ABA who, through the AGS, would be instructing senior counsel. You would not yourself as general counsel prepare an opinion; you would go to the top and ask for an opinion. I spoke to Julian Burnside and I am pretty sure he put it in writing. Julian Burnside's view, and he is a QC, was that he thought it was apprehended bias. The test in Australia—it does not apply in the UK—is whether a reasonable, well-informed member of the public in command of all these facts would have a reasonable apprehension that the officer could be seen to be biased. Would there be a reasonable apprehension?

He came to a conclusion on the particular facts, which are most unusual. Most of these contacts by an officer with a person—for example, a juror with a witness—are done in private. This was done as publicly as you possibly could. It was on the airways. He came to the conclusion that it was a case of apprehended bias and his advice, certainly orally—and I suspect it was in writing—was that I should recuse myself, which I did within a few days. As I said, I did not do it because of his advice; I did it, as I believed, in the public interest. I was not essential to the inquiry. Although it was my idea, I was not essential and it could be done by other members. I decided that the best way, the smoothest way, the way to provide a seamless change, was to do it that way. But there was advice, yes.

Senator FAULKNER—If that could be provided, I would appreciate it.

Prof. Flint—If it is in writing, we will certainly provide it if it is not subject to privilege. We will take advice on that.

Senator FAULKNER—The commercial radio inquiry commenced on 19 October 1999, didn't it?

Prof. Flint—I think so but, again, I would have to look at the files.

Senator FAULKNER—Let us be absolutely precise: public hearings commenced on 19 October 1999. I think that is right, isn't it?

Prof. Flint—It was certainly in October. We will check that.

Senator FAULKNER—Your correspondence with Mr Jones—I will turn it up because, as you rightly say, everyone in Australia has a copy of it—was dated 11 June 1999. Let me quote:

Thank you for your letter of the 2nd of June.

And I might interpolate here that the letter of 2 June, in my mind, forms part of the stream of correspondence, but we have not canvassed it here. The letter read:

Alan ... you have an extraordinary ability of capturing and enunciating the opinions of the majority on so many issues.

This of course annoys those who have a different agenda. I suspect it is extremely irritating to them that you do it so well ...

And so on. What you are saying to us today, Professor Flint, is that you simply did not remember that you had signed what I would have to describe as a particularly fawning piece of correspondence to Mr Jones on 11 June 1999. But, fair enough, it is your correspondence. My point is not the nature of the correspondence so much as the fact that you cannot remember on 19 October that you sent it on 11 June. Is that what you are saying to the committee?

Prof. Flint—Yes, and I am saying that without any equivocation. I did not remember it then and I did not remember it until it was shown on ABC television. Had I remembered it, I would have told our general counsel, because I was trying to recount all of the occasions on which I had contact with Mr Jones.

Senator FAULKNER—But of course it makes a big difference to the case, doesn't it, in relation to apprehended bias? The two instances you do remember are quite different in nature to such a letter. You are the legal expert, so you can advise us on that.

Prof. Flint—As I told you, in the Pinochet case, Lord Hoffman obviously forgot that he was a director of one of the amicus curiae's associated companies and he forgot that his wife worked with them—or did not think it was relevant. He probably did not forget; he did not think it was relevant. It is not unknown for this to happen, because the area of apprehended bias is a very grey area and it extends to all sorts of contacts. For example, it may well be that one of the members had some contact with the Communications Law Centre, which was one

of the amicus appearing before the inquiry, and had forgotten about it and that has not come out. We do not know.

Senator FAULKNER—Do you accept that you misled the commercial radio inquiry by not making public the fact that you had engaged in that stream of correspondence with Mr Jones?

Prof. Flint—I would have thought that to mislead requires a positive act—an intention to mislead. ‘Misleading’ is usually used in the sense of requiring an intention to mislead, and I certainly had no intention to mislead. I had gone to the trouble of telling my general counsel what had happened, and I was trying to ensure that all of those things were brought out.

Senator FAULKNER—Do you regret not disclosing those letters?

Prof. Flint—Of course I regret that.

Senator FAULKNER—Was it a serious error of judgment on your part?

Prof. Flint—You say ‘error of judgment’. Judgment requires positive knowledge. You make a judgment between doings of different things. If you have forgotten or overlooked something, it is not a question of the exercise of judgment—it is an error of memory, not an error of judgment.

Senator FAULKNER—Should you have disclosed those letters?

Prof. Flint—I think that, had I remembered them, I would have disclosed them, because I went out of my way to disclose other things.

Senator FAULKNER—So you should have disclosed them?

Prof. Flint—If I had remembered them, I should have disclosed them.

Senator FAULKNER—Is such incompetence a resigning offence?

Prof. Flint—I deny that it is incompetence. It happens regularly. Lord Hoffman did not resign.

Senator FAULKNER—We have heard about Lord Hoffman.

Prof. Flint—Mr Justice Scalia in the Supreme Court of the United States did not resign when he was reminded that he went duck hunting with the Vice-President. It is not a resigning offence. In fact, the High Court has said, ‘Don’t stand down too easily.’

Senator FAULKNER—But isn’t the truth that it is not just the commercial radio inquiry? Didn’t you go on to preside over a second and third inquiry into Mr Jones? That is true, isn’t it?

Prof. Flint—‘Preside’ is an inappropriate term.

Senator FAULKNER—I am happy to use your preferred term on this occasion. Would you be happy with ‘to chair inquiries’?

Prof. Flint—I sat on the board on those occasions, but the actual conduct of inquiries is an arms-length process. Once the board decides on an inquiry, the matters are handed to the general counsel. For example, the very big one was the ownership and control of 2GB. That

was a whistles and bells investigation; it was top level. We had people being examined. The delegates at those examinations were senior lawyers of the authority. The actual questioning was done by outside silk. This is done almost autonomously by the officers.

Senator FAULKNER—But you sat on those inquiries. The first was the one into 2GB ownership arrangements, which significantly involved Mr Jones. That was in 2002-03, wasn't it?

Mr Tanner—Yes.

Senator FAULKNER—The second was the 2GB-Telstra commercial arrangements, which Senator Mackay is far more expert in than I am. That was 2002 to 2004, wasn't it?

Mr Tanner—That is correct.

Senator FAULKNER—You sat on the board for both of those inquiries. Is that right, Professor Flint?

Prof. Flint—Yes, I did.

Senator FAULKNER—Did you disclose to other members your correspondence with Mr Jones?

Prof. Flint—No, nor did they disclose to me their conversations and correspondence I assume with other people associated with—

Senator FAULKNER—Is there a suggestion—

Prof. Flint—Not at all.

Senator FAULKNER—Let us be clear. Is there a suggestion that any other board member had secret correspondence with Mr Jones or any of the other principals in the inquiry? If there is, I would like to know about it. We ought to get to the bottom of that too.

Prof. Flint—The process of regulation which was established in 1992 is a process of coregulation. It invites the members of the authority to have close contact with the media. It encourages them to try to bring the media towards proper practice in relation to questions of the codes and so on. It was a deliberate attempt to get away from the old ABT—the Australian Broadcasting Tribunal—not because of any fault in its members but because it was such a legalistic body resulting from the law that it was found that so often its attempts to regulate led to the tribunal finding itself in the Federal Court, to no great public benefit.

The system of what can best be described as coregulation was introduced in 1992. This gave a large dollop of self-regulation to the media but invited the regulators—the members of the authority—to have close and frequent contact with the media in a way which would have been unacceptable in the days of the tribunal. So you have this system of coregulation, with the encouragement to have the contact with the broadcasters. Then you have occasions when the authority has to make a determination. That in many ways is handled firstly by the members disqualifying themselves as they do regularly where they have financial conflicts. But it also leads to a vast part of the investigation process being handled away from and at arm's length to the members.

Senator FAULKNER—But this is a very serious omission even on your own account. You accept that, don't you? Your failure to make public your stream of correspondence with Mr Jones is a very serious omission, isn't it?

Prof. Flint—I have told you that I had completely forgotten that letter. I could not remember a letter from 1999.

Senator FAULKNER—Doesn't it also seriously prejudice the inquiries that you were involved in, and not only that but the integrity of the ABA?

Prof. Flint—Let us go to the inquiries first. The view of the board when these matters were reviewed was that the decisions would have been no different had I been absent. That is the case. The decision on ownership and control followed an inquiry conducted by a top silk and a team of lawyers from AGS and within the authority which left no stone unturned. The argument that *Media Watch* had put up—that is, that Alan Jones had some ownership and control interest in 2GB which had not been declared—was found to be completely untrue. That is the first thing you raised.

Senator FAULKNER—So you are saying that if the outcome was correct—if, and those are your words—and proper, it does not matter what shonky way you got there, that is okay? I do not accept that for a minute.

Senator Kemp—Mr Chairman, could I make a comment, please? I have been listening carefully to the questions and the responses. On the last two or three occasions the witness has not had a chance to finish his comments. I think he should be allowed to finish his comments. Secondly, I think the witness should not be hectored, and we are starting to see that tendency from Senator Faulkner. Senator Faulkner is quite entitled to ask questions and the witness is entitled to have a chance to respond. I do not think it is appropriate that the witness be hectored by Senator Faulkner in the way he did in that last question.

CHAIR—Yes, Minister. We agreed that witnesses would be able to answer their questions yesterday and I think that rule should apply today. You must give all witnesses, and in this case Professor Flint, a chance to answer questions put to him without interruption.

Prof. Flint—Thank you. The process was in no way shonky. The process was above board. It was conducted by outside lawyers. We had a silk. No stone was left unturned. A report came before the authority which said that there was no truth in the story on *Media Watch* that Alan Jones had an undeclared interest. That was above board. The second one was the one in relation to 2UE. Certain admissions were made on the part of 2UE; other breaches were found—and that of course is not relevant. The third one had been on ice because we had been advised that it was going to lead to a 'no breach'. The centrepiece of that was that Alan Jones at 2GB had breached the disclosure standard.

The disclosure standard was one of the three results of the commercial radio inquiry of 1999. That standard was adopted in the year 2000 and it requires talkback presenters to disclose their private sponsorships on air whenever they refer to a matter relevant to that private sponsor. Since it was clear that there was no evidence whatsoever of a private arrangement, a private sponsorship, between Alan Jones and Telstra, the officers concluded

that in that third case—the second one relating to 2GB and Telstra—there was no breach. That was put on ice. That was revived in December when papers came before the authority, and the authority decided that there was no breach there.

Senator FAULKNER—But, Professor, no-one—not your fellow board members, your legal counsel or anyone else—knew that you had had this cosy correspondence stream with Mr Jones. That is the problem: you did not front up and tell them. It was just a matter of weeks after you sent that letter, which I think is fairly described as a fawning letter—but that is my view; it does not matter—to Mr Jones that you failed to declare the fact that the correspondence existed and then went on to participate in two further inquiries. What are the normal standards here for disclosing potential conflicts of interest or a conflict of interest?

Prof. Flint—What is the question?

Senator FAULKNER—What are the normal standards for disclosing a conflict of interest at the ABA?

Prof. Flint—The normal standard for disclosing an interest—it may not necessarily be a conflict—is to declare it, and this essentially relates to financial interests. People may be directors of a corporation and so on. That is declared, it is noted in the minutes and they then withdraw. There are grey areas, which is when they seek the advice of the board, but it essentially relates to commercial matters. Other matters, as we saw in the commercial radio inquiry, are declared, as I have declared the occasions on which I met Mr Jones.

But if you do not recall a particular letter—and I assure you that this is not an unreasonable thing to do; we have many letters which we write—you cannot disclose it, and that was my case. Obviously there was a fault in my memory. I would have declared it, because I declared the other matters, particularly the fact that Mr Jones had launched a book in which I had written a chapter. This is human frailty; we do not remember everything we do. I would challenge every member of the committee to tell me what letters they wrote in 1997, because I doubt that you would be able to recall every letter you had written in 1997—including letters which, Senator, you have the grace to describe as ‘fawning’.

Senator FAULKNER—Yes, but we are not talking about letters written in 1997. We are talking about a letter written on 11 June 1999 that you failed to disclose at the commercial radio inquiry that commenced public hearings on 19 October 1999. That is what we are talking about. We are not talking about something seven years ago. Forget about how I describe the correspondence; I could have been much harsher than ‘fawning’, let me assure you. I am trying to be generous. But it does not matter what I think of it. The point is that you wrote that laudatory letter to Mr Jones a matter of weeks before the inquiry started.

Prof. Flint—I think ‘laudatory’ is an acceptable description, so I will accept that, but it was four months later, and four months can be quite a long period, particularly when you have a lot of things going on—and we certainly had a lot of things going on at the authority—and the plain fact is that I completely overlooked it. I regret that I overlooked it but I did overlook it. Had I remembered, I would certainly have told my general counsel, because I told him everything else. I showed him the book and I referred to the meeting I had with the chairman of 2UE and all the circumstances. I was not trying to hide anything at all in relation to that.

Senator FAULKNER—Just so that I understand, Mr Tanner, what are the arrangements in the ABA? There is a register of interests, isn't there? Is there a register of interests or a register of pecuniary interests?

Mr Tanner—There is a process for tracking the interests of staff. I am not sure if there is a register of interests.

Senator FAULKNER—I meant for the board members. Can someone assist me with that so that I can understand it?

Prof. Flint—There is a register of board members. The details are given to me and I pass them to the corporate affairs officer and they are kept in an envelope.

Senator FAULKNER—In an envelope?

Prof. Flint—Yes.

Senator FAULKNER—What about your own?

Prof. Flint—I also register my interests, and those are filed within the authority. I pass them to the corporate affairs officer.

Senator FAULKNER—So board members pass them to you and they are kept in an envelope, and you pass yours—

Prof. Flint—I pass the whole lot on.

Senator FAULKNER—In an envelope?

Prof. Flint—Yes. Whether they are looked at, I do not know.

Senator FAULKNER—No.

Prof. Flint—But those interests are all financial interests that are declared there, and interests of the family.

Senator FAULKNER—But who is responsible for checking those at the ABA? Do you know who is responsible for checking them?

Prof. Flint—It is not a matter of checking them; it is a matter of having them.

Senator FAULKNER—Is it?

Prof. Flint—Nobody has a duty of checking them.

Senator FAULKNER—Really? So they are just stuck in an envelope and filed along with the other files? I hope that they do not get lost.

Prof. Flint—If a matter were to arise where they became relevant, I am sure they would be opened, but this is what is required. It is not like in the case of members of parliament where you go on the public record. That does not apply in relation to statutory officers, and these are filed in a safe place by the corporate affairs officer.

Senator FAULKNER—That would be a numbered ABA file, I suppose, would it—the safe place that you are talking about?

Prof. Flint—I do not know whether or not it is a numbered file. I am told that it would be a numbered file.

Senator FAULKNER—It is the dodgiest procedure that I have heard of in a long time. What about—

Prof. Flint—No, it is the correct procedure, I am told.

Senator FAULKNER—What about your own personal correspondence file? Does that have an ABA file number?

Prof. Flint—When you say ‘personal’ what do you mean, Senator?

Senator FAULKNER—You have pointed out to us that the correspondence we have been speaking about is held in your private office. I am wondering if it has an ABA file number—the chairman’s correspondence file.

Prof. Flint—A lot of people write to me and I respond to them. They are put in outgoing correspondence files. A separate file is not opened for everybody who writes to me.

Senator FAULKNER—No; I understand that. Is there an ABA file number for your correspondence? Is it all on the same file?

Prof. Flint—We are trying to ascertain what is the practice in the ABA in relation to previous chairmen. We do not think that they are given a file number. But if a matter relates to a matter which is currently before the ABA, my secretary would see that one copy went to the ABA file and one copy was with my outgoing correspondence file.

Senator FAULKNER—One of the things about the way the ABA works is that you are chairman of the ABA and you are also the chief executive officer of the ABA, aren’t you?

Prof. Flint—Yes.

Senator FAULKNER—Is it true that you are the head of administration?

Prof. Flint—Yes.

Senator FAULKNER—So the buck stops with you. Do the staff of the ABA report directly to you?

Prof. Flint—Through the general manager.

Senator FAULKNER—Is it directly to you or through the general manager?

Prof. Flint—It is through the general manager.

Senator FAULKNER—On all occasions?

Prof. Flint—Yes.

Senator FAULKNER—I see.

Prof. Flint—Formally, because Mr Tanner is the senior public servant. I am not a public servant.

Mr Tanner—I would expect the chairman to work directly to staff on matters he is interested in and to deal directly with the secretariat about agendas and those sorts of things.

But, as the senior public servant, I am his direct report and the other public servants in the place report to me, formally.

Senator FAULKNER—I am trying to understand how the procedures work with something as simple as a correspondence file. Would there be any correspondence in the chairman's office that would be on a file without some sort of ABA file number? Mr Tanner, can you help me with that?

Mr Tanner—I think I have already made it clear that I expect there would be correspondence in members' offices which does not have an ABA file number. I have said already that that is the kind of stuff I would expect to be assembled on outgoing correspondence files. I have to underline that I have not at any stage been asked to organise and take charge of the correspondence that emanates from full-time members', or the chairman's, offices. We basically provide services to them, and they have executive assistants. To the extent that they do the work that is generated by my staff—other than executive assistants—that stuff will generally go onto a numbered ABA file.

Senator FAULKNER—Is it the standard procedure that you have staff drafts for the inquiry reports?

Mr Tanner—Yes.

Senator FAULKNER—Is 'staff drafts' the correct terminology?

Mr Tanner—They are drafts, but they are prepared by staff. We staff are the arms and legs of the authority, if you like.

Senator FAULKNER—Professor Flint, are you able to say whether the outcomes of the second and third inquiries that we spoke of—as opposed to the commercial radio inquiry—were contested at board level?

Prof. Flint—We quite often have robust debates. The first one—that is, ownership and control—was adopted, to the best of my recollection, unanimously. That was about whether Alan Jones had a notifiable interest which had not been presented to us. It was, I recall, unanimous. With regard to the second one, the Telstra one in relation to 2GB, let me say that we have an understanding in the authority that we do not disclose how members voted; we take a collegiate decision—although we do have a further practice that, if members feel strongly, the resolution is adopted by majority. In relation to the second one, my recollection is that there was unanimity on the core part of that—that is, that the disclosure standard which applies to presenters did not apply to Alan Jones. The other matters that came to the authority came with recommendations from staff. There was the famous leaked report that appeared on *Media Watch*, and then there was the actual draft report which came to the authority.

The second matter on that was in relation to what is called the advertising standard. The advertising standard requires presenters to make clear a distinction between what is called a 'live read' and editorial comment. You can imagine on talkback radio that live reads are sought after, and they are highly paid. When a presenter reads an advertisement, that is supposed to be distinguishable from the surrounding editorial comment. How many there were I cannot recall. We certainly listened. You are required to listen. You have to listen to a

tape. That is the only way you can do it. You listen to a tape and listen to the surrounding comment and then decide whether there was a breach. I cannot recall how we divided, or whether we did divide on that; but, in any event, I think we all agreed that we would accept the final decision.

The other matter was the political matter conditions, and my recollection is that there was no disagreement over that. We all accepted the advice that there was no evidence which would suggest a breach of the political condition. Then there were two code areas where I do recall a debate. I cannot tell you precisely what happened, but we certainly decided at our meeting, which created great interest, that—had I been present there or not—those two proposals that there be a code breach be dismissed.

Proceedings suspended from 11.02 a.m. to 11.22 a.m.

Senator FAULKNER—Professor Flint, I would like to try and tidy up a few of these matters, if we can, and then move on, because time is short. I want to go back to the issue of apprehended bias, which you raised in one of your questions. Firstly, you have informed the committee that senior counsel, Julian Burnside, had recommended that you stand aside from the commercial radio inquiry. You explained your view to the committee on that particular point. For the record, when Mr Burnside made that view known to you, he, of course, was not aware of your correspondence with Mr Jones, was he?

Prof. Flint—No.

Senator FAULKNER—If that had have been the case, if Mr Burnside had been aware of the correspondence between yourself and Mr Jones, would it be fair to suggest that that would have obviously made clear the case in relation to bias—and, a much higher degree of apprehended bias? That would have been clear, would it not?

Prof. Flint—I do not think so. He had decided that, in his opinion, what occurred on 2UE constituted apprehended bias. I do not think there are degrees for this purpose. His advice was that I was in a state of apprehended bias.

Senator FAULKNER—But you said, at the inquiry on 8 November:

The cases of apprehended bias seem to fall, to me, into three broad classes.

I interpolate here; then you go through them.

... the third, which appears to be more relevant, relates to contact between the judge or the officer and one of the parties or witnesses. This is invariably in private or at least not in the earshot of all of the parties. The conversation is invariably about the case or could be seen to be about the case.

Is this not right on the point in relation to your correspondence with Mr Jones?

Prof. Flint—No, it is not. That reference, in my summary of what I understood to be the law, relates to a contact between a judge, juror or officer during the course of the proceedings—not before, but during the course of the proceedings—where this thing can so often arise. That is what I was talking about—for example, in the leading case, the Webb case, in Australia, where the juror had contact during the course of the trial with one of the witnesses. I was not referring to prior contact, which is a completely different area. This was

one point in relation to my explanation, because my contact with Mr Laws was during the course of proceedings, while those proceedings were alive. So I was not talking about prior contact. As I said—

Senator FAULKNER—Are you seriously saying that—

Prof. Flint—As I said, if I may conclude—and I think this is an important point—in 1992 the parliament had introduced a system of coregulation, with a very clear indication to the regulators not to be legalistic, to be quick and economical and to lead the media into correct behaviour through regular contact with the media. That was the whole theme of the coregulatory device which was installed and we were supposed to go out and convert, if necessary, the media into the correct behaviour. That, obviously, could not refer to that sort of prior contact with the media.

Senator FAULKNER—It seems to me that, given the explanation, given what you said yourself at the commencement of the commercial radio inquiry, it is just an absolutely open-and-shut case, even in your own words, that your private correspondence with Mr Jones deems this to be a case of apprehended bias. Surely you are judged, out of your own mouth, prior to the inquiry. Surely, Professor Flint, you would accept, without doubt, that if the correspondence with Mr Jones that was not made public in any of the three inquiries relevant to Mr Jones had been known, you would have been properly required to stand aside from those inquiries. You do at least accept that, don't you?

Prof. Flint—I do not follow the train of your question, because we are talking about something extremely hypothetical and academic—something that happened in the past.

Senator FAULKNER—It is not hypothetical, because the correspondence actually exists; it is just that you did not acknowledge its existence.

Prof. Flint—It is hypothetical and academic because I stood down. It is something in the past. As I go through the reports, no-one has ever suggested to a judge that because something was overlooked and they decided to rehear the matter—as in Pinochet, as in the case of Justice Scalia in the Supreme Court of the United States and as in many other cases—the person, therefore, has committed some heinous crime; it has been a question that the court thought should have been disclosed and was not disclosed. But here we have a situation where I did not recall the letter. I have said time and time again that I did not recall the letter. Had I recalled the letter, of course I would have declared it. I did not recall the letter, because of the volume of correspondence that one sends.

Senator FAULKNER—Professor Flint, the Laws matter was public. It was still apprehended by us, and that was public. Don't you understand in relation to the Jones matter that that was secret and therefore even on your own logic, which is there in black and white, it was definitely falling within the circumstances of apprehended bias? The Laws issue was public, and that is what Burnside and others provided advice on. The Jones issue was secret.

Prof. Flint—I and my students would be delighted if we could be so certain as to what is apprehended bias and what is not. The courts themselves divide frequently on this. We have Mr Justice Scalia in the Supreme Court of the United States refusing to recuse himself in

relation to matters. The law is not that clear on apprehended bias, because it depends on a test which is applied to ‘reasonable and informed’ members of the public. The judges make judgments as to whether reasonable and informed members of the public would be biased, and who can say. Courts themselves are divided on this. I cannot give you a categorical answer on such a matter, which is so grey and so unclear.

Senator FAULKNER—You have said to the committee that it is academic anyway because you stood down from the inquiry. Is that what you believe?

Prof. Flint—Of course it is academic: I stood down, it is in the past, it is hypothetical.

Senator FAULKNER—But you did not stand down from the other two inquiries that involved Mr Jones. Again, when the same correspondence—or ‘stream of letters’, to use your words—was not made public, you did not stand down from those inquiries. Eventually, you were forced to stand down from the commercial radio inquiry—I accept that; that is a matter of public record; we all know that—but in the subsequent two inquiries you did not stand down; you were involved in them. Your work as the chair of the ABA is ongoing. That is a very serious situation, regardless of the fact that eventually you were forced to stand aside in relation to the commercial radio inquiry. In the other two you participated right through, from beginning to end.

Prof. Flint—I have said over and over again this morning that I did not recall that correspondence until it was beamed on television recently. I just did not recall it. How could I declare it if I did not recall it? The point is that the High Court has issued an admonition to jurors, officers and others not to lightly disqualify themselves. There is a view in the media—and I saw it in one paper—that my office is the highest quasi-judicial office in the nation. That is absolute rubbish. The quasi-judicial side of the exercise of the responsibility of the chairman is only a small part of the chairman’s functions, and the High Court has made it very clear that bodies such as the ABA do not exercise the judicial power of the Commonwealth.

Senator FAULKNER—Can you explain, Mr Tanner, why the very clear advice that was provided by Julian Burnside QC was not followed at the subsequent inquiries? We know about the first one, the commercial radio inquiry—we know what happened. Why wasn’t the same sort of advice followed in relation to the subsequent inquiries?

Mr Tanner—Why would it have been followed? What would have triggered it? I am not certain.

Senator FAULKNER—The point here, Mr Tanner, is that, even though Professor Flint does not recall it, within a matter of weeks before the start of the commercial radio inquiry he sent a letter to Mr Jones which, by his own admission, is laudatory. Mr Jones was a significant party to the subsequent two inquiries. That is true, isn’t it, Mr Tanner?

Mr Tanner—Yes. The first I learnt about this correspondence was from *Media Watch*. I am quite puzzled by the direction of the questioning.

Senator FAULKNER—Was Mr Burnside’s advice followed?

Mr Tanner—I just do not understand the question. In relation to what issue?

Senator FAULKNER—I am asking you a simple question: was Mr Burnside's advice followed?

Mr Tanner—In the specific instance to which it related, yes, it was.

Senator FAULKNER—At what point?

Mr Tanner—The chairman stepped down, although he has made it clear that it was for his own reasons.

Prof. Flint—I did not accept Mr Burnside's advice.

Senator FAULKNER—No; I know that. You did not accept Mr Burnside's advice.

Prof. Flint—No. I thought the advice was incorrect.

Senator FAULKNER—So you are saying that it was not followed?

Prof. Flint—No, it was not followed. I made my own decision to stand down. I stood down for public interest reasons, not because I thought I was in a state of apprehended bias.

Senator FAULKNER—But you did not stand down from the subsequent two inquiries, which we will get to in a moment. I understand that Senator Cherry has something he wants to ask in relation to the bias issue. I will come back to the issue of those subsequent inquiries and the drafts that we were talking about before the break.

Senator CHERRY—I want to follow up a couple of those issues that Senator Faulkner was raising. From the evidence you gave earlier about the stream of letters, there was a further letter in April 2000 and you had the advice from Julian Burnside in October 1999. Did that advice sit in your mind when the 2GB ownership or the Telstra sponsorship deals were coming up to be discussed at the board? Did you recall that Burnside advice when considering whether you should participate in those inquiries?

Prof. Flint—Mr Burnside gave very specific advice and very specific circumstances relating to specific facts. When a silk gives you advice of such precision it is not something that you necessarily rely on on another occasion. His advice was not relevant to other occasions.

Senator CHERRY—But as to his advice on reasonable apprehension of bias, which you obviously will be familiar with, did you consider whether that advice was relevant to the subsequent three inquiries on 2GB ownership, the Telstra sponsorship and indeed the ABC hearing?

Prof. Flint—When I read Mr Burnside's advice—and he spoke to me too—I did my own research and I consulted other lawyers, and I came to the conclusion that his advice did not apply to the case in 1999. The core of his advice which could be of relevance on a later occasion related to a statement of the law in relation to reasonable apprehension of bias, which we all understand and the lawyers understand, and we do not in any way resile from the statement of the law; it is the application of the law to given fact. There was nothing in the advice which we would have thought of having precedential value. We had no reservations about the way in which he stated the law in the advice. Normally, when you want to consider

the law, you do not go to a previous piece of advice; you go to the law, look at the cases and, if you need advice, get new advice.

Senator CHERRY—Coming back to one of your answers to Senator Faulkner, you rejected the view that this is the highest quasi judicial position in Australia, which is a reasonable position to reject, I suppose. But the notion of a content regulator does carry with it a notion of fairness and being seen to be fair. Wouldn't you agree that a reasonable apprehension of bias test should be rigorous, robust and err on the side of caution in a position of that sort, as a content regulator?

Prof. Flint—I was chairman of the Australian Press Council for 10 years. Nobody ever suggested that any of the decisions I took were in any way biased or improper. If you go through the decisions taken by the Broadcasting Authority, I do not think I could be accused of being unfair or biased in the role that I took. You might disagree with some of the decisions—they were decisions of the board—but I do not think anybody could say that what I did was unfair or biased.

Senator CHERRY—The question is in terms of the perception of your role, because that is important in terms of a content regulator. I am trying to get your notion of what you think the chair of the ABA should be, in terms of unbiased or being seen to be unbiased, and your perception of what a reasonable apprehension of bias test is in that respect. In what circumstances do you believe you should stand down from an inquiry at the ABA as ABA chair?

Prof. Flint—Take, for example, the current case concerning the complaint by the Hon. Richard Alston against the ABC. In that case there were suggestions in the media and other places that I should not sit on that, and we took legal advice on that. The advice was that there was no reasonable apprehension of bias—not any reasonable apprehension of bias—but I decided to stand aside because there was such a carry-on by some people that I thought it would be better and more in the public interest not to be associated with it.

Senator CHERRY—Did you decide to step down or did your board ask you to step down on that occasion?

Prof. Flint—I decided. The decision in these matters is for the officer. It is not for the board. They make their decisions. It is not some infrequent, strange, bizarre decision to stand down. The minutes of the ABA are replete with examples of members of the ABA disqualifying themselves from the taking of certain decisions. That is not at all unusual. They declare what their interest is and they make the decision, and that is noted in the minutes. I took the decision in relation to the ABC—not my board.

Senator CHERRY—Did you take that decision when the ABC complaint arrived or after the furore in April?

Prof. Flint—I took it more recently.

Senator CHERRY—Why didn't you take that decision when the complaint arrived?

Prof. Flint—The High Court says that officers should not be eager, they should not readily agree to disqualify themselves, because that way the whole system would collapse. We had

the situation, for example, in relation to the old ABT. It was a case concerning John Laws and the Australian Broadcasting Tribunal. They found that every member of the Broadcasting Tribunal—every one of them—was in a state of apprehended bias. So what did the High Court do? They took the sensible decision. They said, ‘In a situation like that, the organ still has to function. Go ahead and do it, although you are all in a state of apprehended bias.’ It is easy to slip into that. You could slip into it by association, by hospitality, by all sorts of things. For example, you may be acting legally for a corporation, and the extent to which that makes you biased is a question of degree.

Senator CHERRY—You said you took legal advice on the ABC complaint. Was that advice from in-house counsel?

Prof. Flint—No, it was from outside.

Senator CHERRY—And was that requested by the ABA board or by you?

Prof. Flint—No, it was not. The newspaper that said that was completely wrong. I requested that.

Senator CHERRY—As chair of the ABA.

Prof. Flint—Yes.

Senator CHERRY—So the ABA commissioned that.

Prof. Flint—The ABA commissioned it, but I requested general counsel of the ABA to seek advice through the AGS from outside counsel. We presented outside counsel with all the facts, and counsel came back with the opinion that there was no reason that I should be set aside because of apprehended bias.

Senator CHERRY—And that was on the reasonable appreciation of bias test that we were talking about earlier.

Prof. Flint—That is right.

Senator CHERRY—Did that counsel take a different approach to that test, in your view, from Mr Burnside in 1999?

Prof. Flint—They made exactly the same statement of the test. When you come to the facts, as with so many other areas of the law, lawyers may disagree. All appellate courts will frequently disagree, so it is not unknown for lawyers to disagree.

Senator CHERRY—And the facts presented to counsel were essentially in the book you had written, *The Twilight of the Elites*.

Prof. Flint—Yes.

Senator CHERRY—What other facts were presented to counsel for them to rule on at that stage?

Prof. Flint—It was mainly the book. Incidentally, when Barry Cassidy interviewed me some months before on ABC radio, he did not see anything in my book which would suggest that I was biased against the ABC. All I did in that book was criticise some programs of the

ABC. Surely one is allowed to criticise some programs? That does not mean you have criticised the whole ABC, and I have not criticised the whole ABC in that regard.

Senator CHERRY—There has been some media speculation that you participated in Liberal branch meetings and spoke in favour of Mr Peter King in the recent preselection. Can you confirm that?

Prof. Flint—That I have?

Senator CHERRY—Spoken in favour of Mr Peter King in his recent preselection battle with Mr Turnbull.

Prof. Flint—I did not speak about Mr King.

Senator FAULKNER—If you had, Professor Flint, we could have said that it obviously did not work.

Senator CHERRY—Did you participate in any branch meetings in respect of that preselection?

Prof. Flint—I was made a preselector.

Senator CHERRY—Was that fact presented to the counsel considering whether you were biased with respect to the ABC complaint?

Prof. Flint—No, and I cannot imagine why it would be.

Senator CHERRY—You participated in a Liberal party preselection process and you are considering a complaint from a Liberal Party minister. You do not think that would be a matter which should be considered in terms of bias?

Prof. Flint—I think it is drawing a very long bow.

Senator CHERRY—I think it is a very short bow, actually.

Prof. Flint—I doubt if under the law that would be thought of as a proper matter for consideration.

Senator CHERRY—It is extraordinary.

Senator FAULKNER—To follow up what Senator Cherry was asking—not about the Liberal Party preselection in Wentworth, which I have a massive disinterest in, but about the other legal advice that was mentioned—was this outside legal advice?

Prof. Flint—Yes.

Senator FAULKNER—Paid for by the ABA?

Prof. Flint—Yes.

Senator FAULKNER—Who was it from?

Prof. Flint—We will take advice on that. I think we will take that on notice.

Senator FAULKNER—Mr Tanner, this question is directed to you. Surely you would know who this advice was sought from? And I would expect you would know the cost to the Commonwealth of the advice. This is an estimates committee.

Mr Tanner—I do not recall the exact cost to the Commonwealth. I could have a stab at it or I could take the question on notice.

Senator FAULKNER—Was it written advice?

Mr Tanner—Yes.

Senator FAULKNER—Only one advice?

Mr Tanner—One advice from senior counsel.

Senator FAULKNER—On the same matters that Julian Burnside QC advised on?

Mr Tanner—No, not at all. My recollection is that the issue that we took to counsel was whether the chairman's various public positions and statements, including in particular but not restricted to the views in *The Twilight of the Elites*, would give rise to a reasonable apprehension of bias in relation to the ABC bias complaints from Senator Alston.

Senator FAULKNER—There is a range of issues you are coming back to the committee on. By the way, is a copy of that faxed letter available now to be tabled?

Prof. Flint—It is indeed.

Senator FAULKNER—If you could table that we would appreciate it. You might come back to us on this; I think this is something you could provide to the committee.

Senator CHERRY—I want to finish the point on this advice.

Senator FAULKNER—Certainly; I have not finished on that point. I was just making the point that the question taken on notice by Mr Tanner in relation to costs is something that I believe he could respond to the committee with before it concludes its deliberations. It should be an easy matter—

Mr Tanner—I can get that information as soon as I am—

Senator FAULKNER—to nail down who and how much it cost. I might come back to this too.

Senator CHERRY—I want to tease this question out. One of the key arguments in the Alston complaints against the ABC was the perception that the broadcasts were antigovernment. I am fascinated by your view that being a Liberal Party preselector in Wentworth does not add to any concept of perceived bias in respect of ruling on a complaint of that sort.

Prof. Flint—Have you read Senator Alston's complaint?

Senator CHERRY—I have, actually.

Prof. Flint—Then you would have seen that he is complaining about an ABC program and the way in which they reported the Iraq war. It was not about the government; it was about the reporting of the Iraq war. It was not about whether the war was justified; it was about the day-to-day reporting of events concerning the war. That is what it is about, essentially; it is about a week on *AM*.

Senator CHERRY—It was a war that was supported by the government, and part of the argument in that particular set of complaints was that the ABC were not giving sufficient weight to the government's point of view.

Prof. Flint—No, that was not it. The complaint was about how proper the reporting of the war was. It was not about whether the war was justified; it was not about the government's position. It was just about the objectivity and balance of the reporting over that week. It was not about the government; it was about the facts of the reporting and the balance in relation to views on the reporting.

Senator CHERRY—And that is why you would regard your position as a Liberal Party preselector as being irrelevant to that particular complaint?

Prof. Flint—There is no possible link between the two. It had nothing to do with Wentworth; it was about Iraq.

Senator CHERRY—I do not know if you have seen the opinion polls in this morning's papers which suggest that the Iraq war is leaching the government's support. I think there is a very clear link, but possibly I am thinking too logically.

Senator FAULKNER—It is not a matter that I intend to pursue, but it is true that you have pro Iraq war views. You have published them, haven't you?

Prof. Flint—A group of lawyers did publish a view on the legality of the war. This is a position on which lawyers differ, and some—the advisers to the Blair government, for example—think there was a legal case for going to war because of the breach of what was essentially the truce at the end of the first Gulf War.

Senator FAULKNER—I do not doubt that what you say has occurred or that you have faithfully recounted it to the committee. Senator Cherry asked about the war in Iraq. You have published views in relation to that matter. Senator Cherry is, I think, mounting a case of bias in relation to that issue. I am only making the point—and I think you can accept it before the committee—that you have published pro Iraq war views—haven't you?

Prof. Flint—I have published views supporting the legal grounds which the British, Australian and United States governments argued as the basis for the intervention in Iraq. Yes, I have published views on that legal aspect.

Senator FAULKNER—What about at page 233 of *The Twilight of the Elites*?

Prof. Flint—What did I say there?

Senator FAULKNER—I thought you would have known, but obviously you do not. You said:

Again, the elites exploded in indignation over the actions of the "coalition of the willing" against Saddam Hussein. Much of this was directed against the United States, and little against Saddam. The attitude of the people of Iraq to the intervention demonstrated how much they longed to be free, and how grateful they were to the coalition.

I am sure that is what Senator Cherry is referring to.

Prof. Flint—That has nothing to do with the actual conduct of the war, which was the complaint that Senator Alston made against the ABC. It was about the accuracy of the day-to-day broadcasts and whether there was balance in them. That has nothing to do with the legality of the war or the reaction of the Iraqi people at the end of the war.

Senator FAULKNER—I am only making one point, and it is not a major point. Your musings on this are a little broader than what you have indicated to Senator Cherry, but it is not a major point and frankly I do not want to be diverted by it. We have enough to discuss at this estimates committee without dealing with the war in Iraq. No doubt other committees will be handling that matter in some detail, and I have no wish to canvass it with you.

Senator CHERRY—I want to make one point before I hand back to Senator Faulkner. I do not understand why the matter of the Liberal Party preselection in Wentworth and the articles which you published—in addition to the provision that Senator Faulkner referred to—were not referred to senior counsel for comment. From what you have indicated, the only matter that was referred to senior counsel for comment on bias was a fairly narrow matter, and these wider matters which I am raising were not raised with senior counsel.

Prof. Flint—What was raised with senior counsel were my publications.

Senator CHERRY—So the articles arguing the legal justification for Iraq were referred to senior counsel?

Prof. Flint—Senior counsel was aware of that.

Senator CHERRY—They were given that to look at?

Prof. Flint—Whether or not he was given that, I cannot recall; we would have to take that on notice—

Senator CHERRY—If you could.

Prof. Flint—but he was certainly aware, because we discussed that when we had a conference.

Senator CHERRY—Right. Thank you.

CHAIR—Before we proceed, Professor Flint wishes to table a letter to Mr Alan Jones, so could we have the committee's permission to table that letter? Permission is granted, so you can distribute the letter.

Senator HARRADINE—Professor Flint, are you required to be full time in your job as chairman of the ABA?

Prof. Flint—Yes.

Senator HARRADINE—How much have these extraneous occupations of yours eaten into that time?

Prof. Flint—They have not cut into that time in any way. I have spent more than 40 hours a week on ABA matters—well more than 40 hours.

Senator HARRADINE—I will be raising issues which go to the efficiency and effectiveness of your organisation, but probably now is not the time.

Prof. Flint—Thank you.

Senator FAULKNER—Can I now, if it is okay, Professor, return to the matter we were discussing before the break, which is this question of the staff drafts, as Mr Tanner described them, that go to the board. I gather that is standard operating procedure, is it, Mr Tanner, for all ABA inquiries?

Mr Tanner—That would be nearly always the case. The staff would prepare drafts, yes.

Senator FAULKNER—Was it the case for the commercial radio inquiry and the other two that we have been referring to today that involve Mr Jones?

Mr Tanner—No. The complication with the commercial radio inquiry was that as a public hearing we had a counsel assisting. He contributed a great deal as well.

Senator FAULKNER—So in that case—

Mr Tanner—But, broadly, staff wrote the reports.

Senator FAULKNER—With a public hearing, I think what you are saying is that it is an even more collegiate sort of process.

Mr Tanner—That is right. In fact we do draw in assistance from our lawyers, senior counsel as appropriate or other experts if we need them.

Senator FAULKNER—Of the other two hearings, one is best described maybe as the Telstra hearing. I am looking for a shorthand description.

Mr Tanner—You are talking about the 2GB-Macquarie-Jones-Telstra inquiry?

Senator FAULKNER—Yes.

Mr Tanner—It is not a hearing; it is an investigation.

Senator FAULKNER—I am sorry, the investigation. Is it best described as a Telstra investigation?

Mr Tanner—Let us call it the 2GB-Telstra-Jones investigation.

Senator FAULKNER—Okay. What is the best description for the other one?

Mr Tanner—I think the Jones-Macquarie control investigation would be good shorthand.

Senator FAULKNER—I think before the break, Professor Flint, you were indicating the processes that related to the staff draft in relation to one of those inquiries. That is correct, isn't it?

Prof. Flint—Yes. I must say, though, that the nomenclature 'staff drafts' is not Mr Tanner's, it is yours.

Senator FAULKNER—I am happy to use the accepted nomenclature that you find suitable, so you tell me what you call them.

Prof. Flint—We call them drafts.

Senator FAULKNER—Drafts? Dear oh dear, I am sorry to have stuck the adjective in!

Prof. Flint—It was just that you attributed that to Mr Tanner, and I thought for the record, since he had said that they were not called staff drafts, we should correct that.

Senator FAULKNER—The accuracy of the record is paramount. So, the draft or the draft report—that would be better, wouldn't it, than draft? The draft report?

Prof. Flint—Yes, draft report is fine.

Senator FAULKNER—So we have changed it again. Okay, terrific.

Prof. Flint—As you wish.

Senator FAULKNER—I am merely here to assist. For which inquiry was the draft report—on which there were different views expressed at the board level—that you referred to prior to the break?

Prof. Flint—That relates to the 2GB-Telstra inquiry.

Senator FAULKNER—Thank you. Is that where an investigation report draft appeared on, I think, the *Media Watch* web site?

Prof. Flint—Yes.

Senator FAULKNER—I suppose there have there been investigations about why such a draft report appeared on a web site, Mr Tanner?

Mr Tanner—Yes.

Senator FAULKNER—Where is all that up to?

Mr Tanner—It is currently with the Federal Police.

Senator FAULKNER—Has it been defined as a leak inquiry?

Mr Tanner—We believe it was a leak. It was a document which we think had a fairly tight internal circulation. It contained a lot of information that should not, under the laws that bind us, have been released without certain processes having been gone through which acknowledged the rights of parties to the inquiry. Accordingly, if it was made available other than inadvertently, there may have been a breach of law involved.

Senator FAULKNER—Are you aware of how many leakers have been caught since the election of the Howard government?

Mr Tanner—No.

Senator FAULKNER—You are not? I would have thought that that would be an infamous figure. Not a one. Zot. So good luck. You might do a bit better than others.

Mr Tanner—To my knowledge, the ABA is not an agency which has leaked much, if at all, in the past.

Senator FAULKNER—I am not suggesting it is. I am talking about every agency and department across the Commonwealth of Australia. Not one leaker has been caught yet. But there is always hope. You might make the difference.

Senator Kemp—I think our record is about the same as the leakers that were caught from the Hawke government.

Senator FAULKNER—Yes. Spot on.

Senator Kemp—Just for the record.

Senator FAULKNER—Yes. It is just about—

Senator Kemp—as good.

Senator FAULKNER—That is the point I am making. So you never know, Mr Tanner. You might make political history in this country.

Mr Tanner—We will also be looking at our internal procedures to work out what we can improve there.

Senator FAULKNER—That is probably wise in the circumstances. In fact, it is likely to be a far more worthwhile activity. Did that staff draft that appeared on the *Media Watch* web site go to the board?

Mr Tanner—No.

Senator FAULKNER—Did a staff draft go to the board?

Mr Tanner—A staff draft did go to the board in February. That was an earlier draft of that draft—

Senator FAULKNER—So this is a much earlier iteration?

Mr Tanner—It is an internal working document. It is in the form of a draft report, and it was prepared with a view to finding out from the senior executives of the ABA whether it was in a state to go to the board yet.

Senator FAULKNER—So a staff draft did go to the board, but it certainly was not the one that was made public on the *Media Watch* web site.

Mr Tanner—That is correct.

Senator FAULKNER—Which is standard procedure?

Mr Tanner—Which is standard procedure, exactly.

Senator FAULKNER—Was the draft report that went to the board cleared by the legal branch of the ABA?

Mr Tanner—Yes, but not just by them. It was prepared in the legal and policy teams under the general counsel.

Senator FAULKNER—Is there any doubt that the thing on the *Media Watch* web site is a genuine iteration? Is it a genuine internal document?

Mr Tanner—It is. It is a pretty late draft. It is a genuine internal working document. There is no doubt about that.

Senator FAULKNER—As these documents go, it looks to be in pretty reasonable shape, doesn't it? It has the whole kit and caboodle—an index, all the identifiers on it and an ISBN number. It looks like it is in reasonable shape.

Mr Tanner—It is a draft of a draft report.

Senator FAULKNER—It is very impressive. The ABA is to be congratulated on its competence. So it is a late draft?

Mr Tanner—Yes. I think that is a fair description.

Senator FAULKNER—Are you able to indicate to this committee whether the final draft that went to the board—we understand ourselves if I use that terminology—

Mr Tanner—Yes.

Senator FAULKNER—included recommendations in relation to breaches of codes, standards or acts? Are you able to say that to the committee?

Mr Tanner—Yes.

Senator FAULKNER—There were four substantive areas, weren't there—broad issues? If I am not using the right terminology, no doubt I will be corrected.

Mr Tanner—If you like you can divide the compliance issues into four areas in the December draft. The December draft actually only proposes breach findings in relation to three and it queries another issue—internal compliance programs—which the officers did not have sufficient information on. The draft that went forward to the ABA, I recall, proposed breaches, but a smaller number.

Senator FAULKNER—Are you able to say how many?

Mr Tanner—I think from memory it may have been one.

Senator FAULKNER—From memory?

Mr Tanner—Yes—this is the document that went in February to the board—in fact, it was one.

Senator FAULKNER—Is the staff draft substantially different to the one that appeared on the *Media Watch* web site?

Mr Tanner—It was fairly substantially different, and the document that was released in April was different again.

Senator FAULKNER—I appreciate that. I have copies of both documents; it is not hard to see how different they are. What about recommendations? Were they the same or similar or substantially the same?

Mr Tanner—The big differences during the evolution of the document were that the document that went up in February was intended to canvass the policy issue rather than the compliance issue of whether there are inadequacies in the current regulatory scheme—for example, in the standard. That issue is not really dealt with in the December draft.

Senator FAULKNER—Given that a late iteration finds itself on the *Media Watch* web site, would you agree to table the staff draft that went to the board of the ABA? Perhaps it is more appropriate if I ask Professor Flint.

Prof. Flint—I would have to take advice on that.

Senator FAULKNER—Outside advice again?

Prof. Flint—I would have to take advice from the officers.

Senator FAULKNER—If you did not agree with that advice, would you seek outside advice?

Prof. Flint—I can say now that I would accept whatever their advice is.

Senator FAULKNER—I appreciate that and that is what I hoped you would say to the committee. If you can take that on notice, we would appreciate it. Are you able to indicate, Mr Tanner, in which area—you said there was one breach, effectively, in the staff draft that went forward to the board.

Mr Tanner—Yes, it was a breach of 2.2(d) of the code.

Senator FAULKNER—Can you describe what 2.2(d) is?

Mr Tanner—It is actually the same breach which is canvassed at 2.2(d) in the 15 December draft.

Senator FAULKNER—The leaked one?

Mr Tanner—Yes. Basically that went forward to the board as a recommended breach finding or a possible breach finding.

Senator FAULKNER—The late iteration draft had, I think, three out of four breaches, didn't it?

Mr Tanner—When you say, 'three out of four', I would clarify what I mean when I answer that. There was extensive canvassing of the issue of whether or not there was a breach of the political advertising condition. The conclusion of 15 December was that there was insufficient evidence to make such a finding. There was canvassing of whether or not there was a breach of one of the three standards made after the commercial radio inquiry—that was the advertising standard. The 15 December report proposed that you could make a breach finding in relation to a particular live read—I think it was the Child Flight live read.

There were also two other breach findings of codes of practice suggested—one of 2.2(c) and one of 2.2(d). Finally, the authors of the report raised a query and said that they could not conclude that there had not been a breach of the third post-commercial radio inquiry standard which required internal compliance mechanisms to be put in place. My understanding is that that issue got cleaned up by further inquiries with the station during the period between that draft and the draft that went up in February. That is my recollection. You could call that 3½ breaches—I recall that there were three breach proposals and one query in the December draft. In the end, one of those went forward to the board, and the board did not find a breach in that case.

Senator FAULKNER—So it went from breaches of code, standard and acts—

Mr Tanner—No. There was no breach of the act—it was of the standard. Although it is a requirement of the act that you comply with standards.

Senator FAULKNER—So it went from 3½ breaches of code and standards, to use your terminology—

Mr Tanner—Let us say three breaches and a query, to be fair.

Senator FAULKNER—So, it went from three breaches and a query to one code breach in the final draft. Is that accurate?

Mr Tanner—Yes, that is accurate. What went in, as opposed to what went out, was a greater focus on whether or not—notwithstanding that, unlike in the case with 2UE and Mr Laws, there was not a long list of breaches—there were policy problems raised for the totality of the regulatory scheme by the direct sponsorship relationship with the licensee. That was what came in: a focus on whether, notwithstanding that there were not a lot of breaches, there was still a problem.

Senator FAULKNER—I appreciate that the board got the final draft. Is that all they get? Do they get the earlier draft as well?

Mr Tanner—The staff tend to conduct major inquiries in some sort of liaison with the board. The term ‘board’ is probably a misnomer—the authority meets frequently. A lot of its decisions are non-delegable, and it takes an active interest in the direction of a lot of its inquiries—that was certainly the case here. There had already been a paper around mid-2003 which had gone to the board in committee, canvassed issues in this inquiry and basically sought direction from the board. So there had been other contacts.

Senator FAULKNER—What you are saying is that there is quite an interactive process.

Mr Tanner—Yes, there is an interactive relationship. We also have full-time members and they sometimes take a personal interest in how things are going.

Senator FAULKNER—Obviously.

Mr Tanner—They are in here basically to do more work on a day-to-day basis with the staff than a part-time board member is able to do.

Senator FAULKNER—Nevertheless, the draft investigation report that appeared on the *Media Watch* web site—

Mr Tanner—That did not go to the full ABA board.

Senator FAULKNER—In that form.

Mr Tanner—No.

Senator FAULKNER—But elements of this may have been contained in other documentation that went to the board.

Mr Tanner—Absolutely, it was drawn on for a substantially redrafted document.

Senator FAULKNER—When the final staff draft goes to the board, is there also accompanying documentation?

Mr Tanner—Yes, there is a covering paper, and there will be any other attachments which it is appropriate to bring to the attention of the board.

Senator FAULKNER—Could we also have a copy of the covering paper?

Mr Tanner—Yes.

Senator FAULKNER—Was the issue of the three breaches, and the possible other breaches, covered in the covering paper?

Mr Tanner—I do not recall. I would have to take a look at it.

Senator FAULKNER—I would appreciate it if you could check that. Given that Professor Flint has taken on notice the issue of whether the draft can be made available, could you also check whether any of the other material that goes to the board as it gives consideration to the final draft could also be made public for the benefit of the committee. Professor Flint, you are seeking advice on that from the ABA, which is appropriate. Could you also extend the advice into that area, please.

Prof. Flint—Certainly. My principal concern was that which related to the leaking of the 15 December report—that is, that those named in it had not had the natural justice opportunity to comment, which is part of the process. But I will adopt whatever is the view of the law officers on this.

Senator FAULKNER—That is out there in the public arena. Even I have a copy of it, which goes to show how easy it is to get hold of. The truth of the matter is that you have a late iteration—a late draft—of this report that has three breaches and another possible breach, and you have a staff draft that has one breach in the area of 2.2. In layman's language—and no doubt you or Mr Tanner will jump all over me if I am wrong—my understanding is that 2.2 is in the area of failure to provide significant differing viewpoints. Is that right? I am not an expert on this. In other words, you might cut off callers who are critical of Telstra and the like. Is that right?

Mr Tanner—There is 2.2(c) and 2.2(d). I will check which is which. I do not actually have the codes in front of me.

Prof. Flint—It was about 'allowing wrong or improper emphasis to be given to certain facts, thereby preventing listeners from knowing what weight to put on statements made by Mr Jones.' That is 2.2(d), which is the recommended breach which appeared in the document that went to the board.

Senator FAULKNER—You are quoting from the staff draft, are you?

Prof. Flint—Yes.

Senator FAULKNER—That is good news. That at least means that the staff draft at least is not lost. That is now confirmed is it, Mr Tanner?

Mr Tanner—We have all these documents, yes.

Senator FAULKNER—What do you mean ‘you have all these documents’? You have that document. There are certain documents you do not have, but I do not want to get too technical. There is a whole range of correspondence that no-one can tell me exists or not. But I am pleased you have that document—that is terrific—and I am pleased that Professor Flint is able to quote from it today, because it is helpful to the committee.

Prof. Flint—I was quoting from the document of 15 December—which you have—which was brought over when the staff draft, as you call it, of 5 February contained a recommendation for the upholding of a breach.

Senator FAULKNER—So, to answer my question, you have access the leaked document?

Prof. Flint—It was our document!

Senator FAULKNER—I am not being critical; I am just saying that you have access the leaked document to answer my question. Thank you for that. My point is that the explanation of the impact of the code breach in 2.2 is helpful to the committee.

Prof. Flint—The crucial question in all of that was the disclosure standard—and this is what *Media Watch* was making a song and dance about: was Alan Jones subject to the disclosure standard which applies to presenters who have separate contracts?

Senator FAULKNER—That is one thing that is crucial in your view, but obviously some believe it is quite crucial that we had at least three breaches in a very late iteration by the staff—and possibly four breaches—and by the time the board has dealt with it, under your chairmanship, there are no breaches. That is also significant.

Prof. Flint—I would say that the big things were the two standards. First and most important was the disclosure standard. Then there was the advertising standard, which was about the child flight and whether, when Mr Jones read that, it was sufficiently distinct from editorial comment. The other standard was the political conditions. Of course, on the first two of those—the disclosure standard and the political matter conditions—both the first draft, of 15 December, which did not go the board, and the draft which went to the board recommended no breach.

Senator FAULKNER—Yes, but the draft that goes to the board recommends a breach. You have quoted from an earlier iteration, an earlier version of that document. That is fine. I just want to be assured that what is being quoted is accurate. I have to depend on your evidence before the committee, so I was very deliberate in my question to Mr Tanner, asking him what the breach contained in the draft that went to the board was.

Prof. Flint—It was 2.2(d).

Senator FAULKNER—And 2.2(d) is what, Mr Tanner?

Mr Tanner—It is basically being misleading by allowing wrong or improper emphasis to be given to certain facts. The germ of it is misleading factual statements.

Senator FAULKNER—Anyway, we end in a late staff draft that has three or four breaches to the final staff draft, after the involvement of board members, that goes to the board with

one breach, and the board finally indicates that there is no breach. That is the story, as I understand it. That is correct, isn't it, Mr Tanner?

Mr Tanner—That is the story in terms of the history from December through to February.

Senator FAULKNER—Thank you—yes, that is the story. The other element of the story of course is your correspondence, Professor Flint, with Mr Jones—none of which is disclosed right through this period of three inquiries. That is the other element of it. You failed to make a public declaration, a few weeks after you wrote the letter, to the 1999 commercial radio inquiry public hearings. And in relation to the two subsequent inquiries—one on 2GB-Telstra and the other inquiry in relation to Mr Jones—again, there was no declaration to anybody about that sort of engagement. I ask you this, Professor Flint, so that I can be assured: you of course did not engage in any direct interaction in any way with the staff in relation to those draft reports, did you?

Prof. Flint—The draft of 15 December, which is the leaked draft, was a draft that I did see. It was open to any member to see that. Mr Tanner made that available to me. My comment to him was essentially about the political conditions—where there was no breach—and I said, 'I think it should be consistent with all of the other positions we have taken in relation to breaches of political conditions in its writing,' because it read, I thought, rather strangely. I handed it back and I said, 'But it's for you.' That was the first draft.

Senator FAULKNER—That is the *Media Watch* draft?

Prof. Flint—Yes, that is right. I also saw the second one and I read it, and I thought, 'Well, that's interesting.' I saw the breach being recommended and I made no suggestion that that should be withdrawn. It came to the board as the staff drafted it. That is how we work. We work in an arms-length way with the investigating staff. They bring their recommendations which they come to professionally and the members react to them.

Senator FAULKNER—What happened as a result of Professor Flint's expressing those concerns to you, Mr Tanner, in relation to the late draft? What happened then? What did you do? Did you take any action as a result of Professor Flint's communication with you?

Mr Tanner—No, I actually made a separate decision for my own reasons in consultation with the general counsel, who was the SES directly in charge, that the report needed a bit more work. I listened to what the chairman had to say, but I expect my response would have been, 'Look, I think the report needs a bit more work anyway.' Basically, we handed all those comments over to the officers.

Senator FAULKNER—What does 'read strangely' actually mean, Professor Flint? I read your letters and, frankly, I think they are pretty strange—but that is just my view. These things are in the eye of the beholder, aren't they?

Prof. Flint—Indeed, and I will not make comments about your speeches.

Senator FAULKNER—I have no doubt you do, and I am sure it is a topic of conversation in the Liberal Party in the Wentworth federal electorate—and fair enough; all's fair, I accept that. But what do you mean when you say to this Senate estimates committee that you thought it read strangely?

Prof. Flint—Senator, you have never been discussed in Wentworth, as far as I can recall.

Senator FAULKNER—You would know; you are an active member there.

Prof. Flint—I regard myself as a passive member. I did what I did in relation to the preselection, but otherwise I do not take a great role.

Senator FAULKNER—I am in no position to judge; all I know is there is an awful lot of members in Wentworth—passive and active.

Prof. Flint—It is cruel of you to remind me of that, Senator! What was your question?

Senator FAULKNER—My question was: what does ‘read strangely’ mean?

Prof. Flint—When you read it, the logic of the document seems to be, ‘It looks as though we’re going to find a breach,’ but then it pulls back. Of course, we have to go through natural justice processes. These have to be balanced documents. I just thought it seemed to be saying, ‘We’ve got a breach but we haven’t.’ There seemed to be an internal contradiction. In the case of a court where you have dissenting judgments, you would have one position saying, ‘We think there’s a breach,’ and the other saying, ‘There’s not a breach.’ Here there seemed to be an internal contradiction, as I read the document, and I just said, ‘It’s a matter for you, but to me this does read strangely.’

Senator CHERRY—If that contradiction comes down to the fact that the first report found that there was not a breach of disclosure standard because the key parties had found a way around the disclosure standard through this particular sponsorship arrangement structuring, that would be why it read strangely, I would have thought. They felt that there was a breach of the spirit of the standard but not a breach of its words. That would be consistent with what you see as reading strangely, I would have thought.

Prof. Flint—That was not my comment, as I recall it. My comment was not on the part relating to the disclosure standard; my comment was in relation to the breaches of the political matter conditions. There seemed to be an internal contradiction where there were a number of elements of finding a breach of the political matter conditions—namely, that there would be a request and authorisation of a political advertisement and then a failure to tag it. It was not the recommendations; the recommendations were ‘no breach’. It was just that I found it did not read as directly as I thought it should. The text should lead to the conclusion, I thought, whereas it seemed to wander. That was just a comment I made to the general manager, but I left it to the general manager to take whatever action he thought appropriate in bringing the matter to the board.

Senator FAULKNER—What did you as general manager, Mr Tanner, think of the draft?

Mr Tanner—I thought that it was a well-written draft and well-reasoned. My primary concern with it related a little bit to what Senator Cherry was saying. I felt that the issue that would be of interest to the board primarily was the policy one; that is, that there was not a breach here of the disclosure standard and there was no suggestion of that—not in the CLC complaint and not in the facts that we gathered. I thought that the board would be more interested in the policy issue of whether these matters were indicative of a gap in the regulatory scheme than in the compliance issue of whether we could chase down even

borderline breaches and find a small number of breaches of the code or something like that. But it seemed to me there were not a lot of breaches that were in play here and that, to some extent, a sole emphasis on that was not really giving the board what it would want, which would be a report which dealt with whether there were any breaches of the existing law, codes or standards but also dealt with the policy issue. That was my primary comment—I felt we needed to draw out that policy discussion.

Senator FAULKNER—We have talked a lot this morning, Professor Flint, about the three identified inquiries that have involved Mr Jones since 1999. I think you would accept that. Are there any other inquiries involving Mr Jones that did not reach the board level as a result of your decision?

Prof. Flint—May we take that on notice?

Senator FAULKNER—You may take it on notice, but it is a fairly crucial question for this Senate estimates, Professor Flint. I try to be reasonable about these things, but I think this is of such significance that you ought to be able to answer at the table. If you are not aware of it, I would have hoped that officers at the table—who would have a pretty thorough working knowledge of these sorts of complaints—

Mr Tanner—If your question is whether these are the only inquiries that relate precisely to Mr Alan Jones—

Senator FAULKNER—No, that is not my question. There are three inquiries. One, of course, is the commercial radio inquiry, which included public hearings. It involved Mr Jones. That is fine. My question is whether there were any other complaints raised with Professor Flint as chairman that, by his decision—regarding Mr Jones in this case—as chairman of the ABA did not go to the inquiry level. That is my question.

Mr Tanner—No.

Senator FAULKNER—Thank you.

Mr Tanner—I am being alerted to take it on notice. I would like to check that, but I am not aware of any.

Senator FAULKNER—Please take it on notice. I assume, Professor Flint, that you only raised your concerns about the late draft with Mr Tanner. You did not raise it with anyone else, did you?

Prof. Flint—That is my recollection—

Senator FAULKNER—I always worry when you say that, Professor Flint. Anyway, if it is your recollection, it is proper that you provide it to us.

Prof. Flint—It is my recollection that I raised that orally with Mr Tanner. It was purely a question of style. It had nothing to do with those recommendations.

Senator FAULKNER—But they all slip out, don't they—the three or four recommendations of breaches. It has got nothing to do with that, but they have all slipped out by the end of the process.

Prof. Flint—A crucial one was the advertising standard, and the only way you could make a judgment on that—no matter what recommendation you had—was to actually listen to the ad in the context of the surrounding editorial comment, which the whole board did.

Senator FAULKNER—But now you say to me it is only a question of style. Didn't you tell me a few minutes ago it was a question of logic?

Prof. Flint—Yes, that has to do with style.

Senator FAULKNER—Oh, I see!

Prof. Flint—Logic and style are related. The style did not go logically from the facts to the conclusion.

Senator FAULKNER—Oh, come on!

Prof. Flint—You may well laugh, Senator.

Senator FAULKNER—I do laugh at that. Even for you, Professor Flint, that is a massive slash outside the off stump. You cannot be serious. You told me a moment ago it is a matter of style. A few minutes ago you were telling me it is a matter of logic. Now you are telling me that logic is a part of style.

Senator Kemp—Mr Chairman—

Senator FAULKNER—Don't you start—at either style or logic.

Senator Kemp—I think it is important that the witness be given a chance to respond. Again we had an issue just then when the witness was responding and was met with jeering laughter, I have to say, from the committee members.

Senator FAULKNER—I plead guilty.

Senator Kemp—I think it is appropriate that the committee is entitled to ask their questions, but the witness, as I said before, is entitled to respond.

CHAIR—We do have to give witnesses an opportunity to respond, and their responses should be respected.

Senator MACKAY—Surely we are allowed to laugh.

Senator CHERRY—Just on the issue of the advertisement, you said that the whole board listened to it. My concern is that large bits of evidence appear to be deleted between the December report and the February report. One of the bits in the December report about this particular advertisement states:

The words, 'brought to you by Telstra, proud sponsor of Telstra Child Flight' did not occur until after a number of other items had been read including an advertisement (read by someone else) about RAMS home loans, a public transport update, a traffic report. The words were included in the following statement:

The *Alan Jones Program*, 2GB, brought to you by Telstra proud sponsor of Telstra Child Flight.

The report in December only said:

In this regard, the Telstra Child Flight live broadcast at 7.10 am was followed shortly by the announcement ...

That is a very significant difference in evidence between two perceptions of what the advertisement said. It is almost misleading to the public to delete those provisions from your final report.

Prof. Flint—What was important to the board was to actually hear it, and the board heard it, and it would be available to anybody who wanted to hear it. But the board heard it and came to that conclusion. In the editing of the document it was no doubt thought that the number of words in the earlier draft were not necessary for the later draft. You have not seen the draft of 5 February, and I cannot recall what was in the draft of 5 February in that regard, but the crucial thing for the board was to actually listen to the words. If you listen to the words—

Senator CHERRY—Can you recall the RAMS home loans, the public transport update and the traffic report before the actual sponsorship announcement came through?

Prof. Flint—We are talking about the—

Senator CHERRY—The Child Flight advertisement.

Prof. Flint—We listened for some time to the editorial comment so that the members made sure that they heard everything that they wanted to hear to come to the conclusion they did.

Senator CHERRY—That is interesting. I just wanted to raise some questions about that advertisement while Senator Faulkner was on it. As to the tone and delivery issue in terms of the December and February reports, I would be interested in Mr Tanner's advice to the board about whether the tone and delivery findings in the December and February reports were so very different on that advertisement.

Mr Tanner—The point I would make about it is that you need to look at the April decision that the board made. The board did not find that there was a breach of the advertising condition in relation to the Child Flight announcement but it did find that there was a need for greater differentiation and a requirement in the rules for greater differentiation between advertising and advertising content. My personal reaction to the Child Flight issue when I saw it in December was: it is always borderline with these things; you have to listen to them but some people might understand that this is obviously a live read and other people might not know what that is. I felt that this live read was towards the borderline. That was my instinctive reaction to it. I did not listen to it and I did not actually push the officers to form a view on that; that was all resolved subsequently with the board. I felt it was borderline.

What is noteworthy is that the board did not find that there was any problem with that in terms of compliance with the existing rules but it has thrown down the challenge that it thinks the rules need to be clarified further in terms of distinguishing advertising from non-advertising content. That directly points at the whole issue of live reads and how people understand them. I think that to some extent the board has said, 'That is pretty borderline; we are not interested in finding a breach there but there is an issue around whether that discloses an issue with the regulatory scheme.'

Senator CHERRY—What happened to that recommendation about changes? That goes back to the council and the minister—

Mr Tanner—There are several things happening about it. It has been put to Commercial Radio Australia, which is the peak body responsible for developing the codes of practice, and the ABA registers them, but we are also commencing some internal work, which is likely to see some research over the next six months or so, into that and the other issue that the ABA raised as an inadequacy in the regulatory scheme. The intention is to give the ABA the full range of options if CRA proves to be not interested in addressing the problem to the board's satisfaction.

The board was aware, in issuing that report, that there had been a process of review of the Commercial Radio Australia code ongoing, and there was an expectation that that was soon going to be wound up, as there had already been a call for submissions. So the ABA took care in its April report to say that it did not expect to have the problem addressed at once. But it is now getting down to a program of work which we hope will see the regulatory scheme issues addressed over the coming financial year.

Senator CHERRY—Who would have deleted from the final report the wording about the gap between the read and the acknowledgement? Would that have been officers, or would that have been at board level? That mentioned the RAMS home loan, the public transport update and the traffic report.

Mr Tanner—I do not recall.

Senator CHERRY—If you could find out, that would be good.

Mr Tanner—Sure.

Senator FAULKNER—In relation to the staff draft that went to the board that had been watered down to one recommended breach, did you support that breach at the board, Professor Flint?

Prof. Flint—I did not support it. What I did support was that the officers have the autonomy, if they wish, to recommend breaches to the board. That is the way we work.

Senator FAULKNER—But you did not support the staff recommendation?

Prof. Flint—I did not support it and I did not not support it. I took no position in relation to the staff and whatever breaches they wanted to recommend.

Senator FAULKNER—Yes, but what about when it gets to the board? The staff draft recommends a breach—did you support it at the board, or did you not?

Prof. Flint—The board decided not to accept that recommendation.

Senator FAULKNER—Obviously.

Prof. Flint—As I explained to you, we take the view on the board that we do not reveal divisions on the board.

Senator FAULKNER—That is handy. Mr Tanner, has the ABA been requested to provide briefing material or original documents to the Department of the Prime Minister and Cabinet

in the preparation of PM&C advices in relation to matters relating to the Professor Flint-Mr Jones letters and other associated matters?

Mr Tanner—Not to my knowledge.

Senator FAULKNER—Are we not in a situation now, Professor Flint, where you are chairing the ABA and you cannot inquire into any matter relating to Mr Alan Jones or Mr John Laws, radio station 2UE, radio station 2GB, the ABC and probably Channel 9—at least in relation to the *Today* show, which Mr Jones appears on? Are you not totally hamstrung in fulfilling your role as Chairman of the ABA?

Prof. Flint—The premises on which your question is based are incorrect.

Senator FAULKNER—So you think it is perfectly competent for you to sit on any inquiries or make further judgments about matters relating to Mr Jones, given all that has been said, all that has been exposed by others, in relation to your communications and correspondence?

Prof. Flint—You are assuming that there is such a complaint. The position of all members is that decisions on these matters are taken by the member when the matter comes before them.

Senator FAULKNER—How many inquiries have you had to withdraw from involving Alan Jones and the ABC, so far?

Prof. Flint—I did not have to withdraw from the ABC. I voluntarily decided to withdraw, notwithstanding legal evidence to the effect that it was most unlikely that I would be found to be in a state of apprehended bias.

Senator FAULKNER—That is one. How many inquiries have you withdrawn from in your term as chair of the ABA?

Prof. Flint—I withdrew from the commercial radio inquiry. I will have to take the rest of that question on notice, because I do not instantly recollect the occasions when I may have stood aside.

Senator FAULKNER—You do not even know when you stood aside?

Prof. Flint—We have a large number of matters before the authority and, as I said earlier, our minutes are replete with examples of members disqualifying themselves or withdrawing from the discussion of matters. I think that I would be one of the ones on the lower end of self-disqualifications. However, because I wish to be accurate, I will take that on notice and I will let you know.

Senator FAULKNER—Not to mention the ones where you should have stood down. But here is one that is not hypothetical; it is very real. I have written to you about my very serious concerns about a matter relating to political advertising in this country. You would be aware of that correspondence, obviously.

Prof. Flint—Yes.

Senator FAULKNER—I will not go to the substantive issue of the *Landscape* programs, on which I have lodged a formal complaint with the ABA. I go to the issue that I have raised in relation to your suitability to investigate or be involved in any way in any matter relating to the political process in this country. I have requested, quite clearly, that you not be involved with any such matter. It is a matter of public record, of course, but there is a range of issues, including your very strong and public critical statements about the Leader of the Opposition, Mr Latham, your membership of the Liberal Party, and broad concerns about the matters that we have been canvassing. Are you able to assure this committee that you will not sit on any complaint related to political advertising between now and the time your term expires later this year?

Prof. Flint—Your letter asked me to do two things. Firstly, it asked me to disqualify myself in relation to the specific complaint which you made. Secondly, your letter proposed to me that I should disqualify myself from a whole class of complaints.

Senator FAULKNER—That is right.

Prof. Flint—In relation to these matters, these decisions are taken by the member concerned on a case-by-case basis. When the matter comes before the board in relation to your specific complaint, I will take a decision. In relation to other matters which may or may not come before the authority, I will take decisions as they come. May I say this: I will not identify the complaint, but in relation to a specific complaint some time ago from the Australian Labor Party, which I recall distinctly, I think I was the member who argued that the complaint should be upheld on legal grounds, whereas the majority were opposed to me. I am quite capable, Senator, of taking a decision fairly and in an unbiased way in relation to these matters. But, as I say, in relation to your specific complaint, I will take the decision when it comes before me, acting on advice. In relation to other matters, I will do it, as we always do, on a case-by-case basis. I have never heard of a disqualification as to a class of issues and I do not propose to enter into that, having regard to the admonition from the High Court of Australia that we should not loosely and too easily disqualify ourselves in these matters.

Senator FAULKNER—I have an apprehension of bias for very good reasons, and I want you to know that. I think it would be most improper for you to be associated in any way with any matter relating to the political process—particularly political advertising—between now and the election, between now and the time your term expires as chairman of the ABA. I want you to know that, clearly, in this public hearing. I have an apprehension of bias. I have good reasons for it: your public statements in relation to my colleagues, which I find offensive; your membership of the Liberal Party; and a whole range of other reasons that have led me to that conclusion. Most people know I am a pretty reasonable person on these sorts of issues, but I certainly have an apprehension of bias, and I would expect you to do the proper thing and stand aside from any such inquiry.

In my view, given all the circumstances—given where we find ourselves with Mr Jones and Mr Laws, with inquiries into the ABC, with the failure to make public the correspondence between yourself and Mr Jones, and with the fact that there is a whole range of your responsibilities as chairman of the ABA that you are in no position to conduct and in fact you

are required to stand aside—there is an apprehension of bias. I asked you directly before why, in these extraordinary circumstances, you have not seen it as appropriate to resign this particular position in these circumstances.

Senator Kemp—Estimates are designed for questions to be asked. I do not believe they are designed for witnesses to be called before committees and be harangued or intimidated by senators. Senator Faulkner has his views and his biases. We appreciate that. He has put them on the record—

Senator FAULKNER—I do not—

Senator Kemp—Indeed you do.

Senator FAULKNER—I should not be sitting in judgment of political advertising either.

Senator Kemp—Indeed you do.

Senator FAULKNER—Neither should Professor Flint, nor should you. None of us should. We are all active members of political parties.

Senator Kemp—I am speaking now, so just shut up for a moment. The point I am making is that these estimates are designed to allow senators to ask questions. We have seen a prize example in the last five minutes of Senator Faulkner attempting to harangue a witness, to put his views on record. That has happened, but that should now be it. Senator Faulkner should be required to abide by the appropriate standing orders to ask questions and not attempt to intimidate witnesses.

CHAIR—I did ask the secretary whether there was a standing order covering intimidation and threats. There is not, but I do take your point. It is inappropriate to hector and attack a witness in this way. Do you wish to proceed, Senator?

Senator TCHEN—I think Senator Faulkner offered the witness a badge of honour through his questioning.

Senator FAULKNER—I am just making clear my apprehension of bias.

CHAIR—I assure you that your point of view has been noted.

Senator FAULKNER—By the way, I accept that I am biased. I accept that Senator Kemp is biased. I think every senator around this table is biased, and I know that Professor Flint is biased too, and I do not want him sitting in judgment of my reasonable complaints at the ABA.

Prof. Flint—Your statement today was completely superfluous, because when you made your complaint you saw fit to issue a press release announcing it to the whole nation. So there is no point repeating that here today in the Senate estimates committee.

Senator FAULKNER—There is a point, because you are here in this estimates answering questions—and properly answering them—and when you have been unable to do, admitting that you are unable to, or telling us you do not recollect or taking them on notice. That is as it should be, and I accept that. But I also make the point about another matter which I have

raised with you in correspondence. Let us hope that that correspondence is not lost and is responded to pretty quickly.

Senator CHERRY—Continuing on the issue of the differences between the December and February drafts, was the December draft the draft that was sent out for comment from the media organisations—from 2GB and Mr Jones?

Prof. Flint—No. That was purely internal. That was the one which did not proceed because the general manager and general counsel thought it needed to be rewritten in a number of areas.

Senator CHERRY—So it was rewritten before it went out for comment from media organisations?

Prof. Flint—The one that went out started with the draft which went to the board in February, but then the board requested further changes to that. There would have been further changes. If I remember—I have some difficulty saying ‘if I recollect’, because I am criticised for that, but I cannot remember everything—I would have thought that, after sending out the final version that the board liked to 2GB, there may well have been changes in relation to that, because you have to take into account the submissions put to you. The matter would have then been released to the public. But I cannot recall whether there was such—

Senator CHERRY—Does Mr Tanner have a comment on that?

Mr Tanner—It would have happened once we had a clear fix from the board of what content they wanted the final report to have. It would not have happened during December or the period up to 5 February when the staff were preparing a document to go to the board. The ABA has a requirement that is more specific than natural justice, that where it says anything that might be seen as critical of a party it has to give them the opportunity to comment. That is in section 180. However, that process would not have taken place until the staff had guidance from the board about what findings it was interested in making and any other comments the board would have had on the content and scope of the report. So, without knowing exactly when it occurred, I assume it would have occurred in the period between when the paper went to the board in February and when it came out in April.

Senator CHERRY—I refer to the material about the breach of clause 2.2(c) of the code, which requires that:

... reasonable efforts are made or reasonable opportunities are given to present significant viewpoints when dealing with controversial issues of public importance ...

There was a very significant difference between the conclusions in the earlier draft and the final draft. Essentially, you come to the conclusion in your final draft, as I recall, that you did not have any evidence that the producer was filtering out calls, therefore, you could not really find a breach of the code, essentially. I found that extraordinary given the findings that there was an overwhelming view of your investigators, in listening to the program, that Mr Jones was in fact filtering out those calls and giving short shrift to anybody critical of Telstra.

Mr Tanner—Once again, I do not recall the detail of the changes in the staff view over January or February, but I do recall that one of the major things that occurred was that the

staff took account of the way the ABA has dealt with achieving balance in other inquiries and it imported that standard over to this inquiry. I am not certain but there may also have been some developments in terms of the analysis of whether or not there was balance achieved over time in this program. However, I do recall that there was some careful examination of precedents here. Basically, in past instances, the ABA accepts that talkback-style current affairs radio is often very slanted and opinionated, and a factor such as throwing open the lines and not editing calls may be enough to establish that you have achieved balance. I think I will be in a better position to be more authoritative once I have actually had a chance to look at the February draft again, but the thing I would like to draw your attention to is that, once again, the ABA did not find a breach here. I know that it was imposing the standard that it has imposed in other inquiries on how you achieve balance in a current affairs and talkback driven setting. But the ABA did express concern that, where you have a direct sponsorship relationship with that presenter via the licensee, there should be a higher standard for achieving balance than currently exists in the code. So, once again, although the ABA in the end did not find a breach, it was troubled that there may be an inadequacy in the regulatory scheme. The April final report actually points forward and says that this is one of the two areas where we believe that the regulatory scheme needs to be changed to address an inadequacy.

Senator CHERRY—What I do not understand is the inadequacy. You have acknowledged that there was a problem here—and, in fact, I thought the first report showed that the problem was pretty clear, but the board subsequently decided that it was not that clear. I noticed on 6 May you imposed a new licence condition on 2UE that included the appointment of an independent monitor at 2UE's expense to ensure compliance with, presumably, the disclosure standard at the point.

Mr Tanner—Yes.

Senator CHERRY—Given the concerns which have been raised about balance in Mr Jones's program and whether he was breaching clause 2.2 of the code, why would the ABA not consider an option like that which was considered for 2UE of actually monitoring the program?

Mr Tanner—Once again, just to make it clear, in the case of 2UE the ABA found a pattern of breaches that it was so concerned about that, among other things, it imposed what is likely to be a fairly onerous condition, designed to improve the likelihood of compliance in future. In the case of the Macquarie-Jones-Telstra inquiry, the ABA did not find a breach in the end. Ergo, there would have been no purpose to be served by a monitoring condition. Instead, what the ABA was at pains to say was that it believes that the current regulatory scheme—that is, the rules—is inadequate to deal with a situation where there is this sponsorship relationship between licensee, sponsor and presenter.

Senator CHERRY—But, by your own admission, you acknowledge that these were lineball issues from the board's point of view in terms of whether there were breaches or not. In those circumstances, why would you not consider a monitoring arrangement?

Mr Tanner—Because if the rules are not adequate then the fact that there are not any breaches does not mean that there is not a problem. The issue with 2UE was noncompliance with the existing regulatory scheme, not the adequacy of the regulatory scheme. The issue in the board's mind with 2GB-Telstra-Jones was that, though there were not any breaches of the current scheme, the current scheme is deficient in a couple of areas. There is not really much point in monitoring in a scenario where you are saying that it is the current rules that are at stake. Rather than actually putting conditions on the licence, what the ABA is saying is it would like to see variation of the codes or perhaps some other action if that does not work out. I note here that that ABA has the power to make standards. The ABA has found a solution to the problem it sees here in a different area.

Senator CHERRY—Which will take, by your admission, six to 12 months to resolve, through reports, inquiries, discussions with Commercial Radio Australia et cetera. Behaviour which part of the ABA—presumably, part of the staff—thinks is a breach, and you acknowledge is lineball and the board thought was not a breach, continues whilst that processes is going on. I think that is an inadequate regulatory response.

Senator Kemp—Chair, as fascinating as all of this is, it is now one o'clock. It is the normal time to break for lunch. Could I have from the committee, for the officers who are waiting, an indication of how long they expect this particular section of estimates to go, so we can give some advice to others.

CHAIR—We will get the ABA to come back after lunch. The Democrats have further questions, probably for about half an hour.

Senator Kemp—Is that going to take an hour, or two hours?

CHAIR—Half an hour.

Senator CHERRY—Half an hour. I will put some of the questions on notice.

CHAIR—That will be followed by the ABC and SBS.

Senator Kemp—So we would expect the ABA to be on for half an hour.

CHAIR—Until about half past two.

Senator MACKAY—That is for the Democrats. Senator Harradine has some questions, I think.

Senator Kemp—Senator Mackay, is the Labor Party finished with questions with the ABA?

Senator MACKAY—Yes.

Senator McLUCAS—I have—

Senator Kemp—You have got a few questions?

CHAIR—No. They are going on notice.

Senator McLUCAS—I have a series of questions that go to regional broadcasting licences, which I am happy to put to Mr Tanner on notice in order to facilitate the committee's needs.

CHAIR—Senator Faulkner has a question to go on notice as well. We are left with the Democrats.

Senator Kemp—We are left with the Democrats, and I think that Senator Harradine had some questions.

CHAIR—He did. Yes, all right.

Senator Kemp—I just want to give some indication to the officers who are waiting as to whether they should come back at two o'clock or at three o'clock.

CHAIR—I would have the ABC standing by from 2.30.

Senator Kemp—I am sure they have heard that. Thank you very much.

Proceedings suspended from 1.03 p.m. to 2.04 p.m.

Senator CHERRY—I just wanted to follow through a few more questions about the Telstra sponsorship report and the difference between the December and the February drafts. I am mystified as to why the reference to the fact that their commercial arrangement was above commercial rates was, according to Telstra's own media buyer, deleted from the final report. Who made the decision to delete that particular reference in the final report and why?

Mr Tanner—I will have to take that question on notice.

Senator CHERRY—It struck me, as it was very relevant to the matter under consideration, that this particular commercial arrangement was way above what the commercial cost of advertising was, as regarded by their buyer.

Mr Tanner—Senator Cherry, perhaps you could take me to the particular reference. Are you looking at the 15 December report?

Senator CHERRY—I am looking at the draft report. I am just trying to find it. There is a note from Telstra's media buyer. It is an email from Georgia Payne, Buying Manager, Optimedia, December 2003, page 28 of the December draft. It said:

I know there are non-media reasons for signing this deal but we really need to stress that this does not represent value and we are paying more than we estimate market rates to be for this airtime.

I think that is very relevant to the consideration of this deal, and I was surprised that that piece of evidence was deleted from the final report because it is a very relevant piece of evidence, in my view, and that was not part of your consideration.

Mr Tanner—I will have to take that question on notice.

Prof. Flint—On that, could I just add there are three possibilities as I see it: firstly, the officers deleted it in typing the report; secondly, the board deleted it—they wanted a tighter report, as I remember; or, thirdly, it may have happened in the natural justice process when the report goes out to 2GB. But that can be traced.

Senator CHERRY—That might be sorted out if the officers' draft is released by the board, which we would much appreciate. I have a general question about this issue. There is evidence in your report that Telstra had in its standard pro forma contract a requirement that

sponsors are not engaged in any negative comment on Telstra. Are you aware of such a provision turning up in any other contracts in the media sector?

Prof. Flint—Are we talking about the contract with 2GB?

Senator CHERRY—Both the Laws contract and the 2GB contract in their original pro forma had a provision from Telstra, from Telstra's lawyers, saying that as part of the sponsorship agreement the sponsor, whether it be Laws or 2GB, would not engage in any adverse comment against Telstra. It was deleted from both contracts during the negotiation phase. But that fact is in both reports, both the Laws report and the 2GB report.

Mr Tanner—You are asking whether or not we are aware of any other contracts involving Telstra in which that clause has not been deleted?

Senator CHERRY—Yes.

Mr Tanner—The answer is no.

Senator CHERRY—You are not aware of any?

Mr Tanner—No. There are going to be a lot of advertising deals or deals with Telstra which are right outside our remit. We are the broadcasting regulator. But we are not aware of the content of any other contract involving Telstra.

Senator CHERRY—Certainly when we asked the same questions of Telstra yesterday they were not aware. They said it was just a standard clause the lawyers put in. But I would be concerned about whether the ABA will be looking at those sorts of clauses in the broader review of the standards and codes that you are now looking at in this area.

Mr Tanner—As I said before the break, one of the topics the board has actually asked for work to be done on is setting a higher standard for achieving balance in debate when an issue concerns the sponsor. So potentially that is an issue which is in scope.

Senator CHERRY—I am still fascinated with that issue I was debating before. Over lunch I reread your final report. Reading that report, it makes it quite clear that it was even the ABA board's view that the Jones program was not balanced in its treatment of Telstra issues, that Mr Jones's program had significantly changed their view on key issues to do with Telstra following this sponsorship agreement, yet it still found that there was no breach of the code in the absence of evidence that the producer was filtering calls. I know we said that was an on-balance call, but I am still mystified as to why you would not insist on a monitoring arrangement—

Mr Tanner—The codes do not actually require balance of radio current affairs. That is the first thing. The second point is that the code-breaching question related to the requirement we have instead of balance. I will just see whether I can find the actual terms of it.

Senator CHERRY—The code says:

(c) reasonable efforts are made or reasonable opportunities are given to present significant viewpoints when dealing with controversial issues ...

As I read your report, the fact that Alan Jones on a couple of occasions said, ‘Call in and give me your views,’ and then even the fact that he did not actually take the calls they are regarding as sufficient to qualify as a reasonable opportunity.

Mr Tanner—Yes. There are precedents for that. The ABA has accepted that there is a fairly low bar for achieving balance. If a talk show compere or host has extremely strong views but throws open the lines in a way which actually does enable people to speak up—they are not being edited behind the scenes so that no-one ever gets on air and once people are on air they are not immediately cut off so they cannot express their view—the ABA has found in the past that that actually constitutes making an effort to achieve some sort of balance.

Senator CHERRY—But the draft report says:

On the limited occasions when alternative viewpoints were expressed by callers to the program Mr Jones did not allow such viewpoints to remain unchallenged and in effect denied or undermined their opportunity to be heard.

There was a significant imbalance in the viewpoints presented which favoured the use of proceeds from the sale of Telstra to ‘drought proof’ Australia.

In your report you put enormous emphasis on the fact that Jones said, ‘Call in and give me your views,’ but if anyone did call in and disagreed with him they were pounced on from a great height.

Mr Tanner—My recollection—and it is only a vague one; I really have to take this on notice—is that, going through the material again, we actually found contrary indications. But that is a recollection and a fairly vague one. I would like to take that question on notice, if that is all right.

Senator CHERRY—It just strikes me in this particular area that you have really erred on the side of extreme caution and that the report in December was much more reasonable and much better argued in terms of 2.2(d), I think it was, and certainly in terms of 2.2(c).

Mr Tanner—I think another way of expressing it would be that the ABA have not found that the behaviours that we have picked up during the inquiry are by and large causing breaches, but we have questioned the adequacy of the current regulatory regime to deal appropriately with a situation where you have a sponsorship deal between the licensee and the sponsor concerning that presenter. So I think what the ABA’s report in April is saying and what I think has to some extent got lost in this debate is that there are not breaches given the way the current regulatory scheme is drafted but that there are some areas of concern where you have this kind of relationship, this sponsor relationship.

Senator CHERRY—Yes, but your original draft report suggested that there were not breaches because the parties had structured the commercial agreement to deliberately fall outside the regulatory requirements.

Mr Tanner—That is a different issue. That is the issue of the disclosure standard. The disclosure standard was pitched at deals between presenters and third parties, not between licensees and third parties, because of course most advertising, or nearly all advertising, in commercial radio is sold by licensees. So the standard was always designed to deal with the

commercial relationship between the presenter rather than licensee and the third party. So those remarks are intended to be about that particular issue of the application to the disclosure standard.

Prof. Flint—There were two different principles there. With advertising, everybody knows that there are advertisements and that Telstra advertises on that program. But, with deals between an outside person and a presenter, the ABA was very keen to see that that was disclosed, because it was not always disclosed, it was not known. But everybody knows that Telstra is an advertiser on the Alan Jones program.

Senator CHERRY—But nobody knows that Telstra was paying above market rates and that Mr Jones benefited from that as a shareholder of 2GB.

Prof. Flint—I think everybody knew he had an equity interest in 2GB. It was front-page news. It was all over the place.

Senator CHERRY—I would like to survey the audience of 2GB to determine whether everybody knew that at all. I think the reasonable person listening to 2GB would know that, but I am not sure of my knowledge of the 2GB audience. Just going through the process, you indicated in answer to earlier questions that in mid-2003 a paper went to the board canvassing board views on this particular paper, and that paper obviously would have given some guidance to staff in preparing the December draft. Would that be the case?

Mr Tanner—The paper that went forward was a report on progress in the investigation and, yes, that was put up by way of canvassing views from the board.

Senator CHERRY—On the basis of that feedback, the staff would have then proceeded to continue the report up to that December draft?

Mr Tanner—I do not recall and do not have details of what feedback was actually given at that meeting. I should make the point that the paper that went to the ABA committee actually did not propose any breach findings. The report that I looked at in December was the result of a later focusing on the material by a different investigation team.

Senator CHERRY—So it was a new team?

Mr Tanner—Yes. Ancillary to the fact that this particular inquiry was regarded as the least highest priority of the three inquiries that were commenced at once by this group of complaints back in 2002, the principal reason for delay was a series of discontinuities in staffing. We actually lost several key staff who were working on this during the preparation. That resulted in discontinuities and a need for a new officer or officers to get on top of the material. So the team working on it in the first half of last year was actually different from the team that was working on it in the second half. That was unavoidable. Not just one but in fact three officers happened to get better jobs elsewhere during that period.

Senator CHERRY—Professor Flint, on 20 October 2003 you advised *Media Watch* that there was nothing that would indicate any breach of standards or the code in respect of Mr Jones, yet the inquiry at that stage was not actually completed. How do you view in retrospect that particular comment that you made?

Prof. Flint—*Media Watch* phoned me in October. *Media Watch* had done an extraordinary thing. They floated all these complaints—they had presented very strongly the view that Alan Jones and 2GB had breached the ownership and control laws, that John Laws had breached the disclosure standard, that Alan Jones had breached the disclosure standard—and then when we issued the report in May which showed that there was absolutely no breach, every stone had been upturned—

Senator CHERRY—This was the ownership report?

Prof. Flint—Yes, on the ownership as well—*Media Watch* did not even bother reporting that. When I was at the Press Council we took a very dim view of newspapers which launched a story making allegations about somebody and then later on when that person was absolutely cleared, for example by a jury, did not even bother to report that. That was regarded as a very serious matter. *Media Watch* did not bother. When they phoned me in October I thought, ‘They have relented; they are going to do a story now to correct the serious misrepresentation that they had put when they started this story.’ When they asked me about it, I said, ‘No, as you know, he has been cleared.’ Then I realised they had got onto the disclosure standard and that is what they were asking me about. They were not going to do a story on ownership and control.

When we bundled all these complaints that came from the Communications Law Centre into three—that is, the most serious, ownership and control of 2GB; secondly, the 2UE matter; and, thirdly, the disclosure standard essentially and 2GB—the officers’ view which came to me was that there was no breach in that because there was no separate contract between Alan Jones and Telstra. So when they phoned me in October and explained what they were talking about, that they were not going to correct their serious breach, I thought of not publishing something about the report. They told me it was about the disclosure standard, and what I said to them was, ‘There is nothing in that. I am told there is nothing in that because, absent some evidence linking payment by Telstra to Alan Jones directly, a contract directly, the disclosure standard by its terms’—we had legal advice to this effect—‘could not possibly apply to him.’ That is what I told them. That was the basis of my phone conversation in October 2003.

Senator CHERRY—The December report said:

The available evidence suggests that the key parties—that is MRN, Telstra and Alan Jones—structured the commercial agreement of 17 July 2002 to fall outside the regulatory requirements ...

Was there any suggestion or recommendation to senior officers or to the board that further investigation was needed to actually confirm, add to or detract from that evidence?

Prof. Flint—On the disclosure standard?

Senator CHERRY—On the disclosure standard at this stage. I am interested in the use of the words ‘The available evidence suggests’. Does that suggest that they were short of evidence or that your investigators wanted to get more evidence?

Prof. Flint—I do not think so, because we had done the documentary trawl. If there were a contract between Telstra and Alan Jones, that would have been produced by the lawyers in the documentary trawl.

Mr Tanner—There was never a suggestion that the disclosure standard itself was breached. The CLC in its original complaint noted that the disclosure standard did not apply because the deal was directly with the licensee. The ABA, when it considered this matter earlier this year, was well aware that the issue was not whether there was compliance with the disclosure standard. There was, however, an issue about whether or not the scope of the disclosure standard was correct.

Senator CHERRY—My final question comes back to—I am sorry to bounce around a bit, but there are a lot of areas in this, as you know—the findings on clause 2.2(c) of the code in respect of the reasonable opportunity for comment. On this one and the 2.2(d) provision the finding from the ABA is an on-balance finding. Does the word ‘on-balance’ mean that the ABA or the board was not in agreement or could not reach a consensus view on that?

Mr Tanner—I would have read the word ‘on-balance’ in the ABA report not to be referring to the voting patterns of the members but to be referring to whether they felt it was close or clear cut.

Senator CHERRY—It is that lineball issue you were talking about earlier.

Mr Tanner—With the application of codes to broadcasting content, in general you are often talking about fairly broad rules or even rules that import subjective language, and you are applying them to content which is very varied in character. Quite often the conclusion you reach is that it is lineball. In those situations, unless there is a clear-cut breach, a board or a delegate may be inclined to say, ‘There is no breach on balance.’ Those words suggest that we are perhaps approaching the border. I do not think we would use those words to suggest that the board had split 3:3 on it and there was a casting vote or something like that. We might record in the minutes the decision was by a majority in that situation, but we would not use the term ‘on balance’ to describe that.

Senator CHERRY—So it was not a matter that the board itself was in some disagreement or disarray over these findings?

Mr Tanner—No. There was certainly debate within the board, but that was not the meaning of ‘on balance’ in that context. ‘On balance’ I think is a reference to how clear cut the issue is.

Senator CHERRY—That will probably finish me, Chair.

Senator HARRADINE—In view of the time, I have decided to put certain questions on notice; otherwise I think I would be about half an hour to three-quarters of an hour. Could I have some indication from the ABA that the responses will be provided within the next couple of weeks or so? They are pretty straightforward questions.

Prof. Flint—Yes, we could do that for you, Senator.

Senator HARRADINE—Thank you. I want to ask about the web site Cybersmart Kids Online. On that web site there is an area where children can design and submit a poster to the ABA for display on its Internet site. In order to post artwork to the gallery a child has to provide an email address and the child’s name, age and details of the city or town in which they live. The details are taken on a pop-up page which does not claim to be secure. Has the

ABA taken steps to ensure that it is not possible for people such as paedophiles to access this information and make contact with children and, if so, would you please detail what steps have been taken?

Ms Wright—I am aware that we have looked at that issue. I do not have all the information with me. My understanding of our finding is that it was sufficiently anonymised and it was accompanied by warnings. But we can certainly take that on notice and provide you with what we concluded there. It is a matter that we are looking at as part of the review of that whole web site. So we were aware of that issue, we did look at it and we did establish what safeguards were in place, but I do not have those details with me.

Senator HARRADINE—This is very disconcerting. If there is an invitation to children to send in a poster to the ABA through their email address, surely the ABA would have, before that invitation was made, ensured that the information regarding the age, names and location of children who respond to the ABA would be secure. From the word go this does worry me.

Ms Wright—Yes, that was put to us. We looked at it, and we understood it differently from the way you have described it. I do not have those details with me, but at the end of our inquiry we were satisfied with the security. We can provide you with the information on notice, but I do not have any more information with me.

Senator HARRADINE—You say that this had been pointed out to you. By whom?

Ms Wright—We are currently reviewing our Cybersmart Kids web site, and security was one of the issues that we looked at and in fact continue to look at.

Senator HARRADINE—So you are able to go ahead and advertise notwithstanding the fact that a paedophile, for example, could get access to the names and addresses or locations of children who send in posters to the gallery?

Ms Wright—My understanding is that is not the case. As I said, we will check that and provide you with the information. But my understanding is that that was not the case.

Senator HARRADINE—Can you say quite definitely right here and now that this will not result in any paedophile getting names which were requested by and submitted to the ABA accompanying a poster? Can you give us a guarantee that as of this moment that is the case?

Ms Wright—What I am saying is that it is an issue that we have looked at. My understanding is it is not the case, but I do not have the details with me and we can provide those details to you on notice.

Senator HARRADINE—How do you mean that is not the case? Is it the case that those names are protected absolutely?

Ms Wright—My understanding, without having the details, is that they were sufficiently anonymised. But I would need to check that information.

Senator HARRADINE—I want to now go to the issue of satellite delivered pornography of various types, including hardcore pornography. I raised this matter in the last meeting of the estimates. Where is this all up to?

Ms Wright—My understanding is that it was raised with the department at the last estimates. I am able to advise you that since that time the ABA have initiated an investigation in that area and that we have issued notices under the Broadcasting Services Act to require certain information which is to be provided to us by Friday, 28 May, which is the end of this week. The information goes to establishing whether the service provider of those satellite services is an offshore entity and, if so, whether those in the intermediary chain may also be construed for the purposes of our act as a service provider.

Senator HARRADINE—Under the Broadcasting Services Act, is it not the duty of the ABA and its employees to know whether there has been a breach of the legislation or the provisions of the act? Should you not immediately have been able to determine that?

Mr Tanner—This is an exceptions based regime. The ABA's role is typically triggered by a complaint, although that was not the case here. We commenced investigation once the ABA itself became aware of the issue. It also is a regime which imposes only light regulatory requirements on what are seen as the least influential broadcasters. So, for example, for any service which fits the definition of open narrowcasting or subscription narrowcasting, there is no requirement to get a licence from the ABA. Their content is authorised by class licence. That means that the ABA is not even aware who that person is necessarily until it receives a complaint. So there is no inconsistency with the ABA's role in our not knowing that people are commencing narrowcasting services until we become aware of a problem. That is the way the exceptions based regulatory regime works.

Back before 1992 you could not broadcast without a piece of paper from the government. Since 1992 there has been a different regime and a number of things are authorised under class licences, which means the regulator does not know who is doing it. Having become aware of the problem, the proper thing for the ABA to do is to determine who is doing the elements of providing a broadcasting service, because they are the people that the Broadcasting Services Act regulates and imposes conditions on. We know people who are involved in this business, and they are the ones we are making inquiries of. The purpose of those inquiries is to establish who and also in what jurisdiction the people or entities are that are providing a broadcasting service, because they are the ones that the Broadcasting Services Act allows us to regulate. They are the ones on whom there is a set of conditions bearing on classified or unclassified material.

Senator HARRADINE—What will occur in the end? Will there be a determination or what?

Mr Tanner—There is a number of possibilities.

Senator HARRADINE—Like what?

Mr Tanner—I cannot pre-empt that.

Senator HARRADINE—No, you can tell us what the possibilities are.

Mr Tanner—Yes.

Senator HARRADINE—Can you do that?

Mr Tanner—We need to establish who is providing a broadcasting service. If the entity is an offshore entity, and we are pretty sure offshore entities are involved, if any of the onshore people or entities are also doing actions that would mean that they are providing a broadcasting service in the terms of our legislation, we would then be able to—and we are doing this in parallel—establish the relevant category of licence with greater certainty than we have now, although we have a pretty fair idea, and therefore what the applicable rules are and whether there is a breach of those rules. We can then consider what our options are for taking action if there is a breach of rules. If any inadequacy is shown in the regulatory regime, that is another group of issues we will either be able to fix or be able to take up with other people.

Without a broadcasting service, we have no jurisdiction. If the only entities we can find that are actually providing a broadcasting service are entirely offshore based, that may also pose some practical problems in terms of a certain jurisdiction. But the point is when we have a fix on which entities are providing the service—and it is very often the case when you have a service brought in from overseas that there is someone in Australia who can be held to be providing a broadcasting service because of their role in onselling, marketing or whatever that service—then we know whom we are dealing with and we can work out whether they are complying with the rules. So that is what we are endeavouring to do, and we are doing that as promptly as we can.

Senator HARRADINE—If they are entirely overseas based, you can recommend to the relevant minister amendments to the legislation.

Mr Tanner—We will exhaust everything within our power if we find there is a problem. If there is an inadequacy in the class licence conditions, for example, we could make a new class licence condition. But, if there are things that are outside our power to rectify, we would have to come back to the government.

Senator HARRADINE—When is this likely to be concluded? When are you wrapping this up?

Ms Wright—As I said, the information we have asked for by notice is due at the end of this week. Then we would need to consider that information, draft a report and provide that to the board for consideration. So I would think that we are a couple of months away from an outcome on that investigation. But it depends on the degree of difficulty that the material that we are provided with throws up for us. As Mr Tanner said, there are issues if the service provider is an offshore entity, and this is an area I think which is internationally recognised as a problem, which is the regulation of satellite services. It is certainly something that the European Union is turning its attention to. For example, if it were being broadcast effectively from Europe, if it is not illegal in the country of origin nothing could be done in that country to deal with that situation regardless of whether it was illegal here.

You may be aware that Australia has been active in this area and that we set in place transborder television broadcast principles as part of the Asia Pacific Forum in the late 1990s which meant that, if we were transmitting material from Australia into another country, that country could come to us if they had a problem with material. Also, following on from that, the Broadcasting Services (International Broadcasting) Guidelines in 2002 substantially

targeted that area to give it a legal status. But not all countries have reciprocated. They do not extend to us formally or legislatively the same rights as we are necessarily offering them. So the purpose of this investigation would be to establish who the service provider is, who the other providers are in the chain, if that is relevant, and the countries that those service providers are operating from.

Senator HARRADINE—And what you can do about it?

Ms Wright—Then the conclusion will be whether, if they are located within Australia or part of a chain, we can take action in that regard. If they are located internationally and there is no provision in place for us to take action, then that is going to be, I presume, a broader matter for government of international liaison and turning attention to how these problems can be resolved. As I said, I know it is a problem that the European Union is endeavouring to grapple with currently. So it is something that is on the international drawing board, but not all instances are covered. So our investigation will be to ascertain where the primary service provider is located.

Senator HARRADINE—Are you working with the Australian Communications Authority, the ACA, on this matter—for example, as to what physical methods can be utilised to prevent these images coming across?

Ms Wright—I understand that we have had some preliminary discussions with the Communications Authority, but it is not yet clear how they would be able to assist us or work with us further on this until we have the information that we are seeking from notices.

Senator HARRADINE—I will put the rest on notice.

CHAIR—That almost concludes the ABA section of this estimates, but I would like to read a statement from the Acting Deputy Clerk of the Senate, Rosemary Laing, concerning questions to witnesses. The statement reads:

Earlier today, there was discussion in the committee about whether questions asked by Senator Faulkner of Professor Flint amounted to the hectoring of a witness and whether the standing orders of the Senate prohibited such behaviour.

Standing order 26 provides that estimates hearings proceed by way of asking questions of ministers and witnesses. Questions may be accompanied by brief explanations, but speeches must not be made.

The then President pointed out to all committees in 1988 that chairs have an obligation to ensure that questions are asked and answered in an orderly fashion, which means that witnesses must be given the opportunity to answer questions and must not be interrupted before they finish an answer.

This does not prevent robust and probing questioning, but does prohibit hectoring of a witness by interrupting their answers and not giving them reasonable opportunity to respond.

That is the information we have had from the Acting Deputy Clerk of the Senate. With that, I thank the ABA for appearing today.

[2.45 p.m.]

Australian Broadcasting Corporation

CHAIR—I welcome the officers of the ABC here today.

Senator MACKAY—Mr Balding, I refer to the 2004-05 budget announcement of \$54.4 million in funding over three years for the extension of the national interest initiative and the \$17.4 million for ABC program acquisition over four years. Can the ABC confirm that the so-called new national interest initiative funding is simply an extension of existing funding in that area?

Mr Balding—Yes, it is a renewal of the existing program. The existing program ceases in June 2005. The initial program was for four years, and that would have been the last year. What was announced in the budget was a continuation of that program for a further three years.

Senator MACKAY—Can I conclude, therefore, that the program acquisition funding that I referred to in my initial question of around \$4.2 million to \$4.5 million is the only, what I would term as, truly new funding in the budget?

Mr Balding—That is correct. Yes, that funding has been added to our base funding.

Senator MACKAY—The ABC has claimed its funding is down around \$10 million—we have discussed this in previous estimates—in real terms since 1996. Taking into account the new funding of around \$4 million, does this mean that the ABC is now down, for want of a better term, around \$6 million in real terms since 1996?

Mr Balding—I will ask Mr Pendleton to have a look at that, because we have a model that we continue to update.

Mr Pendleton—Are you talking about the 2004-05 funding, post the 2004-05—

Senator MACKAY—Yes.

Mr Pendleton—Comparatively speaking, the ABC is probably up by about \$450,000 in real terms on 1995-96 levels.

Mr Balding—Once you take into account the new—

Mr Pendleton—All the new funding.

Senator MACKAY—So you are up from 1996, are you?

Senator Kemp—No, in real terms, not in dollar terms. The figure would be very substantial. This is adjusted for inflation. That wipes out a whole series of questions, does it?

Senator MACKAY—No. Of course you adjust for inflation and the CPI et cetera. An increase in real terms means once you have taken account of the CPI.

Senator Kemp—Exactly. But it means that there has not been a cut. That is what it means.

Senator MACKAY—Then perhaps the ABC can explain to me how they concluded that they were \$10 million down from 1996. Perhaps you would like to know, Senator Kemp, as well.

Senator Kemp—I shall be all ears, Senator—all ears.

Mr Pendleton—The \$10 million is for the 2003-04 budget. If you look at 2003-04 indexed back, comparing that even today, our appropriation is \$10 million below in real terms where we were at in 1995-96.

Senator MACKAY—That is the question I asked you. Then I said in real terms—and I do know what ‘in real terms’ means—

Senator Kemp—I know that.

Senator MACKAY—If you are down in real terms \$10 million, assuming we are still contending you are, and you get \$4 million of new money, according to my layperson fiscal knowledge that means you are down \$6 million—does it?

Mr Pendleton—No, there are a number of other adjustments to our base funding. There are parameter changes just against our base funding of about \$13 million, which happens year on year. It just depends how that goes against the inflation rates of the time. There are also non-base adjustments to things such as depreciation funding and asset replacement moneys, and a number of other non-indexing type adjustments as well.

Senator MACKAY—So what am I missing here? Last year you said you were down \$10 million and all of a sudden you are in the black by about half a million. Are you saying that there has been an increase in your base in real terms?

Mr Pendleton—Not in our base.

Senator MACKAY—That is what I am talking about: base funding. I think Mr Balding gave me the figure, to be honest.

Mr Balding—The model we do is not only base funding. It is total funds that have been provided to the ABC by government that are basically discretionary to the corporation. Mr Pendleton outlined there is other funding that is not in our base funding—adjustment for depreciation would be one of those; Mr Pendleton can take you through it—which impacts then on that model. But if you were to ask about where we stand in respect of our true operational base funding—in other words, exclude transmission, exclude depreciation funding, exclude all that—then that would be a different answer.

Senator MACKAY—That is effectively the question I am asking. I think your response last time was to the base. In terms of the base funding, taking account of capital depreciation and all those variables you account for, how do you stand after this year’s budget?

Mr Pendleton—After this year’s budget, we stand \$450,000 better off than we were in real terms.

Senator MACKAY—It is not what the question is.

Mr Balding—The question is in respect of base funding only, not total funding.

Senator MACKAY—Base funding in 1996 to when we got the response last estimates or the estimates before and then 1996 to now. What impact has this budget had on the base funding of the ABC?

Mr Pendleton—If we were to look at the money we have available for program making, this budget has \$562 million against, in real terms, \$604 million in 1995-96. That is money that we have available to make programs. So we are in the order of \$35 million behind.

Senator MACKAY—I think that has clarified it.

Mr Balding—It just depends which benchmark you are comparing.

Senator MACKAY—No, I understand.

Mr Pendleton—The benchmark that we generally compare is all the money that is appropriated to the ABC that is not required to be returned.

Senator Kemp—I could probably add some information on this, Senator, that will perhaps further assist you in your considerations, if you would like me to.

Senator MACKAY—Sure, if you want.

Senator Kemp—This is the advice I have received from the department. In 1995-96 the ABC received a total appropriation of \$522.24 million. The ABC received no transmission funding prior to the sale of the National Transmission Network in 1998-99 but received funding for orchestras to the order of \$32 million. To compare the 1995-96 appropriation with current levels, the value of transmission funding it receives, \$75.5 million, should be included. The orchestra funding which it no longer receives is removed. This alters the relevant figure to \$565,740,000. Adjusting the figure of \$565.74 million and using the relevant index, which I understand is now called WCI-6, the ABC's overall 1995-96 appropriation would be \$692.4 million in 2004-05 if maintained at the same level. The ABC's overall appropriation in 2004-05 will be \$756.1 million. The overall appropriation with those adjustments is \$756.1 million versus \$692.4 million.

However, the advice is that a valid comparison of this figure with the 2003-04 appropriation is difficult. There have been significant changes in the structure of the ABC's appropriation since 1995-96. Three things are listed. The first is accrual accounting, which was introduced by the Commonwealth in 1999-2000. This has significantly altered the ABC's appropriation and particularly the accounting treatment of its assets. Second is access to capital. The ABC is now required to source capital from the Commonwealth and accordingly has borrowed significant sums, approximately \$170 million, for its Sydney and Perth accommodation projects over recent years. Third is changes to analog transmission. On the sale of the National Transmission Network in 1998-99, the ABC and SBS received funding for analog transmission services. However, in 2004-05 the ABC is funded for a higher level of analog transmission services than were provided to the ABC by the National Transmission Authority in 1995-96. I do not know whether that enlightens you, Senator, or does the reverse.

Senator MACKAY—All I was going on, to be honest, was information provided by the ABC. That is why I am asking the ABC the question.

Senator Kemp—That is the advice from DCITA.

Senator MACKAY—What is the ABC's view on that advice?

Mr Balding—Our advice is that, when you look at total funds available to the corporation provided by the government that do not have to be returned to the government—in other words, when you exclude things like loan funds—when you make the number of adjustments that the minister is referring to, and when you take into account the new funding for 2004-05 as announced in the budget, we are nearly half a million dollars more in real terms than we were in 1995-96. However, your question, which was different, was where does our operational base funding stand coming into the new financial year compared to what it was in 1995-96. I think Mr Pendleton answered that. There is still a significant difference.

Senator MACKAY—So what was the difference, again, Mr Pendleton?

Mr Pendleton—It is about \$42 million.

Senator MACKAY—We might leave that to the finance gurus and come back to that later on. Mr Balding, in terms perhaps I can understand, how adequate is ABC funding now to pursue the ABC's charter obligations?

Mr Balding—I do not think the ABC will ever be in a position to say that it has adequate funding. We sought continuation of the NII funding. We also sought an additional \$8 million as a catch-up. The government announced in the budget \$4.2 million. So at this stage I would still be of the view that the ABC will go through a fairly difficult process in respect of its budget for 2004-05 and 2005-06.

Senator MACKAY—But you seem to be saying now that it is generally not too bad compared to what you received previously.

Mr Balding—It is a lot better than it was prior to the announcement of the budget. \$4.2 million will take a fair degree of pressure off television's budget. It will provide much needed relief.

Senator MACKAY—I think those who are responsible for financial management in both political parties may be taking note of those comments. I take it then you are not considering any further cuts in programming following the axing of *Behind the News* and the digital multichannels last year?

Mr Balding—Not at this stage.

Senator MACKAY—Not at this stage.

Mr Balding—Not going into the new financial year, no.

Senator MACKAY—Is anything under active consideration, though?

Mr Balding—No.

Senator MACKAY—Do you have any plans to reinstitute a *Behind the News* type program?

Mr Balding—I think as I said publicly, if I can ever find an additional source of revenue, we would consider bringing back a similar type of program. It may not necessarily be exactly *Behind the News*. I have never stopped looking for that source of funds, and I know the

director of television is very keen to bring back a program of a similar format. We are still continuing to pursue those opportunities.

Senator MACKAY—Were media reports in early March that the ABC was considering axing Radio National true or false?

Mr Balding—They were false.

Senator MACKAY—Is it true, Ms Howard, that you referred to Radio National as ‘boring as bat shit’?

Ms Howard—No. I think I may have made some comment to the effect that we cannot afford our programs to be as boring as bat shit or no-one will listen to them.

Senator MACKAY—I apologise for my profanity, but I am quoting from an article. Let us just go to the issue of media monitoring, the Rehome issue. Can you confirm you have entered into a media monitoring arrangement with Rehome.

Mr Balding—Yes, I can confirm that.

Senator MACKAY—What will be the cost of the arrangement? I have seen reports of \$200,000 cited.

Mr Balding—I have put a cap on this exercise of no more than \$200,000. The actual cost will be very much dependent on the timing of the calling of the election, but a budget has been set of no more than \$200,000.

Senator MACKAY—Why was this considered necessary, Mr Balding, when you have previously defended the ABC against allegations of bias and you have in fact gone to the point of citing Audit Office reports clearing the ABC of bias and the ABC itself has claimed it has got one of the most transparent processes in the world? What has changed?

Mr Balding—Can I say up front, and as I said in my email to the staff, that I have full confidence in the professionalism of ABC journalists and their broadcasters in meeting our legislative requirements and our editorial obligations with respect to fairness and impartiality. What I need to point out is that what we have done here is no different from what we have done since 1998 for all federal and state elections, other than to bring the coverage forward, the monitoring forward, and to introduce an audience survey perspective.

You ask why have we done it. For all intents and purposes, I believe we are in election mode now and I think it is important that the ABC continues to demonstrate that it is discharging its obligations and that our processes and procedures are in place to ensure that we deliver a fair and impartial coverage of the election.

Senator MACKAY—Was this your idea, Mr Balding, or was it considered by the board?

Mr Balding—It was a management initiative. It was part my idea; I will put my hand up for that. I stress it was not a board initiative, it was not a board decision and nor was there any board resolution. The decision to bring it forward was a management initiative and a management decision. As I said, we have been doing this since 1998.

Senator MACKAY—Why have you not brought it forward in previous election periods? What has changed?

Mr Balding—At this stage I believe it is necessary because of the actual environment that we are in in respect of the election. Secondly, there is also a greater awareness of the ABC and its need to ensure that it continues to deliver programming that is fair and impartial. To me, it is just another issue of improving our corporate governance processes.

Senator MACKAY—You have not caved in, have you, Mr Balding?

Mr Balding—In what way?

Senator MACKAY—To the sort of pressure you have been under from the coalition.

Mr Balding—No.

Senator Kemp—I think you are trying to lead the witness there.

Senator MACKAY—There is no standing order about leading a witness.

Senator Kemp—That is what I detect. I detect an element of attempting to lead the witness there. It is a shocking suggestion too, by the way.

Senator MACKAY—So, Mr Balding, you can assure the committee that it is not as a response to what seems to be a fairly orchestrated Liberal Party campaign; this is just something that popped into your head as being not a bad idea because we are currently in what you term an election environment? That stretches credulity a bit, I have to say.

Mr Balding—Let me assure this committee that it is a management initiative that we have decided to bring it forward. As I said, there was no direction from the board. There was no board resolution with respect to this matter. It was obviously discussed at a number of board meetings. I saw a benchmark, if you like, in the delivery of the federal budget as an appropriate time to start, given the environment we are operating in at the moment.

Senator MACKAY—Was the ABC subject to criticism by people in the coalition prior to the last election?

Mr Balding—In respect of the election coverage or—

Senator MACKAY—No, just more generally than that.

Mr Balding—I think the ABC has been subject to criticism by all parties over a period.

Senator MACKAY—Yes, that is right. That may be so, but I am asking just about coalition members.

Mr Balding—I would assume so.

Senator MACKAY—Why didn't you do it last election?

Mr Balding—Last election was a period when I had just moved in as acting managing director. It had not come to my mind at that stage.

Senator MACKAY—Why did it come to your mind this time around?

Mr Balding—I have outlined to this committee a number of times what we are doing to improve our governance processes and again to demonstrate as far as we can to the parliament and to the Australian people that the ABC does conduct its election coverage, and it does have proper processes in place to ensure its programming is, in a fair, balanced and impartial way. We are in election mode. I do not think anyone is going to deny that. There is heightened political activity, and it is important that the ABC not only is fair and impartial but is seen to be fair and impartial. The corporation over the past couple of years has introduced a number of improvements to its corporate governance. Complaints handling is one of them. This is just another improvement that we are introducing.

Senator MACKAY—I guess the old adage ‘if it ain’t broke don’t fix it’ comes to mind. Are you responding to concerns? It seems to me you are responding to concerns that have been raised. I do not think you can deny that you are.

Mr Balding—I would like to think I am being proactive rather than responding to concerns that have been raised.

Senator MACKAY—You can say that, but I do not think anybody here would necessarily buy that line in isolation of circumstances surrounding—

Mr Balding—It is up to individuals how they interpret it.

Senator MACKAY—Essentially you said previously that there is no problem with the ABC—the ABC is not biased. You have defended the ABC, which is appropriate in your role. All of a sudden, to improve management practices or whatever you claim, you have instituted this new process.

Mr Balding—I have brought forward the process.

Senator MACKAY—You have brought forward a process which exists during election campaigns.

Mr Balding—Yes.

Senator MACKAY—The campaign could be six months away.

Mr Balding—Yes, it could. The calling of the election could be, yes.

Senator MACKAY—So it is not an insignificant bringing forward of something that normally would operate during the campaign period.

Mr Balding—No, it is not.

Senator MACKAY—It is one month times six compared to, say, one month.

Mr Balding—It could be, and I said it is subject to the calling of the election as to what it would cost us and for how long we are doing this extra monitoring. But at the end of the day I think you will agree that there has been a fair degree of comment in respect of the ABC’s programming, its coverage, whether it is the war in Iraq or whether it is other issues, and I just want to put another process in place that demonstrates and gives the public confidence that the ABC is discharging its obligations properly.

Senator MACKAY—Do you think the public did not have that confidence previously?

Mr Balding—No, I do not, as a matter of fact, and Newspann surveys prove time and again that the vast majority of Australians believe the ABC is fair and balanced. But there are still elements out there who dispute that.

Senator MACKAY—Was this discussed with anybody within government?

Mr Balding—It has been discussed at the department level, yes.

Senator MACKAY—Beyond the departmental level, at the political level?

Mr Balding—No, not really.

Senator MACKAY—Not really?

Mr Balding—Not that I am aware of, no, other than bringing this monitoring forward.

Senator MACKAY—This initiative has not been discussed with anybody at the political level?

Mr Balding—Not that I am aware of.

Senator MACKAY—Which elements dispute the assertion that the ABC is not biased? What elements are you talking about?

Mr Balding—We have various critics who will argue the ABC is biased.

Senator MACKAY—Who?

Mr Balding—There is a number of people who complain to the ABC about our coverage, who allege that we are biased in our coverage, in our programs and in our output.

Senator MACKAY—Who are they? Who are the primary ones?

Mr Balding—I can get you a list.

Senator MACKAY—We all know. Who do you think the primary ones are?

Mr Balding—There are various commentators from the media, for instance. Various journalists will be forever writing about the ABC's coverage in respect of its bias.

Senator MACKAY—Which journalists?

Mr Balding—There is a number of journalists. I am happy to pull some out, but I do not think it is appropriate that I name them here. People know who they are.

Senator MACKAY—I do not think there would be a huge swag of them. Who are we talking about here—Piers Ackerman?

Mr Balding—They are the types of journalists we are talking about, yes.

Senator MACKAY—Andrew Bolt?

Mr Balding—Yes, I think he has been critical of us from time to time.

Senator MACKAY—Alan Jones?

Mr Balding—I do not listen to Alan Jones.

Senator MACKAY—Just on the political level, Richard Alston has been pretty critical, hasn't he?

Mr Balding—He has been, yes, in the past.

Senator MACKAY—Anybody else you would like to mention to complete the answer?

Mr Balding—Not at the moment, no.

Senator MACKAY—Am I to assume that far right commentators are now driving the agenda at the ABC with respect to management decisions?

Mr Balding—Sorry, Senator, I did not hear that.

Senator MACKAY—Am I to assume that commentators to the far right of centre are now having influence on ABC management decisions? Have they got you running scared, Mr Balding?

Mr Balding—No, far from it.

Senator Kemp—Chair, I think the question is argumentative. It is making assertions. What may seem far right to Senator Mackay may seem mainstream to others.

Senator MACKAY—Not to you, I suspect.

Senator Kemp—You are seen to be on the Left of the Labor Party. That is all right. I do not argue with that.

Senator MACKAY—But I do not think you are on the far right.

Senator Kemp—You are quite entitled to be on the Left, but you do not want to assume everyone who is to the right of you is far right of centre.

Senator MACKAY—No, I do not think you are; that is my point. I was actually complimenting you.

Senator Kemp—To frame a question in that way I think is again attempting to lead the witness.

Senator MACKAY—I understand. I will rephrase it: what is regarded by some as the far right.

Mr Balding—No, I reject that assertion. Management has taken this decision, as I said before, as part of improving our corporate governance processes. I believe we do have an obligation to continue to improve our corporate governance process and to demonstrate to the Australian public, as I said previously, that we are discharging our obligations in accordance with our legislative requirements and our editorial policies.

Senator MACKAY—What would you say to a journalist at the ABC who may say, ‘This to me seems to be a lack of support from senior management’?

Mr Balding—No, it is not a lack of support. As I said, I put a note out to staff expressing my confidence in them and I have made a public statement here this afternoon in that regard again. Our journalists have nothing to fear. I have full confidence in our journalists.

Senator MACKAY—If they have nothing to fear, why have you instituted a new process which has brought forward something—

Mr Balding—I brought forward a process.

Senator MACKAY—Please do not interrupt me—which is normally instituted in only an election period, a 30-day or four- to five-week campaign, which could theoretically run for seven or eight months?

Mr Balding—Again, to demonstrate to the public that we are fair dinkum about our legislative obligations in respect of our editorial coverage. You could say the same thing to me about why we have got external auditors. I have faith in my financial officers here, I have faith in my staff, but we have an external audit and we have an internal audit. These are all part of governance processes that have been built up over time. So it is not just one activity on its own we should be looking at here. We should be looking at the totality of the governance processes that the ABC has introduced over the past couple of years.

Senator MACKAY—It is not that you were not defending the ABC in the past; you have—

Mr Balding—Yes, and I continue.

Senator MACKAY—most vehemently. You have not signalled this new initiative at any previous estimates, as I recollect. You have not said, ‘That is something we are looking at, Senator. Yes, we accept some people may have a perception that the ABC is biased. I am looking at it, Senator. I will look at instituting new management procedures.’ This is a bolt from the blue in terms of the song sheet you were singing from previously.

Mr Balding—I have not mentioned this specific initiative, but in the past I have brought to the attention of this committee that we are continuing to look at our governance processes, and this is one part of the governance process.

Senator MACKAY—The government’s process?

Mr Balding—Governance; sorry.

Senator MACKAY—I do not know whether that was a Freudian slip of the tongue or I just misheard you.

Mr Balding—No, I am sure I pronounced it correctly.

Senator MACKAY—So basically the taxpayer can thank you for spending \$200,000 pleasing the likes of Senator Santoro over here and making sure that he does not come down on you too heavily in estimates?

Mr Balding—No, I think the taxpayer can be reassured that what the ABC is doing is demonstrating that we are delivering our legislative obligations and editorial responsibilities in the right way.

Senator MACKAY—Dear, oh dear. How will the ABC ensure that Rehome’s monitoring of bias is not biased itself?

Mr Balding—We go through a number of processes. Mr Crawford might be in a position to take you through the details of that.

Mr Crawford—I shall run through them. We have an election coverage review committee, and it draws in material from a number of sources. One is its own internal monitoring of share

of voice. Secondly, it receives raw information from an external monitoring company, which is Reham. So it is things like length of time, share of voice, what radio station, what television station. The ECRC also has its own source of collection of information through the complaints handling process. It is the Election Coverage Review Committee which then reviews and appraises the material that comes in.

Senator MACKAY—I think you might have to look at a change of nomenclature if it is currently called the Election Coverage Review Committee. You might have to change it to ‘In Perpetuity Coverage Committee’.

Mr Crawford—I hope not. In the initial period, of course, the methodology is that it will be on a rotating sample of programming across the ABC. But, when the election campaign is announced, it will be all political coverage. That committee’s job is to analyse, and it meets on a regular basis to assess, the material that has come in.

Senator MACKAY—Just run me through the process again.

Mr Crawford—The ECRC is formed. It receives material from a number of sources, both from within the ABC and externally. It appraises that material in terms of party share of voice, station where the material appeared, and analyses it to make sure that all parties are given fair treatment.

Senator MACKAY—So Reham is just one of—

Mr Crawford—The inputs into an appraisal system which the ABC operates.

Senator MACKAY—If you have a plethora of other sources, why bother with Reham in the first place?

Mr Crawford—I think it is good to have some external research company doing some of the work. It provides that extra balance and check on what we are doing, and also provides us with trends and patterns over time as well as some analysis.

Senator MACKAY—No disrespect to Reham here, but have you checked the journalistic qualifications of the staff at Reham who will be monitoring for bias?

Mr Crawford—We will be keeping a close watch on Reham.

Senator MACKAY—So you will be monitoring Reham for bias?

Mr Crawford—No. They are not analysing content. They are simply analysing things like share and doing fairly mechanical tasks such as that. They are not analysing the content or whether it is biased. That is done by the appraisal process in the ECRC.

Senator MACKAY—Bias is a fairly nebulous concept, isn’t it? It is fairly subjective and I think, as the minister said, it is very much in the eye of the beholder. So how do you measure it? You said it was for content with respect to, say, Reham’s role.

Mr Crawford—The methodology on that is simply factual: the station where an item appeared, the program in which it appeared, the share of—

Senator MACKAY—Run me through an example.

Mr Crawford—They monitor, say, an *AM* program, and they would have on a spokesman for the government and a spokesman for the opposition. They would say, ‘This spokesman had 30 seconds, that had 30 seconds and these were the issues covered.’

CHAIR—That is balance rather than bias.

Mr Crawford—They would make sure that that was reported on on an ongoing basis—I think it was once a week or once a fortnight—to make sure that there was balance in the coverage we provided.

Senator MACKAY—Has the issue of, I think as the Chair put it, balance in terms of time share, if you like, been a matter of contention?

Mr Crawford—I am not aware that it has, but I think there is a need to make sure that it is monitored.

Senator MACKAY—Putting aside the issue of equal timing, is that all that this process will be looking at? Is there anything more qualitative?

Mr Crawford—No. It is mainly party share of voice and those issues.

Senator MACKAY—Let me put it another way. Effectively, you will not be checking or you do not feel that there is a need to check the journalistic qualifications of the staff at Rehome who will be monitoring because—

Mr Crawford—It is more of a mechanical task.

Senator MACKAY—You contend all they are doing is simply saying, ‘Nick Minchin was on *AM* for four minutes and Bob McMullan was not,’ or whatever?

Mr Crawford—Yes.

Senator MACKAY—‘Therefore you need to get Bob McMullan on more,’ or, ‘You need to get Nick Minchin on more.’ Are you saying it is totally quantitative?

Mr Crawford—It is like that, and it is the ECRC which will continue to appraise that material coming in.

Senator MACKAY—Will they be making recommendations or simply providing statistical information?

Mr Crawford—As far as I am aware, it is only statistical information.

Senator LUNDY—So what is the process by which you then analyse that statistical information within the ABC?

Mr Crawford—I think over time what happens is the material builds up cumulatively and I think if they detect a trend, or more particularly the ECRC detects a trend, then we would pursue it within the ABC.

Senator MACKAY—A trend of what? Too much of Nick Minchin, for example, or not enough of Bob McMullan?

Mr Crawford—It may be that, and analysing why that happened.

Senator MACKAY—I think what Senator Lundy is saying is that is a straight quantitative study.

Mr Crawford—Yes.

Senator MACKAY—Does your committee look at anything else other than quantitative data?

Mr Crawford—The committee also looks at things like the complaints that come in from the audience and consumer affairs area, complaints from members of the public, about bias and balance. In relation to the second arm of the study, which is the community attitudes, when that research starts coming in that will also be fed in through the ECRC process.

Senator MACKAY—Take me to that community attitudes work, which is more your qualitative end.

Mr Crawford—Yes.

Senator MACKAY—Take me through that.

Mr Crawford—Normally over the past few years I have been at the ABC we have used Newspoll to provide a community survey poll. We thought it would be worth while to provide during the run-up to the election some ongoing survey of community attitudes of our coverage. We are working out a methodology with Newspoll whereby we would have some questions about bias and balance at the ABC inserted into some of their regular omnibus surveys of community attitudes in Australia.

Senator MACKAY—So along the lines of, ‘Do you believe that the ABC is biased’—that sort of thing?

Mr Crawford—Yes.

Senator MACKAY—‘If so, why? Please identify where you think it is biased’—whether it be Iraq, whether it be—

Mr Crawford—Yes, and that will form part of an omnibus survey, which they do regularly anyway.

Senator MACKAY—Given that the coalition is in government, unfortunately, and that ministers do tend to get more coverage than shadow ministers and mere backbenchers like my good self, I suppose it is conceivable that this process could identify that Labor politicians are not given equal time?

Mr Crawford—It might, yes.

Senator Kemp—What conclusion do you draw from that?

Senator MACKAY—I am hopeful it is a cunning plan.

Senator Kemp—Is the conclusion you draw from that that this is a good move?

Senator MACKAY—We will just wait and see. We will monitor it for bias.

Senator Kemp—It is counter to the arguments that you were putting earlier.

Senator MACKAY—No, I am asking questions, of course. This is estimates.

Mr Balding—In respect of the audience survey, as Mr Crawford said, normally once a year we go out with a very comprehensive audience appreciation survey, and that asks questions in general, if you like, in respect of the ABC's coverage as to whether they believe it is biased or balanced. What we thought this time is that the question is not whether the ABC is balanced but is specific to the election period. So it is during the election period then the question is asked.

Senator MACKAY—But what you have done is extend it beyond the election period, commencing budget on?

Mr Balding—Yes, leading up to the election, yes.

Senator MACKAY—Does this mean the ABC has a policy, as do most outlets, of equal time during an election period?

Mr Balding—Yes.

Senator MACKAY—So effectively this equal time will apply from the budget?

Mr Balding—The actual equal time will be from the formal calling of the election, but we want to make sure that during this lead-up to the calling of the election we are balanced and impartial and we are fair with the allocation of time.

Senator MACKAY—How do you do that when you have a circumstance where government ministers necessarily get a lot more coverage because they are ministers and the Prime Minister gets more coverage than Mr Latham because he is the Prime Minister? That is just the way of the world; it was the same under Labor. How do you determine balances in that respect? Do you weight a government minister 2:1 or how would you do it?

Mr Balding—The first thing in doing it is, as Mr Crawford explained, getting those number of inputs and having the Election Coverage Review Committee have a look at it to see whether there is a trend starting to develop.

Senator MACKAY—What sort of a trend? Nick Minchin is on six times because he is the minister for finance. So what?

Mr Balding—But they would look at the issues that the minister is on and talking about.

Senator MACKAY—This is a very subjective process. How do you measure these things? Say Nick Minchin has been on running his portfolio—I will use Nick Minchin just as an example; I do not have anything against Nick Minchin. There is a particular issue, which there invariably will be given the nature of the portfolio, so Nick Minchin has got a run pretty much around Australia on X, but, goodness me, Bob McMullan has one-tenth of the run of Nick Minchin, which is appalling of course from a Labor Party perspective. We contend he should have equal time. That is not going to happen. Where do you strike the balance? Where do you say, 'Nick Minchin is 10:1 on Bob McMullan. We had better do something about it'?

Mr Balding—I think this is what the committee will look at. It is not just one person. Trying to answer your question, I do not think there is any precise formula here, and that is why the ABC is not getting caught up in various methodologies. We are trying to keep it simple. On the committee there is a number of representatives from across the corporation.

Senator MACKAY—Who is on the committee?

Mr Balding—The chair of the committee is Murray Green, who is our complaints review executive. He has been the chair of the committee for some time now. Also on the committee are representatives from other divisions of the corporation. So it brings together a cross-section of the corporation with an opportunity to take a step back and have a look at the information and the data coming in from those various sources.

Senator MACKAY—Various sources being Rehome. They do not have journalistic qualifications, do they?

Mr Balding—No, I am sorry, the information coming in from Rehome will not be from a journalistic background. It will be data in respect of the actual—

Senator MACKAY—Time?

Mr Balding—Time and things like that.

Senator MACKAY—Things like that or just time?

Mr Balding—Time, and also—

Senator LUNDY—So you are going to try to rate it as to whether or not it was favourable?

Mr Balding—Yes, favourable, unfavourable or neutral.

Senator MACKAY—So Rehome has been asked to do that?

Mr Balding—Yes. Let me stress that this is no different from what we have been doing since 1998.

Senator MACKAY—I come back to my original proposition: have you asked them about journalistic qualifications? With all due respect to Rehome, essentially they are being asked to make a qualitative judgment.

Senator LUNDY—What if they make it up? What checks and balances do you have in place to make sure that the information they give you—that qualitative assessment about what is favourable and what is not—is actually correct?

Mr Balding—Firstly, they are not the sole source of this data. As I said, the Election Coverage Review Committee will be analysing it as well. This is just one activity.

Senator LUNDY—But you are asking them to provide qualitative analysis?

Mr Balding—Yes, we are.

Senator LUNDY—My understanding is that they will provide you with a body of data, some statistics, based on their subjective view of whether it was favourable or unfavourable, and you will take that at face value?

Mr Balding—It will be someone's view, yes.

Senator LUNDY—You will take that at face value and then make all your decisions and all of your points based on that data as part of your body of evidence?

Mr Balding—No. It is just one source of information coming into the Election Coverage Review Committee, which is charged with the responsibility of monitoring our overall coverage.

Senator LUNDY—What I am putting to you is that when you receive that from Rehome you do not challenge it or question it; you accept it for what it is?

Mr Balding—The committee challenges it. The committee goes through that.

Senator MACKAY—But they cannot challenge it in the minutia. They have not got the time. These people are paid \$15 an hour and work from home—no disrespect to them.

Mr Balding—We are looking over a period of time here. We are looking at trends over a period of time. As I said, this is only one source of information. The other source of information is our own complaints system, where members of the audience are complaining. We are looking at it in respect of our own producers and what they are monitoring in respect of their output.

Senator MACKAY—Just for Senator Lundy's and my benefit, what are your conduits? You have got Rehome and you have got complaints from the public?

Mr Balding—Yes.

Senator MACKAY—What else?

Senator LUNDY—And your community attitudes survey?

Mr Balding—The community attitudes survey.

Senator MACKAY—The community attitudes survey, which is due when?

Mr Balding—The community appreciation survey for the election coverage is every six weeks.

Senator MACKAY—You have not had time to have one of those?

Mr Balding—No.

Senator MACKAY—What else have you got?

Mr Balding—Then we have got the people on the Election Coverage Review Committee themselves.

Senator MACKAY—Who are all the people you outlined previously within the ABC?

Mr Balding—Yes.

Senator MACKAY—That is it?

Mr Balding—That is correct.

Senator LUNDY—Going back to the statistics that you get from Rehome, the employees or contractors for Rehome will compile those figures based on their subjective view of whether something was favourable or unfavourable, and the time attributed to government, non-government and others?

Mr Balding—That is the way I understand it.

Senator LUNDY—That will be presented to you presumably in a written format with percentages or actual time figures and positives or negatives?

Mr Balding—Yes.

Mr Crawford—On a regular basis.

Senator LUNDY—Do you have any plans to test the accuracy of that data as a check and balance for the contract?

Mr Crawford—Yes, and I think that is what the ECRC does whenever it meets. It reviews the data that comes in. We also have of course internal monitoring of our own share of voice. Our internal telecommunication systems do checks as well. That will be another check for the committee.

Senator LUNDY—Does the internal process that the ABC conducts do the same thing? Does that look for favourable or unfavourable—

Mr Crawford—No, it is a mechanical check of the party share of voice.

Senator LUNDY—A mechanical check? Does it present some way in which you can compare the statistics you are getting from Rehome?

Mr Balding—Through the share of voice there is; with the party share of voice there is, yes.

Senator LUNDY—So why do you need Rehome to do that as well?

Mr Crawford—I think it is another form of external monitoring. We have not got the capacity to do it all the time ourselves.

Mr Balding—I accept that to a degree it is subjective. Most of this sort of analysis is subjective. But the advantage of having Rehome or another company doing this is that it is an external company. The ABC has had a fair bit of criticism. Not only the ABC but a lot of organisations receive criticism when they put review processes in and those review processes are internal. To supplement internal review processes, I think, at times it is appropriate to have an external independent organisation providing you with some extra data. But I think the point to raise here is that the data coming from Rehome is not the sole data that the ABC's Election Coverage Review Committee will be assessing and analysing.

Senator MACKAY—Who is the British audience researcher referred to in the email on this matter from Ramona Koval to Mr McDonald and you?

Mr Balding—Gareth Morgan.

Senator MACKAY—Can you give me a little bit more information?

Mr Balding—Mr Crawford will be able to give you a bit more information on that.

Mr Crawford—He is a very well known international research and marketing consultant. He has advised the ABC previously. In 2001 he was out, I gather, and did some work with us then. We believed it was wise to seek advice from a very eminent and independent expert.

Senator MACKAY—Is this person a journalist?

Mr Crawford—I do not think he is. He is practising as a consultant now, but what he did when he was younger I do not know. He is also currently advising Ofcom, the new broadcasting regulator in the UK.

Senator MACKAY—Bully for them. Why is he eminent?

Mr Crawford—He is an expert in working out methodologies, research and marketing.

Senator MACKAY—Does that make him eminent?

Mr Crawford—I think he is very good.

Senator MACKAY—You think he is very good, so that makes him eminent?

Mr Crawford—No, I think he is well suited to advise the corporation.

Senator MACKAY—In your opinion?

Mr Crawford—Yes.

Senator MACKAY—That does not make him eminent. On that basis, many people I know would be eminent. What are his qualifications?

Mr Crawford—I will have to go back into his CV a bit more, but he has worked as a consultant, as I said to you before, in Europe and the UK for some years now, and he worked out here.

Senator MACKAY—Is he a mate of yours?

Mr Crawford—I had never met him until he came out to advise us recently.

Senator MACKAY—Can you provide me now with his qualifications?

Mr Crawford—I do not have anything in front of me. I will take it on notice.

Senator MACKAY—You do not have that there. What was he paid?

Mr Crawford—The fee for his work, depending on when the election is called, is in the vicinity of \$40,000 to \$50,000.

Senator MACKAY—What, for the whole in-perpetuity committee?

Mr Crawford—No, for this project. That is the absolute capped maximum.

Senator MACKAY—But it could be eight months or it could be two months?

Mr Crawford—That is right. That is an absolute maximum.

Senator MACKAY—A maximum of \$40,000? Was he on the payroll under Jonathan Shier?

Mr Balding—He was engaged previously by Jonathan Shier, yes.

Senator MACKAY—When was that, Mr Balding?

Mr Balding—From memory, the end of 2000-01, I think. I can get those details for you.

Senator MACKAY—2000-01?

Mr Balding—I think so, yes.

Senator MACKAY—For how long?

Mr Balding—I think from memory there were two periods. I would have to get those details. But it was to advise the ABC in respect of audience numbers. When OzTAM was set up—if you recall when the ratings moved from Nielsen to OzTAM—there was a lot of concern within the industry that the sampling of those audience figures was not being done correctly. From my recollection, Jonathan engaged Gareth Morgan to assist with that. He also assisted us—

Senator MACKAY—So he was actually engaged by Jonathan Shier directly?

Mr Balding—Yes.

Senator MACKAY—Did he report directly to Jonathan Shier?

Mr Balding—Yes, from my recollection at that time, yes. He also assisted the ABC in setting up its audience research unit.

Senator MACKAY—Why could an Australian not have done this? Someone like Hugh Mackay, for example—no relation—would be someone I would regard as eminently qualified. And he is not a mate of mine either.

Mr Balding—Obviously, there are many people who could do it. It is just the fact that he has worked with us before. He understands our processes.

Senator MACKAY—I am sure lots of people have worked for the ABC before. Why pick this particular person?

Mr Balding—Why not pick him?

Senator MACKAY—Given the shroud that now characterises the Shier regime, I would not know whether you have got reason there. This guy might be fantastic. I do not know.

Mr Balding—I did meet Gareth Morgan when he was out here previously. He is a very good appointment by Jonathan. Gareth Morgan was very good value to the corporation in his previous assignments. I had no hesitation in engaging Gareth. In actual fact it was my idea. I had no hesitation in approaching Gareth to see if he was available to assist us.

Senator Kemp—I think the crime could have been solved, Mr Balding, with all these appointments if he had just got Sue Mackay's approval first.

Senator MACKAY—Yes, that is a possibility. With any luck one day the Labor Party will be approving these things, but you never know. I refer you now to some correspondence. Can you confirm, Mr Balding, the correspondence between Don McDonald and the minister regarding the new complaints system?

Mr Balding—In what regard?

Senator MACKAY—Can you confirm it exists?

Mr Balding—Yes, it does.

Senator MACKAY—Have you seen it?

Mr Balding—Yes, I have.

Senator MACKAY—Does this correspondence confirm cooperation between the government and the ABC in setting up a new complaints system?

Mr Balding—I think it alludes to the fact that the ABC board—again, this is an issue that I have raised several times with this committee—is looking at reviewing its complaints handling processes. It demonstrates that the ABC had a number of ideas. On behalf of the board, the chairman wrote to the minister to outline to the minister the board's thoughts on certain directions it may be considering in respect of improving its complaints handling.

Senator MACKAY—Do you still contend, as you have previously, that the ABC has the best complaints handling system in the world?

Mr Balding—I do. But that does not say that you should not be forever looking at other ways of improving it.

Senator MACKAY—Improving the world's best complaints handling system?

Mr Balding—That is what world's best practice is all about. The BBC up until the Hutton inquiry thought they had the best complaints processing system in the world, too. They have now moved to improve their complaints processing system. I think you will find a number of the ideas they are looking at are initiatives that we implemented about two years ago.

Senator MACKAY—You have made the point that in fact the ABC's complaints system is much better than that of the BBC.

Mr Balding—Yes.

Senator MACKAY—That has been made by the ABC?

Mr Balding—Correct.

Senator MACKAY—Who will appoint the panel?

Mr Balding—These are details that have not been worked through. There is a number of options that the board, through its editorial committee, is currently considering. There has been no decision in respect of this. The board, as I said, through the chairman merely wrote a letter to the minister outlining the board's thoughts on a number of initiatives and to seek the minister's comments on that. The board is in no rush to put anything new in place. As I said, the board is satisfied that our complaints handling system is robust and fair. I think when I reported last time to this committee in respect of the Hutton inquiry we had commissioned a review inside the ABC to assess the process that took place with Hutton and to compare it with the processes that the ABC employs and to see if there is any way in which we can improve our internal processes to minimise the risk of what happened in Hutton happening at the ABC. The board considered that report through its editorial committee and at that stage considered there was no need to make any changes to its complaints handling system. But at the end of the day, I am quite happy to say that the board is considering a number of initiatives. If, in the board's view, they improve complaints handling, it will look to implement them.

Senator MACKAY—Did anybody advise the board on this proposal?

Mr Balding—In what way? Do you mean external to the corporation? Management has advised the board on this proposal. There are a number of initiatives that the board is currently considering.

Senator MACKAY—What about David Quilty? Did he provide any advice to the board?

Mr Balding—Not directly to the board, no.

Senator MACKAY—To whom, if it was not directly to the board?

Mr Balding—I am aware of certain conversations and correspondence between Mr Quilty and a board member. But can I just say right up front that, again, this is a management initiative. The board is considering a range of options here.

Senator MACKAY—The chair of the ABC agrees in principle, presumably writing on behalf of the board to the minister, that the establishment of an independent complaints handling body is worth pursuing?

Mr Balding—Yes.

Senator MACKAY—I thought that the complaints handling procedure was fairly independent. But that is my view.

Mr Balding—So does the board at this stage as well. But, again, we are looking to see whether there is any opportunity to improve our complaints handling processes.

Senator MACKAY—So there is this bit of correspondence.

Mr Balding—Sorry, I cannot see which bit of correspondence you have got there.

Senator MACKAY—It is the letter from Daryl Williams to Don McDonald of 23 March 2004. Has there been any other correspondence between the government and the ABC?

Mr Balding—In respect of that matter?

Senator MACKAY—Yes.

Mr Balding—Not that I am aware of. I think that would have been the last correspondence received from the minister.

Senator MACKAY—The last correspondence?

Mr Balding—I believe so, in respect of that matter.

Senator MACKAY—So this is in respect of the complaints handling process?

Mr Balding—If that is the letter—

Senator MACKAY—Yes.

Mr Balding—which would have been responding to the chairman's letter of early February, from memory?

Senator MACKAY—Yes. Has there been any correspondence with respect to the issue of bias, perceived or otherwise?

Mr Balding—Not that I am aware of. I would have to have a look at that. In what period of time?

Senator MACKAY—What about since Daryl Williams has been a minister?

Mr Balding—I would have to have a look at that.

Senator MACKAY—So offhand you are not aware of any?

Mr Balding—No. There may have been a letter between the chairman and the minister when the minister was first appointed. In the chairman's letter in early February there may be some other reference, but basically the correspondence you have got there refers to improvements to our complaints handling processes and procedures.

Senator MACKAY—Mr Balding, have you caved in to the views of the board?

Mr Balding—In what regard?

Senator MACKAY—I have a letter from Daryl Williams to Don McDonald saying that the minister agrees in principle with the establishment of an independent complaints handling body. The minister agrees, surprisingly, with the ABC board's suggestion that such a body should comprise a small panel rather than a single member and that the body should only consider complaints after they have first been considered by the broadcaster and so on. What has changed in the relationship between the ABC and the government? Is Daryl Williams a nicer bloke than Richard Alston?

Mr Balding—I do not want to comment on that other than to say that I think you have gleaned from the letter you have there that these initiatives have come from the ABC board itself to the minister.

Senator MACKAY—A happy coincidence?

Mr Balding—No, as I said, I think you will recall that over the last couple of Senate committee hearings I have been flagging that we are currently reviewing our complaints handling processing system, and this is what I was flagging.

Senator MACKAY—You have also been absolutely trenchant in your defence and support of the current complaints mechanism?

Mr Balding—Yes.

Senator MACKAY—Absolutely trenchant.

Mr Balding—And continue to do so.

Senator MACKAY—You have not ever said that it could require improvement?

Mr Balding—No, you will find on the record I have said that, in the event it does require improvement, we will look to further improvement.

Senator MACKAY—But what has changed in your mind? We have correspondence here from the minister to Don McDonald, presumably in response from Don McDonald to the minister. We know that has changed; we have got this correspondence.

Mr Balding—Yes.

Senator MACKAY—That indicates a change of attitude or a broad initiative?

Mr Balding—There is a much better working relationship between the board and the minister.

Senator MACKAY—There is a better working relationship between the board and the minister? So Daryl Williams is a nicer bloke than Richard Alston. I actually personally like Richard Alston. Is the Liberal Party running the ABC?

Senator Kemp—I intend to draw that comment to the former senator's attention.

Senator MACKAY—He will be thrilled and delighted to know. He is probably watching now. I will probably get a letter from him.

Senator Kemp—I suspect he is not watching now, actually.

Senator MACKAY—You could refer it to the new independent complaints tribunal for bias. Is the Liberal Party running the ABC, Mr Balding? Did Dr Brunton tip the numbers on the board over the edge? Are the barbarians through the gates?

Mr Balding—No.

Senator MACKAY—Have you run up the white flag?

Mr Balding—No. Again, can I stress that there has been no decision on these initiatives. The board will only go forward with it if it is of the view that, first, it does improve our current system and it serves the ABC and the Australian public for the longer term. The board is in no rush here, because it is quite comfortable with its current system.

Senator MACKAY—Joe McCarthy would be very pleased.

Senator Kemp—Just to get some perspective on all of this, the ABC is doing this, as I understand it, to achieve balance.

Senator MACKAY—Are you saying that they were not balanced before?

Senator Kemp—They put in a procedure to check that they are fulfilling their charter and providing balanced news coverage, and you have now spent an hour and a half complaining about it. I think it is astonishing that you should be arguing against a procedure which allows people to complain if they feel they have been unfairly reported. You are complaining about a procedure which seeks to achieve balance. I do think it is a bit of an astonishing performance. But still, it takes all types. I know that. I understand that.

Senator MACKAY—My question was really about process. But if you wish to construe—

Senator Kemp—Your argument was that the ABC have put in place various arrangements to deal with accusations of bias and to achieve balance, and you are opposed to those arrangements. That is the position that after an hour and a half you have reached.

Senator MACKAY—I have not. That is your construction of what—

Senator Kemp—I think it is a bizarre position that you have got yourself into.

Senator MACKAY—While we are talking about bias, Minister, before Senator Santoro starts congratulating the ABC for its new management initiated processes, can the ABC confirm the decision of ABC New South Wales state editor Paul McIntyre that the ABC Radio

Lismore newsroom is correct to refuse to interview Labor's preselected candidate for Richmond, Justine Elliott, on the basis that the election has not been called and that no writs have yet been issued and she is therefore a private citizen?

Mr Balding—I am not aware of that. I will take that on notice for you.

Senator MACKAY—Prima facie do you think that is fair?

Mr Balding—I would have to have a look at it in the context of how that decision was reached.

Senator MACKAY—Let us take a theoretical candidate who is not interviewed on the ABC and the reason they are given is that the election has not been called, no writs have been issued and the person is a private citizen. In terms of this theoretical candidate, would you regard that circumstance as fair?

Mr Balding—Again, it depends on the circumstances of the subject matter and the newsworthiness of the item. If the person was merely seeking time on ABC Radio because they were a candidate, as opposed to being a news item, then I would probably say that it is the right call by the news and current affairs state editor.

Senator MACKAY—Can you also confirm reports from the ALP's Richmond candidate, Justine Elliott, that ABC Lismore have also advised her that they will not put her on general talkback radio as a normal caller? Isn't this policy, I would contend, even more bizarre given that they have rejected her right to speak as an official ALP candidate? Doesn't this mean prima facie that Justine Elliott has been totally silenced effectively as the alternative candidate for Richmond as far as the ABC in that area is concerned?

Mr Balding—Again, can I please take that on notice? I am not aware of that particular circumstance, but I am more than happy to have a look at it and come back to you.

Senator MACKAY—Given that Justine Elliott is the preselected ALP candidate for Richmond and will of course oppose Larry Anthony, who we understand has just booked six weeks worth of advertising on behalf of the National Party in the forthcoming election, how can Ms Elliott be considered the same as any normal private citizen?

Mr Balding—Have you finished the question?

Senator MACKAY—Yes.

Mr Balding—Again, please let me have a look at it. At the end of the day they should not be treated any differently from any other citizen. But, again, that depends on what they want to talk about, whether it is a newsworthy item or whether they just wanted to access ABC airwaves because they are the candidate.

Senator MACKAY—Have you seen the correspondence I am referring to?

Mr Balding—No, I have not.

Senator MACKAY—It is from Paul McIntyre to—

Mr Balding—I am totally unaware of the circumstances you are describing.

Senator MACKAY—I have the letter here. It is from Paul McIntyre and states:

I have received your complaint about the ABC radio newsroom in Lismore.

I find myself in agreement with the decision the Lismore newsroom personnel have taken. Their stance is based on the simple fact that there has not been an election called, no writs have been issued and as a result Ms Elliott cannot be a candidate.

Quite simply, at this time there is nothing to be a candidate for.

Ms Elliott is a private citizen and is no more or less entitled to air her views in local radio broadcasts than any other private citizen.

Once an election is called, her status changes and she becomes the alternative local member. At this time ABC's policy is to give ... equal time ...

Mr Balding—To me that sounds reasonable.

Senator MACKAY—You have just said that we are effectively in election mode. That is why you are establishing this new process.

Mr Balding—It is a bit different being effectively in election mode as to when an election is called, and our editorial policies are very precise in respect of when an election is called.

Senator MACKAY—But if you have contended, as you have, in a previous line of questioning that we are effectively in election mode, quite obviously Ms Elliott is not Josephine Bloggs, she is a candidate.

Mr Balding—But I think you need to have a look at what airtime Larry Anthony has had on ABC Radio.

Senator MACKAY—I bet you he is getting more than Ms Elliott; she is getting zero.

Mr Balding—I am more than happy to have a look at it.

Senator LUNDY—Can I clarify something. If Larry Anthony is getting airtime as minister and airtime as local member, does all that become cumulative time for Mr Anthony that then needs to be compensated with equal time for the candidate? That would be fair.

Mr Balding—Yes, that is what we would be looking at.

Senator MACKAY—This policy means that the local member of parliament—as Senator Lundy has pointed out, Larry Anthony—effectively has a free run on the ABC without any opposition from his opponent in the forthcoming election?

Mr Balding—This is part of the problem that we are faced with.

Senator MACKAY—And he gets lots of time.

Mr Balding—This is part of the dilemma we face. I have not got the precise answer here. You are effectively in election mode, yet the ABC's editorial policies are quite specific as to what goes into play when the election is called—this is one of the issues that we are seeking to address.

Senator MACKAY—Can we construe this as official ABC policy in New South Wales?

Mr Balding—The way that Mr McIntyre has outlined it, I presume that is what it would be under current editorial policies.

Senator MACKAY—Presumably one could construe it as ABC policy in the broad as well, given your imprimatur?

Mr Balding—Yes.

Senator MACKAY—Let me give you another example. Let us say that Peter Garrett announces he is running for Wentworth. Are you saying that Peter Garrett will not get a run till the election?

Mr Balding—First of all, if that were the case, his announcement would probably be a newsworthy item that would be covered in respect of the news story.

Senator MACKAY—So he would not get a run after the announcement that he was going to run for Wentworth?

Mr Balding—Again, it depends on the nature of the item itself, whatever they are talking about, the issues they are canvassing and what is happening there.

Senator MACKAY—But given that he is effectively Peter Garrett private citizen, why should he get a run?

Mr Balding—Again—and this is one of the things that we are trying to look at and address—if it is a snap poll, three-week campaign, then we do not have these issues. But we have been in election mode for some time now and we may very well continue in election mode for some time. I think it is important that the ABC has a look at these issues and the dilemma it faces and addresses them in a proactive way. That is what we are endeavouring to do.

Senator MACKAY—Maybe the ABC ought to concede and advise Justine Elliott that we were in election mode—

Mr Balding—There is a different terminology between election mode and when the election writs are issued and the election is called.

Senator MACKAY—You are the one who used the term ‘election mode’.

Mr Balding—That is what I am saying, yes.

Senator MACKAY—Now you are seeking to qualify it.

Mr Balding—I am sorry, the editorial policies do not talk about election mode, they talk about when the election is called.

Senator MACKAY—But in terms of the new process you have outlined, you yourself have described it as effectively now being in election mode?

Mr Balding—Correct.

Senator MACKAY—I do not think that the ABC in Lismore understand this, if they regard Ms Elliott, preselected candidate, as a private citizen.

Mr Balding—As I said, I am quite happy to take that on board and have a look at it.

Senator MACKAY—But you have endorsed it as a general policy.

Mr Balding—No, sorry. I want to ensure that people are not being disadvantaged. This is what the whole process is about—to ensure that we are doing it impartially and fairly and that there is no disadvantage going on here.

Senator MACKAY—That is fine. Can I take it you will review the decision?

Mr Balding—Yes, I will.

Senator MACKAY—And provide the committee with a full justification of what—these are my words—seems to be a fairly bizarre decision, which I have to say has the effect of gagging Ms Elliott. Those are my words, my hyperbole.

Mr Balding—We will have a look and come back to you as soon as we can.

Senator MACKAY—Whilst you are doing that—you seem to give some imprimatur to this as a more general policy, so could you provide us with some advice?

Mr Balding—I will.

Senator MACKAY—Can the ABC confirm off-the-record allegations that recent ABC board appointee, and someone I would regard as a conservative, Dr Ron Brunton, has sought to influence the program *Media Watch*?

Mr Balding—In what way?

Senator MACKAY—Has he sought to influence the ABC program *Media Watch* in any way? Are you aware of these allegations?

Mr Balding—I am not aware of allegations. I am aware of some issues that Dr Brunton has raised with me, which I have passed on to the director of television, in respect of *Media Watch*.

Senator MACKAY—What were those allegations?

Mr Balding—There were a number of issues, from memory. The director of television may be across them a bit further. There are a number of issues in respect of David Marr and particular issues in respect of—

Senator MACKAY—Perhaps you could provide me with a run-down of what those issues were. Before Ms Levy starts, these are issues that Dr Brunton has raised with you and which you have then raised with whom?

Mr Balding—I referred them to the director of television.

Ms Levy—The managing director requested the director of television to provide him with a response to a document from Dr Ron Brunton, and I provided that response to the managing director.

Senator MACKAY—What was in the document?

Ms Levy—It was a number of pages of a critique of *Media Watch* on a number of issues.

Senator MACKAY—What were they specifically?

Ms Levy—To do with an editorial in the *Australian* and the treatment of Janet Albrechtsen. There was an issue to do with an asylum seeker, and in relation to *Media Watch's* comments

on coverage of the Iraq war, and a joke that David Marr made about something being ‘albrechtied’. I think the term is ‘albrechting’.

Senator MACKAY—‘Albrechting’.

Ms Levy—Based on the name of Janet Albrechtsen. It was more of an essay than anything else.

Senator MACKAY—It sounds like a rant.

Ms Levy—More of an essay, I would say. I did provide comments in response to that to the managing director as requested.

Senator MACKAY—What comment did you provide to the managing director?

Ms Levy—I do not have a copy of it with me. But again, in the nature of a response to an essay, there were numbers of comments dealing with the various points made by Dr Brunton, which were more in the nature of a discussion than anything else.

Senator MACKAY—Let us get down to taintacks. Can you list all of the complaints? I understand we are talking about an essay form. You have listed some.

Ms Levy—They were not complaints. If they had been complaints, they would have been referred to the complaints handling process. It was more of an essay. I do not know the history of Dr Ron Brunton’s passing it to the managing director, but when the managing director asks for a briefing from the executive director, we provide that briefing.

Senator MACKAY—Okay, but specifically what did he raise in his essay?

Ms Levy—I just outlined those ones. Shall I go through them?

Senator MACKAY—Yes, please, just for the sake of completeness.

Ms Levy—I have got a number of *Media Watch* comments here and I am not sure that they were all covered in the letter from Dr Ron Brunton. I would probably prefer to check the letter itself to make sure that I am not adding a couple of other criticisms of *Media Watch* to his. Could I provide that response—

Senator MACKAY—From other members of the board?

Ms Levy—No. My response was a briefing to the managing director, and I would prefer to check that I am not taking some of it out of context. If I could go through the briefing about the Ron Brunton essay, I would prefer to do that. Could I answer that on notice?

Senator MACKAY—Yes, you can. You have been very helpful in providing some answers. I think you mentioned Iraq, Janet Albrechtsen, asylum seekers, various complaints about Mr Marr. Anything else?

Ms Levy—I cannot recall them. I would prefer to check the detail of the exact response and the exact essay.

Senator MACKAY—I have one final question before we take a break. Your response was essentially agreeing, refuting or saying you would look into this—what was it?

Ms Levy—We provided a response to the managing director to the various comments and discussion points in Dr Brunton’s letter. It was not in the nature of a formal criticism. As I say, had it been, it would have gone through the complaints handling process.

Senator MACKAY—What was the tenor of your response?

Ms Levy—The tenor of the response was to provide the information from *Media Watch* as to the investigation that *Media Watch* had entered into regarding various matters—the use of the term ‘albrechting’, the humorous tone intended and so on. As I say, the essay was quite long. I would prefer to go back and check that I am giving you the—

Senator MACKAY—During the break, could you have a look at your response?

Ms Levy—Yes.

Senator MACKAY—We can return to it. Thank you.

Proceedings suspended from 4.02 p.m. to 4.18 p.m.

Senator MACKAY—Before the break we were talking about the correspondence from Dr Brunton and you were going to check it during the break and get back to me about the contents.

Ms Levy—The three issues that were raised in the letter referred to the ‘Getting it right on Iraq’ episode of *Media Watch*, which was in February 2004. Dr Brunton was discussing the response by *Media Watch* to the Hutton inquiry, which we responded to and provided the context of that, and also quoted the statements made here by me in defence of the coverage by *Media Watch* of the Hutton inquiry.

Senator MACKAY—What was his contention?

Ms Levy—I do not have his letter with me so I will be remembering it from some time back when I read it. I would prefer to go back to his original letter if I was going quote his actual contentions. As I say, it was more in the nature of a discourse rather than anything else. There were a number of propositions put forward and hypothetical positions argued, so it was not easy to summarise it in point form. He commented on the use in *Media Watch* of the term ‘albrechting’, which is a term that *Media Watch* used to describe the lifting and twisting of material. In this instance they used the term to describe something that Philip Adams had said on ABC. I think Mr Brunton was concerned about the invention of the term and the use of the term. We were describing how such a term had come about and the ways in which *Media Watch* were using it. There was also, I think, a question about the Senator Santoro question raised here about the necessity for David Marr to disclose his books on asylum seekers and a response that we had—

Senator MACKAY—His books?

Ms Levy—He has written a book called—

Senator MACKAY—Yes.

Ms Levy—I cannot remember what his book on the Tampa is called. It is not called that. What is it called? I am sorry, my brain has gone. I am completely dead on the title of that book. I can see it in my mind's eye. David will kill me. But the title of that particular book—

Senator MACKAY—*Dark Victory*.

Ms Levy—Thank you: *Dark Victory*. There was a question asked about that and we were describing the process of editorial policy evaluation we had used in order to ascertain whether disclosure was necessary.

Senator MACKAY—So the proposition was that Mr Marr should disclose that he had written a book?

Ms Levy—Senator Santoro asked that question of us in this room, and we had responded to it. I think there was a question from Mr Brunton about the process which we had used. We generally described in our response our compliance with editorial policy.

Senator MACKAY—So the process used in answering Senator Santoro?

Ms Levy—And in determining whether disclosure was necessary, which was the question that was raised here about disclosure and the process that we used, using editorial policies as our guide, to determine whether disclosure was appropriate or not.

Senator MACKAY—Sorry to interrupt. The minister is not here, but if he were I would accept the admonition. Was Dr Brunton commenting on an estimates *Hansard* he had read? I am assuming Dr Brunton does not routinely have chats with Senator Santoro?

Ms Levy—Again, I would prefer to check the wording of his document to ensure that I am not taking liberties with that comment. We talked about disclosure and editorial policies. Generally, in the response to the managing director, I provided an explanation of how *Media Watch* is evaluated in terms of both editorial policies and legal issues before it is recorded each Monday.

Senator MACKAY—So the three issues were the program 'Getting it right on Iraq' on the February 2004 *Media Watch*, the invention of language, and the issue of a response in whatever form to issues Senator Santoro on the *Dark Victory* disclosure?

Ms Levy—To disclose.

Senator MACKAY—What was your response to those three issues?

Ms Levy—In each instance we explained the nature of the reasons for *Media Watch* having covered those issues in the way they did. It was more of an explanation to contribute to a dialogue rather than a response to a complaint.

Senator MACKAY—So presumably the ABC does not agree with the contentions in Dr Brunton's rant or essay or whatever?

Ms Levy—The history of the term 'albrechting' was explained by us and its usage described in the program. Our process of evaluating whether or not it was necessary to provide disclosure on the book was described. The nature of *Media Watch*'s coverage of the Hutton inquiry was described. We contributed to the nature of the discourse by providing

responses generally along those lines. As I say, it was not a formal complaint, so it was not necessary to take a position in terms of a complaint. It was more of a discussion paper.

Senator MACKAY—That is an interesting issue, that it was not a formal complaint. I will come back to that. Can I just get some time lines here? Mr Balding, Dr Brunton raised this with you in writing when?

Mr Balding—In March.

Senator MACKAY—You received the correspondence in March some time?

Mr Balding—Yes, there was some correspondence in March to me, which I referred to Sandra. We have not sent those comments back to Dr Brunton. I was going to personally sit down with him and take him through those comments. Dr Brunton is not in receipt of that information as yet.

Senator MACKAY—All right. So you received the essay or whatever from Dr Brunton in March. Ms Levy, did Mr Balding ask you in writing to provide advice and when did you receive that? Or did you just accept that Mr Balding simply forwarded the letter for you to comment on and advise him?

Mr Balding—Can I answer that?

Senator MACKAY—Sure.

Mr Balding—I did provide the request in writing, a covering note on top of Mr Brunton's comments, and asked for a response. I asked for the director of television's comments.

Senator MACKAY—When did you do that?

Mr Balding—It would have been shortly after I received it.

Senator MACKAY—What, a matter of days?

Mr Balding—Yes, I think it would have been late March or early April when I would have forwarded it on to Ms Levy. I am only going off memory now.

Senator MACKAY—Sure, I understand.

Mr Balding—I have received, obviously, Ms Levy's comments back, which I have not gone through in detail yet. I was planning to go through them in detail and then sit down with Dr Brunton and take him through them and then advise Dr Brunton, if he was not satisfied with those comments and if he felt he had a complaint, that the option would be open to him to put in a complaint and it would then go through a formal process.

Senator MACKAY—With respect to the advice that Mr Balding asked you for on Dr Brunton's essay, when did you provide that? Mr Balding, when did you get Ms Levy's advice on this?

Mr Balding—It would have been a week or more ago.

Senator MACKAY—Thank you for that. Ms Levy, just in terms of the three topics, I really am trying very hard here not to bore you, but I am extremely curious as to the context of the issues that Dr Brunton raised. For example, taking the Hutton issue, which I think you

are saying he raised with respect to the 'Getting it right on Iraq' February 2004 *Media Watch*, what was his contention? I am trying very hard not to verbal you, because I know you have not got it with you. I am trying to get a sense of whether it was righteous indignation. Were the complaints reasonable, in your view?

Ms Levy—I do not think I can answer that.

Senator Kemp—It is a very difficult question, I must say, to ask an officer to comment on the views of a board member at a Senate estimates. I am not trying to instruct Sandra Levy, but my view is that to ask an officer to comment on the views of a board member at an estimates committee is quite outrageous, actually.

Senator MACKAY—It is almost as hard as determining a subjective issue like bias.

Senator Kemp—We have had that debate and you have shown that you are not in favour of attacking bias. That is all right. That is your position, not my position. Now we are discussing what I understand to be a leaked board paper, which in itself is a significant issue.

Senator MACKAY—It is not a leaked board paper.

Senator Kemp—If people on boards cannot have private discussions, I think that is a bit of a problem. The next step is to get an officer to make comments on the views of a board member. I have to say that I do not think that is an appropriate question.

Senator MACKAY—Ms Levy seems quite willing to respond. It is not within—

Senator Kemp—If Ms Levy wants to respond, she is quite entitled to. I am not trying to instruct her.

Senator MACKAY—Exactly.

Senator Kemp—But I do think that it is a bit rich.

Senator MACKAY—I do not want to argue with the minister, because we are running out of time. But Ms Levy has been asked to provide advice officially by Mr Balding. It is not something that was—

Senator Kemp—Yes, but the advice is to Mr Balding. The advice is not to you. It is up to Mr Balding what he wants to do with it. If by some mischance of the electoral process you find yourself in government, you will find that it is quite a different matter for them to provide frank and fearless advice to a managing director than to be asked to provide that advice at a Senate committee hearing. I think that is putting the officer in a very unfortunate position

Senator MACKAY—Okay. I will ask Ms Levy the question again. Do you think the arguments that Dr Brunton put forward had any veracity?

Ms Levy—Again, without having the document in front of me I think it would be inappropriate for me to try and recall the nature of the document, so I would prefer not to comment.

Senator MACKAY—Did you agree with them?

Ms Levy—It was not a matter of agreeing or not agreeing with them. They were comments on the nature of the *Media Watch* programs that were cited.

Senator MACKAY—So was your response in the nature of a refutation?

Ms Levy—It was in the nature of a courteous response to the managing director, as requested, explaining how *Media Watch* handled each of the matters raised.

Senator MACKAY—I understand it is difficult, because we do not have this. I would hate you to be verbally by either myself or the minister.

Senator Kemp—I am not trying to verbal anybody.

Senator MACKAY—I think you said ‘putting words in Ms Levy’s mouth’. I think I used the word ‘rant’ and you said, no, it was more in the nature of an essay.

CHAIR—Yes, an essay.

Senator MACKAY—What sort of an essay was it? Was it an essay praising Mr Marr on his inventive use of the English language, or the fact that he had authored a book called *Dark Victory*—that type of thing?

Ms Levy—It was an essay that explored various matters that *Media Watch* had covered and it tried to discuss those matters and *Media Watch*’s treatment of them.

Senator MACKAY—But it was not a formal complaint? Was it in the nature of a complaining letter?

Ms Levy—It was not a formal complaint. Had it been a formal complaint, it would have been referred in the normal manner. The managing director asked me for a briefing that he sought on our responses to that document, and we have provided that to the managing director.

Senator MACKAY—But was it in the nature of a complaining letter? It was not a formal complaint; I understand that. Surely it was not congratulations to the ABC on *Media Watch*, David Marr and so on? I could be wrong; it might have been.

Mr Balding—I think, as Ms Levy explained, it was more of an essay on comments over various things and just seeking our view on them. I was quite happy to take them on board. As I said, I have not had the opportunity to sit down with Dr Brunton yet and take him through our response.

Senator MACKAY—Okay. Let me put it in a fairly simple way: were the comments positive or negative, generally? I think that is a fair question. That is not asking for a subjective—

Senator Kemp—I am not—

Senator MACKAY—Hang on a sec, Minister. It is up to the officer to determine this. This is the ABC, not the department.

Senator Kemp—Indeed, it is entirely up to the officer to determine, and I make that point in prefacing my comments. What I understand is there was a communication from Dr Brunton, a member of the board, that was provided to the managing director. One of the officers of the ABC, Sandra Levy, has been asked to comment on that. Frankly, Senator, I just do not think it is appropriate to put an officer on the spot like this. I think it is not appropriate.

I am sure Sandra Levy will provide frank and fearless advice to the managing director and he will decide whether he accepts it or not. That is the proper process.

Senator MACKAY—Maybe my previous questions were not appropriate. I might agree with you there. I am actually trying to put it in a way that Ms Levy feels comfortable with. Generally, was the correspondence positive or negative? That does not imply a subjective analysis.

Ms Levy—I think I would prefer Mr Balding to answer that.

Mr Balding—The correspondence was more of questions rather than a negative or a positive comment. It was more of questions raised by Dr Brunton and giving Sandra Levy and *Media Watch* the opportunity to answer those questions. They were more about how *Media Watch* went about various things.

Senator MACKAY—So it was gently discursive, was it?

Mr Balding—In response, I believe it is more about giving Dr Brunton confidence in the way that *Media Watch* goes about its processes and when it puts together and develops its programs and puts those programs to air.

Senator MACKAY—Have you received any other correspondence from Dr Brunton on anything?

Mr Balding—Dr Brunton forwarded to me a copy of Ross Warneke's article in respect of sport in Melbourne.

Senator MACKAY—Pardon? Supporting Melbourne?

Mr Balding—No, in respect of sport in Melbourne.

Senator MACKAY—Right. So he simply forwarded it to you, did he?

Mr Balding—Yes.

Senator MACKAY—Do you often get letters from the board members?

Mr Balding—Not necessarily letters. Boards ask me various questions or about issues that are not necessarily formal or official board matters. A board director may have an issue brought to their attention and they just seek feedback or a briefing note. At times I will provide a briefing note to the board member. It may only be in respect of the particular matter that is relevant to that board member. Or if it is of relevance to the entire board and the board members ask for a briefing on something, I will provide a copy of that briefing note to the board in its entirety.

Senator MACKAY—Mr Balding, you have got the response from Ms Levy?

Mr Balding—I have, yes.

Senator MACKAY—You got it recently. What is your view about the response that Ms Levy has provided?

Mr Balding—From memory, I gave it a quick over-read, because I had other pressing matters on my plate at the time, with a view to going back and reading it in more detail before

I sat down with Dr Brunton. But, from memory, the overview set out a very positive response giving reassurance to myself—remember, Sandra Levy has responded to me—as editor in chief that, first of all, *Media Watch* does adhere to the editorial policies of the ABC. In any of the issues that Dr Brunton may have raised there is reassurance that there has been no breach of editorial policies. The paper then goes into a bit more detail about the processes that *Media Watch* has followed in respect of certain examples or instances that Dr Brunton has raised. I am very comfortable, with the response that Sandra has given me, to now sit down with Dr Brunton.

Senator MACKAY—Okay. Is it normal for a board member to complain about an individual program in writing? Is this usual?

Mr Balding—Can I say that it is not a complaint.

Senator MACKAY—All right. Is it normal for a board member to provide an essay on a particular program in writing? Is that normal to you?

Mr Balding—It does not happen every day. No, it does not. Board members will raise issues in casual conversation obviously with me.

Senator MACKAY—Of course.

Mr Balding—That does not become part of a formal board meeting. They will raise issues. We all have various views on programs—the nature of the program or how the program is delivered.

Senator MACKAY—I understand that. That is fine. But in writing, Mr Balding?

Mr Balding—In writing, no, it does not happen all that frequently. A board member will normally come up to me and in a corridor and in conversation say, ‘I saw that program last night.’ They will either congratulate me or say, ‘Is there a concern with it? Can you have a look at it?’ I have got no problem doing that.

Senator MACKAY—Are staff in *Media Watch* aware of the letter that Dr Brunton has written?

Ms Levy—Yes.

Senator MACKAY—Presumably you had to advise them so that you could provide their response, I take it? So you have asked them for advice on the letter?

Ms Levy—Yes.

Senator MACKAY—Putting aside the issue of casual conversation, Mr Balding, is it normal for members of the board to comment about sensitive programming matters?

Mr Balding—Yes.

Senator MACKAY—It is, is it?

Mr Balding—Yes. At times they might do it in the capacity of a board member in a formal sense, whether that is at our editorial committee or in the formal board meeting, or they comment as a private citizen with a view. Everyone has a view about programs. Everyone has

a view about the ABC. Board members should not be backward in coming forward in expressing views.

Senator MACKAY—No, I understand that. You said it was unusual for a board member—

Mr Balding—Unusual in writing, I think I said.

Senator MACKAY—No, I understand. When was the last time that you received correspondence of this nature in writing from a member of the board?

Mr Balding—I cannot recall.

Senator MACKAY—It is so long ago you cannot recall? You are not doing a Flint on us, are you?

Mr Balding—No, I am not. If at all I have received one in writing. I think your question was more general about board members and over a period of time. As I said, in my two years as managing director I cannot recall having a written comment.

Senator MACKAY—That is fine. Is this the first one from Dr Brunton, other than on the Melbourne sport issue?

Mr Balding—Yes.

Senator MACKAY—Ms Levy, what do you think of *Media Watch*? Do you think it represents quality journalism?

Ms Levy—I do, yes.

Senator MACKAY—Do you stand by its impartiality?

Ms Levy—I do, yes.

Senator MACKAY—What about you, Mr Balding?

Mr Balding—Yes, most certainly.

Senator MACKAY—Mr Balding, have you received many complaints about *Media Watch* from either board members or people in the political arena?

Mr Balding—Not overly, no, not personally. Whether there are complaints in the system—I am quite happy to pull the statistics out and have a look at that—I am not aware of any avalanche of complaints about *Media Watch*. I note some issues in the *Australian* from time to time with respect to editorials or comments by *Australian* journalists. But overall I am not aware of any avalanche of complaints in a formal sense about *Media Watch*.

Senator MACKAY—Have you received any comments—I hesitate to use the word ‘complaints’ because that would pull you into a whole different paradigm—or have you received any letters about *Media Watch* from any MPs or any other people in the political arena?

Mr Balding—Not that I can recall to me personally. I do not know whether the ABC has or not. I am quite happy to have our corporate affairs people have a look at it and take that on notice.

Senator MACKAY—No, that is fine. Ms Levy, have you received any that you are aware of along those lines?

Ms Levy—No.

Senator MACKAY—I wonder, Mr Balding, whether you would be prepared to, when they come to hand, table the correspondence we have been talking about?

Mr Balding—Yes, I have got no problem with that.

Senator MACKAY—I understand Senator Santoro has some questions. He has got 10 minutes worth, have you, Senator Santoro? The chair advises me that it is approximately 10 minutes.

Senator SANTORO—That was before I started listening to you, Senator Mackay. I just wanted to follow up some of the issues.

CHAIR—We will switch to Senator Santoro.

Senator LUNDY—We are still planning to finish the program this evening and I want to remind everybody that we are now well over time.

Senator SANTORO—I do not intend to take much—

Senator Kemp—Senator Lundy, it is very gracious that you have reminded us.

Senator LUNDY—I am just looking after my own interests.

Senator Kemp—If I recall, this is possibly the first question that we have had from a coalition senator with the sole exception of an intervention by Senator Tchen.

Senator LUNDY—These are Senate estimates, Minister.

Senator Kemp—Senator Lundy, we understand the agreements and we understand that the coalition provides space for the Labor Party. But I do want to make the point that this is the first time in almost two days that a coalition senator has a series of questions to ask. We note your comments, but I think in fairness it is probably appropriate that we give at least some time to Senator Santoro.

Senator MACKAY—We do have internal agreements.

Senator Kemp—Thank you for the reminder.

Senator MACKAY—Just before Senator Santoro starts—before you get beaten up by Senator Santoro—it strikes me that you have caved in on the complaints issue, Mr Balding, and you have caved on the monitoring. Please do not cave in on *Media Watch*.

Senator Kemp—Can I make an observation.

Mr Balding—Can I just reject those—

Senator Kemp—You reject those and I will make an observation.

CHAIR—Let us get back to the main game. Senator Santoro has some questions.

Senator Kemp—Mr Chairman, I just want to make a concluding observation. We have learnt that Senator Mackay is opposed to any attempts by the ABC to deal with bias. She is also opposed to members of the board having discussions with the managing director.

Senator MACKAY—No, I am not. You are just making this up as you go along.

Senator Kemp—That the correspondence and letters should be made public, I think, is most unfortunate. That is a very unfortunate series of questions from Senator Mackay.

Senator MACKAY—That is complete rubbish. I put it on the record that that is absolute garbage.

Senator TCHEN—If I may, after Senator Santoro finishes I do have two very short questions.

CHAIR—We will proceed, I think. Senator Santoro, would you like to begin asking your set of questions.

Senator SANTORO—I just wish to assure the witnesses from the ABC, and in particular Senator Mackay, that I have no intention of beating anybody up. Nor indeed do I have any intention of congratulating the ABC on anything—although, Mr Balding, I was going to commend the ABC for the extension of the accountability process that we have been discussing for the last two hours. It is an initiative that would be supported by the majority of reasonable Australians, if they had the opportunity to listen to the evidence that has come forward. I do commend the ABC for that initiative. Also, just for the record, to the very best of my knowledge, I have never met and I have never spoken to Mr Brunton, although I do commend his choice of reading if he in fact turns his attention to transcripts of estimates hearings such as the one that we are participating in today. That was just to answer an indirect question of Senator Mackay, not that I am under any obligation to do that. I do not think I have ever met or had any discussions with that particular board member, although I do support his appointment. He sounds, from everything that I read in the media about him, like a very highly qualified, intuitive and very worthwhile individual and member of that board.

Mr Balding, we have been discussing the interaction between the government and the ABC management and the ABC board. Just for the record—and I think you have answered this question in relation to another question that has been put by Senator Mackay—do you regard the exchange of correspondence between the ABC board and members of the government, in particular the minister, as improper?

Mr Balding—As improper?

Senator SANTORO—Is there anything sinister or improper about the exchange of correspondence?

Mr Balding—No, Senator.

Senator SANTORO—Because we seem today to be concentrating a lot on correspondence between individuals.

Mr Balding—I think it is appropriate that the ABC communicates with its minister and, in particular, the board communicates with its minister.

Senator SANTORO—If you cannot assist the committee, maybe other members of the ABC, the team in front of us, may be able to help out. Did previous Labor Party government ministers write to ABC board and management? Do the officers before us recall receiving letters from previous Labor Party ministers responsible for overseeing the running of the ABC?

Mr Balding—I have only been at the ABC a little bit over 8½ years, and I was only there for a short time prior to the change of government, so I cannot personally say whether or not Labor Party ministers wrote to the ABC. But I would assume, yes, that there would have been numerous pieces of correspondence between Labor ministers and the ABC.

Senator SANTORO—I am not going to put in an FOI request, otherwise I would be subject to more public complaints about the cost of submitting FOI requests, but I just want to reiterate the point that you have just made, that it is not unreasonable for that sort of correspondence to take place.

Senator Kemp—But I think it is actually more serious than that. We have been asked to table a lot of responses. I do not know whether Labor leaders have written to the ABC. Frankly, if letters from Liberals are going to be tabled to this committee, I suspect that letters and responses to Labor leaders and shadow ministers should also be tabled.

Senator SANTORO—I was going to come to that, Minister, because I do want to explore that particular point later on in this brief line of questioning. Do you have any recollection or is there any corporate memory within the ABC about Labor Party ministers making suggestions or commenting on any initiatives by—

Mr Balding—I do not personally because, as I said, the majority of my tenure at the ABC has been under the coalition government.

Senator SANTORO—Do any of your other officers who may have been with the ABC a little bit longer than you know whether that is the case?

Mr Balding—I doubt that these officers would be aware of it.

Senator SANTORO—Obviously, it is a bit difficult then to pursue that point. The point that I am trying to make is—and I think it is intuitively a valid one—that there would have been a lot of correspondence and perhaps a lot of comment or even suggestions from ministers as to how to progress administrative initiatives such as the one that has been under main discussion today. Mr Balding, are you able to confirm that the process of accountability, which has exercised in the main today the attention of Senator Mackay during these estimates, was established during the Labor Party's previous term in government, and that is the process of monitoring the content of ABC coverage during an election period?

Mr Balding—To the best of my knowledge, the ABC only commenced the external monitoring of election coverage in 1998.

Senator SANTORO—What prompted that at that time?

Mr Balding—I would have to check that, but I believe it was an issue following the waterfront dispute. There was a lot of contention over the ABC's coverage of the waterfront

dispute. As I said, I was not privy to management and the board taking that decision at the time.

Senator SANTORO—And has the process or methodology of collecting the statistics, the amount of time that is afforded to any particular party or minister or opposition spokesperson, changed ?

Mr Balding—I do not believe so. It might have been refined, but in general I am advised that it has not changed. As I said, what we are doing here is basically continuing the same process and procedures that we have done since 1998 other than, as I said, for bringing it forward and adding the audience survey as well.

Senator SANTORO—Has the ABC received any complaints about that methodology prior to the line of questioning that has taken place today? Have there been any suggestions from anybody particularly in the political arena that may help to make improvements?

Mr Balding—I am not aware of any. I would have to take that on notice.

Senator SANTORO—I would be grateful if you were able to shed any light on that. Do you regard the extension of the accountability process that we have been discussing today as an initiative that will be continued in future elections?

Mr Balding—In future elections?

Senator SANTORO—You have brought the measuring process, the monitoring process, forward. Would you see that as being a permanent practice?

Mr Balding—I think you need to consider that case on its merits come the next election and what builds up to the election. That is something we would need to have a look at. But basically what I also would need to do is to take from this particular period of monitoring what information and experiences we gain out of that.

Senator SANTORO—So you basically determined that we were, for all practical purposes, in election mode?

Mr Balding—That was my view, yes.

Senator SANTORO—Just for the record, you never felt heaved by any member of the government or any official within the government apparatus to make such a decision?

Mr Balding—No.

Senator SANTORO—Just for the record.

Mr Balding—No, Senator.

Senator SANTORO—If during this extended period and during the actual election campaign period proper you determined that a government minister was receiving disproportionate coverage or more coverage than a shadow minister, how would you seek to redress the imbalance? How would you determine that such imbalance or bias occurs? It seems to me that bias is more likely to relate to the content of discussion of an issue as opposed to the length of time, for example, that the various individuals involved in the debate have afforded to them, at least on the ABC. I think the point that Senator Mackay makes is a

valid one, and I can think of other reasons why Labor Party shadow ministers may not be as well covered as government ministers, but I will not go into that. But let us say that more physical coverage is ascertained for government ministers. How would you then go about determining a course of redress? Would you just say, 'We will give them equal time next time or we will give them extra time next time'?

Mr Balding—That is something that the editorial staff would need to take up. Again, it would depend on the circumstances at the time. The editorial policies make it quite clear that we have to give equal time, but not necessarily in the same particular program. So it is over a period of time that you are looking to redress any shortcoming there. That is something that our editorial staff and management would be looking at.

Senator SANTORO—So you will then seek to make up time as opposed to looking at the issue of bias or lack of fairness in the way—

Mr Balding—It could be a combination of a number of things, whether it is time, whether it is the network itself or the program itself. I think they would be looking at a combination of factors.

Senator SANTORO—I have become interested in your comments about measuring bias and also time within the coverage of issues during an election period. I see the issues as being different. It will be much easier to make up for an imbalance in time being afforded to a government minister and a shadow minister, but determining whether there is a bias for or against a government minister or indeed a shadow minister seems to be something that the process that you have instituted with Rehome does not—

Mr Balding—As I said, Rehome is only one contributing source to that overall analysis. It would be the Election Coverage Review Committee that would assess that. That is chaired by Murray Green, and they would be providing that assessment and providing continuous feedback to our editorial staff as to whether any trend seemed to be emerging.

Senator SANTORO—During the actual election campaign how will complaints from political parties or representatives be handled? Let us say that you receive a complaint from me, Senator Mackay or the federal director of the Liberal Party or the Labor Party. How would those be handled?

Mr Balding—If it is to do specifically with the election and something in respect of our coverage, it would go straight to the chairman of the Election Coverage Review Committee.

Senator SANTORO—That is Mr—

Mr Balding—That is Mr Green, who also is the complaints review executive. So it would not go necessarily directly to the program area; it would go to the chairman of the committee, as I understand it.

Senator SANTORO—So it is handled almost the instant it is received?

Mr Balding—Yes, it is. It is looked at, it is assessed and it is responded to during the period of the election.

Senator SANTORO—But there is an intention to handle it as quickly as possible?

Mr Balding—Yes, and that has been the case, as I said, previously.

Senator SANTORO—Before I move on to another area of questioning, as the minister has indicated, it is a very commendable initiative that you have taken on and it is good to hear that you have not been intimidated, heaved or been subject to any improper influence by anybody, including any member of the government. Mr Balding, are you aware of the ABC's extensive use of Access Economics and in particular Chris Richardson, a director of that company, as a commentator on government economic policy?

Mr Balding—Not specifically. We would use those people at different times. Do you have a particular instance that you are referring to?

Senator SANTORO—Yes, I do have a number of documents here that I can certainly provide to you, if you wish. I will get the secretariat to photocopy them for you. There is a plethora of documents or references on that particular claim. Do you accept that such commentary has the capacity to influence public opinion about government economic measures. For instance, when Chris Richardson predicts a \$7.7 billion budget surplus, could this hype expectations, leading to disappointment, if the figure is less?

Mr Balding—That would again depend on a whole range of circumstances. The ABC seeks to have a number of commentators, with a view to providing information to our audiences and allowing our audiences to make up their mind.

Senator SANTORO—In this particular case, though, I am referring to Access Economics, which I am claiming is a commentator of choice, I suppose, if I can put it that way, of the ABC.

Mr Balding—That is something I am happy to have a look at.

Senator SANTORO—I would be grateful. I would like to take you through a few more questions on the point that I am trying to make. Do you think that it is appropriate that, similar to journalists having to declare potential interests, economic commentators used by the ABC should also declare if they are retained by a particular political party or that the ABC should state such facts?

Mr Balding—That would be appropriate, yes.

Senator SANTORO—In fact, one could easily have a situation where an economic commentator had made a particularly big call and then the opposition used this as a pretext to advance its political argument. If that was the case and if that commentator was retained by the political party, would this not, in your view, be relevant?

Mr Balding—It depends on the timing when the commentator was retained by the political party. If they have not been retained by the political party prior to the commentator making the comment, I think it would be very difficult for the ABC or the person to declare that relationship.

Senator SANTORO—Would you concede that it is not uncommon for oppositions to feed off economic commentary and use it as an opportunity to get their views into the marketplace?

Mr Balding—I would probably concede that, and vice versa. Governments feed off political and economic comment as well and put it out into the marketplace. I think the ABC's role is to get the full range of views out there, for the audience to make up their own minds.

Senator SANTORO—As an example, in a letter of 22 September 2003, Access Economics wrote to Mark Latham, then the shadow Treasurer, confirming its proposal for a research project on income tax reform; then Chris Richardson, from Access Economics, predicted a \$6.9 billion surplus, saying, 'The taxman is laughing all the way to the bank,' which prompted Mark Latham to brand the government of which I am a member as the highest taxing government in Australian history.

Mr Balding—I am not aware of that matter, I am sorry. I am not aware of those circumstances. I am having difficulty understanding the line of questioning.

Senator SANTORO—The line of questioning, which will become fairly clear to you, is this: would an average viewer or listener think it is relevant if Access Economics was in the middle of conducting a tax study for the ALP when it made its prediction, and would they think that that should be made public by the ABC when covering comments by the Leader of the Opposition?

Mr Balding—That seems reasonable but, again, I would have to look at the circumstances around that.

Senator SANTORO—Are you aware that Access Economics was engaged by the federal opposition to cost its policies for the 2001 federal election and that it has again been retained by the opposition for the upcoming election?

Mr Balding—From memory I was aware that they were engaged in 2001 but I do not know about subsequent to that.

Senator SANTORO—I would like to inform you that that is the case. I notice that the Access Economics web site discloses many of its clients; in fact, it hits you with them when you log on. While it seems to be as much like advertising as a client list, I understand that many firms operating in the public policy area do, in fact, publicly disclose their client lists so that their interest in a particular area is known. That is something that is fairly common. Do you believe that, when the ABC seeks commentary from Access Economics, it should add a similar qualification such as, 'Access Economics has been employed by the federal Labor Party to cost its policies for the last two elections.' Do you think that would be reasonable?

Mr Balding—Again it depends on the context in which we were using Access Economics for a commentary, but I would have thought that it is not only Access Economics, it is any organisation.

Senator SANTORO—I am using that as an example to establish a principle. I do not want to sound as if I am picking solely on Access Economics. I am using that as an example because they do seem to be the ABC's choice in terms of—

Mr Balding—Do you have a problem with them? Is there an issue with Access Economics?

Senator SANTORO—I normally find them to be quite a reputable outfit. The point I am making is that they are providing specialist services that are being paid for by the Labor Party; and then they are being used by the nation's public broadcaster to back up comment, some of which is not always correct, including their prediction of the budget deficit.

Mr Balding—That is something we will have to look at.

Senator SANTORO—That led the Leader of the Opposition to make some statements which were in turn reported.

Mr Balding—Again it is something we will need to have a look at. You could extend that analogy across a whole range of issues and commentators used by the ABC.

Senator SANTORO—In fact, I have raised this issue previously, as you will recall, with regard to commentators the ABC has used from North America and other parts of the world, where clearly those commentators do not portray themselves as anything but very biased towards one particular point of view, yet that bias is in no way acknowledged or broadcast to the listening public, when the political affiliation or the particular political preference of other commentators that the ABC has used is made clear. I have raised those issues and I will not canvass them again. This is just another instance where I am trying to highlight perhaps an inconsistency of approach.

Mr Balding—That is fair enough. As I said, I am more than happy to have a look at the matter.

Senator SANTORO—I would be grateful for that. Does the ABC or any other media organisation have a code of practice which might inform such a discussion? Do you see any need for a code of practice that may help inform members of the listening public or the viewing public about that?

Mr Balding—The ABC has its own editorial policies and guidelines and a code of practice which addresses those particular issues that you are referring to.

Senator SANTORO—Would you make a copy of those available to the committee?

Mr Balding—Yes. I think we have previously but I am more than happy to make them available again. They are public documents.

Senator SANTORO—When Access Economics costed the coalition's Fightback package, for years afterwards the media publicly identified this company with the Liberal Party. Now, despite the fact that Access Economics has done work for the federal Labor Party and the Queensland and Northern Territory Labor parties this is, to the best of my knowledge, never mentioned. Why do you think that is so? What is your comment on it?

Mr Balding—I do not know and, as I said, I am quite happy to look at any specific instances. The ABC policy is that they should disclose that.

Senator SANTORO—Do you think that when the ABC in the future quotes Access Economics as an authority on a particular issue it should disclose that to the listening or viewing public?

Mr Balding—Again it depends on the nature of the subject that Access Economics, or any other commentator, would be commenting on. There could be issues where it would be very relevant to disclose their previous assignments or engagements with an organisation or a political party; there could be other instances where it is not relevant at all because what they are commenting on has nothing to do with their previous assignments.

Senator SANTORO—If they are commenting on government economic policy during an election period do you think it is appropriate then to disclose that?

Mr Balding—On the cold face of it, my answer is yes.

Senator SANTORO—I appreciate your answer, Mr Balding. I am happy to make these documents available to you. If the secretariat could photocopy them and make them available to Mr Balding I would be grateful for that. I have a few more questions, Senator Mackay, and it is in the spirit of our agreement, half an hour to an hour. I think I will be finished well and truly before—

Senator MACKAY—Nice try, Senator Santoro—10 minutes and I have given you 25.

Senator SANTORO—I do have many other questions which I will place on notice.

Senator Kemp—Santo, you are always a team player.

Senator SANTORO—Minister, of all the people here you would be one of those who would appreciate that that is indeed the case, and I am grateful for your kind reflection, as always. Mr Balding, at the additional estimates on 16 February 2004 I asked the following question:

Do you think that ABC journalists sent to Iraq to report the crisis and subsequent conflict should have been aware to the possibility that individual Iraqis they approached for vox pops might not want to risk committing suicide just to get on the ABC?

You will undoubtedly remember that question.

Mr Balding—You asked many questions at the previous hearings.

Senator SANTORO—That is the question that I asked. This was in the context of the remaining presence at the time of the Saddam Hussein regime and its 30-year practice of state organised mass murder, torture and incarceration of those considered to harbour anti-regime thoughts. I remind you of your response which was as follows:

We will take all that on notice, and we will have to give a very considered response to that.

Your considered response then turned out to be:

Yes, ABC journalists were aware of the implications regarding public comment in Iraq.

Mr Balding, given that ABC journalists were indeed aware of the implications regarding public comment in Iraq at that time, in short, that no vox pop was ever going to accurately reflect Iraqi public opinion, I ask you to explain, perhaps in a very considered way, why your journalists persisted in reporting, and the ABC in broadcasting, what everyone involved, from the vox pop source on the Iraqi street to your management officers at Ultimo, knew perfectly well was not accurate public opinion? Why do we keep on reporting?

Mr Balding—In what regard?

Senator SANTORO—Basically, you had people who were being questioned not giving accurate answers because of fear of very severe personal physical repercussions, possibly as extreme as physical violence and death. They obviously were not giving accurate answers that really reflected their feelings or the reality, but they were still being broadcast, despite the fact that you answered, ‘Yes, ABC journalists are aware of the implications regarding public comment in Iraq,’ and that is that the implications of making public comments, particularly truthful or genuine public comment, could lead to consequences and therefore you were not going to get answers that reflected the reality.

Mr Balding—Again, I would have to have a look at that, but I would be concerned if there were not some form of qualification in respect of those comments.

Senator SANTORO—I would just appreciate your qualification, because your one-line answer during the estimates and your one-line answer in writing did not describe any qualifications that may exist.

Mr Balding—No but, from memory, the question was, ‘Were they aware?’ and the answer was, ‘Yes, they were aware.’

Senator SANTORO—My obvious question, then, is: why did the ABC continue to broadcast what could basically be described as nonsense—

Mr Balding—Again, if I had some specific examples I would be more than happy to have a look at those. We are talking about a period of time here and a whole range of programming that was on the ABC over a long period of time. If you could provide some specific instances I would be more than happy to look at them and come back to this committee.

Senator SANTORO—I would be grateful if you could review the material that I previously provided, and I will see whether I can get you some more. Mr Balding, I was very interested in the first line of questioning by Senator Mackay. I listened to your answer, which I thought was a reasonable answer, but I want to put a question to you that I prepared before Senator Mackay asked her first question. In your media statement that you issued on budget night you said:

It is encouraging to see the Federal Government has responded positively to the ABC’s funding submission of late last year.

Does that accurately reflect what you said?

Mr Balding—Yes.

Senator SANTORO—You said this in relation to the additional \$4.2 million a year provided by the taxpayer to cover cost increases and television program acquisitions. Your media statement also reported you as welcoming the government’s commitment to renew funding from 2005 for the ABC’s national interest initiative program at the rate of almost \$80 million a year. That new funding, as I am sure you are aware, provides quite a substantial amount of funding over three years—\$54.4 million over three years, which comes on top of \$71.2 million provided to the ABC in the 2001-02 budget to support national interest

initiatives. That is a total level of support of \$125.6 million between 2001-02 and 2008-09. The ABC's total appropriation of 2004-05 is \$756.1 million. Just for the record, would you agree that this is a substantial measure of public support that meets the reasonable needs of the ABC?

Mr Balding—It is a substantial amount of funding, and it enables the corporation to fulfil its charter obligations. But you need to take into context that, at \$756 million, it needs to cover three major output areas: television, radio and online. By any comparison, if you want to compare us with other public broadcasters around the world, to compare us to the commercial networks, the ABC is funded a lot less than those other broadcasters. I think the ABC needs to be congratulated for delivering what it does deliver on this appropriation and, yes, I did welcome the government's positive response to our budget submission. For the first time in many years our operational base funding has actually been increased; that was the \$4.2 million. The NII funding was not new funding; it was a continuation of a very important program initiative. But the ABC could always do better with more funding, and I do not resile from that. What frustrates me when I go around the corporation is the amount of lost opportunity that I see in the ABC in respect of programming, in respect of genre, in respect of taking advantage of emerging technologies and in respect of our reach.

The ABC can do so much; but at the moment it is, to a point, restricted. If additional funding was provided to the ABC there would be much more opportunity. There would much more programming and better programming—more Australian content, for instance. I think we expressed that in our previous triennial funding submission and I am confident that the ABC board will express it again in its next triennial funding submission to government.

Senator SANTORO—Thanks, Mr Balding. I am in agreement. In accordance with the spirit of our agreement, I will desist at this point and foreshadow that I will place some questions on notice to Mr Balding and the ABC.

Senator TCHEN—Mr Balding, on a number of previous occasions I have asked you questions about ABC NewsRadio. In fact I quite often commend the ABC on the quality of that particular frequency. I did not ask you any questions on the last occasion, mainly because I was aware that the ABC was expanding the NewsRadio coverage.

Mr Balding—The ABC is not expanding NewsRadio coverage.

Senator TCHEN—At the last budget estimates hearings I did not ask you any questions because I thought there was some reason—the introduction of a NewsRadio station in Wyong or Gosford or somewhere.

Mr Balding—That was local radio in Erina, at Gosford on the New South Wales Central Coast. We opened up a new radio station there.

Senator TCHEN—That is right. What is your ABC NewsRadio network coverage these days?

Mr Balding—Predominately it is the capital cities—

Senator TCHEN—Still only the capital cities?

Mr Balding—plus Newcastle and the Gold Coast, I think. That is predominantly it. In answering Senator Santoro I talked about opportunities. To me, NewsRadio is an opportunity but it is the reach that restricts it. It is restricted mainly to those capital cities and Newcastle, Gosford and the Gold Coast. To me that is disappointing, because it is a very good service that does not extend to all of Australia.

Senator TCHEN—I think we all share that sentiment. Can you tell the committee what proportion of the national audience now receives the NewsRadio service?

Mr Balding—I am advised that about 77 per cent of the population receives NewsRadio.

Senator TCHEN—Mainly in the metropolitan areas?

Mr Balding—Yes, in the capital cities.

Senator TCHEN—Do you have any plan to expand this coverage? I know you said that you have no immediate plan.

Mr Balding—No, unfortunately. Again, it comes back to reach. It is the cost of transmission, and we are funded separately for transmission. As I said, in the previous triennial funding submission we put a bid in to extend the reach of NewsRadio, Triple J and Classic FM to all population centres of greater than 10,000. That is the issue here—that NewsRadio is the predominant network that does not reach those population centres of greater than 10,000. I think it is a travesty that it does not. It is a fantastic service. What that is about is equity and access. All Australians, no matter where they live, should have equal access to ABC programs and services. They are paying for them.

Senator TCHEN—You say you have no plan. Do you have any intention of expanding the service?

Mr Balding—I have no intention because I have no money. I am sorry about that.

Senator TCHEN—Spoken like an accountant—very cautious.

Mr Balding—I have a desire and an objective to extend the reach of NewsRadio and Triple J to population centres of greater than 10,000 to bring consistency of equity across our audiences. But unfortunately I do not have the money.

Senator TCHEN—In that case, I recommend that you continue to pursue your desire.

Mr Balding—I will.

Senator Kemp—Mr Chairman, I would also like to make a comment on NewsRadio. I am a regular listener to NewsRadio and, being a bit of a night owl, I can cover both the day and the evening fairly well. I must commend the ABC on the general quality of NewsRadio. I do not say that everything I hear is unblemished, but it is an excellent service and the quality of the broadcasters is first rate. Of course, as the sports minister, I particularly listen to David Lord. The coverage he gives to sport and the knowledge he shows is particularly interesting. The arts side is very well covered as well. Debbie Spillane, as a general commentator, a sports commentator, does very well; Phil Kafcaloudes is also a very good broadcaster. The whole range of them is a very interesting group of broadcasters. I join with my colleague in commending the ABC on NewsRadio.

Mr Balding—Thank you, Minister.

Senator SANTORO—I fully support those comments and those of Senator Tchen.

Senator Kemp—I tell you what, this is an unusual Senate estimates hearing. I have never heard this before, Mr Balding.

Senator SANTORO—I have not been heaved by anyone to make them either, Mr Balding.

Mr Balding—Minister, show us the colour of the money and we will extend the reach of NewsRadio.

Senator Kemp—Mr Balding, we are only paying \$745 million a year, so we will see what we can do.

Senator TCHEN—Thank you, Minister, thank you, Senator Santoro, you took the words right out of my mouth because I have NewsRadio on my car radio and I listen to it in drive time. Drive time is the most challenging sector of the NewsRadio service, and can I say that NewsRadio certainly beats other drive time programs hands down.

Senator Kemp—If I can just make one slightly critical suggestion: as a news radio they will consistently have to repeat items, and that is accepted, but they have got to remember that there are a few of us that actually listen on an extensive basis, so the more repeats they can cut down the better.

Senator TCHEN—I have one other question which follows on from Senator Mackay's question. I think it might help Senator Mackay a bit. Senator Mackay and Senator Lundy brought up the issue of the plight of Miss Justine Elliott. I do not know Miss Elliott but she is a candidate for the Labor Party. Having been a candidate myself, I am extremely sympathetic to her inability to get exposure on ABC. I understand that you have a policy that a candidate, until the election is actually called, is just an ordinary person, a member of the public. I commend you for that position, but I understand that Senator Mackay and Senator Lundy are rather indignant about that. As I said, I tend to agree with them having had experience as a candidate myself. However, given your position, would it surprise you, Mr Balding, that Mr Peter Curtis, for example, who is the Liberal candidate in the Lalor electorate, does not get any coverage from ABC radio at all, whereas Ms Julia Gillard, who is the member for Lalor, gets great coverage quite often? Does that surprise you?

Mr Balding—Not at the moment under the current policy, no. But, as I said to Senator Mackay, it is something that I am more than happy to have a look at and address any deficiency that is there.

Senator TCHEN—I understand that Ms Julia Gillard is a shadow minister, a high-profile person, and obviously she is newsworthy. However, in the seat of Corio, where our candidate, Mr Bruce King, does not get any coverage either, the sitting member is also a shadow minister and he gets more coverage. Does that surprise you?

Mr Balding—Not at the moment, no.

Senator TCHEN—Our candidate, for example, in Chisholm, Mr Steve Harder, does not get any coverage. Ms Anna Burke, the sitting member, does not get much coverage either—she is a backbencher. In Bendigo, Mr Steve Gibbons gets a lot of coverage even though he is a backbencher, but the Liberal candidate for Bendigo, Councillor Kevin Gibbins, does not get any coverage even though he is a very well-regarded councillor of the City of Bendigo. Does that surprise you?

Mr Balding—No. Again, it depends. Are you talking about as a candidate for a political party for an upcoming federal election or in his role as a local councillor? Again, it comes back to the newsworthiness of the issues that are being raised by those individuals. Are you talking about coverage as in the news part of it or in respect of local radio and talkback radio? Again, it is an issue about the interest in that particular item.

Senator TCHEN—I would say that in that case you are confident that the position you have taken, as described in Mr McIntyre's letter, is a good position?

Mr Balding—No, I think I said I would have a look at it.

Senator TCHEN—If you did think of changing it, would you also tell the other candidates?

Mr Balding—You would know about it; it would be a public statement.

Senator TCHEN—Okay. Thank you very much.

Senator MACKAY—Can the ABC confirm that its commercial arm, ABC Enterprises, has been given a commissioning role with respect to a \$5 million fund for children's television programs?

Mr Balding—What do you mean by a commissioning role? It does not have a commissioning role for ABC television.

Senator MACKAY—To contextualise, if there is such a word, I am looking at an article that was in the *Australian*—

Mr Balding—I am aware of that article. If I can make a statement on it, it might clarify it for you.

Senator MACKAY—That might expedite matters, yes.

Mr Balding—Let me just say, in respect of that article, that the claim that ABC's television programming is determined by the ABC Enterprises division is incorrect. ABC television determines what goes on its schedule.

Senator MACKAY—What, then, is this \$5 million for?

Mr Balding—Mr Pendleton will be able to give you a bit of background on that.

Mr Pendleton—The ABC has for a number of years received a revenue stream from a number of its programs and its content, and we rely upon the net revenue streams that we receive to fund our base activities. This amount of capital was identified back in 2000-01—\$2½ million that year and \$2½ million the following year—to replenish that asset base upon which we rely and to grow it if we possibly could. Where there is a programming activity that

we undertake, if there is an opportunity for us to leverage off that and benefit from the revenue streams in that asset base, our program inventory, then we do that. That is what this investment is for.

Senator MACKAY—So it is not new money?

Mr Pendleton—It is not new money, no.

Senator MACKAY—I will have a look at that in the *Hansard* and I might put some questions on notice on that one. Just to fill in while we are waiting for Senator Lundy, can the ABC confirm that since its inception the program *Inside Business* has had feature interviews with government ministers on at least six occasions?

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

Senator MACKAY—Can the ABC also confirm, on notice I suspect, how many times opposition spokespeople have had feature interviews on *Inside Business*?

Mr Balding—You have pre-empted part of what my answer would have been on notice. We will give you a schedule of all the shadow and—

Senator MACKAY—Our count is ‘never’.

Mr Balding—I am quite happy to have a look at that.

Senator MACKAY—Can the ABC confirm that Senator Alston made an incredible three feature interview appearances on *Inside Business*, including an appearance on the first program of *Inside Business* in August 2002, followed by interviews in February and June 2003? You will probably have to take that on notice too.

Senator Kemp—It must have been by popular demand, Senator.

Mr Balding—I will take that on notice and confirm it one way or the other.

Senator MACKAY—Can the ABC confirm that the incoming communications minister, Daryl Williams, also got an interview on *Inside Business*, ironically titled ‘Baptism by fire for Daryl Williams’? Can the ABC confirm that in this ‘baptism of fire’ interview, Minister Williams was asked such difficult questions as: ‘Do you find this portfolio very different to the previous one?’ and ‘What you going to be like as Minister for Communications?’ and also the following question: ‘Do you agree that there is a conflict of interest between the government owning and regulating Telstra?’

Senator Kemp—Gee, that’s a very good question. I think that is an excellent question.

Senator MACKAY—Is the ABC concerned that *Inside Business* have interviewed communications ministers four times since its inception, but not once have they interviewed Mr Lindsay Tanner?

Mr Balding—Let me take that on notice and have a look at that. I will have a look at the subject area that they are examining.

Senator MACKAY—It is shocking.

Senator LUNDY—Following up on those points, are those the sorts of statistics that Rehame will be diligently delivering to your door?

Mr Balding—It will cover a range of issues.

Senator LUNDY—Will it look at individual programs in the way that Senator Mackay has just identified?

Mr Balding—Initially on a rotating basis, yes. When the election is formally called, it will be across all news and current affairs programs.

Senator LUNDY—What do you mean ‘on a rotating basis’? Who gets to pick what gets rotated through the system?

Mr Balding—Mr Crawford might be able to outline a bit more detail.

Mr Crawford—We have settled on a very simple methodology that will move across perhaps the 7 o’clock news in Sydney for a week or two weeks and then move somewhere else in the run-up to the election. It is a random sampling method.

Senator LUNDY—Do you pick the random sample, or does Rehame pick that?

Mr Crawford—We do. The ECRC selects the programming.

Senator LUNDY—On the local ABC radio station they have a guest on that show at least once a week from Rehame to talk about what is hot, I guess, in the polls that week or in the talkback and obviously the statistics. Does an employee or, in this case, the managing director of Rehame appear on any other ABC radio programs around the country on a regular basis, and are they remunerated for it?

Mr Crawford—I am not aware of it; and remuneration, I do not know.

Ms Howard—I think remuneration would be highly unlikely.

Senator LUNDY—I presume it would be unlikely. I just did not know whether Rehame had the same arrangement right around the country.

Ms Howard—Not that I am aware of.

Senator LUNDY—I have some questions relating to Community and Public Sector Union research on the declining coverage of the arts on the ABC. This survey was conducted by Professor Liz Jacka. Some of the key findings were that arts coverage on radio, television and online fell between 1992 and 2002; that the ABC has missed opportunities to reach younger audiences through newer art forms; and that there is less original performance on both ABC radio and television, reducing the opportunities for new Australian artists. Mr Balding, I am sure you are aware that that report on arts programming on the ABC by Professor Jacka did have a series of recommendations. Is the ABC considering those recommendations? If so, what action have you taken?

Mr Balding—No, they are not considering the recommendations. We do not agree with most of Professor Jacka’s conclusions in that paper. We believe there is a great deal of subjective argument that was based on perception and hearsay, and we believe it is poorly supported by evidence. I will ask the directors of television and radio to outline to this

committee what we are doing in respect of arts coverage. We are not diminishing our arts coverage; in fact, we are enhancing it.

Having regard to that public comment in respect of our arts coverage, we did commission Newspoll to do a survey of our arts listeners. I can report that 74 per cent of arts followers are satisfied with the quality of our arts programming content, while only seven per cent are not satisfied. Sixty-eight per cent of arts followers are satisfied with the breadth of ABC arts coverage, while nine per cent are not satisfied. So, with regard to the concerns raised in that report, I do not accept them. There was a fair amount of public comment in respect of our arts coverage. There has been public comment at this committee previously in respect of our arts coverage which we have attempted to answer. As I said, we commissioned Newspoll to go to the people who count the most, and that is the audience. They are very satisfied with our arts coverage. I am more than happy for the director of television and the director of radio to outline to you what we are doing in respect of arts coverage.

Senator LUNDY—That would be helpful but, before you do that, is the ABC going to reconsider its decision to close down The Space, which is online arts?

Mr Balding—Not at this stage; not that I am aware of.

Senator LUNDY—Is that because you do not think it is worthy? What was the rationale for closing it down, given that that closure is used as an example of a lesser commitment?

Mr Balding—Let me take that on notice and get back to you with the rationale behind it. When you are talking about arts coverage, what we need to take into context is the ABC's coverage of the arts across all our platforms rather than just individual platforms and individual programs.

Senator LUNDY—I understand that. The report does say that they have detected an improvement through 2003, so I want to make that clear. It is not all about criticism, but it does raise a series of recommendations about how things could be improved. I am interested to hear what your officers have to say.

Ms Levy—There is a fact sheet that the ABC has collected called the *ABC and the Arts* which summarises quite a number of the issues that were raised in the CPSU paper, so perhaps we could table that document.

Senator LUNDY—When was that published?

Ms Levy—Earlier this year. It is a 2004 document but I do not have a date on it.

Senator LUNDY—Was it published after this report was released—

Ms Levy—I do not think so.

Senator LUNDY—in response to it or earlier?

Ms Levy—I think it was before.

Mr Balding—I think it was made available to Professor Jacka. I believe it was published before the report.

Ms Levy—If I could quickly summarise the ABC television situation, this year we will be broadcasting 120 hours of first-release Australian arts content compared to the period that Liz Jacka refers to, which averaged 99 hours, so we are well ahead in terms of hours of content. There will be a slight fall in overseas arts content this year, in part because there is an increase in Australian arts content. On television the ABC provides a program called *Sunday Afternoon Arts*, which is three hours on Sundays and includes a review program called *Critical Mass*. It includes the *Words* program by James Griffin. It is a themed program which looks, every four or five weeks, at a theme like photography or dance or architecture. It is a program which comprehensively reports on, discusses and shows documentaries on significant areas of the arts.

As well as that we have a huge number of documentaries and arts programs in development and on air over the period of time, including *One Night the Moon*, the mdTV musical opera. A successor of that is a program called *The Widower*, which is another music opera using the poems of Les Murray as the basis for the operetta, for the score. There are many, many others: the celebration of the 40th anniversary of the Australian Ballet; *Wild Swans*, which is contemporary ballet commissioned by the Australian Ballet; and *Divergence*, another contemporary ballet, so quite a lot of ballet material and a lot of other new material. So there is a significant amount of Australian arts content. Not only that, but in the last 12-month period we trebled the number of staff working on *Sunday Afternoon Arts* around the country to ensure we had more regional content coming from around Australia contributing to the arts program.

Senator LUNDY—It sounds like there have been some changes taking place with this increased commitment that you are talking about. Is that the case or is this—what you are describing—really just the normal circumstance?

Ms Levy—*Sunday Afternoon Arts* in its three-hour form has been in existence for three years, so I do not know whether that is a change. The gradual increase in Australian content probably occurred—it started last year, I think—when we introduced *Critical Mass*, as well as the other programs. That was introduced in 2003. There is a commitment in the ABC to arts. I suspect that the tone of the CPSU paper misunderstands that commitment. Wherever possible—as you know, the ABC is very strapped for money—where we can increase local content, especially arts content, we do.

Senator LUNDY—What about in radio?

Ms Howard—I will give you a couple of examples. Radio National has 60 programs on air and 30 per cent of them are arts programs. I think that is a pretty good tally. There are always changes in programs and in the way we deliver programming. It is our job partly to be responsive to audience, and I think that Professor Jacka probably picked up changes in the way we go about delivering quite a lot of our content over 10 years, as you would hope and expect. I was a bit disappointed that she was not able to have a look at what local radio does in the way of coverage of arts, particularly local arts, because that is extensive, but I understand that she did not have the resources to do that.

There are other things in particular with regard to Australian music and Australian composition, which is something that radio takes very seriously. Within the last four years Classic FM has increased its Australian composition target—not necessarily popular with audiences but something that we believe we should be doing—from five per cent to 12 per cent, so 12 per cent of what Classic FM plays now is Australian composition. Triple J constantly exceeds by a massive amount its Australian music quota, and that is something we take very seriously.

Senator LUNDY—Going back to the ABC online, obviously the closing down of The Space has attracted a lot of criticism in this report. Can you give me an update on what is happening in the online area as well?

Mr Balding—In respect of The Space?

Senator LUNDY—Yes, The Space and other arts initiatives on the ABC online.

Mr Balding—Again, I will have to take that on notice.

Senator LUNDY—Okay.

Senator Kemp—Chair, if there are no questions I wonder if I could exercise an unusual ministerial prerogative and ask a question.

CHAIR—Yes.

Senator Kemp—As well as having the Arts portfolio, I have the Sports portfolio. I come from Melbourne, I look at news services regularly in Melbourne and I would have to say there is still a great deal of concern about the changes the ABC has made to news coverage.

CHAIR—This is the national sports news service?

Senator Kemp—Yes. There have been quite a few comments made. You would be aware of those. I notice the ABC position is that the situation has become quieter. From my experience, I would have to say it has not become quieter: there is still widespread concern. One of the arguments that have been put is that this is a Sydney-centric decision, in the sense that much sport comes out of Melbourne. Melbourne does like to see itself as a bit of a sporting capital. Sydney would argue that, I am sure. Nonetheless, I think there is still concern. Mr Balding, I was wondering, in the light of that concern, whether you can make any further comments about the ABC position.

Mr Balding—I would be happy to, in actual fact following on from a number of questions from Senator Lundy the last time we were here. Can I reassure this committee that there has been no reduction in the number of local sports stories covered at the various state levels. Minister, you talk about concern still being expressed. That concern is not being expressed by our audiences. We have measured our audiences—as well, we have measured the number of local stories—in the seven weeks prior to introducing the national sports wrap and in the seven weeks after introducing the national sports wrap. Our actual audience in four cities other than Perth—because Perth was unaffected by this change—has gone up 2.9 per cent over the seven-week period since we introduced the sports wrap. I am quite happy to table these figures because Sydney has gone up 1½ per cent and Melbourne has gone up 4½ per

cent—so the audience has gone up 4½ per cent since we introduced the national sports wrap—Brisbane has gone up 0.9 per cent and in Adelaide, which has also been expressing concern, the audience has gone up 5.3 per cent. So if there is concern being expressed it is definitely not being expressed by the audience.

Senator Kemp—I think it would be handy to have those tabled.

CHAIR—Would you like to table those figures, Mr Balding?

Mr Balding—I am quite happy to.

CHAIR—Please table those figures. I thank the ABC representatives for appearing today.

Proceedings suspended from 5.45 p.m. to 7.03 p.m.

Special Broadcasting Service Corporation

CHAIR—I welcome SBS to the table and Senator Mackay will begin the questioning.

Senator MACKAY—Thank you, Chair. I just want to go to the issue of the departure of David Stratton and Margaret Pomeranz to the ABC and, specifically, Mr Milan, Ms Pomeranz's comments on the way out that she was uncomfortable with what she termed 'SBS's new direction'—heading in a new direction. Does it worry you when key SBS personalities leave SBS citing problems with the direction at SBS?

Mr Milan—I think it was unfortunate that those comments were actually included in the ABC press release and, yes, of course, from the point of view of public relations, I find it troubling. But, by and large, the internal reaction it caused for the younger staff is that it creates an opportunity for renewal. We have still got a tremendous commitment to film within the organisation and the *Movie Show* will continue with new talent.

Senator MACKAY—Her comments, from my reading, seem to reflect criticism from ethnic groups that SBS is drifting away from its original multicultural identity towards a more mainstream commercial identity. We have discussed this in estimates previously. Do these criticisms have merit, in your view?

Mr Milan—No, they do not. I am not even sure that your interpretation of her comments is correct either.

Senator MACKAY—What was Ms Pomeranz talking about then when she said she was uncomfortable with the new direction SBS was heading in?

Mr Milan—I think you would have to address those comments to her. I am in no position to answer that.

Senator MACKAY—I have an article here that was in the *Australian* dated 6 April in which you are quoted as saying that SBS had been in discussion with David Stratton and Margaret Pomeranz about their retirement 'for some time'. Presumably the issue that was raised may have occurred in those discussions. Ms Pomeranz is quoted in this article as saying that there were not any discussions with you. I will quote from her in the article:

We have never discussed retirement from the *Movie Show*. Not ever ...

Who is right here?

Mr Milan—I can only say that my comments were based on advice I had received from my management staff. Indeed, the whole cessation issue with the *Movie Show* had been discussed with Ms Pomeranz. In her interpretation of what constitutes retirement and what constitutes cessation we may have an issue in which the syntax is in dispute, but I stand by what I said.

Senator MACKAY—What discussions were there with SBS and Ms Pomeranz then?

Mr Milan—A whole range of conversations would have taken place between the head of production, Glenys Rowe, and Ms Pomeranz about the future of the show.

Senator MACKAY—Can you give me a little more information than that, please?

Mr Milan—I am sorry, but I was not directly a party to those discussions.

Senator MACKAY—It is not really a question to you personally; it is actually a question to SBS.

Mr Milan—If you like, I can take that question on notice. When I return to the office I can talk to Ms Rowe about it and get some direct quotes about the nature of that debate and send them on to you.

Senator MACKAY—Mr Milan, you are quoted in the article as saying that SBS had been in discussion with David Stratton and Margaret Pomeranz about their retirement ‘for some time’. Is that quote accurate? That is the first thing we have to establish.

Mr Milan—I believe it to be accurate.

Senator MACKAY—So, presumably, when you made that comment to the *Australian* you must have been aware of something.

Mr Milan—Yes.

Senator MACKAY—What were you aware of?

Mr Milan—Just what I said to you: there had been numerous discussions with Ms Pomeranz about the future of the show. Ms Pomeranz, as I understand it, had from time to time expressed a reluctance to go on with the show because it had been on air for a long time and she had other things that she wanted to do with her life. The only thing I can surmise out of all of this is that she felt by going to the ABC it would give the show some form of renewal—and best of luck to her. I have got a lot of time for Margaret and, indeed, Mr Stratton. We wish them the very best of luck, but we will move on. Talent does move channels from time to time.

Senator MACKAY—I understand that. My job here is to ask questions in relation to SBS. I understand what you are saying, but you have suggested in this article to the *Australian*, which you have indicated is correct, that—

Mr Milan—That was my knowledge. I had not had the conversations with Margaret personally, other than on a social basis, to be fair. When I asked, ‘Are you going to do the same again next year, Margaret?’ she would shrug her shoulders—the normal reaction you get from someone who had been doing the same thing for a long time—but I had not had direct

discussions with Margaret on the retirement of her and David. What I had had was advice from my own programming people that they had had those discussions. To be fair, as I said before, there may be a dispute of syntax between Margaret's interpretation and that of my management as to whether we were talking about cessation or retirement. To my mind they mean the same thing; to Margaret they may mean something else. That is the state of my knowledge.

Senator MACKAY—When you were talking about retirement, what were you reflecting? When you mentioned the word 'retirement', what did you mean by that?

Mr Milan—I was reflecting the advice that I had received from my management team that they had had that conversation. I am not sure whether it was directly with David but it was with Margaret, because Margaret was the executive producer of the program.

Senator MACKAY—The advice that you had received was that there was active consideration by Ms Pomeranz and Mr Stratton that they may retire—that is, retire from—

Mr Milan—I think there was some talk about whether they should try and keep the show going to its 20th anniversary and those sorts of things.

Senator MACKAY—Was there? With whom did that occur?

Mr Milan—My understanding is yes, but I am happy to take it on notice. I will go back and get precisely what my head of production in SBS based her advice to me on and respond to you.

Senator MACKAY—There seems to have been a bit of discussion in the media recently with respect to SBS's legislative charter and in particular the weighting given by SBS to its various potentially conflicting charter obligations, like multiculturalism, multilingualism and preferred language goals on the one hand and the requirement to inform, educate and entertain all Australians on the other hand. Could you give me a bit of a run-down, Mr Milan, on what your own view of the SBS charter is?

Mr Milan—I do not see that those goals are necessarily inconsistent. In simple terms, we say our radio service actually supplies multilingual services that are obviously language group specific and they contain specific community information. We say with our television service, because it is much broader—and the reason it is broader is that radio viewing is an individual experience, because when you listen to the radio invariably you are on your own and you are making your decision to listen to your radio announcer, while with television often it is a much more general media, and people often view television as a family; it is not necessarily even the adult in the household that makes the decision what program is watched—that that is where we make the multicultural part of our delivery and what we promote is cross-cultural understanding. So we try to keep the programming at a level where it actually involves as broad a brush within the community as possible. In simple terms, that is how we interpret the act.

Senator MACKAY—But that does not actually answer my question: what is your view of the SBS charter?

Mr Milan—I think it is a good charter.

Senator MACKAY—Please! I mean the interpretation of the SBS charter.

Mr Milan—I have just given it to you, with great respect.

Senator MACKAY—What you told me was a bit of a dissertation about TV viewing and who watches television and about the fact that radio tends to be a solo activity et cetera.

Mr Milan—I am saying I think that we entertain, inform and educate all people through television and we give the language specific part of our charter delivery through radio. That is also supported broadly with our online services, which actually cover both ends of the spectrum. We deliver on time all of our radio services through our web services, and we also develop a whole range of new products. For instance, we have a lot of youth programming aimed at introducing new young bands to Australian youth and giving opportunities to young performers and those young folk who actually write music. You need to take a holistic view of SBS and the way it views its charter, because we use the whole spectrum of the services available to deliver it. It is a very broad based charter.

Senator MACKAY—You seem to be delineating television on the one hand as mainstream and radio on the other as multilingual. Is that correct? You seem to be providing that delineation.

Mr Milan—That is a reasonable assertion, yes.

Senator MACKAY—You think that that delineation accords with the charter?

Mr Milan—You say ‘delineation’. I am taking a holistic view of the charter and a holistic view of the resources available to me as Managing Director of SBS to deliver against the charter objectives. Some charter objectives are much easier delivered through radio than they are through television. To make up 68 different language programs in television would be extraordinarily expensive and go way beyond the resources available to us as an organisation. So we deliver those language specific services through radio and through our multimedia services. The television service is to inform, entertain and educate all Australians, but with a multicultural slant. That is how we deliver the service.

Senator MACKAY—Fair enough. But the difference is quite marked, is it not?

Mr Milan—But they are markedly different services. Radio and television are very different services. As I think I said in answer to a previous question, radio is listened to individually; people listen on their \$10 trannies to their own radio station. When they are watching television, often they view it as a family, and you have to have a broad enough programming base that can take into account that more than one person at a time might be watching that particular performance or program. All we are trying to do is to use the part of our organisation most suited to deliver an individual part of the charter. As I have said before I think in this forum, you have to look at SBS from a holistic point of view because it is a very broad charter and it does contain quite a lot of challenge in delivering it.

Senator MACKAY—Mr Luu, do families listen to SBS radio, do you think?

Mr Luu—I guess so. What the managing director was saying is that radio is far more effective in providing the kind of information needed by Australians of culturally diverse

backgrounds in order for them to be successful Australian citizens, and we do it in an inclusive way. The objective of SBS, amongst many other things, is to create harmony in society.

Senator MACKAY—So I guess your contention is that radio is not necessarily a solitary activity, that families do listen to radio?

Mr Luu—The radio is very effective in terms of one-to-one communication, but that does not mean that families cannot listen as a unit; they can. But that does not contradict what the managing director just said.

Senator MACKAY—Mr Milan, is it important, in your view, for SBS to maintain its multicultural and multilingual obligations? What weighting would you give to that and, say, the objective to attract a more mainstream audience? Do you think they are equal or do you think one has more weighting than the other?

Mr Milan—I would say the former is without question 90 per cent of what we try to do. But when you talk about mainstream, if you mean all people, we have to oblige by the act to supply a service for those people that actually only speak English. If you only speak the English language, we are obliged to put up a service for you. As our radio channel is almost exclusively non-English language—we do have an hourly block a day of English language—the best way of doing that is television.

Senator MACKAY—Are contentions that Mr Shaun Brown is applying a particular interpretation of the SBS charter to attract a more mainstream audience true, do you think?

Mr Milan—No. What Mr Shaun Brown is doing is developing a programming strategy which matches the company's corporate plan.

Senator MACKAY—So, presumably, you would reject media speculation that he is applying a particular interpretation of the charter?

Mr Milan—I completely reject that.

Senator MACKAY—Does his plan match the charter, in your view?

Mr Milan—Absolutely.

Senator MACKAY—Mr Milan, can you tell us how your moves to reconnect with the ethnic community are going? Has the reported formal consultation with FECCA started?

Mr Milan—Yes, it has. I think the best way to answer that question is to read the media release that was jointly released by ourselves and FECCA.

A meeting—

held on Wednesday, 28 April—

between SBS management and ethnic community and religious leaders agreed on the need for more regular consultations on a wide range of issues concerning SBS and the coverage of multicultural issues in the Australian media.

Representatives of the Federation of Ethnic Communities' Councils of Australia (FECCA) and the Australian Partnership of Ethnic and Religious Organisations (APERRO) said they were "extremely

pleased” with the outcome of the day-long forum which was called to discuss their concerns about perceived changes at SBS and a lack of community consultation.

The Chair of FECCA, Mr Abd Malak, said he believed his organisation and SBS could “collaborate as partners” to promote a unified multicultural message for all Australians. He said: “We want to help protect and expand SBS’s unique role in Australia as a media organisation and cultural institution.”

The organisations and SBS identified the need to work together to put in place processes to ensure effective communications and consultations as well as a process for on-going mutual support.

SBS Managing Director, Nigel Milan, said he was “delighted at the open, positive and constructive discussion”. He thanked Mr Malak for his enthusiastic support for SBS and for his offer to assist with future consultations with SBS.

Those involved in the forum expressed a common interest in supporting SBS to become a strong, relevant and well resourced media organisation. The organisations were supportive of SBS’s bid for additional funding, including for multichannel television programming, new media services and the extension of SBS Radio services, which currently broadcast in 68 languages.

That was a joint release put out by ourselves and FECCA. I have since spoken to Mr Malak again and we are meeting either next week or the week after with our Sydney management team to follow up.

Senator MACKAY—Thank you for that. Do you think things may have gone a bit awry with the ethnic community under your watch recently and you are now back on track?

Mr Milan—I take absolute responsibility for that. I apologised to the meeting when we commenced the forum. I think, frankly, we put too much weight on the strong relationship our radio division has with the ethnic communities, and there has not been enough consultation or explanation of what actually television is doing with FECCA and its associated organisations. We have given an undertaking to do that. I have to say that, by giving Shaun an opportunity to explain his interpretation of our corporate strategy and he thought his program strategy was matching our corporate strategy in the charter, by simply passing on the information, that in itself resolved a lot of the issues between ourselves and FECCA. As you can see, that was a release that we put out together.

Senator MACKAY—How do you react to the reported comments by former SBS board director Luciano Bini that there is now a pronounced Anglo-Saxon slant at SBS television that is unacceptable? Do you feel that there is any merit in that?

Mr Milan—No, I don’t.

Senator MACKAY—How do you react?

Mr Milan—It is a lot of uninformed comment.

Senator MACKAY—This is an ex-board director. He is not just uninformed.

Mr Milan—He may have been talking for when he was on the board rather than now. One of the strategies we have put in place to attract more younger and more female viewers to the channel is to bring in more foreign language drama; so in fact languages other than English. Our suspicion at the moment is that, if anything, it is up slightly. I just do not think it is true. I think a lot of the comment comes from either disgruntled staff members or folk who do not

actually watch SBS. It is difficult in your position because I realise politicians do not have much time to actually watch television, but SBS is a very different-looking channel from any other channel. It does not look like the ABC and it certainly does not look like any commercial channel, and on any given evening, if you simply turn the television on, I think you would find that your fears were allayed.

Senator MACKAY—They are not my personal fears, Mr Milan. I am here representing the federal opposition questioning SBS, so let us not personalise the issue. I understood Mr Bini to be talking about staff, not programming. Is that right? Am I misinformed there?

Mr Milan—I do not know what he said.

Senator MACKAY—What was he referring to?

Mr Milan—I am sorry, who was it?

Senator MACKAY—Luciano Bini.

Mr Milan—That significantly precedes my watch, so I have no knowledge of the gentleman. All I can say is that we have recognised, I guess, that the top management of television is a little on the Anglocentric side. The board is aware of this as an issue and has actually made it a strategic objective of the organisation in our corporate plan, which is 19.4, to increase the code for cultural diversity of SBS management and staff. So we are actually working on that as a corporate objective.

Senator MACKAY—Please finish.

Mr Milan—I was just going to say that, on my watch, it has not significantly deteriorated in the sense that the balance is about the same as it was when I took over the organisation.

Senator MACKAY—Let us look at the languages other than English programming figures that were given in a response to a question on notice from me. I will just turn to the actual answer. Do you have question on notice No. 49?

Mr Milan—Yes, we have question 49.

Senator MACKAY—If you removed the digital world channel from those figures, what difference would that make?

Mr Milan—The digital world channel takes it up to about 74 per cent language other than English. At the moment we think we are running at about fifty-fifty on the main channel.

Senator MACKAY—So this is in the prime time schedule?

Mr Milan—No, it is a bit less than that in prime time. It is down to about, I would say, about 40:60 in prime time. They are estimates for prime time, because we do not specifically keep prime time statistics, but there would have been a slight drop I suppose since 1996 with the launch of SBSi. We have actually been commissioning stories through SBSi about the multicultural experience here in Australia and those programs are in English. So that may have taken the percentage down slightly in prime time, because they tend to be broadcast in prime time.

Senator MACKAY—So you think it is currently 40:60 in prime time. Do you exclude anything from that figure? How do you come up with that figure?

Mr Milan—I am guessing.

Senator MACKAY—I would prefer that you did not.

Mr Milan—We do not actually compile the statistics.

Senator MACKAY—You have for me.

Mr Milan—We do not normally do it in prime time.

Senator MACKAY—The answer to the question on notice was, ‘The following data catches prime time 6 p.m. to 10.30 p.m.’

Ms Eisenberg—It was recorded programs in languages other than English. That is the way it is recorded. So they contain languages other than English.

Mr Milan—To be fair, the point that I made the last time I appeared in front of you is that I do not think language other than English is necessarily a measure of multicultural content. If that were the measure, then we would simply have foreign programming on SBS all the time and we would not be telling the story of Australian multiculturalism. Surely, that has got to be part of our charter, and to punish us for creating a resource to make more programs about the Australian multicultural experience I think is inappropriate.

Senator MACKAY—Who is punishing you?

Mr Milan—It would seem to be the—

Senator MACKAY—Mr Milan, this is just an estimates hearing where I am asking questions. Nobody is being whipped and chained and being dragged through the streets.

Mr Milan—Fair enough, it is just late.

Senator MACKAY—It seems a bit of excessive hyperbole. It is certainly not intended that way.

Mr Milan—Also, the content of language other than English varies on any given night, depending on the program. For instance, if we have a football match on, even though that may be two non-English-speaking teams playing, invariably the commentary will be in English because that makes it accessible to a broader audience.

Senator MACKAY—To me it seems that languages other than English, in terms of prime time, mean languages other than English. It means programs that are in languages other than English. I am no expert in this area, but are you saying that you include languages that are in English that emanate from other countries, for example?

Mr Milan—No. The statistics, as you have asked for them, are presented as languages other than English. The point that I was making to you is that I do not think that that is a fair judge of multicultural content on SBS, because the programs that we are making in English about multicultural Australia, in my view, are as good a multicultural content as something that is in a language other than English and subtitled. I would say further that it is actually

more important programming because it is Australian programming; it is about what is happening here in our own society.

Senator MACKAY—Estimates is also an opportunity for agencies to get their views out. There have been a number of articles in the paper on SBS and it is my job to ask questions about them. It gives SBS a chance to respond, that is all. On that issue, for example, there was an article in the *Sydney Morning Herald* from former *SBS Movie Show* producer Richard Coopers. He says that SBS is being ‘dumbed down’ by the screening of ‘low grade tits and arse movies on Friday nights’. How do you respond to that, for example?

Mr Milan—They used to be on Wednesday night. It is true: we used to have the relationship movie on Wednesday night and they have moved it to Friday. Our marketing people thought it was worth putting a bit of push behind it, but the movies are the same. They have just changed the night of the week.

Senator MACKAY—So you reject that?

Mr Milan—Yes, I do.

Senator MACKAY—I am advised that there was a movie on last Sunday night called *How Tasty Was My Little Frenchman* set in Brazil during the colonial wars of the 16th century.

CHAIR—There you are.

Senator MACKAY—I am advised by the person who has advised me about this that there were a lot of naked Indian women running around. I do not know how he would know that.

Mr Milan—Bugger, I missed it!

Senator MACKAY—I did not actually see it. Obviously he did.

CHAIR—Missed out again.

Senator MACKAY—I think he needs to get a life. On another matter, and a bit more serious, are allegations that Mr Brown now personally ticks off every *Dateline* story proposal true?

Mr Milan—As far as I am aware, that is absolute nonsense. Mr Brown would not have the time to tick off every *Dateline* story.

Senator MACKAY—Is it true that the idea for a recent story on the Sari nightclub and Australians being in potential danger came from a SBS marketing manager and a local *Dateline* journo initially refused to do the story saying it was speculation, not journalism?

Mr Milan—I will have to take that on notice. I have no level of knowledge of that.

Senator MACKAY—The other contention that is out there is that Mr Matt Campbell and Mr Shaun Brown, two more recently appointed heads of television, have been bypassing SBS’s long-established Sydney based documentary selection panel consisting of local experts when selecting documentaries. Is this the case?

Mr Milan—It is the first time I have heard of that allegation.

Senator MACKAY—How about taking it on notice?

Mr Milan—I will take it on notice.

Senator MACKAY—On a similar issue, we are advised that Mr Campbell and Mr Brown have overseen the rejection for screening of three documentaries on the Palestinian-Israeli conflict entitled *Food Transits*, *Checkpoints* and *The Wall*. Is that correct? Have those documentaries been rejected by SBS?

Mr Milan—We will have to take it on notice.

Senator MACKAY—Is anybody able to assist? I appreciate you may not be personally aware.

Mr Berryman—In the process of reviewing shows, there would be a lot of programs that would be rejected. I do not think you would—

Mr Milan—We would not know specifically about it.

Mr Berryman—We would not have access to those records.

Mr Milan—Do not speculate. I think what my colleague is saying, which would have been my closing comment on this set, is that that is why you have a program director—to make those final judgments.

Senator MACKAY—I understand that. I am sorry to interrupt you, but I am talking about the three documentaries called *Food*, *Transit Checkpoints* and *The Wall* that have been rejected. We are concerned. The reason I am asking this question, which is similar to questions that we pursued with the ABC, is that we are interested in whether or not this may have been in response from pressure within government, for example.

Mr Milan—No.

Senator MACKAY—Do you want to take it on notice so you can check it out completely for us?

Mr Milan—No, I can absolutely deny it, because the only person that can put pressure on Mr Brown and Mr Campbell is me, and I certainly did not do that. So I can absolutely refute it: it does not come from any pressure from government or from any other outside source.

Senator MACKAY—Take on notice whether it is the case that those three documentaries on the Palestinian-Israeli conflict were rejected and on what basis they were rejected.

Mr Milan—I am happy to do that.

Senator MACKAY—Similarly, there has been some reporting about a decline in ratings for SBS, and I refer specifically to the report of a decline of 14 per cent in February-March this year. Mr Milan, could you give us your view on why that has occurred?

Mr Milan—It is nonsense.

Senator MACKAY—It is not true?

Mr Milan—I think I actually said in estimates last time that the period that was put into focus compared our ratings this year with a period last year which was in the middle of the Iraqi war. SBS is perceived to be the main international news provider for Australia. Our news

and current affairs programs were getting two or three—and up to four—times their normal audiences, so the audience at that equivalent period last year was vastly inflated. So, if you did a direct comparison for that two- or three-week period, you would see a significant drop in audience.

Senator MACKAY—So that is a month on month comparison, is it?

Mr Milan—I am delighted to be able to report to you that that gap has been consistently narrowing since that period, and for the last two weeks our ratings have pulled in front of the equivalent time last year.

CHAIR—I think SBS is a channel that people go into and out of a fair bit. What percentage of the Australian population would you estimate watches SBS over a week?

Mr Milan—Over the week, about half of adult Australians watch SBS currently on a given week.

CHAIR—So 50 per cent of the Australian population tune into SBS programs during the week?

Mr Milan—Yes, 50 per cent and another 10-plus, I think the figure is. So it is about eight million, if you take into account the regional viewing as well, which is not as well researched as the metropolitan living.

CHAIR—That is quite a significant percentage.

Mr Milan—The trick for us is to try and get the other half to watch something on SBS.

CHAIR—Maybe a different half each week.

Senator MACKAY—Mr Milan, can anybody in SBS, be it you or anybody else, confirm that the Howard government board appointee and—and I use my term—conservative columnist Christopher Pearson is seeking to review the section of the SBS code of conduct which states that SBS programming may at times be distasteful and offensive, and that Mr Pearson also wants the term ‘balance over time’ replaced with ‘internal balance’? Is he involved in such inappropriate direct activity?

Mr Milan—Not as far as we are aware.

Ms Eisenberg—If it did happen, the board has a subcommittee which reviews the codes of practice from time to time. At the moment, the main issue for that has been the sections of the codes dealing with complaints handling, and that is a very longstanding inquiry. Later in the year, the board will probably be due to look at the broader code issues. At that point, there is quite an elaborate process that involves both internal and external consultations and review by the members of the board’s subcommittee. Eventually it goes to the full board. So it would not really be within the power of an individual board member to make a substantial change unless it had gone through the very elaborate process.

Senator MACKAY—Unless he or she is on the subcommittee.

Ms Eisenberg—Certainly he is one of four members of that subcommittee.

Senator MACKAY—So he is on the subcommittee that is conducting this review.

Ms Eisenberg—That is correct. The subcommittee liaises with management after the processes have been conducted, but it is the full board of SBS that makes determinations about changes to the codes of practice.

Senator MACKAY—So it is conceivable that Mr Pearson is proffering these sorts of views within the context of the subcommittee?

Ms Eisenberg—He has not, to date, expressed such a view in those subcommittees.

Senator MACKAY—Has Mr Pearson contacted any staff at SBS as far as anybody is aware?

Mr Milan—Not that I am aware of.

Senator MACKAY—We had an incident with the ABC and Dr Brunton earlier.

Mr Milan—No, not that I am aware of.

Senator MACKAY—Do you want to take it on notice and advise me if there has been contact you are unaware of? ‘Not that you are aware of’ is not a complete answer.

Mr Milan—Can we say that there would be appropriate contact like organising flights, for instance, to attend board meetings.

Senator MACKAY—Of course.

Mr Milan—My sense is that you mean any form of contact that might be construed as inappropriate or as editorial comment.

Senator MACKAY—Probably. He would not construe it as inappropriate, but others may.

Mr Milan—I am pretty sure that I can say that that has not taken place, because I am sure I would have been informed. I am beginning to make regular appearances here, so if I am wrong I promise you I will correct it the next time.

Senator MACKAY—We could probably dismiss SBS now because I have finished.

CHAIR—I want to ask some questions about radio. Mr Luu, first of all—

Senator MACKAY—Before you do, I should actually conclude with a congratulations to SBS for the good work and, on behalf of Mr Lindsay Tanner, to Mr Quang Luu in particular.

Senator Kemp—That does not quite follow from your questioning, Senator. But it is nice to hear at the end.

Senator MACKAY—Pardon?

Senator Kemp—The session was half an hour of critical comment—and then you congratulate SBS on their performance. I fully endorse your last comments.

Senator MACKAY—Chair, can I clarify this. This is estimates. Stuff is raised in the newspapers. As the federal opposition—you have been in opposition, Senator Kemp, and you would recall this—we are paid to raise issues. You may have the chance sooner than you think! Who knows! To be in the situation—

Senator Kemp—Do not even say that, Senator. Do not even contemplate that.

Senator MACKAY—Senator Santo Santoro could take at least two days on questions to SBS.

Senator Kemp—That would be a nightmare for you.

CHAIR—Mr Quang Luu, what is the range of languages covered by SBS Radio?

Mr Luu—SBS Radio broadcasts in 68 languages, including the common language of Australia, which is English.

CHAIR—Where are your broadcasts centred? Are they in cities other than Melbourne and Sydney?

Mr Luu—Yes. In Sydney and Melbourne we have two frequencies that broadcast 36 programs a day. Outside Sydney and Melbourne—because we have only one frequency in each capital city and in Wollongong, Newcastle, Bathurst, Wagga Wagga and Young—we broadcast only half of the programs. Say, for instance, in Perth—

CHAIR—Which is where I am interested in.

Mr Luu—That is where you are. We broadcast only half of the programs that can be heard in Sydney and Melbourne. That is why we are suggesting very strongly to senators and members of parliament that it may be a good case for capital cities outside Sydney and Melbourne to have a second frequency.

CHAIR—That is sort of where I am going. When you say there is only one station in Perth that broadcasts half the programming, does that mean that it still includes all of the languages and reaches all the ethnic groups, but only half the time or something like that?

Mr Luu—It includes most languages. With the Greek language program, for instance, listeners in Sydney and Melbourne would listen to that program 14 times a week. In Perth, Australians with Greek backgrounds listen to only seven programs a week. For the Albanian program for instance, because they have most of their community mainly in Sydney and Melbourne, programs such as that one do not have the national penetration in the sense that they are broadcasting only in Sydney and Melbourne, not outside Sydney and Melbourne. That is a matter of regret, but we cannot do otherwise because we do not have the air-time capacity.

CHAIR—What ethnic languages would miss out, for example, in Perth?

Mr Luu—I do not have a list of the languages with me but there could be about 10 languages altogether.

CHAIR—Can you find that out for me? Please take on notice to provide the languages broadcast in Perth and the languages which are not broadcast in Perth?

Mr Luu—Yes I can provide you with that.

CHAIR—What kind of additional funding would be required to extend SBS Radio to give them a second channel outside Sydney and Melbourne, in other capital cities?

Mr Luu—Our programs are already produced at the two centres—one in Sydney and one in Melbourne—and take into account the needs of Australians of ethnic background around

Australia. The programs are already made. What we need is a local frequency and the capacity to rebroadcast. The cost would be the installation cost of the antenna, the maintenance of the antenna and perhaps also the opportunity cost for the second frequency. There would not be any production costs because those programs have been already, and are still, produced.

CHAIR—So really you are talking about something a bit like Radio National, with repeater stations around the country?

Mr Luu—We have that one now. What we would like to do is extend that around Australia to the same extent as the ones available in Sydney and Melbourne.

CHAIR—There are quite large ethnic populations outside the capital cities, of course. In regional WA there are quite large Macedonian and Italian populations, and I guess in other states there are ethnic foci, if you like. Have you given any thought to providing radio broadcast services to those communities in non-metropolitan Australia?

Mr Luu—Yes. We also suggest that SBS Radio should be extended to all regional networks. In the meantime, because of a lack of funding, what we are trying to do—and we have done it a bit—is encourage local communities outside capital cities to utilise what are known as self-help projects. SBS funds the local community in order for them to set up a radio station that has a local frequency, they seek the licence from the ABA and then rebroadcast our programs in that particular locality.

CHAIR—That is satellite delivered, is it?

Mr Luu—Within where there is a satellite footprint.

Mr Milan—It is a major priority for the organisation to take our national radio channel into regional Australia. It was part of our last funding bid and was given priority.

CHAIR—That is good.

Mr Luu—In the meantime, anyone anywhere in Australia who has access to digital broadcasting of the SBS television broadcast service—the multi-channelling—can also listen to SBS Radio because each TV channel will carry the radio signal.

CHAIR—That is very interesting.

Mr Milan—Would I be right in saying we have got it up on the Foxtel digital platform?

Mr Berryman—There are two digital radio services on terrestrial digital free-to-air television which now covers over 90 per cent of Australia's population. Under our retransmission transaction with Foxtel, there are the two radio services, a Sydney service and a national service, that are distributed nationally through the Foxtel service.

CHAIR—Through the new Foxtel digital?

Mr Berryman—Through the new Foxtel digital service.

CHAIR—Very good, a bonus. Do they include the Melbourne based French language service, by any chance?

Mr Milan—We would not dare not.

Mr Luu—The Melbourne based French service could be heard around Australia.

CHAIR—That is one of the more outstanding services provided by SBS.

Mr Milan—Just stepping aside, I would hate for you to think that, because theoretically our radio signal can get to 90 per cent of the population on digital terrestrial, that is a reason for not funding the analog extension. At the moment there are only about 300,000 set-top boxes out there. So, notionally, the signal gets there; the number of people that can actually bring it into their own home is very limited. Mr Luu can give you the precise numbers, but there are a lot of non-English speakers currently in rural Australia that do not get a service.

CHAIR—There are serious issues.

Mr Luu—Senator, you mentioned Australians of various cultural background living outside capital cities. In fact, there are more than 300,000 of them living outside capital cities—

CHAIR—I am sure that is the case.

Mr Luu—and there are half a million of them living outside Sydney and Melbourne. So it is quite a substantial number of people.

Mr Milan—We would also like some money to see our SBS independent service renewed beyond 2006. So, while you are shopping, we might point that out. We believe we have earned the right, through *Harvey Krumpet*, to a significant renewal of that service and it is important that it gives security now because funding runs out in 2006. The way the film industry operates, you are often making decisions long before.

CHAIR—I understand that.

Senator Kemp—That was probably some of the more blatant lobbying I have heard all day.

Senator MACKAY—Would I be able to ask Mr Milan whether he is aware of any other opinions on the matter and could he please add to his answer.

CHAIR—With the extension of digital, the number of set-top boxes will go up dramatically in the next few years, so your service will be available very widely through that mechanism.

Mr Milan—Yes.

Mr Berryman—That is not to say that it does not need to be complemented by its own unique nature, like the unique nature of radio distribution.

CHAIR—We did pick that point up.

Mr Milan—I think the key factor that I gave to Senator Mackay in a previous answer, though, is that people do not watch television to listen to radio; so, though the service is out there, you really have to work pretty hard to find it. I think the analog extension is vital for SBS Radio to deliver proper service.

CHAIR—I have noticed that you do have pleasing music with your test pattern.

Senator Kemp—Your comments on a certain Melbourne based program have been noted and will be passed on.

Senator MACKAY—Just before we go, Mr Tanner and the federal opposition would also like to congratulate you, Mr Milan, for the efforts particularly with FECCA and the reconnection. We have had some very positive feedback about that.

Mr Milan—Thank you; that is good to hear.

Senator MACKAY—So congratulations to SBS.

CHAIR—As there are no further questions, we thank SBS for appearing tonight.

[7.55 p.m.]

Department of Communications, Information Technology and the Arts

CHAIR—We welcome the officers from the department.

Senator MACKAY—What is the department's policy in maintaining email accounts for former ministers? Does the department do that?

Ms Williams—I think that would come under corporate; this is broadcasting at the moment.

Senator MACKAY—When does corporate come on?

Ms Williams—When we go on to 3.4 and that is corporate.

Senator MACKAY—That is not tonight then?

Ms Williams—I hope it is tonight.

Senator Kemp—Senator Mackay, you are not going home, are you?

Senator MACKAY—No. I have another estimates committee to go to. Just for that I will stick around.

Senator LUNDY—Can the department provide a general update on its television and radio black spots program?

Mr Cameron—There are three programs relating to television and radio black spots: the television black spots program, the television black spots alternative technical solutions program and the commercial radio black spots program.

Senator LUNDY—I am sorry, what was the second one?

Mr Cameron—The television black spots alternative technical solutions program. The television black spots program is entering its final year of operation next financial year. To date, 194 black spots have been provided with new television services. There are a further 42 projects that have had their budgets approved and are awaiting construction and five projects are being assessed for ministerial approval. There are another nine projects where we remain waiting for the relevant organising group community body to submit fully costed proposals for approval.

Senator LUNDY—Are there enough funds to consider those?

Mr Cameron—Yes.

Senator LUNDY—Can you give me all the figures for the television black spots program?

Mr Cameron—There are 194 black spots.

Senator LUNDY—Can you give me the allocation of those administrative expenses for television black spots?

Mr Cameron—The television black spots program is funded through the television fund, which is a special account. For the 2004-05 financial year, \$10.315 million has been allocated.

Senator LUNDY—Where it says in the portfolio budget statement ‘Television Black Spots Program’ in ‘Administered Expenses’ and then it has the television fund under ‘Special Accounts’, can you clarify for me how that fits together?

Mr Cameron—On page 67 is a list of administered expenses. Under ‘Special Accounts’ at the bottom of the page, the second line is the television fund, and the amount indicated there is \$10.54 million.

Mr Buettel—The estimate for 2004-05 is \$10.54 million. If I could perhaps just clarify one of the figures that we gave earlier on, there are now a further 41 retransmission facilities awaiting construction rather than the figure of 42 that we gave earlier.

Senator LUNDY—So that figure for the television fund for the last financial year of \$12.598 million?

Mr Buettel—Correct.

Senator LUNDY—And it ends after the expenditure of the \$10,540,000?

Mr Buettel—Yes, it closes at the end of 2004-05.

Senator LUNDY—Going back up to the television black spots alternative technical solutions, that obviously still has money yet to spend—\$3.510 million. What is that being spent on?

Mr Cameron—The alternative technical solutions program is a program that the government initiated to attempt to find solutions to television black spots where an analog retransmission solution is not technically possible, primarily because of the unavailability of spectrum in the relevant area. So it looks at solutions such as the availability of digital signals for a digital retransmission service or direct-to-home satellite signals. There are 22 projects that are currently candidates under the alternative technical solutions program. The minister has approved funding for two of those locations to provide direct-to-home satellite solutions, and direct-to-home solutions have also been offered for a further three locations. In relation to the remaining black spots, technical work is being undertaken to identify solutions or seek to put solutions in place or there is an awaiting of an ability to test for digital signals in those areas.

Senator LUNDY—Given that last year’s amount is \$3.3 million and this year’s is \$3.5 million, out of all that money have only two locations been serviced?

Mr Cameron—To date only two locations have had approved solutions implemented, that is correct.

Senator LUNDY—But you have already spent—

Mr Cameron—\$3.345 million was the budget allocation for this current financial year.

Senator LUNDY—Are we talking about towns or regions or suburbs in valleys? Just give me a better idea about what is being funded.

Mr Buettel—The five locations that direct-to-home satellite solutions are proposed for at the moment are Woomargama, Mingoola-Glenlyon, Lavers Hill, Wisemans Ferry and Rosebank. So they are small towns in regional areas. The major projects that we are working through with commercial broadcasters and local councils involve a solution for a large number of black spots on the Gold Coast, and we are working at putting up a new transmission facility at Springbrook, which will help to deal with a number of those black spots. There is also a major project at Port Stephens that we are working through as well.

Senator LUNDY—For those five, and I presume the remaining 17, you have already got those applications?

Mr Buettel—Yes.

Senator LUNDY—Can you tell the committee where those new projects that are seeking funding are?

Mr Buettel—Yes. I mentioned the five that have the DTH solutions. There are six locations on the Gold Coast, Port Stephens, Rosebank, Kiama-Jamberoo, Woy Woy South, Bacchus Marsh, Tecoma/Belgrave, Delaneys Creek, Ma Ma Creek-Tent Hill and Edith. In the case of three of those black spot locations, the actual roll-out of digital television services has actually resulted in good television signals being provided to those areas in digital, and they are in the three locations of South Woy Woy, Bacchus Marsh and Kiama-Jamberoo.

Senator LUNDY—So does that mean that they will not need—

Mr Buettel—No further solutions are required for those three black spots because they have got good signals.

Senator LUNDY—So will that result in any underspend in this program?

Mr Buettel—As the television black spots program has been dealt with, in some cases the planning has resulted in the discovery of a lack of analog frequencies available for solutions. So, as we have continued to progress the first program, additional black spots have moved into the ATS program. So the short answer is that at this stage we could not identify an underspend, no.

Senator LUNDY—Are you likely to have a shortfall—within that dynamic?

Mr Buettel—It will really depend on the outcome of future digital roll-out. If the future digital roll-out results in good digital signals, and we have more candidates fall off the list, then that is a possibility. But if there are residual areas where there is still poor reception then we will still have to look at solutions in those areas.

Senator LUNDY—Does that program end in the next financial year?

Mr Cameron—The funding for that program continues to the 2005-06 calendar year.

Senator LUNDY—What is the allocation for that financial year?

Mr Cameron—\$4.073 million.

Senator LUNDY—How does the ABC and SBS digital interference scheme relate to the black spots program?

Mr Cameron—That scheme does not have any relationship to the black spots program. The ABC and SBS digital interference scheme represents a funding program which reimburses the ABC and SBS for their participation in an industry-wide or a free-to-air broadcaster-wide program to manage and minimise the impact of any interference to analog television and other customer equipment, such as VCRs, from the roll-out of digital television services. The ABC and SBS contribute on an equal basis with the commercial broadcasters to the top cost of that scheme, and the government has committed to reimburse the ABC and SBS for their costs.

Senator LUNDY—And that was less than expected, from memory.

Mr Cameron—Yes, the total amount to date has been significantly less than expected, and a large proportion of the original funding was returned to the last budget.

Senator LUNDY—So is there any allocation for 05-06?

Mr Cameron—Yes, there is an allocation of \$0.1 million for 05-06.

Senator LUNDY—And that is where it will end, is it?

Mr Cameron—No, that program continues into the out years—0.1 in 06-07 and an amount of 1.259 in 07-08. Given that the roll-out of digital television services is likely to occur for a number of years, an amount is kept in the out years, which in turn is pushed out into subsequent out years to ensure that there is a remaining amount for—

Senator LUNDY—So for that figure of 1.259 in 07-08 the idea is that you will just keep pushing it out and using it as you need to?

Mr Cameron—That is correct.

Senator LUNDY—I am just looking at the administered expenses here. What is happening to the National Transmission Network residual funding pool?

Mr Cameron—The NTN residual funding pool was a program established at the time that the NTN—National Transmission Network—was privatised. It is now Broadcast Australia. The funding pool provided an amount of money which is used to subsidise the transmission costs of broadcasters, including Radio for the Print Handicapped and other community broadcasters, to recognise that the transmission costs that they bore under the NTN arrangements were not a commercial cost, but under the Broadcast Australia arrangements they pay a commercial rate. The NTN residual funding pool essentially provides a basis on which to recompense those community and other broadcasters for the cost gap or a portion of the cost gap.

Senator LUNDY—So is there a figure for 05-06 and 06-07?

Mr Cameron—Yes, for 05-06, \$0.791 million, and for 06-07 it is 1.155.

Senator LUNDY—You have not done an 07-08 figure?

Mr Cameron—1.138.

Senator LUNDY—Does the compensation to SITA fall within this output?

Mr Cameron—No, it does not.

Senator LUNDY—What does that come under?

Ms Holthuyzen—That must come under telecommunications.

Senator LUNDY—Sorry?

Ms Holthuyzen—It is an administered expense, but I think it must come under the telecoms area.

Senator LUNDY—3.1?

Ms Holthuyzen—It might be 3.4 actually.

Senator LUNDY—The regional equalisation plan?

Mr Cameron—Yes. The regional equalisation plan is in fact a \$255-million arrangement which provides, for the most part, a reimbursement via reduced television broadcasting licence fees for regional broadcasters, representing 50 per cent of the costs of converting to digital broadcasting in regional Australia. There are, however, a number of broadcasters in very small licence areas where the amount that they pay in television broadcast license fees is less than the amount they are effectively due in terms of subsidy for 50 per cent of the cost of reimbursement. The government has agreed, in those circumstances, for there to be a grant paid in addition to a full reimbursement of their licence fees. The figure of \$300,000 is an amount paid to licensees in the solus markets of South Australia.

Senator LUNDY—Are there any figures for 05-06, 06-07 or any other year?

Dr Pelling—The \$0.3 million is in each of the next eight years—this year and the next seven years. So it is eight years in total.

Senator LUNDY—Does NetAlert fall under this scheme?

Mr Cameron—Yes.

Senator LUNDY—Is that an administered expense as well?

Mr Cameron—That is correct.

Senator LUNDY—The PBS has their projected expenditure for the next year at \$0.546 million. What is it for 05-06 and 06-07?

Mr Cameron—For 05-06 it is also \$0.546 million and in the out years there is an amount of \$0.035 million in 06-07 and \$0.024 million in 07-08.

Senator LUNDY—Why the drop?

Mr Cameron—The government has agreed to provide them with core funding up until the year 05-06. The subsequent years represent an amount to be provided to NetAlert to assist them in ongoing reporting to government in financial matters.

Senator LUNDY—Just for the sake of completeness, for the commercial radio black spots, can you give me the 05-06, 06-07 and 07-08 figures?

Mr Cameron—The commercial radio black spots program is due to be completed in the 04-05 financial year, so there are no figures in the out years.

Senator LUNDY—On the issue of community radio generally and community radio licences, we had a circumstance here in the ACT where radio station 2XX had fees due to Broadcasting Australia of \$29,000. Could you just outline for the information of the committee what the licence fee structure is for community radio stations like 2XX?

Mr Buettel—Just to recap on the situation with 2XX, I understand that on Monday, 3 May 2004 Broadcast Australia—the transmission service provider for 2XX—switched off the power due to the long-term failure of 2XX to meet its financial obligations for the payment of fees for 2003. Transmission was resumed on 5 May 2004 as 2XX paid a third of its arrears and agreed to demonstrate commercial sustainability and discharge remaining arrears by 30 June 2004. 2XX has stated that its transmission costs are around \$29,000-\$30,000 per annum. It appears that 2XX faces costs of this order due to its decision to change from AM to FM and to broadcast from Black Mountain Tower. The station receives an annual subsidy from the government's National Transmission Network subsidy scheme, which is administered by the Community Broadcasting Foundation, to assist stations on former national transmission sites.

Senator LUNDY—So where do I find that program in the budget statement?

Mr Buettel—It is actually funded out of the National Transmission Network residual funding pool, and money from that funding pool is made available to the Community Broadcasting Foundation, and it is the Community Broadcasting Foundation which then allocates the money that is provided amongst various community broadcasting stations that are situated around the country but are on Broadcast Australia sites.

Senator LUNDY—So what is the whole figure from that fund that the Community Broadcasting Foundation gets?

Mr Buettel—In 2003-04, the government provided \$150,304 for transmission subsidies for community broadcasters on Broadcast Australia transmission sites. My understanding is that the subsidy for 2XX in 2003-04 was \$7,970. That subsidy was provided by the CBF.

Mr Cameron—It is also worth noting that the government provides spectrum free of charge to community broadcasters, and the transmission costs that Mr Buettel was referring to before are commercial costs of operation

Senator LUNDY—I just wanted to get this very clear. From a policy perspective, notwithstanding 2XX's decision to want to go to FM—which I presume has issues to do with the quality of their broadcast and the reach and so forth—does the government have policies that are trying to assist community radio stations in such a way that they are not faced with such massive fees and charges to do what they obviously think is necessary to be a viable

operation? It is a bit hard to put that to you with the minister not here, but perhaps you could tell me if you are aware of any issues or strategies or if this issue has been reviewed or considered in recent times with a view to improving the situation of community radio stations.

Mr Cameron—The government does provide significant funding to the community broadcasting sector to assist them. Mr Buettel mentioned the subsidy arrangement under the NTN residual funding pool scheme, which involves \$150,000 in this current financial year, to assist with subsidies for site access costs for former NTN sites. As I indicated, the government also does not charge for the use of spectrum used by community broadcasters. The community broadcasting sector also receives funding directly for its general operations. In 2004-05 the Community Broadcasting Foundation will receive approximately \$5.492 million, comprising \$3.679 million of core funding, \$1.66 million of targeted funding for ethnic community broadcasting and infrastructure projects and the \$0.153 million that Mr Buettel referred to before in relation to transmission subsidies.

Senator LUNDY—So how is it that these radio stations still get charged \$29,000? Is that the commercial costs of occupying their space on the tower? Is that what that relates to?

Mr Buettel—Yes, that is a commercial agreement between the community broadcasters concerned and the transmission provider, which in this case is Broadcast Australia.

Senator LUNDY—What other choices do these community radio stations have?

Mr Buettel—I suppose they could have chosen to remain using AM transmission capacity rather than moving to FM—presuming that that was a decision that they made understanding the costs involved.

Senator LUNDY—But, as I said, obviously with good reason—to expand their offering. Is there anything within the suite of programs that can look at supporting in a more effective way—perhaps with greater financial support—that step to go from AM to FM to improve their transmission and reach?

Mr Cameron—The individual community broadcasting stations have to make their own decisions about what is an appropriate transmission arrangement for them. The funding that the government provides is to the Community Broadcasting Foundation and the individual community broadcasters can make submissions to the CBF in seeking funding for their particular needs. Clearly the CBF needs to make judgments about the relevant priorities between the range of funding requests that it receives.

Senator LUNDY—Do the Community Broadcasting Foundation funds as a component of that residual funding pool remain the same across the out years, or do you have a set of figures there that I could be given?

Mr Cameron—The funding for the Community Broadcasting Foundation more generally includes amounts in addition to the subsidy which come out of the NTN residual pool. I would have to take on notice the out year figures for the residual pool component in relation to transmission subsidies.

Senator LUNDY—If you could do both—

Mr Buettel—It is around the \$150,000 mark for the next two years as well, but with indexation applied. We do not have the exact figures here.

Senator LUNDY—Could you take that on notice, and also expand those sources of funds for the Community Broadcasting Foundation—how they distribute it, both this year and across the out years?

Mr Cameron—We can take that on notice, yes.

Senator LUNDY—Just going back to the black spots program—to the television fund first—how many projects have missed out under that program? How many applications have been rejected?

Mr Cameron—I think we might need to take that on notice. There were two rounds for that program conducted a number of years ago. There would have been a range of applications made, some of which may not have complied with the relevant guidelines and some of which may have fit the guidelines for the program but have subsequently moved, as Mr Buettel mentioned before, to the alternative technical solutions scheme. But I think we would have to take the specific figures on notice.

Senator LUNDY—If you could provide that, and just a summary of the reasons for their rejection, that would be helpful.

Mr Cameron—Yes.

Senator LUNDY—Can you take on notice to provide me with a breakdown of the actual program funding and the funding for administering those programs within this output 3.2? I asked some questions on notice last time in relation to NOIE programs with the same breakdown, and that was very helpful—just looking at the administered expenses and the associated departmental expense. Could you do that for each of the programs administered under 3.2?

Mr Cameron—Yes.

Senator LUNDY—Can you tell me something specific about Roxby Downs? I know you mentioned South Australia earlier, but I do not know if it is related. It did not receive funding, nor did Ceduna, because the 8SAT submission was rejected. What were the reasons for rejecting the 8SAT application for black spot funding?

Mr Neil—You might be referring to the Freshstream broadcaster—the remote central commercial radio broadcaster. 8SAT is one of their call signs.

Senator LUNDY—Sorry, what?

Mr Neil—There are three remote commercial radio broadcasters, and the one for Central Australia is called Freshstream, and it sometimes goes by the call sign 8SAT. They are part of our program and have been offered funding for 10 projects in South Australia and the Northern Territory.

Mr Cameron—I understand that there were 10 projects proposed from Freshstream FM which were assessed as being of our highest priority for funding, of which eight were

included in a third round of funding for the commercial radio black spots program announced on 21 April 2004. The other two projects require planning.

Senator LUNDY—Would that be the Roxby Downs and Ceduna ones?

Mr Cameron—I would have to take on notice whether that is specifically those ones, yes.

Senator LUNDY—So, if that is the case, they have not been rejected; they are just needing further planning.

Mr Cameron—I would have to confirm whether those two are the relevant two towns, but I will take that on notice, if you do not mind.

Senator LUNDY—Okay. The information I have is that they were rejected.

Mr G. Neil—I do not think that is the case. We need to check. We do not have that detail here. But, as Mr Cameron said, I think they are the two that required further planning. We need to check the details of their application here.

Senator LUNDY—If you can take that on notice, that would be good.

Mr G. Neil—Yes.

Senator LUNDY—Can you give me the figures for the departmental appropriations—I think I have this year's and next year's in the PBS but the out years as well?

Mr Cameron—Just to clarify, departmental appropriations for what?

Senator LUNDY—For 3.2.

Ms Williams—Sorry, was your question on the departmental appropriations?

Senator LUNDY—Yes, the departmental appropriations.

Ms Williams—They are not broken up at that level for the out years.

Senator LUNDY—But you would know what they are.

Ms Williams—No. We look at it each year. I am just doing it now for this coming year.

Senator LUNDY—So you will not be able to give them to me.

Ms Williams—No.

Senator LUNDY—Given that a number of programs end at the end of the next financial year, is it likely that the departmental appropriations will drop?

Ms Williams—Yes.

Senator LUNDY—So I will look forward to talking to you about it when we win government at the election, as opposed to seeing you at the next estimates. Turning to the antisiphoning list, why did the government choose to cull international grand prix events from the antisiphoning list?

Mr Cameron—The government assessed the antisiphoning list generally against a number of criteria, including the extent to which the particular events are of national significance and the historic level of coverage provided by free-to-air broadcasters—

Senator LUNDY—Sorry, I am having trouble hearing you.

Mr Cameron—The government assessed the antisiphoning list against the criteria essentially established by the original objects of the antisiphoning scheme, which are the extent to which the events themselves are of national significance and the historic level of coverage provided in recent years in relation to those events. The government's assessment was that, in relation to grand prix events, the events held in Australia are clearly of national significance and receive a high level of coverage, but the assessment of the government is that the level of coverage and the extent to which the international rounds are of national significance did not justify their retention on the list.

Senator LUNDY—Is it true that events such as the international grand prix receive little or no free-to-air coverage, which I think is what the minister claimed in his press release?

Mr Cameron—It is true that a large proportion of the events that have been removed from the list receive little or no coverage. The international grand prix events generally do receive coverage, but that coverage is often delayed and is generally in the middle of the night, not in prime time or other times when it would be seen by a large proportion of the community.

Senator LUNDY—Does the government intend to stop Foxtel related entities such as FoxSports buying pay TV and free-to-air television rights to listed events prior to free-to-air operators?

Mr Cameron—The antisiphoning regime prevents pay TV licensees from acquiring the broadcast rights. It does not prevent people who are not pay TV licensees from doing so. What that means is that for Foxtel to actually broadcast that event—and to broadcast is effectively to acquire the rights—the free-to-air rights must be acquired by a free-to-air broadcaster or the event must be delisted by virtue of not having been taken up. The assessment of the ABA, in its inquiry into the antisiphoning regime in 2001, was that the ability of people other than the licensee to acquire the rights prior to a free-to-air broadcaster having acquired them did not damage the effectiveness of the scheme itself.

Senator LUNDY—So the question still stands: will the government prevent that from occurring?

Mr Cameron—The government has no plans to address—

Senator LUNDY—The government thinks it will just work out okay.

Mr Cameron—The government, on the basis of the conclusions of the ABA and its assessment, has taken the view that the regime operates effectively in its current form.

Senator LUNDY—And what is the department doing to monitor the operation of the regime—anything—or is that left up to the ABA?

Mr Cameron—It is primarily a matter for the ABA. The scheme essentially places a licence condition on pay TV licensees, and if they breach that they breach the licence condition. But the department has monitored and reviewed quite carefully in recent times the operation of the scheme in order to provide advice to the government, and we would expect to continue to do so.

Senator LUNDY—When is the next review scheduled, dare I ask? The last one took so long.

Mr Cameron—The new list covers events operating up until the end of 2010. We would expect the review to be conducted prior to the end of that list. Given that the rights to events are generally acquired some time in advance of the event taking place, that would suggest that a review would have to occur some time in advance of 2010.

Senator LUNDY—The government has announced that it has made a decision that it will legislate to ensure that any decision on a fourth television licence will be made by parliament and not the ABA. When is the government going to introduce that legislation?

Mr Cameron—The government announced, in the context of commencing a range of statutory reviews in relation to the digital television regime and wider broadcasting issues, that it would intend to vest the power to allocate new commercial television licences with the government. In order to do that, that would require legislative change. The specific way in which that change should be implemented is a matter for one of the reviews the government announced. Those reviews are expected to be completed by the end of this calendar year.

Senator LUNDY—What year is that specifically?

Mr Cameron—There are in fact nine particular review obligations that exist in the Broadcasting Services Act that need to be conducted this calendar year. The government has announced its intention to conduct those on the basis of grouping them into four broad themes.

Senator LUNDY—You had better tell me what all of them are then.

Mr Cameron—The first broad theme relates to questions associated with the extent to which free-to-air commercial television broadcasters should be able to offer digital television services other than the relatively closely confined simulcast arrangements that currently exist—

Senator LUNDY—Is that the digital television reviews? There are three in that group, did you say?

Mr Cameron—There are four. This first review, in simple terms, is therefore looking at the question of digital multichannelling, but also the question of whether free-to-air broadcasters should be able to offer other types of services, such as subscription services or commercial radio services. There is a second review, of which the question of the basis on which a fourth network should be allocated is a part, which is looking at the appropriate licensing arrangements that should apply after 31 December 2006. That is when the current moratorium on the allocation of new free-to-air commercial television licences ends. That review is the review in which the government will consider the specific way in which that power to take decisions about the allocation of new licences should be invested in the government.

There is a third review which is looking at whether the allocation of digital broadcasting spectrum has been done in an efficient way and whether all available spectrum which could be used for broadcasting or datacasting services has been identified. There is a fourth review

which is looking at provisions of the Broadcasting Services Act relating to television broadcasting services in what we call underserved markets—that is, markets where there are only one or two commercial broadcasters operating. There are specific rules in those markets relating to the provision of additional services and also relating to the provision of high-definition television services, and that fourth review will be considering that issue. It is probably worth noting that there are other statutory reviews that need to be conducted beyond those four thematic groups. One is a review of the viability of an Indigenous broadcasting service—

Senator LUNDY—I was going to ask you a series of questions about that in a second.

Mr Cameron—There is also a review which is due to be conducted before the middle of 2005 in relation to the HDTV quota arrangements that exist in the digital conversion arrangements. And, finally, there is a review to be conducted before the end of 2005 in relation to the time of the simulcast period that we currently have—that is, the appropriate time that simulcasts of analog and digital television services should continue.

Senator LUNDY—So that is seven?

Mr Cameron—That is seven.

Senator LUNDY—Is that all?

Mr Cameron—Those seven reviews cover the range of statutory review obligations that exist in schedule 4 to the Broadcasting Services Act, which essentially are the digital TV reviews.

Dr Pelling—They are in separate subclauses in the act, and we have grouped the most logical ones together.

Ms Williams—Senator Lundy, they were actually attached to the minister's press release. We could give you another copy, because that sets them all out.

Senator LUNDY—No, that is all right. I just wanted you to run through them this evening. With respect to the digital television reviews, will the public receive adequate notice and the terms of reference in time to complete a reasonable comment on these issues, and what forums will be made available for the public generally to do so?

Mr Cameron—The minister announced the commencement of the review framework on 10 May. At that time he released discussion papers in relation to the first of those four thematic reviews, and also in relation to the review looking at Indigenous broadcasting services.

Senator LUNDY—So there is a discussion paper for that Indigenous broadcasting review?

Mr Cameron—There are discussion papers in relation to both of those reviews. The submissions in relation to the first of those thematic reviews has been requested by the—

Dr Pelling—I cannot remember the precise date. There is about 2½ months in which they have to respond.

Mr Buettel—For the Indigenous television review, the submissions are due by 10 August, so three months has been allowed for preparation of submissions.

Mr Cameron—Yes. I am sorry, I had lost my place here—30 July is the due date for the first of those thematic reviews. There is a slightly longer period in relation to the Indigenous broadcasting review, recognising the—

Senator LUNDY—I will come to that one specifically. How are you going to generate knowledge and interest in the general public in the digital television reviews?

Mr Cameron—The minister has put out a press release, the discussion papers for the reviews have been put on the department's web site—

Senator LUNDY—Are you going to do ads or are you hosting forums or conducting seminars or doing a roadshow?

Mr Cameron—We have certainly moved to do some ads in relation to the Indigenous broadcasting review, and we expect also to do advertisements in relation to the digital reviews—

Senator LUNDY—No, I am talking about the digital services review.

Mr Cameron—While it is not being organised by the department, there is a one-day forum being organised for 8 June in Sydney, for which I understand currently 130 people have agreed to come along to talk about the digital reviews, and the department is participating in that process. We have requested that submissions be made in a form that they can be put on the department's web site, either putting up the submissions themselves, or we have asked submitters to provide a public version of their submission if they are otherwise providing a submission that has confidential information.

Senator LUNDY—To do anything proactive, you might put some ads in the newspaper to generate submissions.

Mr Cameron—That is correct.

Senator LUNDY—But nothing else. You might have participation by invitation in various sector conferences—

Mr Cameron—And there is a wide level of knowledge that these reviews are due to take place and are under way, and the department expects that there will be a large number of submissions made.

Senator LUNDY—Are you writing to, I guess, the known stakeholders and interested parties in this issue as well and sending them the discussion papers?

Mr Cameron—Some advice has been provided to known stakeholders and stakeholders that have expressed an interest in being kept informed of those developments, yes—

Senator LUNDY—So who would that be to—that you are sending that information?

Mr Cameron—That is the peak industry bodies and other parties that have expressed interest.

Senator LUNDY—So FACTS will get a letter.

Mr Cameron—Organisations such as CTVA and—

Dr Pelling—We emailed a number of the key industry players—

Ms Williams—Senator Lundy, I think also, because this has been in the broadcasting act and because the field is very well aware, they have actually been asking us what is happening. We have been able to give them these papers, and I think they are well aware.

Senator LUNDY—Going to the issue of the Indigenous broadcasting review, you mentioned that the discussion paper has now been made available.

Mr Buettel—That is correct.

Senator LUNDY—The closing date for submissions is—

Mr Buettel—10 August.

Senator LUNDY—So what are you doing to ensure that Indigenous communities right across the country—including urban, regional and remote—can actively participate in that review? I hope it is more than just putting an ad in the paper.

Mr Buettel—Yes, we are taking a number of steps. In fact, two of the people in my branch are attending the Australian Indigenous Communications Association conference, which is occurring over three days. In fact, they have been there today to talk to people about the Indigenous review. We are proposing to put advertisements in Indigenous newspapers across the country, and we are also proposing to visit a number of Indigenous communities, particularly those that are actually involved with television production at present, to consult the stakeholders.

Senator LUNDY—Can you provide the committee with the details of the schedule of those meetings—so you have got a plan?

Mr Buettel—Yes, we are still working that through at the moment, but yes, we should be able to provide that once it has been planned.

Dr Pelling—Mr Buettel and I have also had meetings with Imparja on a range of digital conversion issues, and they have raised the issue of the review at those meetings, and I think it is true to say that they will be fairly active themselves in promoting the review amongst their constituency.

Senator LUNDY—Has the department taken advice on the cultural appropriateness of this method of consultation?

Mr Buettel—Yes, we have spoken to colleagues in ATSI, particularly about the locations that we should go to and the people we should talk to.

Senator LUNDY—There is an electronic version of the paper on the web site. How many physical copies have been sent out to stakeholders?

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

Senator LUNDY—I put to you that the answer is probably not many. My question is: do you intend to send the physical discussion paper out to ATSI commissioners, regional

councils and so forth to try to generate some interest in responding and invite them specifically to submit comments?

Ms Williams—I think we will talk to ATSI again and, if they believe that that would be a rather good way to go and that there is a broader distribution than we have actually done, we will follow that up.

Senator LUNDY—Part of the issue is an obvious one, and that is the quality and speed of Internet services in many remote communities. Some places it is great; some places it is not. Some places it is really great but the community infrastructure is not there to get the documents off and print them and so forth.

Mr Buettel—Yes, we understand that. One of the things we want to do when we go out and visit communities is actually take oral submissions from people.

Senator LUNDY—I think you are getting the gist of my questions here—that it is not enough just to put the paper on the web site and that you have to be extremely proactive.

Mr Buettel—No, we will be actively engaging.

Senator LUNDY—How will the government's proposed dismantling of ATSI affect this review and the way you go about gaining an insight into the Indigenous community's view on broadcasting?

Ms Williams—We do not yet know the exact details of how the division of programs will pan out. But we have a fair expectation that the broadcasting programs will come to us. We have also been consulting across the departments that are involved, will be involved, and there will be quite a consultative network, including for the first year, of course, the current network—and it will be our role to get very involved in consulting through that network.

Senator LUNDY—What budget have you put aside to fund this review and this consultation process? How much money have you allocated?

Mr Cameron—We might have to take the details of that on notice. The department has engaged a consultant to assist us in understanding the various funding implications of types of models of Indigenous broadcasting services that might be contemplated. The department also has identified funds to assist in travel associated with visiting the Indigenous communities. I do not have the figure available, but we can certainly take that on notice. In addition to that, clearly the resources of the department in terms of staff are being put to the review. We do not have a specific figure identified for that, but we can certainly provide you with information of the costs of that consultancy and expected costs of travel.

Senator LUNDY—If you could take that on notice, thank you. The Productivity Commission released a report, I think back in April 2000—more than four years ago—recommending that the government should examine the need for and feasibility of an Indigenous broadcasting service. In December 2000, the report was commissioned by ATSI into a national Indigenous broadcasting service. That was released, canvassing three specific models. And then again in October 2001 the government released a policy statement committing to an examination of the avenues for developing and strengthening Indigenous broadcasting, including an examination of licensing options. It is now 2004. Why has it taken

the government so long to get to a point now where the department is actually stepping out and communicating with Indigenous people to try to make this happen? It seems like an extraordinarily long time.

Ms Williams—Although it has been a bit of a split responsibility, we certainly have this review that we are doing now, but of course ATSIIS has also been involved, and we have been keeping in close touch with them. It is something for which we have had, up until now, half of the role, if you like, but not the full role. I think the fact that we now look as though we will be getting Indigenous broadcasting has perhaps moved that along somewhat. And, combined with this review, we hope to be able to do a lot more from the department's point of view. This is no comment on ATSIIS. It is just that, from the department's point of view, we have not had those funds and we have not had the program responsibility.

Senator LUNDY—Have not had the will from the government perhaps.

Senator Kemp—How can you possibly draw that conclusion from that answer, Senator?

Senator LUNDY—I am making an observation. I accept Ms Williams's answer.

Senator Kemp—It has just been indicated to you that it was under ATSIIS—

Senator LUNDY—I guess I was trying to provoke a response from you, given that it was a question really about policy.

Senator Kemp—You certainly provoked me. Why all the politics? You have been given a response, and I thought it was a very good response. How you could draw that conclusion absolutely defeats me, I would have to say. It does not follow.

Senator LUNDY—Why has it taken the Howard government so long?

Senator Kemp—It was explained to you very carefully what the departmental role and the ATSIIS role has been and it has been explained to you what we are doing. How on earth that leads to the conclusion you have said, I simply do not know. It is quite bizarre.

CHAIR—We are scheduled for a break at nine o'clock. We might break now.

Senator Kemp—I think we should have a break. I think we need to contemplate Senator Lundy's absurd accusation.

CHAIR—I have just been advised that that concludes our consideration of DCITA output 3.2. So when we come back we will be doing output 3.4. Thank you very much, witnesses, for appearing.

Proceedings suspended from 8.58 p.m. to 9.15 p.m.

CHAIR—We will resume.

Senator Kemp—I have a housekeeping issue which has come to my attention. The Australian Government Information Management Office is listed for tonight. They have a conference tomorrow, apparently, and it would create real problems if they had to cancel it, I understand. I am wondering whether we can do that earlier rather than later.

CHAIR—I suggest you consult with Senator Lundy.

Mr Doherty—Senator Lundy, what do you think about that?

Senator LUNDY—I do not have a problem with that.

Senator Kemp—Good. There we go—problem solved.

CHAIR—We will move to outcome 3.5.

Senator LUNDY—We are always helpful.

Senator Kemp—That is the sort of cooperation that I have always practised myself.

Senator MACKAY—This committee operates like that all the time.

Senator Kemp—I am glad that people are following my example.

Senator MACKAY—Most of us are team players.

Senator Kemp—I am a team player.

Senator MACKAY—The ones who are not are not on this side of the table.

Senator Kemp—Like Santo Santoro, just a team player.

Senator MACKAY—I did not say that.

CHAIR—All right. We are on 3.5 and we will proceed.

Senator Kemp—We are going to AGIMO now.

CHAIR—We shall proceed without further ado. Mr Grant, welcome.

Senator LUNDY—My first question to AGIMO is this: please could you explain the transfer of your allocations from NOIE? Can you take me to the relevant numbers in the PBS, please, so that I understand it fully?

Mr Grant—Page 309 is the start of the AGIMO PBS. The way that the previous National Office of the Information Economy was separated was that the government focused functions became the Australian Government Information Management Office and the business and community focused functions were transferred to the department.

Senator LUNDY—Sorry, I did not hear what you said.

Mr Grant—Sorry. The business and community focused functions were transferred to the department. That resulted, in rough terms, in about 110 people remaining in AGIMO and about 80 moving to the department. The Gatekeeper function, which had been in the division that primarily moved to the department, stayed with AGIMO and the allocations were basically moved in bulk for the functions. They were transferred, so it was easily identifiable. We split the overhead functions and the corporate functions at an agreed rate. That has resulted in the division of money of \$20.115 million to AGIMO and \$12.495 million to the department for the coming financial year.

Senator LUNDY—How much to the department?

Mr Grant—It was an amount of \$12.495 million for the transfer.

Senator LUNDY—In this financial year?

Mr Grant—That is right. For the coming financial year, for 2004-05.

Senator LUNDY—How does that relate to the total figure for NOIE in the previous forward estimates for 2004-05 from last year's budget?

Mr Grant—I think it is consistent with that.

Senator LUNDY—In last year's PBS, the total figure was \$40 million, and \$20 million plus \$12 million does not equal \$40 million.

Mr Grant—The \$40 million was for the current financial year. I think for the coming financial year 2004-05—I do not have the actual forward estimates with me—it was closer to \$32 million, which is the amount transferred. There is one difference—I apologise—insofar as the amount provided for the operation of the government bookshops has been reduced. That was in the vicinity of about \$4.2 million.

Senator LUNDY—How much was that original allocation for taking over the role of the government bookshop in last year's budget for the next financial year?

Mr Grant—I am not sure I quite understand the question.

Senator LUNDY—If there was a reduction in funding for the role that NOIE picked up when the government bookshop was cut, what was that figure?

Mr Grant—It was in the vicinity of, I think, \$3.6 million or \$3.8 million. An amount of \$4.2 million was allocated for the operation of the bookshop. There was some money held back to enable the development and operation of the register of publications and to continue to provide information and guidance on publishing. I think in the end it was closer to \$3.6 million or \$3.8 million. If you like, I can get you the exact figures.

Senator LUNDY—I am just trying to work out what was the net loss of funding in the transfer. So far, all we can identify is \$3.6 million that was cut from that bookshop.

Mr Grant—Let me go through the figures again. We had in 2003-04 a total budget of \$34.093 million.

Senator LUNDY—So why does it show in the current PBS that last year's allocation was \$32.929 million?

Mr Grant—Sorry, what page are you looking at?

Senator LUNDY—It is page 50 of Budget Paper No. 4. It is the budget measure for AGIMO. You can appreciate my confusion, because that figure implies that that is the former NOIE figure, notwithstanding the fact that some of that money went to the department—the \$12 million you identified. That \$32.929 million figure does not correspond with what was in last year's budget papers for the total allocation to NOIE.

Mr Grant—I will have to wait for the budget paper to come. If you look at page 317 of the PBS, the portfolio budget statement, it provides two tables. One is an estimated actual of 2003-04 and the other is the budget estimate for 2004-05. As you can see there, the estimated actual is \$34,697,000, with the budget estimated being \$20,450,000. The difference between the two primarily relates to the transfer of \$12.495 million for the functions transferred to the

department. My figures here show that the NOIE budget in the previous organisational structures for 2004-05 would have been \$32,610,000.

Senator LUNDY—Now we have four different numbers for the same area.

Mr Grant—Can I take it on notice and give you a table that actually identifies it?

Senator LUNDY—The figures are not that far apart. It is all in that \$32 million, \$34 million area, but the fact that the figures did not correspond made these budget papers very difficult for me to read.

Ms H. Williams—That budget forecast includes parameter changes, whereas the first figure of \$34.093 million was the 2003-04 budget figure. You have the parameter changes in the white book too. But we can provide you with something that just actually sets it all out.

Senator LUNDY—That would be helpful. I appreciate, with the resourcing, that you have total revenue from other sources included in those figures and things like that, so it seems that it is somewhere around the \$32.9 million mark anyway. I am working on the basis that you will take all that on notice and give me the advances.

Mr Grant—Yes. I will give you a table that is very clear.

Senator LUNDY—Perhaps you could include in that the previous NOIE figures so I have something to compare it to as they were then.

Mr Grant—Yes.

Senator LUNDY—Can you just go through the other element of the cut that you described relating to the government bookshops services.

Mr Grant—I will see what I have here on the government bookshops.

Senator Kemp—I am surprised you are talking about cuts under this heading, Senator.

Senator LUNDY—I am just trying to decipher the budget papers at the moment, Minister. It is pretty straightforward.

Senator Kemp—They are actually done according to the usual standards, Senator.

Senator LUNDY—I know, unfortunately.

Senator Kemp—No-one is trying to hide anything. But I do not think I would talk about cuts in this area, if I were you. You are peculiarly vulnerable on this front. I notice that the \$160 million or \$140 million is still in Labor Party savings, which means that Mr Grant would not have a job under your policy. This may be the last time you are appearing here, Mr Grant.

Senator LUNDY—It will be the last time you are sitting next to him, Minister.

Senator Kemp—Dream on, Senator. Dream on, dream on, Senator. That comment has been made for the last two elections and I am still here.

Mr Grant—On the bookshops, the allocation was approximately \$4.2 million. You might recall from the previous Senate estimates committee hearings that the operation was also

funded through the sales. The total operating cost of the bookshops was somewhere over \$8 million, from my recollection.

Senator LUNDY—That is right. And that was cut?

Mr Grant—Sorry?

Senator LUNDY—Sorry, keep going.

Mr Grant—In the decision to change the way the government went about its publications process, from my recollection approximately \$400,000 to \$600,000 was retained to provide systems that would make publications easily discoverable and to provide the ongoing policy and guidance activities in relation to government publications. That meant that the total reduction was in the vicinity, I think, of \$3.6 million or \$3.8 million.

Senator LUNDY—Can you point to the figures in the transfer about where that savings measure is expressed in the current budget documents?

Mr Grant—No. It is not directly in the papers that I have in front of me. In fact, it is only a part year, because the bookshops ceased operation in this financial year.

Senator LUNDY—But are there two figures that do not add up because of that gap in funding?

Mr Grant—No.

Senator LUNDY—Where would it show up in the departmental appropriations numbers?

Mr Grant—No. It was already accounted for in the appropriation for this year. If you have a look at page 316 of the portfolio budget statements, it indicates that in future years—not this current year—we will also be transferring the AusTender function to the department of finance at a cost.

Senator LUNDY—Where does it say that?

Mr Grant—It says that the Australian Government Information Management Office will return \$2.7 million over three years. That is at the bottom of page 316.

Senator LUNDY—It does not say ‘to the department of finance’.

Mr Grant—The first paragraph leads into it.

Senator LUNDY—It does not say ‘to the department of finance’.

Mr Grant—The department of finance is responsible for Australian government procurement arrangements. I am sorry, that is aside. That is for the next financial year. There is no—

Senator LUNDY—I will come to that.

Mr Grant—Okay. On the bookshops, there is a reduction already in the budget this year for the closure of the bookshops. Consequently—built into the allocations and the transfer of functions between the department and AGIMO—that reduction is already incorporated, so it is not shown as a specific line item.

Senator LUNDY—Right. So the only place I can identify that in any budget documentation was the original cut in the budget documents last year?

Mr Grant—I think so. I will confirm that off line.

Senator LUNDY—Take it on notice.

Mr Grant—Thank you.

Senator LUNDY—Going to these cuts and government procurement arrangements relating to the United States free trade agreement, there is a savings measure identified of \$0.9 million over three years starting in 2005-06. I am interested in what that function is actually returning. I want to clarify it. The third paragraph says ‘to the department’. Is that the department of finance?

Mr Grant—Finance. It is not—

Senator LUNDY—It is certainly not clear from the way this is written.

Mr Grant—It is not a savings option. In fact, it is a transfer, and it is the transfer of the operation of the AusTender electronic tendering system from 1 July 2005.

Senator LUNDY—That NOIE was previously managing?

Mr Grant—We did manage it, and in fact we piloted the system first. And then, based on its usage, we actually developed it into a fully operating system. It is not unusual for an organisation like NOIE—like AGIMO—to take the lead in these areas and then transfer the operational responsibility at a later date.

Senator LUNDY—As far as ITOL goes, I take it that you are now managing ITOL?

Mr Grant—No. That is the department.

Senator LUNDY—The department is. So this figure in the PBS of \$1.786 million was last year’s figure, and that is why there is nothing there for this year? It is in the other line item?

Mr Grant—Yes.

Senator LUNDY—As far as the structure of AGIMO is concerned, there are obviously a number of functions you have brought across from NOIE. Can you just go through them again. You said business and community went to the department. What are the specific functions in AGIMO?

Mr Grant—I would be very happy to tell you.

Senator LUNDY—And while you are looking that up, I refer to the answer to a question on notice provided to me at the last Senate estimates, where I asked for a list of all administered programs, the funding commitments and the allocation expenditure to date. That was very helpful. I guess the question now is: what are you still doing and do these numbers still apply?

Mr Grant—We do not have any administered funding at all.

CHAIR—You do not have any which funding?

Mr Grant—Administered money—that is, program money, ITOL, broadband programs and things like that. That went with the department. Perhaps I can tell you what AGIMO actually does.

Senator LUNDY—Please do.

Mr Grant—I hope I make it clear. There are five key functions. The first is policy. In the area of policy, we provide frameworks for Australian government publishing. We lead and collaborate with key agencies, including the National Library and the National Archives, to establish frameworks for publishing that are consistent with current administrative and information access requirements and that support agency best practice in online and off-line publishing. We administer the policy associated with gov.au, the domain name. We do that in collaboration with the states and territories and under the auspices of the online ministers council. We are in the process of developing an authentication framework for agencies that require authentication in business dealings online. It will provide a business risk framework for government agencies to consider identity and authentication issues and a line of business processes with authentication solutions and it will provide a consistent approach across government. In fact, there is currently an exposure draft out for comment.

Senator LUNDY—How does that relate to Gatekeeper?

Mr Grant—Gatekeeper is the standard for accrediting providers of authentication services at the PKI level, the public key infrastructure level. Gatekeeper is another element of what we do. We operate the policy side of it. We also have responsibility for its administration.

Senator LUNDY—When you talk about developing an authentication framework for business dealings and identity, are you suggesting that there is another way of doing it outside the Gatekeeper methodology?

Mr Grant—Yes. In fact, the authentication framework—

Senator LUNDY—That is a bit of a change, is it not?

Mr Grant—No, not at all. In fact, it has been a consistent message for the last three to five years.

Senator LUNDY—Once you realised Gatekeeper was an overkill?

Mr Grant—No. I think that is actually a misconception. Gatekeeper is not a product. Gatekeeper is a standard.

Senator LUNDY—I know that. I know what Gatekeeper is.

Mr Grant—It is a public key standard, not a vertical standard for non-public transactions. With the authentication framework, we are saying that you do not always need to be authenticated. You do not always need to have the high-level PKI authentication. In fact, authentication should be matched to the business transaction. What we are trying to do, and what is out for discussion, is set up a framework that matches the authentication required to the transaction and that will provide consistency in the way that government agencies apply authentication requirements. Perhaps I can go on. We also look at future strategies for e-

government and the way that the Australian government will continue to promote the use of ICT and the Internet to improve government business processes and service delivery.

Senator LUNDY—Like what?

Mr Grant—The last strategy that we put out was Better Services, Better Government. Prior to that, it was the Government Online Strategy. Obviously, the field does not stand still; we actually have to move with the changing times and technologies and with demands from citizens and businesses in terms of how they want to deal with government. More and more, we are looking at ways in which the government can improve its services, improve its internal operations and achieve efficiencies through the productive application of ICT.

In addition to that, we develop principles, processes and agreements that support integrated service delivery across agencies and jurisdictions. What that really means is that we have a look at things like interoperability in a technical sense, interoperability in terms of information and the contractual arrangements, such as whether it is privacy or security—the things that are required to enable agencies to share information without reducing people's rights to their own information.

Senator LUNDY—Is that the element that brings you into contact with CIAC in providing services to those whole-of-government programs?

Mr Grant—I am sorry, but who is CIAC?

Senator LUNDY—The CIO committee.

Mr Grant—That is certainly part of it, yes. In terms of providing whole-of-government services internally and externally, we have already spoken about AusTender, which is a secure electronic tendering facility. It provides a central—

Senator LUNDY—Sorry, but you are giving that back to Finance.

Mr Grant—We are, but we operate it for the next year, so it is within our budget at present. It allows businesses, whether they are in cities or regions, to download and then submit tenders from where they are. It also has a provision to enable small businesses in particular to be informed when government is seeking supply. We operate the Gazette Publishing System. It meets the mandatory reporting requirements of the Commonwealth procurement guidelines. That service also will transfer to Finance on 1 July 2005. We operate the publications register to improve the accessibility of government information. We operate the Australia.gov web site, which is the Internet portal to Australia. We operate fed.gov, which is the Internet portal to the Australian government. We operate the gov.gov web site, which is the Internet portal to state, territory and local governments. We operate Gold, now known as Directory.gov, which is the online directory of Australian government officials. We also produce in hard copy the guide to Australian government departments and agencies, formerly known as the *Commonwealth Directory*. In terms of providing services within government, we operate FedLink. It is the secure whole-of-government virtual private network which provides encryption to make interagency data transmissions over the public network secure. Betrusted Pty Limited are actually contracted to provide this service. We manage the Gatekeeper accreditation

Senator LUNDY—So you manage the Betrustrated contract?

Mr Grant—We manage the Betrustrated contract. We also do a significant amount of work in terms of developing what I suppose you would call the architecture or the future plan for the way that FedLink and the government secure communications using FedLink will operate. We manage Gatekeeper, which is the accreditation system for digital certificates and CAs and RAs. We also are the managers of the gov.au domain. I talked before about the policy, but we manage it. What that means is that we ensure that the domain operates in a secure, consistent and robust environment and that the administration keeps up to date with the users' needs. The users, of course, are the Australian jurisdictions. We operate procurement head agreements—these span the provision of telecommunications services for the whole of government—and some IT software products, particularly Microsoft.

Senator LUNDY—Sorry, what do you do with Microsoft products?

Mr Grant—These are head agreements. The objective of these head agreements is, first of all, to set a maximum price, which is a discounted price on what they would normally sell at. The second is to put in place the standard terms of contract so that departments do not have to continually go back and renegotiate—and, by the way, annoy the companies.

Senator LUNDY—So you do that for Microsoft?

Mr Grant—We did it for Microsoft. We have three operating at present, with a number potentially in the wings. A recent example is the agreement we have reached with Adobe in relation to the—

Senator LUNDY—Can you provide those agreements to the committee?

Mr Grant—No. The agreements are commercial-in-confidence. I can provide you with the names. The problem with providing the agreements is that they do actually have details of what the prices are.

Senator LUNDY—You can black them out.

Mr Grant—I will take that on notice. If we can, we will.

Senator LUNDY—Please do. We have been through this before.

Mr Grant—Okay. We also—

Senator LUNDY—Just black out the commercial-in-confidence elements and provide the documents.

Mr Grant—There are 23 agreements for the telecommunications—

Senator LUNDY—Excellent. I will look forward to reading them.

Mr Grant—I was hoping I might be able to give you one basically standard agreement and the names of those who have those agreements.

Senator LUNDY—Yes, that is fine.

Mr Grant—Okay.

Senator LUNDY—And the names that you think you are going to get a software agreement with.

Mr Grant—I can give the names of the companies we have the agreements with. We do publicly announce it when we actually have new agreements, so it is not a secret.

Senator LUNDY—So why can you not give me the ones you are negotiating?

Mr Grant—Because we are in negotiation with them.

Senator LUNDY—So? You are spending taxpayers' money talking to them. We have a right to know.

Mr Grant—They are at different stages of negotiation.

Senator LUNDY—Can you take it on notice?

Mr Grant—I will ask the companies.

Senator LUNDY—If you want to withhold the information, you need to provide a full explanation of the grounds on which you are doing so and the committee will assess it.

Mr Grant—I will ask the companies if they are prepared for us to do it.

Senator LUNDY—No. It has nothing to do with the companies.

Senator Kemp—Yes, it does, Senator.

Senator LUNDY—No, it does not.

Senator Kemp—It does. Mr Grant will ask the companies, and Mr Grant will not be harassed by you.

CHAIR—I think we have to be sensible about commercial agreements or commercial-in-confidence information.

Senator LUNDY—I am very sensible and I have asked them to provide reasons if they are going to withhold it.

CHAIR—They can provide reasons.

Senator LUNDY—They are on a hiding for nothing in trying to withhold information from this committee.

Senator Kemp—Reasons will be provided. The witnesses will do what is proper and ethical and they will not be bullied by you.

CHAIR—You seem to have a lot of functions, Mr Grant. How much of NOIE have you taken into this new conglomerate?

Senator LUNDY—Are these the questions Senator Kemp gave you, Senator Eggleston?

CHAIR—No. He wants to know what I am doing—

Senator LUNDY—If you are going to waste time with dorothy dixers—

Senator MACKAY—Why not answer him, Senator Kemp?

CHAIR—No. I want to know how much of NOIE is involved in this agency.

Senator LUNDY—We will just bring back the other agencies tomorrow.

Mr Grant—We took all of the functions that were government focused—basically, they are the operations I have described, which I am about two-thirds of the way through—and the Gatekeeper administration and policy role.

CHAIR—So you have taken quite a lot of NOIE into this new organisation?

Mr Grant—Of NOIE, in terms of people, approximately 110 stayed with the new agency and approximately 80 were transferred to the department.

CHAIR—What was the original work force in NOIE?

Mr Grant—Approximately 190.

CHAIR—So you preserved almost all of those jobs?

Mr Grant—We did.

CHAIR—One reads that another party which is interested in becoming government had a policy of abolishing NOIE. That might have cost those jobs, might it not? We are also told it would have saved \$140 million. Where would that saving have occurred?

Mr Grant—I do not know the basis of those calculations.

CHAIR—I am sure Senator Lundy and Senator Mackay do. It is ALP policy to abolish NOIE, no doubt at the cost of those jobs—and at a saving, we are told, of \$140 million. My question is this: where would those savings be made?

Senator LUNDY—I will do whatever Senator Kemp asks me to do.

Senator MACKAY—I will read this question out.

Senator LUNDY—Let us get on with our job, Senator Eggleston.

CHAIR—It is a reasonable issue to raise because we have heard that most of the jobs have been preserved and the functions have been preserved.

Senator Kemp—The Labor Party have announced savings of \$140 million over the forward estimates for the abolition of NOIE; presumably the only way they could make that is for all the jobs to go. I will tell you another thing, Senator Eggleston: the CPSU will not be defending those jobs. Mr Rodder, who is the CPSU spokesman, would have done the most lamentable job in this area. He appears to me to be more interested in electing Mark Latham than in defending the jobs of people who used to work with NOIE. It is a very bad performance.

Senator LUNDY—Have you been waiting for this opportunity to attack union officials?

Senator Kemp—It is a very crude, very bad performance by the CPSU. The CPSU are interested in Mr Latham's job. They are not interested in the jobs of the people who pay their union dues. Mr Rodder, as the footballers would say, should take a good, hard look at his performance, to be quite frank. The first press statement that he puts out attacking Latham's policy to abolish all those jobs would be well worth reading.

CHAIR—To abolish jobs when they could have been preserved is appalling.

Senator MACKAY—This is a government who would know that.

CHAIR—We just seek to provide better government and efficient government and to preserve jobs.

Mr Grant—I am about two-thirds of the way through what we were doing. Would you like me to continue?

Senator LUNDY—I think Senator Kemp just—

Senator MACKAY—We did not interrupt. You will have to ask the minister.

Senator LUNDY—He used up all the time, did he not.

Mr Grant—Perhaps I can run through the rest quickly so you do know what we do. We provide the Publications Services Directory, which assists agencies to source publication and distribution services.

Senator LUNDY—What is that, exactly?

Mr Grant—Essentially, it is a web site used by agencies which identifies suppliers of the range of publications services from design through to actual printing and/or distribution.

Senator LUNDY—Do you give any money to the people who have to print it out?

Mr Grant—No.

Senator LUNDY—Why not?

Mr Grant—Who have to print what out?

Senator LUNDY—The publications.

Mr Grant—Agencies pay for publications. What our web site does is actually allow businesses who provide the relevant services, either bundled or separately, to register as businesses who can provide those services. Agencies can go to that publication web site and look at who provides services they are seeking.

Senator LUNDY—What about members of the public?

Mr Grant—Members of the public can still pick up the publications they want.

Senator LUNDY—From where?

Mr Grant—The publications guide, the register of publications, tells people where the publications are available from.

Senator LUNDY—What if they do not have the Internet?

Mr Grant—Without the Internet, they can go to a library. They can in fact—

Senator LUNDY—And use the Internet?

Mr Grant—Yes. If they have a reasonable idea of the publication they want, they can ring up the relevant agency.

Senator LUNDY—Who use the Internet.

Mr Grant—Sorry?

Senator LUNDY—Who use the Internet.

Mr Grant—Who uses the Internet?

Senator LUNDY—Do not worry. So people have to know the document they are looking for unless they can use the Internet?

Mr Grant—You have to have an idea of the document you want anyway. When we looked at the way that the bookshops were being used, we found that very few government publications were in fact being purchased through the bookshops and they were all operating at a significant loss. This has made the availability of what publications the government does produce easier, albeit that the information is available only on the Internet, not in a printed form.

Senator LUNDY—How much of the \$20.115 million will be spent on consultants?

Mr Grant—In broad terms, we would estimate that in the vicinity of \$1.8 million is likely to be spent on consultants. These are very broad estimates at this stage. We are still going through our budgeting process for the allocation of funds for the coming financial year.

Senator LUNDY—As far as the critical infrastructure protection security strategy that was announced in the budget is concerned, what is AGIMO's involvement in that e-security strategy? I know your involvement previously did not have any money allocated against it; you had to find resources from within your existing budget. Has anything changed?

Mr Grant—That is a function transferred to the department.

Senator LUNDY—So you do not do security?

Mr Grant—Not in that context, no.

Senator LUNDY—What security do you do? You mentioned security before.

Mr Grant—Yes.

Senator LUNDY—Privacy and security interoperability.

Mr Grant—Yes. We do FedLink, which is a secure system for transferring government information across the public network. We also administer Gatekeeper. We have been—

Senator LUNDY—Right. So you are not actually providing that support to the whole-of-government e-security strategy?

Mr Grant—No.

Senator LUNDY—Is that under 3.5 in the department?

Ms H. Williams—It is 3.1, I understand. It is between the two. It has some in one and some in the other.

Senator LUNDY—There is a budget measure with figures in there for the out years. Is some of that in 3.1 and some of it in 3.5?

Ms H. Williams—Yes.

Senator LUNDY—How much?

Ms H. Williams—The department would have got some and the debt that has transferred with NOIE would have got some. It is in two different areas.

Senator LUNDY—How much is it overall? What is in the budget measure and how do you aggregate the element that did not have a budget measure in NOIE that is now in the department to create a total figure of what the department spends on e-security?

Ms H. Williams—Mr Cross has the figures.

Senator LUNDY—Okay. Fire away.

Mr Cross—The budget figure is \$5.5 million to the Communications, Information Technology and the Arts portfolio over four years.

Senator LUNDY—And how is that spread across the out years?

Mr Cross—I beg your pardon.

Senator LUNDY—How is that spread across the out years?

Mr Cross—In total, it is \$1.31 million in 2004-05; \$1.46 million in 2005-06; \$1.36 million in 2006-07; and \$1.37 million in 2007-08.

Senator LUNDY—Are they the same figures that correspond with Budget Paper No. 2?

Mr Cross—Sorry, I did not hear that.

Senator LUNDY—Do those numbers correspond with the budget measure in Budget Paper No. 2?

Mr Cross—Yes, I believe so.

Senator LUNDY—So it is that e-security critical infrastructure protection initiative?

Mr Cross—Yes.

Senator LUNDY—Are any reviews being conducted by AGIMO at the moment?

Mr Grant—Two come to mind. We are reviewing a program called GOVERNMENT, which is a program by which the Australian government, the states and the territories and local government work together to create interoperable standards and, hopefully, even some reuse of their lessons learnt and software. We are also reviewing the e-procurement strategy. In fact, we have a paper that will be released in the near future. The last one I mentioned before is—I am not sure if you would call it a review—an exposure draft of the authentication framework looking at how and when you should authenticate and how you match the authentication with the actual transaction. I am not sure if there are any others. I will look into it.

Senator LUNDY—What about open source? What are you doing for open source software—

Mr Grant—Open source is an issue—

Senator LUNDY—particularly in relation to the procurement review?

Mr Grant—Well, the procurement review is not about open source, to begin with. On open source, the government has a policy that, as is the case with any software, it is the software that delivers the outcome.

Senator LUNDY—I know what the policy of the government is. What are your strategies or initiatives to promote the use of open source, to look at open standards, to try and encourage agencies and departments to look beyond their incumbent software providers to consider open source?

Mr Grant—Interoperability is the key to what we are doing. There are a number of activities we are undertaking to promote interoperability. Open source per se is software that may or may not be interoperable. Again, I come back to the policy. Agencies may use open source software if it delivers the outcomes that they desire.

Senator LUNDY—So you are not doing anything, apart from the general interoperability policy?

Mr Grant—We have been ensuring that there is an informed debate about open source and that there is information that flows. We have had a series of seminars.

Senator LUNDY—What about in relation to the issues being raised in the context of the free trade agreement and the open source community's opinion that the free trade agreement presents quite a serious threat to their future generally and possibly a specific threat to many of the open source developers? Are you involved in that in any way?

Mr Grant—No.

Senator LUNDY—Why not?

Mr Grant—Our key function is about the productive application of ICT to the way the government operates. Open source is simply software. It is a generic term used for a range of different products. We do not see that there is any reason to get into some of these debates, which are really very much oriented to what people believe in rather than what they might actually wish to apply.

Senator LUNDY—No, that is actually not true. If you think that the open source debate relating to the free trade agreement is about philosophical commitment to the concept of open source, you are mistaken. I want to know if you think open source needs some attention from you, given that the community believes it is under threat because of the free trade agreement. Let me couch the question this way: do you think it is in the interests of the Australian government that there is a viable, competitive tension presented by open source in the market competing with proprietary software? If the answer to that question is yes—which I presume it would be—I suggest you need to take an interest in what is going on.

Mr Grant—I would suggest that that competitive tension is already there. You can see that from the way some of the traditional companies have been operating.

Senator LUNDY—And you would not want to see that competitive tension disappear, would you?

Mr Grant—No.

Senator LUNDY—But you are not taking an interest in the prospects of the FTA for open source?

Mr Grant—It is not an issue that we have actually seen as affecting competition in the market.

Senator LUNDY—Are you familiar with the presentations by witnesses to the FTA inquiry?

Mr Grant—I have not read them personally, no.

Senator LUNDY—Perhaps you could take my question on notice and read them and get back to the committee.

Mr Grant—It is not an issue on which I would be able to. It is a matter of policy, not a matter of activity, so I would not be able to respond to that.

Senator LUNDY—Okay. I get the message. The Joint Committee of Public Accounts and Audit recently delivered a report on the state of the integrity of Commonwealth information. Does AGIMO support all the recommendations of that report?

Mr Grant—The government's response to that report is currently being developed.

Senator LUNDY—Is AGIMO involved in that response?

Mr Grant—Yes.

Senator LUNDY—When will it be presented to the parliament?

Mr Grant—The time frame is set down for that response. We would intend to have it done within that time frame.

Senator LUNDY—It was a pretty damning indictment on the state of affairs, was it not? Minister?

Senator Kemp—Yes, Senator?

Senator LUNDY—Thanks. That was the answer I was looking for.

Senator Kemp—What did you want to ask me? Have you got some good questions to ask?

Senator LUNDY—I have finished with AGIMO, Minister.

CHAIR—Thank you. That is very good. Who should we call next?

Senator LUNDY—I think we should go back to the very patient souls in 3.4.

CHAIR—Thank you to Mr John Grant and his team. I just hope that you will be available at the next estimates.

Senator LUNDY—I will be on the other side.

Senator Kemp—I hope you are not just Labor Party savings. That is what I hope.

[10.09 p.m.]

CHAIR—We will move to output 3.4.

Senator LUNDY—I want to go to the issue of the digital agenda review. Has the department done an analysis of the consistency between the recommendations in the digital agenda review and the proposals for legislative change that will be necessary to enact the free trade agreement as drafted between Australia and the US?

Mr Cordina—The intellectual property chapter of the Australian FTA contains a number of commitments in areas covered by the Phillips Fox report. Some of those recommendations have been superseded to a degree by the obligations contained in the agreement. Others will facilitate or help to inform the government's implementation of those obligations.

Senator LUNDY—When you say superseded, do you not mean conflicted?

Mr Cordina—I think some of the recommendations are not consistent with the obligations.

Senator LUNDY—Can you just take me to those, please, in the digital agenda review. I have a copy in front of me. Can you step me through them.

Mr Cordina—Technological protection measures, I think, would be an example where the recommendation has been superseded by the obligations.

Senator LUNDY—Can you outline the recommendations in the Phillips Fox report?

Mr Cordina—I think the definition of 'technological protection measure' is one of the areas where the recommendation has been superseded—and also in relation to the exceptions to technological protection measures.

Senator LUNDY—And what does the digital agenda review recommend in relation to those two issues?

Mr Cordina—In relation to the definition of a technological protection measure, the report recommends that the government narrow the definition of 'technological protection measure' by including an express requirement for the technological protection measure to prevent a person from infringing copyright material. In relation to the exceptions, I think the report recommends that the existing exceptions to the prohibition on the manufacture and supply of technological protection measures be extended to all exceptions under the act.

Senator LUNDY—Just to get a clear understanding on the record about what the free trade agreement proposes, are you able to articulate where precisely the conflict is?

Mr Cordina—In relation to those two areas, that is an area where the obligations do supersede the recommendations.

Senator LUNDY—No, I understand that. The free trade agreement is proposing to expand the scope of how those TPMs are dealt with under Australian law.

Mr Cordina—That is right. The effect of the obligations is to tighten the provisions in relation to technological protection measures. Having said that, the obligations also allow us to implement exceptions to those technological protection measures to reflect our own domestic circumstances and the interests of stakeholders.

Senator LUNDY—But the free trade agreement does not nominate those specific exceptions that Australia could in fact implement.

Mr Cordina—It nominates a number of exceptions and it also has an open-ended review process which allows us to implement exceptions as we see fit provided that they satisfy the rule making process.

Dr Hart—There is also a two-year transitional period to implement the provisions.

Senator LUNDY—With respect to the TPM provisions under the free trade agreement, one of the arguments presented during the inquiry was, of course, that with the expansion of that there is no corresponding fair use provision under Australian copyright law. Does the department have a view on that specific issue and the prospect of legislative amendment to create a fair use provision that is more, I guess, analogous to the fair use provisions in the US which provide that added protection for the individual?

Mr Cordina—I think that is one of the areas that is being looked at and considered by government. The good thing about the obligations in the free trade agreement is that they allow for Australia to implement exceptions provided that they are consistent with our international standards, which would allow the government to then consider the implementation of a US type of exception if that were found to be appropriate and consistent with international standards.

Senator LUNDY—So you do not see any barrier to the government choosing to implement fair use provisions?

Mr Cordina—No—provided that it was regarded as being consistent with international standards, those standards which we are already currently subscribers to.

Senator LUNDY—Are the US fair use standards consistent with what are understood to be international provisions?

Mr Cordina—There is a difference between the fair use exception and our current fair dealing, but as far as—

Senator LUNDY—I appreciate that. It is the fair use provisions specifically I am talking about, not the existing fair dealing provisions under Australian law.

Mr Cordina—Sure. As far as I am aware—and I am not an expert on the US copyright system—the US fair use exception has not been found to be inconsistent with international standards in relation to exceptions.

Senator LUNDY—Given the number of concerns that have been expressed through various witnesses, has the department made it its business to actually look through those submissions and take those issues into account in preparing the legislation?

Dr Hart—Yes, we have. Obviously Mr Cordina and other officers have been attending various meetings and round tables. We are also privy to all the submissions. As with all inquiries and processes of this kind, we do review all the submissions and take them into account in implementing, in this case, the agreement.

Senator LUNDY—One of the themes that has developed in many of the submissions is that the free trade agreement really tries to take Australian copyright and intellectual property law and co-opt many of the attributes under US law but that in fact they are inconsistent—first because of our experience here and second because we now have a review that recommends moving in the opposite direction in some cases. TPM is arguably one of those areas. We will go back to what the others are. What is the government's general response to that concern? Is there now a complete policy commitment to walking away from the intellectual property regime that has been built up under Australian law as a result of the FTA?

Dr Hart—I think it comes back to what Mr Cordina has been saying about flexibility. It is understandable that people would have concerns. They are concerned about words like 'harmonisation' and assume that that necessarily means duplication. But in fact we do have the flexibility, in implementing the agreement, to reflect those traditional balances—in the same way we have the opportunity to implement it in a way that provides for procedural fairness. In discussions we have been having with people, we have been taking every opportunity to make those points and to use examples like the technological protection measures and the way they can be implemented to suggest that there does not have to be a duplication of the US regime.

Senator LUNDY—If various witnesses and submitters to those inquiries wanted to make representations to the department, given that you are currently preparing legislation, how would they go about doing that?

Dr Hart—They are able to contact us in any way at any time.

Mr Cordina—Provide written submissions or meet with us, as has been the case.

Senator LUNDY—Who is the contact officer?

Mr Cordina—I would be the first point of contact.

Senator LUNDY—Mr Cordina of the Intellectual Property Branch?

Mr Cordina—Yes.

Senator LUNDY—What is your email address?

Dr Hart—It is @dcita.gov.au.

Senator LUNDY—What is your street address?

Dr Hart—It is 44 Sydney Avenue.

Senator LUNDY—The postcode is 2600?

Dr Hart—It is 2601.

Senator LUNDY—You might be getting some mail.

Dr Hart—Sorry, it is 2603.

Senator Kemp—I am very glad that was corrected. There would have been a letter to the chair.

Senator LUNDY—It is quite common knowledge that the minister made an announcement some time ago—obviously before the free trade agreement was announced—that the Howard government would not be supporting any of the take-down provisions with respect to Internet service providers and copyright. It then popped up in a very obvious way as a significant part of what is in the free trade agreement. Can you explain what happened there? Was the minister just unaware of the deals that were going on or did he make a mistake? I understand that he was asked that question at an Internet Industry Association do.

Mr Cordina—That is right. I am not aware of any actual inconsistency with the minister's statement and what the government policy is on this issue. I understand that the minister made a comment at the Internet Industry Association annual gala dinner in February. It was to the effect that he understood that the US allows copyright owners to issue subpoenas to ISPs to get subscriber details without judicial consideration. That actually in fact is the case in that the FTA does not require Australia to implement a similar system in relation to the issuing of subpoenas to get subscriber details. I think there may have been an error somewhere.

Senator LUNDY—The way it was interpreted was that there would not be a take-down system put in place, but obviously that is an element of the agreement. Whatever technical weasel words the minister is now relying on, the fact is the group were led to believe there would not be something, and there is something.

Mr Cordina—I do not think his statement was in relation to take-down. I think it was in relation to obtaining subscriber details, which is a different process.

Senator LUNDY—I do not think so. I am reporting on how it was interpreted, which I am sure would have been the concern for the minister.

Senator Kemp—We thank you for reporting it and giving us the opportunity to correct the error.

Senator LUNDY—It is a pleasure, Minister. Mr Cordina, can you tell me how that regime that is expressed through the exchange of letters as part of the free trade agreement will be required to operate in Australia?

Mr Cordina—That is an issue we are considering now as part of the implementation process. It provides for owners to be able to provide notices to ISPs about alleged infringements and then for ISPs to act on those notices. But in implementation of the process, we are looking at ensuring that the principles of procedural fairness and natural justice are built into that system so that it is a fair process for owners, ISPs and subscribers.

Senator LUNDY—And, obviously, the people who are the subject of the take-down notice. What are your intentions or ideas about how you manage justice for those parties?

Mr Cordina—Really, that is an implementation issue at this stage, but, as I said, we will be looking at a model which will reflect principles of procedural fairness and natural justice.

Senator LUNDY—Will the onus of proof remain on the person making the request?

Mr Cordina—That type of detail is really an implementation issue, which at this stage I would not be able to comment on.

Dr Hart—We are still working through those kinds of details.

Senator LUNDY—Who are you working with on sorting out those details?

Mr Cordina—We have had a number of meetings with ISPs.

Senator LUNDY—Which ones?

Mr Cordina—Large and small ISPs. We have been dealing with the Internet Industry Association. They have organised various representatives from large and small ISPs to come and talk to us.

Senator LUNDY—Which ones have you spoken to?

Mr Cordina—Telstra and OzEmail.

Dr Hart—There is the Internet association itself.

Senator LUNDY—They would be the two big ones.

Mr Cordina—Optus. The big ones. Some local ISPs.

Senator LUNDY—Who?

Mr Cordina—I might have to take that question on notice. There were some representatives of small ISPs.

Senator LUNDY—Was that done through the IIA, or did you seek the input from the small ISPs yourselves?

Mr Cordina—That was done through the IIA, I understand.

Dr Hart—They may be on here.

Senator LUNDY—Have you approached any other ISP organisations, such as the Internet Society, which may, I understand, have ISPs as members?

Mr Cordina—No.

Senator LUNDY—So your communication with the ISP community is primarily through the IIA?

Mr Cordina—We understand that to be the peak body that represents a broad range of ISPs in Australia.

Senator LUNDY—They certainly represent the big ones. I know they represent a lot of small ones too, but I think that, from a policy viewpoint, they would be dominated by the views of the larger ISPs.

Mr Cordina—It is always open for ISPs, whether they are big or small, to—

Senator LUNDY—To take the initiative?

Mr Cordina—directly contact us. But we spoke to the Internet Industry Association, which, as I indicated, is a peak body which represents a broad range of ISP interests.

Senator LUNDY—A lot of the discussion—and indeed it was the subject of some submissions—claims that provisions such as these will create a great deal of ambiguity about

liability and the potential for litigation arising from the take-down procedures and that, whatever they look like, this will put small ISPs out of business. What are you doing to ensure that the provisions you come up with will not have that impact on ISPs? How will you monitor the effect of your plan?

Dr Hart—I think that is one of the major challenges of the implementation. What we are aiming to do is to create certainty around what the safe harbours are. That really would be a way of reducing ISP liability. That should be one of the positives coming out of the process.

Senator LUNDY—How high is the priority you place on not allowing provisions that put small ISPs out of business?

Dr Hart—It is a high priority. The whole approach to the implementation is to make sure that it is practical, it is workable and it meets the interests of both the providers and the users. We try to get that balance all the time.

Senator LUNDY—So if, by virtue of consultation with small ISPs, you were not able to conclude that this could be put in place without inevitably sending some of them to the wall, does that mean the government is in a position to reject this element of the free trade agreement on your advice?

Dr Hart—Clearly not, but we come back to the point about flexibility. We do hope that we will use the flexibility we have to craft a regime that is suited to Australian conditions.

Senator LUNDY—But there is no kind of veto on that provision you have based on your consultation with the sector?

Mr Cordina—I suppose generally there is not really a veto power in relation to any of the obligations in the IP chapter. I think it is important to note, though, that the obligations in relation to ISPs provide them with a level of protection which they never had before in relation to these safe harbour provisions. In implementation, we will be looking to try and make the law as clear as we can so it will have the most positive impact on ISPs.

Senator LUNDY—Well, they know your address now, so they can make representations.

Mr Cordina—Yes.

Senator LUNDY—What involvement, if any, do you have—again, on an FTA related issue—in software patents?

Mr Cordina—Software patents is a matter which falls within IP Australia's area.

Senator LUNDY—But obviously it falls within this suite of IP related issues under the FTA. My recollection of estimates with IP Australia last time around was that they had very little involvement with the free trade agreement and the issues leading up to it. Are you handling the legislative amendments or are they?

Mr Cordina—My understanding is that the officers from IP Australia have been involved throughout the whole FTA process—in negotiating, in implementation and in consultation.

Senator LUNDY—Well, read the *Hansard* of the last estimates.

Mr Cordina—From my experience in terms of the IP chapter, I have—

Senator LUNDY—I am sure they will read this with interest as well. Anyway, that may be the case. That was certainly the impression I got, and it was surprising because obviously they should have quite a central role. Anyway, I will go back to the issue of software patents. What role do you have with software patents and those elements of the free trade agreement generally, if any?

Mr Cordina—No real direct involvement in patents. That is a form of intellectual property. It is industrial property, which falls in the area of IP Australia's responsibility of patents, designs and trademarks. We are primarily involved with copyright.

Senator LUNDY—Do you have a general view about the US software patents system and its effect on the management of IP in Australia?

Mr Cordina—Not a general view. In relation to the impact of computer software patents on open source software, which might be what you could be leading to, I understand from IP Australia that the free trade agreement will not have an effect on Australia's current approach to and treatment of applications to patent computer software. Consequently, this will not affect the take-up and spread of open source software. In terms of describing the detail, it would be more a matter for IP Australia.

Senator LUNDY—Libraries and archives, too, through various witnesses and submissions, argue that they will be at an increased disadvantage in operating in the digital environment if the agreement goes ahead. For the benefit of the committee, can you identify what issues in the free trade agreement the libraries are concerned about and how they relate to the digital agenda review recommendations.

Mr Cordina—Sure. In relation to the actual library and archives exceptions, the FTA does not provide any obligations to change or narrow the scope of those exceptions, so libraries and archives will be able to continue to rely on those exceptions, as they have in the past. They are quite broad exceptions and they provide to users very valuable access to material contained in libraries' collections. In terms of the digital agenda review, that is one area where the FTA does not really have a major impact. Those recommendations are there to be considered by the government without really having the FTA interact.

Senator LUNDY—A witness raised the issue of the ambiguity surrounding the definition of a for-profit and not-for-profit organisation under the FTA. I refer you to that evidence. It was provided by Mr Russell appearing as an individual at the committee. On notice, could you review that evidence and provide the committee with a view on the concerns raised.

Dr Hart—Yes.

Senator LUNDY—I will go now to the cultural issue and the content provisions that are contained in the free trade agreement. Is it this output that deals with the cultural content?

Dr Hart—No.

Ms H. Williams—No.

Senator LUNDY—Which one is it?

Dr Hart—It is 3.2.

Senator LUNDY—I will be placing some questions on notice in relation to that.

Ms H. Williams—Okay.

Senator LUNDY—Thanks, Chair.

[10.38 p.m.]

CHAIR—We will move to output 3.3

Senator LUNDY—What is the department's policy in relation to maintaining email accounts for former ministers?

Mr Nicholas—We cease access to any account once an officer or a minister has left.

Senator LUNDY—So once a former minister leaves, you stop that account?

Mr Nicholas—Yes.

Senator MACKAY—Are you saying you stop access or the account ceases to exist? There is a difference. Is the account closed?

Mr Nicholas—Yes.

Senator LUNDY—Does that mean it is removed completely so it would not be used again?

Mr Nicholas—The user account would be removed from the system.

Senator LUNDY—In terms of that persisting, if Richard Alston left the Senate when he did and an email was circulated with his address still on it, why would that be?

Mr Nicholas—I would have to know the circumstances to be able to respond to that.

Senator LUNDY—The circumstances are that an email was circulated regarding an ANAO report. It included on it—this is dated 5 April—an address for Richard.Alston@dcita.gov.au as opposed to what the address would have been if he was still a minister, which, for the purposes of these circulars, no doubt would have looked like 'Alston, Richard (Senator)'. Why would that address come up in that way on an email circular at a date after he had departed?

Senator Kemp—What is the circular? Why not just table it?

Senator LUNDY—It was an ANAO audit report.

Senator Kemp—Maybe we could see it. Why not table it so we can see it? We can then make some observations.

Senator LUNDY—I am happy to do that. I do not see there is any issue with that. What I do want to find out is this: after the minister leaves, why would his name still be on the circular?

Senator Kemp—Until we see the circular, it is a bit hard to comment.

Senator LUNDY—Well, I just told you what it was.

Senator Kemp—Just show it to us. Is there any reason why you should not show it to us? It is a bit hard to ask officers to comment on bits of paper they have not seen. There may be a very logical explanation.

Senator LUNDY—Sure.

Senator Kemp—I think that would be the only sort of sensible and fair way to advance this issue.

Senator LUNDY—While we are getting this copied, can you tell me on what date Senator Alston's email account was cancelled?

Mr Nicholas—I would have to take that on notice. I do not have that information.

Senator LUNDY—Would it have been on the day that he left his ministerial position?

Mr Nicholas—The accounts would be cancelled as soon as possible after notification, so I would have to check the exact date on the records.

Senator LUNDY—And if it were cancelled, could there still be the possibility that that email address was circulating?

Mr Hutchings—There is a possibility that spamming can create that type of situation where someone's address can be basically hijacked and used. So even seeing the paper may not provide the evidence we need to track down where that name came from.

Senator LUNDY—The fact that it looks different from all the other names implies that Senator Alston was still using his DCITA account for his email and was still in the parliament.

Senator MACKAY—Or it existed.

Senator LUNDY—That is right, and had not gone to the parliamentary email, for example, like mine—through the parliamentary information service's system.

Ms H. Williams—We will just have to look into it. At this stage, we cannot check the accounts.

Senator LUNDY—It looks as though, when Senator Alston ceased being a minister, he retained his DCITA email account as a member of parliament but not as a minister.

Mr Nicholas—We would have to check, based on having seen the document.

Senator LUNDY—The other issue is obviously the persistence of that account and him not actually accessing it. That is the point Senator Mackay makes. Is it still there and still on that circulation list? I put that on notice as well.

Mr Nicholas—Yes.

Senator LUNDY—Did it still exist without being used? I guess the third point is this: now that Senator Alston has left, again, there is the persistence of that email address on those circulars and whether or not he has been using them now that he has exited parliament.

Senator Kemp—I think we should not jump to conclusions. I think we can all demonstrate hypocrisy.

Senator LUNDY—I am so used to getting partial answers that I am making my questions as complete as possible.

Senator MACKAY—There was an issue with former Minister Wooldridge as well.

Senator Kemp—Sue, I think it is time you went home.

Senator LUNDY—That is very rude, Minister.

Senator MACKAY—I would have gone home two hours ago if you had not challenged me.

Senator Kemp—You were not that sensitive, were you?

Senator MACKAY—I am a sensitive flower.

Senator Kemp—I cannot believe it, Senator. In your shoes, I would have gone home.

Senator LUNDY—Could you take on notice all of those questions in relation to the existence of that email address—and the circumstances, perhaps, by which its status changed. The obvious question is this: if the email address did exist beyond Senator Alston being a minister, can I have the appropriate records which can demonstrate any use of that account.

Mr Nicholas—Yes.

Senator LUNDY—Another matter is the IT outsourcing contracts for DCITA and, in particular, the management of the web site. What is the current status of that contract and how much has it cost to date in this current financial year? I think we have the figures for the last financial year.

Mr Nicholas—The management of the web site is undertaken by the department. We still have a support arrangement with Fujitsu for the maintenance of the software. That continues until the end of June this year. As far as costs for this financial year are concerned, for the year to date the costs would be approximately \$150,000 on the site in total.

Senator LUNDY—And what about the fees and charges to contractors? Is that inclusive of that?

Mr Nicholas—The \$150,000 is the cost of all work undertaken on the site this financial year.

Senator LUNDY—You mentioned that that relationship with Fujitsu continues for another 12 months.

Mr Nicholas—Until the end of June.

Senator LUNDY—Only until the end of June?

Mr Nicholas—June, yes.

Senator LUNDY—What happens then?

Mr Nicholas—We are currently looking at other options post that.

Senator LUNDY—Currently, you still use the Vignette software for your web site?

Mr Nicholas—We do currently use Vignette.

Senator LUNDY—And your relationship with Fujitsu is linked to the maintenance of that Vignette software?

Mr Nicholas—Yes, it is.

Senator LUNDY—If you terminate your relationship or consider your options with Fujitsu, what happens to the support for the Vignette software that your web site is now built on?

Mr Nicholas—We are investigating and looking at the replacement of the Vignette component of the system.

Senator LUNDY—How much did that original Vignette cost the department? Listen carefully, Senator Kemp.

CHAIR—The tabling of this document is approved.

Mr Nicholas—The total costs of Vignette—and that is starting from and in the years 2000 and 2001—is \$354,000 for the software.

Senator LUNDY—And what about the total costs associated with the web site?

Mr Nicholas—To date?

Senator LUNDY—To date.

Mr Nicholas—The total costs, including all operational aspects?

Senator LUNDY—Yes.

Mr Nicholas—The total cost as at the end of May would be \$4.287 million.

Senator LUNDY—And now you are going to change the system again?

Mr Nicholas—We are, yes, looking at the replacement of the Vignette software component only and using the rest of the system.

Senator LUNDY—And how much in additional costs are you anticipating you will incur—without telling all those excited tenderers out there how much they can aim to pitch for? Is it likely to be half a million dollars or \$1 million?

Mr Nicholas—No. The entire cost of the work would be in the order of about \$120,000.

Senator LUNDY—So perhaps at the end of this calendar year you will have clocked up around \$4.3 million worth of work on your web site?

Mr Nicholas—Yes.

Senator LUNDY—That is very unimpressive. But we have been through this before. You would want to hope that the new software works better than Vignette.

Mr Nicholas—Yes.

Senator LUNDY—I will take that acknowledgment. Thank you. That is all I have for corporate.

CHAIR—Where are we at now?

Senator LUNDY—I think we have still got 3.5 to go and 3.3. They are the only two we have to go.

CHAIR—They can come tomorrow after the National Archives. Are we proposing to question for six minutes or depart?

Senator LUNDY—Sorry, Chair, what was your suggestion?

CHAIR—We have six minutes to go. You may wish to—

Senator LUNDY—No. I could not possibly do either of them justice in six minutes. I was going to use this time to work out what we would do tomorrow.

CHAIR—Apparently, the National Archives have a conference tomorrow, so we will do them.

Senator LUNDY—We will deal with them first and then move to 3.5 and then 3.3.

CHAIR—That is all right, yes.

Senator LUNDY—And then go back to the program. I think the Australia Council is next.

CHAIR—Back to the program, with sport in the afternoon.

Senator Kemp—That sounds good.

Senator LUNDY—Okay. We will see you tomorrow morning.

CHAIR—In that case, we will adjourn and reassemble tomorrow at 9 o'clock.

Committee adjourned at 10.54 p.m.