



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

MONDAY, 24 MAY 2004

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Monday, 24 May 2004

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

Senators in attendance: Senators Bartlett, Bolkus, Greig, Harradine, Heffernan, Kirk, Ludwig, O'Brien, Payne and Scullion

Committee met at 9.06 a.m.

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Ellison, Minister for Justice and Customs

Attorney-General's Portfolio

Federal Court of Australia

Mr Warwick Soden, Registrar
Mr Philip Kellow, Deputy Registrar
Ms Anne Hicking, Chief Finance Officer

Federal Magistrates Court

Mr Peter May, Chief Executive Officer

High Court of Australia

Mr Christopher Doogan, Chief Executive and Principal Registrar
Ms Carolyn Rogers, Senior Registrar
Mr Lex Howard, Marshal

Family Court of Australia

Mr Richard Foster, Chief Executive Officer
Mr Bruce Hunter, Chief Finance Officer
Ms Angela Filippello, Principal Registrar

Family Law Council

Prof. John Dewar, Chairperson, Family Law Council

Australian Transaction Reports and Analysis Centre

Mr Neil Jensen PSM, Director
Mr Alf Mazzitelli, Senior Manager, Corporate Resources

Office of Film and Literature Classification

Mr Des Clark, Director
Mr Paul Hunt, Deputy Director
Mr John Robinson, Business Manager.

Human Rights and Equal Opportunity Commission

The Hon John von Doussa QC, President
Ms Pru Goward, Sex Discrimination Commissioner

Dr Sev Ozdowski, Human Rights Commissioner and Acting Disability Discrimination Commissioner

Ms Diana Temby, Executive Director

Mr Stephen Duffield, Director, Human Rights Unit

Ms Vanessa Lesnie, Policy Officer, Human Rights Unit

Ms Rocky Clifford, Director, Complaint Handling

Mr Craig Lenehan, Acting Director, Legal Services

Ms Melissa Stutsel, Senior Policy Research Officer, Sex Discrimination

Attorney-General's Department

Management and Accountability

Mr Robert Cornall, Secretary

Mr Peter Ford, Acting Deputy Secretary Criminal Justice and Security

Mr Ian Govey, Deputy Secretary Civil Justice and Legal Services

Mr Richard Oliver, General Manager, Corporate Services

Mr Graham Fry, Acting General Manager, Information and Knowledge Services

Mr Trevor Kennedy, Chief Finance Officer

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

Output 1.1

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Output 1.2

Mr Iain Anderson, First Assistant Secretary, Legal Services and Native Title Division

Mr James Faulkner, Assistant Secretary, Constitutional Policy Unit

Ms Karen Moore, Acting Assistant Secretary, Office of Legal Services Coordination

Output 1.3

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

Ms Sue Pidgeon, Assistant Secretary, Family Pathways

Mr Kym Duggan, Assistant Secretary, Family Law Branch

Mr Paul Griffiths, Assistant Secretary, Legal Assistance Branch

Output 1.4

Ms Renee Leon, First Assistant Secretary, Office of International Law

Mr Bill Campbell QC, General Counsel (International Law)

Output 1.5

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

Output 1.6

Ms Joan Sheedy, Acting First Assistant Secretary, Information and Security Law Division

Ms Helen Daniels, Assistant Secretary, Copyright Law

Output 1.7

Mr Iain Anderson, First Assistant Secretary, Legal Services and Native Title Division

Ms Katherine Jones, Acting Assistant Secretary, Native Title Unit

Mr Steven Marshall, Assistant Secretary, Native Title Unit

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

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division
Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch
Ms Robin Warner, Assistant Secretary, International Crime Branch
Dr Dianne Heriot, Assistant Secretary, Crime Prevention Branch
Ms Robyn Frost, Principal Legal Officer, International Crime Branch
Ms Belinda Barry, Principal Legal Officer, International Crime Branch
Mr Richard Fairbrother, Principal Legal Officer, International Crime Branch

Output 2.2

Ms Joan Sheedy, Acting First Assistant Secretary, Information and Security Law Division
Mr Trevor Clement, Assistant Secretary, Critical Infrastructure Protection Branch
Ms Catherine Smith, Acting Assistant Secretary, Security Law and Justice Branch
Ms Annette Willing, Principal Legal Officer, Security Law and Justice Branch

Output 2.3

Mr David Templeman, Director General, Emergency Management Australia

Output 2.4

Mr Ed Tyrie, Executive Director, Protective Security Coordination Centre
Ms Leonie Mack, Assistant Secretary Information Coordination Branch PSCC
Ms Susie van den Heuvel, Director, Public Affairs

Output 2.5

Mr Ed Tyrie, Executive Director, Protective Security Coordination Centre

Australian Security Intelligence Organisation

Mr Dennis Richardson, Director-General

Australian Federal Police

Mr Mick Keelty, Commissioner
Mr John Lawler, Acting Deputy Commissioner
Ms Audrey Fagan, Chief of Staff
Mr Trevor Van Dam, Chief Operating Officer
Ms Dianne Carlos, Chief Financial Officer

Australian Institute of Criminology and Criminology Research Council

Dr Toni Makkai, Acting Director

CrimTrac Agency

Mr John Mobbs, Chief executive Officer
Ms Nicole McLay, Chief Financial Officer

Commonwealth Director of Public Prosecutions

Mr Damian Bugg QC, Director of Public Prosecutions
Mr John Thornton, Acting First Deputy Director
Mr Ian Bermingham, Acting Deputy Director Legal and Practice Management
Ms Stela Walker, Deputy Director Corporate Management

Insolvency and Trustee Service Australia

Mr Terry Gallagher, Chief Executive and Inspector-General in Bankruptcy

Mr Peter Lowe, Executive Director

Mr David Bergman, Policy Advisor

Office of the Federal Privacy Commissioner

Mr Timothy Pilgrim, Acting Federal Privacy Commissioner

Mr Paul Armstrong, Acting Deputy Federal Privacy Commissioner

Australian Customs Service

Mr Lionel Woodward, Chief Executive Officer

Mr John Drury, Deputy Chief Executive Officer

Mr John Jeffery, Deputy Chief Executive Officer

Rear Admiral Russ Crane, Director-General Coastwatch

Mr Tom Marshall, Deputy Director-General Coastwatch

Ms Marion Grant, National Director Border Compliance and Enforcement

Mr Phil Burns, National Director Cargo and Trade

Mr Jon Brocklehurst, Chief Financial Officer

Ms Gail Batman, National Director Border Intelligence and Passengers

Ms Jenny Peachey, National Director Office of Business Systems

Mr Murray Harrison, Chief Information Officer

Ms Sue Pitman, National Manager Trade Measures

Observers**Attorney-General's Department**

Mr Stephen Fox

Ms Annette Willing

Mr Marc Hess

Ms Chris Freudenstein

Ms Ruth Treyde

Ms Helen Lewis

Ms May Levantis

Ms Sally-Ann McLean

Mr Noel Bugeia

Mr Craig Maconachie

Mr Andrew Caird

Mr Geoff Conn

Mr Chris Barron

Ms Rachel Jackson

Ms Rachel Weatherby

Ms Rebecca Healey

Australian Federal Police

Mr Graham Ashton

Mr Tony Negus

Mr Michael Phelan

Mr Richard Stanford

Mr Grant Wardlaw

Family Court of Australia

Ms Dianne Gibson
Ms Ann Smith
Mr James Cotta
Ms Virginia Buring

High Court

Ms Fiona Hamilton
Ms Vicki Cuskelly

Human Rights and Equal Opportunity Commission

Ms Jan Payne
Ms Evelyn Scott
Ms Karen Tooley

Office of the Privacy Commissioner

Ms Evelyn Scott
Ms Fiona Ciceran

Office of Film and Literature Classification

Ms Patricia Flanagan
Mr Paul McCarthy

Customs

Ms Christine Marsden-Smedley
Mr John Stephenson

High Court

Ms Fiona Hamilton
Ms Victoria Cuskelly

Director of Public Prosecutions

Mr Jeff Smart
Mr Thomas Leffers

CHAIR—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. On 11 May 2004 the Senate referred to the committee the particulars of proposed expenditure for the year ending 30 June 2005 and particulars of certain proposed expenditure in respect of the year ending on 30 June 2005 for the Attorney-General's and Immigration and Multicultural and Indigenous Affairs portfolios. The committee will consider the portfolios in the order in which they appear on the circulated agenda. The committee will commence proceedings today with the department itself. The committee will then hear from interstate and local agencies.

The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. The committee has agreed to the date of 16 July 2004 for receipt of answers to questions taken on notice and additional information. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also remind officers that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to

superior officers or to a minister. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

I note that there remains only one outstanding answer to questions on notice from the additional estimates round of February 2004. The committee thanks the minister, and Mr Cornall and officers of the department for their assistance in those responses. I welcome Senator Ellison, the Minister for Justice and Customs and Minister representing the Attorney-General; Mr Robert Cornall, Secretary of the Attorney-General's Department, and officers. Minister or Mr Cornall, do you wish to make an opening statement?

Senator Ellison—I do not have an opening statement.

CHAIR—We will begin with the Attorney-General's portfolio.

[9.10 a.m.]

Senator BOLKUS—Chair, there is one matter that probably covers a whole range of personnel in A-G's and agencies and that is the Hicks and Habib matter and I wonder if we can start off with that. Are the appropriate officers here?

Mr Cornall—Mr Holland is on leave at present.

CHAIR—So we will not be graced with his presence at any rate.

Mr Cornall—No.

CHAIR—We will deal with the Hicks and Habib matter and then come back to the courts.

Senator BOLKUS—I have a couple of general questions first. We had a discussion about this matter on 16 February and Mr Holland was going to pursue a few matters as a consequence of that. For the record, how often have Hicks and Habib been visited since the last time we met?

Mr Cornall—According to my briefing notes, on two occasions: 9 March and 12 May.

Senator BOLKUS—Can you tell us who visited them?

Mr Cornall—The consul general in Washington.

Senator BOLKUS—On both occasions?

Mr Cornall—Yes.

Senator BOLKUS—Was he accompanied by anybody else?

Mr Cornall—I do not have the detail of the exact personnel. My briefing note is that the consul general attended.

Senator BOLKUS—Do we know if US officials are present during these visits?

Mr Cornall—It is my understanding that US officials are present during these visits. I do not have precise instructions in relation to the two most recent visits, but that has been the general pattern.

Senator BOLKUS—Is there a stated purpose for each of those visits?

Mr Cornall—They are welfare visits.

Senator BOLKUS—What is the difference between consular access and welfare visits?

Mr Cornall—I am not completely clear on this. That is a question that is probably best answered by the Department of Foreign Affairs and Trade. I understand that a consular visit has certain implications of rights of the person being visited whereas a welfare visit is expressly to determine the welfare of the person who is being visited.

Senator BOLKUS—If that is the case, who decides whether we seek welfare visits or consular access?

Mr Cornall—We have sought access but the terms and conditions on which access has been granted has been a matter for the United States, and they are the conditions that have been allowed to us.

Senator BOLKUS—So have we actually sought consular access, with all the implications of rights that come with it?

Mr Cornall—We have sought as much access as we have been able to obtain from the United States since Mr Hicks and Mr Habib have been in custody.

Senator BOLKUS—I missed the critical word there. We have sought what access?

Mr Cornall—As much access as we were able to obtain. These are the conditions that were offered to us by the United States.

Senator BOLKUS—But we have not gone back and said, ‘We want to upgrade the visits to consular access’?

Mr Cornall—I am not really competent to answer that question in its detail because those are not matters that we were pursuing through the department; they were pursued through the Department of Foreign Affairs and Trade.

Senator BOLKUS—Just going back a bit, can you tell us when Hicks was first seen by Australian officials after he was arrested?

Mr Cornall—He was first seen in Afghanistan.

Senator BOLKUS—Was it in December 2001?

Mr Cornall—Yes, in December 2001.

Senator BOLKUS—Christmas Eve, 2001?

Mr Cornall—I do not have the exact date, Senator.

Senator BOLKUS—Where was he at the time?

Mr Cornall—He was in detention in Afghanistan.

Senator BOLKUS—He was not on a US ship?

Mr Cornall—He was certainly interviewed on a US ship. I am not a hundred per cent sure whether that was the location of the first visit.

Senator BOLKUS—Did that interview involve Australian officials?

Mr Cornall—Yes, it did.

Senator BOLKUS—Was that ASIO?

Mr Cornall—Yes, it was. I think it might also have been the AFP.

Senator BOLKUS—Was that together with US officials?

Mr Cornall—I assume so, yes.

Senator BOLKUS—Have AFP or ASIO interviewed him since?

Mr Cornall—Yes, they have both interviewed him on a number of occasions since then.

Senator BOLKUS—In Guantanamo Bay?

Mr Cornall—Yes.

Senator BOLKUS—But on no other occasion between Afghanistan and Guantanamo Bay? You might want to take that on notice.

Mr Cornall—No, I do not believe so, Senator, because Mr Hicks was transferred from Afghanistan to Guantanamo Bay in January 2002.

Senator BOLKUS—Last time I asked that you try and seek a medical and psychological assessment of both Hicks and Habib, and you and Mr Holland agreed to do so.

Mr Cornall—Yes, we have asked for that to be done.

Senator BOLKUS—When was that asked for?

Mr Cornall—I think that was done in May this year.

Senator BOLKUS—We are now in May. When in May was it asked for?

Mr Cornall—On 12 May during the visit to Guantanamo Bay.

Senator BOLKUS—It took us almost three months from the time you said that you would try and pursue the issue to the matter actually being raised?

Mr Cornall—That is my understanding, Senator. But because we did not make that request ourselves I would need to make sure that that information is correct with the Department of Foreign Affairs and Trade.

Senator BOLKUS—Have we asked for both physical and mental assessment?

Mr Cornall—Sorry, Senator, the answer that I just gave you was in relation to Mr Habib. On the occasions when we have visited him Mr Hicks has appeared to be in very good health.

Senator BOLKUS—Let us just pursue Habib for the moment. Mr Hopper wrote to you in February this year, probably around the same time as our last estimates hearings about this. You did not answer that question directly—I do not think that you meant not to—but have we sought both mental and physical assessment of Habib?

Mr Cornall—It is our understanding that he has always been under detailed medical care and our observations have been that he has been in good physical health. The issue that you have raised is the issue of his mental condition and in May we requested through the consul general that a mental assessment be made.

Senator BOLKUS—To be made by whom?

Mr Cornall—By the American medical practitioners.

Senator BOLKUS—We haven't thought of asking for our personnel to assess him?

Mr Cornall—My understanding is that that is not practical in all of the circumstances. We have no reason to doubt the professionalism of the American medical assistance being provided to the detainees.

Senator BOLKUS—I think the problem is that we have got reason to doubt the American professionalism in many other aspects of the running of this camp. Why would we quarantine the medical side?

Mr Cornall—For example, Mr Hicks had an operation and I understand he was very complimentary about the medical services he received.

Senator BOLKUS—As I will mention later, medical officers are engaged in part of the excessive interrogation techniques. Are we anticipating that the same pool of medical staff based in the camp will make the assessment of Habib or are we asking for some personnel outside the camp?

Mr Cornall—We have asked for an assessment to be made by a proper medical practitioner. That is all I can say.

Senator BOLKUS—That was asked for just a couple of weeks ago. Have we not sought to ask the same question about Mr Hicks's mental assessment?

Mr Cornall—There has been no suggestion that there is any concern with Mr Hicks's mental assessment, save that in one letter I received from Mr Kenny he was concerned that he was being slowed down by the process of detention. In other words, it was a slow process to obtain instructions from him.

Senator BOLKUS—He is alleged to have spent the best part of a year in solitary confinement. That could have some impact on your mental state.

Mr Cornall—I am not in a position to judge.

Senator Ellison—You are asking the secretary to speculate and also for a medical opinion.

Senator BOLKUS—It was the secretary last time who acknowledged that mental assessments were important.

Senator Ellison—That may be so, but to ask the secretary to carry out the mental assessment is another story.

Senator BOLKUS—I am not asking him to carry it out.

Senator Ellison—You are asking him to comment on what solitary confinement might result in.

CHAIR—Mr Cornall has indicated that he is not in a position to answer that question.

Senator Ellison—Madam Chair, a few of these areas are really Foreign Affairs questions. The question of health and those communications, as the secretary has pointed out, are really consular matters. The Minister for Foreign Affairs has said that we have had people visit Hicks and Habib and assess their health. We have discussed their health care with the Americans. In relation to some of those questions, it is unfair to ask the Secretary of the Attorney-General's Department to answer questions which are really consular questions. So

can we can keep to those questions which are AGD and leave those that are DFAT for the appropriate committee.

Senator BOLKUS—Thank you, Minister. The secretary has been very helpful.

Senator Ellison—I think he has.

Senator BOLKUS—What I am leading into is the situation of the rights of the prisoners. This is an aspect of that.

Senator Ellison—The nuts and bolts of the communications of consular matters are DFAT issues. If the secretary can answer the questions which are within the perimeter of the department's responsibility, we can refer those other questions to the foreign affairs department.

CHAIR—Mr Cornall has indicated where the questions fall into the foreign affairs category and purview and that those matters can be referred. Senator Bolkus has indicated that he is moving to an area which he regards as specifically relating to the Attorney-General's Department. If we can move to that and take any other questions that cannot be answered and deal with them appropriately, we will get through this.

Senator BOLKUS—Now that you have raised it, Minister, who actually has steerage of this issue? Who in A-Gs, for instance? Is there a unit set up? Is there an IDC between departments?

Mr Cornall—Mr Holland is primarily responsible for all our dealings in relation to Mr Hicks and Mr Habib. He has other staff who assist him. Obviously, in many of these dealings the agency which actually carries out the visits, organises the visits and so forth is the department of foreign affairs, and we interact with that department on these issues.

Senator BOLKUS—There is no IDC between departments? It is just your department interacting with Foreign Affairs?

Mr Cornall—And the Department of the Prime Minister and Cabinet.

Senator BOLKUS—No working group?

Mr Cornall—I could be wrong about this but my understanding is that it is a group of people who interact as required. I do not believe it could be categorised as a formal interdepartmental committee.

Senator BOLKUS—Who would make the decision as to whether to request physical assessment as opposed to mental assessment of someone like Hicks?

Mr Cornall—My understanding is that it would be a joint decision. As I say, we have visited Mr Hicks on nine occasions. On all those occasions we have been able to observe his physical condition and to discuss with him the circumstances in which he was. Generally speaking, all those inquiries have been quite positive about his physical health.

Senator BOLKUS—Okay, but I am trying to work out the bureaucratic arrangement here. For instance, a decision not to seek mental assessment: is that made by the officials or are ministerial officers consulted?

Mr Cornall—My understanding is that would be dealt with at the officer level.

Senator BOLKUS—We have had assurances they are in good physical condition. Do we have any idea as to when these medical checks may take place?

Mr Cornall—No.

Senator BOLKUS—I presume since, as you say, they have been checked continually, there are medical records held in the camp.

Mr Cornall—I do not know; I would assume so, but I do not know.

Senator BOLKUS—Can you find out whether we have sought access to those records?

Mr Cornall—I am not aware of us having sought access to medical records but we can take the question on notice.

Senator BOLKUS—We canvassed a few questions last time as to the conditions of detention. Mr Holland said he would try to ascertain the length of solitary confinement that Hicks has been subjected to and possibly Habib as well. Have we got an answer to that?

Mr Cornall—Was that taken as a question on notice? If it was, I understood we had answered virtually all questions on notice.

Senator BOLKUS—Yes, but I have not been able to identify where you answered that one and a number of other questions in relation to this that you undertook either to take on notice or to follow up. If you look at the *Hansard* of 16 February you will find there is a whole range of issues there.

Mr Cornall—If there are any issues we should have responded to and have not, I will ascertain what can be done to answer those as a matter of urgency immediately after these estimates.

Senator BOLKUS—I was after the length of solitary confinement. I think Keith Holland undertook to find out whether they had access to television, radio and library books.

Mr Cornall—I can answer that question. They do not have access to radio or television; they do have access to library books.

Senator BOLKUS—We had some discussion about the exercise yard, the size of the yard—

Mr Cornall—The exercise yard is approximately 17 feet wide and 17 feet long. That is for Mr Hicks and Mr Habib.

Senator BOLKUS—When are they allowed to access it and for how long?

Mr Cornall—Mr Hicks is able to exercise during the day four times a week, and this exercise is taken in this area.

Senator BOLKUS—For how long?

Mr Cornall—For one hour.

Senator BOLKUS—You can assure us that is during daylight, not at night time?

Mr Cornall—They are my instructions.

Senator BOLKUS—What about Habib?

Mr Campbell—Mr Habib has the opportunity to exercise for 20 minutes three to seven times a week in the same size area.

Senator BOLKUS—Seventeen by 17—it is not a big area, is it? It has been reported that Hicks is in so-called Camp Echo—is that so?

Mr Cornall—That is my understanding, yes.

Senator BOLKUS—And there are some 24 solitary confinement cells at Camp Echo?

Mr Cornall—Sorry, I do not know the answer to that question.

Senator BOLKUS—But he is in one of them?

Mr Cornall—He is in a cell, yes.

Senator BOLKUS—On his own? He has been there since last July?

Mr Cornall—In Camp Echo?

Senator BOLKUS—In solitary confinement, firstly.

Mr Cornall—I think he has been in a place in the prison where he is able to be kept safely, yes. That is where he is.

Senator BOLKUS—Are we not acknowledging that he is in solitary confinement?

Mr Cornall—I am not sure if solitary confinement is the right term. As I understand it, the cells are open-sided mesh cells, so I do not believe it is solitary confinement in the sense it might be in an Australian prison.

Senator BOLKUS—My understanding is that where the cell has an opening, the only person who can access that opening is the guard.

Mr Cornall—I am unable to comment on that.

Senator BOLKUS—He is in a cell on his own, though.

Mr Cornall—That is my understanding, yes.

Senator BOLKUS—As I said, my understanding is that he cannot talk to anyone. I would not have thought that the guard would be a pleasant alternative for him. So he is in Camp Echo; he is in a cell on his own; he has been there since July last year—that is the part that you did not answer.

Mr Cornall—I will have to check the date.

Senator BOLKUS—I am told that the cell is of a pretty small size. Do you have any idea of the size of the cell?

Mr Cornall—Yes, I do. The cell is 7.5 feet wide, 15 feet long and 10 feet high.

Senator BOLKUS—A bit like a cage.

CHAIR—That is not really a matter for Mr Cornall, Senator.

Senator BOLKUS—In terms of material in the cell, do you know what is in the cell with him?

Mr Cornall—No, I do not.

Senator BOLKUS—From what you were saying earlier, there is no radio or TV; there is the odd library book.

Mr Cornall—Yes.

Senator BOLKUS—Do you have information as to whether there is a toilet and a bed?

Mr Cornall—Senator, I assume that to be the case but I do not know. I would have to make inquiries.

Senator BOLKUS—Those sorts of conditions would breach the Geneva convention, wouldn't they—such a limited size, limited access to exercise, being on your own?

Mr Cornall—The government has taken up this issue on a number of occasions with the United States and has been assured that they are being treated humanely and in accordance with the conditions of the Geneva convention.

Senator BOLKUS—That was from Mr Wolfowitz, who has a different interpretation of 'humane' from those who would interpret the Geneva convention, as we have seen in recent weeks.

Mr Cornall—The issue has been taken up with the United States on a number of occasions and we have consistently been given that assurance.

Senator BOLKUS—Have we taken steps to satisfy ourselves that that is the case? That might be the US response but we have officials working in international law; they would have some knowledge of the Geneva convention. Do they agree with that?

Mr Cornall—It is my understanding that Australian officials have not seen the cell area; therefore we are somewhat limited in our ability to comment on that question.

Senator BOLKUS—The consul general has been able to talk to Hicks and to Habib?

Mr Cornall—Yes, that is correct.

Senator BOLKUS—But he has not seen their cell conditions?

Mr Cornall—That is my understanding.

Senator BOLKUS—Have we sought to see those cell conditions?

Mr Cornall—When we have gone to Guantanamo Bay it has been under very strict conditions and we have gone under the conditions in which the United States authorities have allowed us to attend.

Senator BOLKUS—So we have not sought to see those cell conditions; we have just been told what we can do?

Mr Cornall—It is my understanding that we have made those inquiries but we have not been permitted to see them, but I can check that.

Senator BOLKUS—Can you check when we asked to see them?

Mr Cornall—It might take some little time, given the fact that, as you say, they have been in detention now for some period of time. Obviously there has been quite a lot of communication with the United States over that period.

Senator BOLKUS—How then do we know that that is the right information? That is what we have been told by the Americans?

Mr Cornall—That is my understanding, yes.

Senator BOLKUS—Was that through American officials at Guantanamo Bay or through officials in Washington or elsewhere?

Mr Cornall—I am not able to answer that question.

Senator BOLKUS—Can you take it on notice?

Mr Cornall—We will take it on notice.

Senator BOLKUS—But even putting aside not having seen it, we are talking about solitary confinement in an enormously confined box or cage for almost a year. We have not made an assessment within our administration as to whether that breaches Geneva convention rules?

Mr Cornall—We have said to the United States on a number of occasions that we want this matter to be brought to finality as quickly as possible because we agree it is unsatisfactory that Mr Hicks and Mr Habib are detained indefinitely in Guantanamo Bay. We have received assurances that they will be processed as quickly as possible. Mr Hicks now has counsel who are preparing his defence and matters are moving forward, but not as quickly as the government would have liked.

Senator BOLKUS—They have been detained for 30 months. How does this—as quickly as possible—become relevant?

Mr Cornall—Because that is the request that the Australian government has made of the United States government.

Senator BOLKUS—Having made that request and having waited 30 months, don't we think it is appropriate that we should make our own assessment as to whether, for instance, these conditions breach international rules?

Mr Cornall—As I said before, we have asked the United States for their assurance that they are complying with those international rules and we have been given that assurance on several occasions.

Senator BOLKUS—The question is: have we made an assessment ourselves?

Mr Cornall—I have not made an assessment, no.

Senator BOLKUS—Have officers in your charge made an assessment?

Mr Cornall—No, Senator.

Senator BOLKUS—Have you been asked by Foreign Affairs to make an assessment?

Mr Cornall—Not to my knowledge.

Senator BOLKUS—Have you been asked by any other agency of government—PM&C for instance?

Mr Cornall—Not to my knowledge.

Senator BOLKUS—Why don't you make an assessment?

Mr Cornall—Because, as I said, we have asked the United States on several occasions for their assurance that they are being treated humanely and in accordance with the Geneva convention, when we have visited them they have appeared to be in good physical health and we have asked the United States on a number of occasions to expedite the treatment of their cases so that their incarceration can be brought to an end.

Senator BOLKUS—Do we then think that a cell 7.5 by 15 by 10 for a year, after an extra 18 months of imprisonment, is humane treatment? Is that our view?

CHAIR—You are asking Mr Cornall for an opinion, Senator Bolkus, which you are well aware you are not in a position to do.

Senator BOLKUS—I am asking him why he is not making an assessment as to whether this conforms with international rules. This is a department with direct responsibility for international law—the application of it and advising government on it. In these circumstances, why haven't we made the assessment? Why haven't we asked our legal officers as to their view in order that we can then pursue the matter with the US again?

Mr Cornall—Because the matter is being pursued as much as we can with the United States to bring this detention to an end by finalising the case against Mr Hicks and by dealing with Mr Habib's situation as quickly as possible.

Senator BOLKUS—But it is not moving. There is a responsibility, I would have thought, on your department, Mr Cornall, to build up the case for expedition of these matters. Wouldn't one step to that be to have a legal assessment of how the prisoners are being treated and whether that conforms with international rules?

Mr Cornall—I believe the government has put the case as strongly as it can. I also make the point that since late last year Mr Hicks has been advised by Major Mori, Mr Kenny and his New York attorney on his defence and the matter is to some extent now in their hands in terms of plea bargaining, negotiations and other preparations for the conduct of his case if there is a prosecution brought against him.

Senator BOLKUS—Will you now go off and seek an assessment as to whether these conditions breach the Geneva convention?

Mr Cornall—I will give that matter consideration and I will discuss it with the Attorney-General.

Senator BOLKUS—Do we know about this practice of ERFing that is apparently going on at Guantanamo Bay?

Mr Cornall—Sorry, I do not understand the term.

Senator BOLKUS—Extreme reaction force. ERFing was described last weekend on page 4 of Mr Kenny's press statement. He quoted Jamal al-Harith, who spoke to the *Daily Mirror* in the UK about this practice in Guantanamo Bay called ERFing. He said:

I had seen victims of the ERF being paraded in front of my cell. They had been battered and bruised into submission. It was a horrible sight and a frequent sight.

That allegation was raised publicly over the last week or so. You do not know of it?

Mr Cornall—The government has been extremely concerned by the allegations that have been raised publicly over the last week or so and has requested the United States to investigate fully any allegations of mistreatment against Mr Hicks or Mr Habib, and we understand that inquiry will be undertaken.

Senator BOLKUS—Who asked for that?

Mr Cornall—My recollection is that the request has been made by a number of people—including, I understand, the Prime Minister.

Senator BOLKUS—In previous hearings I asked Mr Holland whether either Hicks or Habib had alleged that they had been beaten at any stage. He replied, and this is on page 67 of the *Hansard*:

There had been allegations made about that in the past, or allegations of torture, which the government took up with US authorities, who assured them that that was not the case.

Then Mr Holland said that those allegations had been in the media on a general basis. The question is: when the matter was raised in the past, was it merely on a general basis or were there specific allegations as to Hicks and Habib?

Mr Cornall—There was no suggestion of mistreatment by Mr Hicks until the fifth visit, which was in late May last year. Then it appeared to be only a passing remark about his treatment in Afghanistan prior to his transfer to Guantanamo Bay and did not refer to his treatment in Guantanamo Bay. He has made other statements at different times about Mr Habib's treatment, some of which appeared to be less serious than others. He talked about being mocked and humiliated and things of that nature, which obviously are not satisfactory but are not in the category of serious mistreatment that we are now considering in Iraq.

Senator BOLKUS—With respect to Mr Habib, last time we canvassed whether he had been badly treated or whether he had raised any complaint about his treatment on the way to Guantanamo Bay, in Egypt or elsewhere. Mr Holland undertook to take that on notice. Is there a response to that?

Mr Cornall—If it had been taken on notice I imagine it has already been answered. My understanding is that we have a great deal of difficulty knowing what if anything occurred in relation to Mr Habib in Egypt because the Egyptians have never acknowledged that he was in their custody. I should point out that Mr Habib is a dual national of both Australia and Egypt.

Senator BOLKUS—Do we know whether his condition has deteriorated or improved over the time he has been incarcerated in Guantanamo Bay?

Mr Cornall—His physical condition appears to us to be sound. We have advised this committee before that he was being treated for a pre-existing medical condition, and that sometimes has proven difficult because he has on occasions refused to take medication.

Senator BOLKUS—You talk about him being treated for that, but that does not exclude the possibility that his mental condition may have deteriorated.

Mr Cornall—I am not able to judge that and I do not believe that the people who were visiting him were in a position to judge that. We have requested the United States to undertake a medical assessment of him.

Senator BOLKUS—It has been suggested that he has been a victim of this ERFing. Have you had that allegation brought to your attention?

Mr Cornall—No.

Senator BOLKUS—And that his brain may have been damaged as a consequence.

Mr Cornall—No.

Senator BOLKUS—He was picked up in Pakistan, was he not?

Mr Cornall—Yes.

Senator BOLKUS—Australian government officials saw him in Pakistan. Did that include A-G's?

Mr Cornall—No, it would not have included A-G's.

Senator BOLKUS—Did we know, for instance, that he was being sent from Pakistan to Egypt? Were you consulted on that?

Mr Cornall—No, I do not believe we were consulted.

Senator BOLKUS—Were you advised?

Mr Cornall—Senator, I will read you my briefing notes on this. They say that inquiries were made about Mr Habib's welfare upon his capture by Pakistan authorities in 2001. The Australian government immediately sought consular access to Mr Habib in Pakistan. Australian officials were granted access to Mr Habib for nonconsular purposes on 29 October 2001 and reported that he showed no signs of physical maltreatment. Before consular access was granted the government became aware that he had likely been moved to Egypt. I do not know how the government became aware that he had been moved to Egypt. Despite numerous requests for access by the government, including at the highest levels, Egypt has never acknowledged it had Mr Habib in its custody.

Senator BOLKUS—Mr Cornall, last time you said that Habib was up for consideration as to whether he would be charged. Today you have said words similar to that. Is 'up for consideration' a formal legal process?

Mr Cornall—The term is not very legalistic. What it meant was that people have to be appointed as eligible for prosecution under the military commission rules, and Mr Habib is being considered as to whether or not it is appropriate to put him into that category of being eligible for prosecution. That is still the situation.

Senator BOLKUS—That for me would imply issues such as whether he is fit for prosecution?

Mr Cornall—I am not aware of all of the issues that are taken into account. But if he were prosecuted and he was unfit for prosecution that would certainly be a matter one would expect his defence lawyers to take into consideration.

Senator BOLKUS—He hasn't got any.

Mr Cornall—No, that is correct, because defence lawyers are only appointed after people are nominated for eligibility for prosecution.

Senator BOLKUS—Do you know what the criteria are for eligibility for prosecution?

Mr Cornall—No, I do not.

Senator BOLKUS—Can we find that out? It seems to be a pretty critical issue.

Mr Cornall—We can try.

Senator BOLKUS—We can try? Eligibility for prosecution would in most jurisdictions imply questions about a person's mental fitness to face charges or to have actually committed charges. You are saying that you do not know if that is one of the considerations in this eligibility for prosecution process?

Mr Cornall—No, I do not, because these are matters that are dealt with entirely within the United States.

Senator BOLKUS—Have we sought advice as to what eligibility for prosecution entails?

Mr Cornall—I am not aware that we have, no. My assumption is that it means that they believe that there is the possibility of an offence having been committed and that there is evidence to justify a prosecution being actively considered by the prosecuting authority.

Senator BOLKUS—Can we actually ask for those guidelines?

Mr Cornall—The guidelines about determining eligibility?

Senator BOLKUS—Yes.

Mr Cornall—I will see what can be done.

Senator BOLKUS—Because it has been suggested to me that maybe he will not be prosecuted—

Mr Cornall—Sorry, Senator, Mr Ford wants to add something.

Mr Ford—I can give you further information in relation to your question about the criteria for prosecution. Quoting from the military order, I think it is in section 2:

(a) The term "individual subject to this order" shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:

There follows a couple of paragraphs which, if you wish, I will read out.

Senator BOLKUS—Why don't you table it?

Mr Ford—Yes, we can.

Senator BOLKUS—Can you read those relevant paragraphs out as well?

Mr Ford—It reads:

- (1) there is reason to believe that such individual, at the relevant times,
 - (i) is or was a member of the organization known as al Qaida;
 - (ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
 - (iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order; and

(2) it is in the interest of the United States that such individual be subject to this order.

It goes on at some length, so perhaps I will table the relevant passages.

Senator BOLKUS—Just table the document, if you could.

Mr Ford—Sure.

Senator BOLKUS—It does not really answer those specific questions of whether someone is mentally fit for trial. Can we seek information as to whether those issues are also part of the eligibility criteria?

Mr Cornall—Yes, I have already said that.

Senator BOLKUS—You mentioned that there was one complaint by David Hicks in May last year. Human Rights Watch presented to the Australian Embassy in late 2002 their assessment of activities in Guantanamo Bay. Was that handed over to the A-G's Department?

Mr Cornall—I do not know.

Senator BOLKUS—Does anyone know?

Mr Cornall—I am not aware of it, no.

Senator BOLKUS—Can you find out if it was, when it was and to whom?

Mr Cornall—Yes.

Senator BOLKUS—They raise a number of concerns as to the treatment of prisoners. If it were handed to our embassy in Washington, I would have anticipated that you would have had it. You should have got it. Can you find out why not if, in fact, it was handed over to you?

Mr Cornall—Yes, I will make inquiries.

Senator BOLKUS—Okay. On 16 February I mentioned the International Committee of the Red Cross and the concerns that they had raised in respect of the treatment of prisoners at Guantanamo Bay. What action was taken to get to the bottom of that report? Did you follow that up?

Mr Cornall—What concerns are you specifically referring to, Senator?

Senator BOLKUS—I actually quoted from the ICRC or referred to them and then referred to their allegations that, for instance, there had been suicide attempts. The ICRC was concerned at the worrying deterioration of prisoners' mental health. I am trying to find the specifics but they were talking about prisoners being placed on antidepressants and other such issues.

Mr Cornall—Firstly, those are comments that were made about the general situation of long-term detention. Our response to that was to seek assurances from the United States that the detention would be brought to an end as quickly as possible by the resolution of the prosecution of Mr Hicks, if that is what is going to happen, and also by a determination being made in respect of Mr Habib's position.

Senator BOLKUS—They were not just as to the general issue of detention, they were actually specific as to what was happening at Guantanamo Bay under General Geoffrey Miller, who has now gone on to bigger and better things in Baghdad. Did you try to see whether those issues related to Hicks and Habib?

Mr Cornall—As I said, we have visited Mr Hicks on nine occasions. He has appeared to us to be in good physical health. Mr Habib equally has appeared to be in good physical health. We have asked the United States on a number of occasions for their assurances that they are being treated humanely and in accordance with the Geneva convention. We have asked that their cases be brought to a resolution as quickly as possible so that their detention is brought to an end one way or another. All those responses seem to me to address the overall concern expressed by the International Committee of the Red Cross.

Senator BOLKUS—I have just found the quote. On page 70 of the *Hansard* the ICRC refer to hunger strikes, suicide attempts, one in five Guantanamo Bay detainees had been put on antidepressants, 21 tried to commit suicide a combined total of 32 times. Did we not go back and ask for assurances that Hicks and Habib were not amongst those who had been put on antidepressants, for instance?

Mr Campbell—On the briefing here it states that in December 2003 the Australian Ambassador to Washington met with representatives from the International Committee of the Red Cross—

Senator BOLKUS—Sorry, when was that?

Mr Campbell—It was in December 2003. The representatives confirmed that they had visited Mr Hicks and Mr Habib on occasion and did not have any issues to raise in respect of either, other than those it had publicly raised in relation to all Guantanamo Bay detainees.

Senator BOLKUS—That is in Guantanamo Bay. Did we have any discussions with the ICRC in respect of Mr Hicks and his treatment in Afghanistan?

Mr Cornall—I do not believe so.

Senator BOLKUS—It has been suggested that the ICRC did report abuses in respect of treatment in Afghanistan in early 2002. They would have been reported to the supervising authority I suppose, which is the USA. Have we seen those reports?

Mr Cornall—I do not believe so.

Senator BOLKUS—Have we asked for them?

Mr Cornall—It is my understanding that, when the International Committee of the Red Cross is monitoring prison situations, it has a strict policy of confidentiality in dealing only with the detaining country or authority on the basis that, if it does not do that, it is unlikely to get access to prisons or other places of detention. My expectation is that we would not have made such a request and we would not have expected it to be responded to positively because of that longstanding policy of the way the ICRC monitors these situations.

Senator BOLKUS—But in this case we have had public allegations about ICRC reports from early 2002—and that they deal with Australian citizens or one Australian citizen. My understanding is that we can actually seek those assessments and they could be given to us. Why don't we seek them?

Mr Cornall—I will take that question on notice. I do not know whether that is the case, but if it is the case I will seek to answer your question.

Senator BOLKUS—At the last hearing we were told by Mr Holland that there were general allegations and so on. He said that we were given assurances that these allegations were not true, that this is not policy and that it would be illegal. Can you tell us who actually gave us those assurances?

Mr Cornall—No, I cannot.

Senator BOLKUS—In the rest of his answer, Mr Holland referred to the President at a press conference.

Mr Cornall—Sorry, he referred to?

Senator BOLKUS—The President of the United States at a press conference giving some assurances. What I am trying to find out is whether we actually asked the US administration directly about the allegations that we discussed last time or whether we were satisfied by a press conference with the President.

Mr Cornall—As I have said, on a number of occasions we have spoken to the United States about the treatment that Mr Hicks and Mr Habib have been receiving, and we have been assured that they have been treated in a humane way and in accordance with Geneva conventions. There would be a number of conversations along those lines that would have covered that ground.

Senator BOLKUS—You may want to take this on notice, since Mr Holland is not here, but when he said that these excesses would be illegal can you tell us under what law they would have been illegal?

Mr Cornall—He would have been referring to the general terms and conditions of holding prisoners of war under the Geneva convention and the Hague regulations.

Senator BOLKUS—But we are told by the Americans and by the Attorney-General that that law does not apply.

Mr Campbell—I think the Americans say that they are not prisoners of war for the purposes of the Geneva convention, but they say that they apply the principles in the Geneva convention to their detention.

Senator BOLKUS—So these activities would not be illegal because there is no law on which to base any assessment of illegality? There might be a principle, but there is no law?

Mr Campbell—I think there is a general principle of humane treatment under international law, which is reflected in the Geneva conventions and in relevant human rights conventions.

Senator BOLKUS—But that does not apply here. We have been told by the Australian Attorney-General that the Geneva convention does not apply. Isn't that the case?

Mr Campbell—I am not aware of that statement. What I am saying is that the US administration says that they are not POWs for the purposes of the Geneva convention.

Senator BOLKUS—I am trying to work out how we assert—

CHAIR—Mr Ford?

Mr Ford—In relation to the information that the matters to which Mr Holland referred would be illegal, I am advised that the United States has said that it would be illegal in terms of US domestic law. That comes from the Defense Department in the US.

Senator BOLKUS—But the problem is that it is a catch-22. It would be illegal if there was a law to make it illegal, but there is no law that makes it illegal at Guantanamo Bay.

Mr Ford—My information is that US domestic law would make it illegal.

Senator BOLKUS—But US domestic law, as we have known from day 1, does not apply to Guantanamo Bay, does it?

Mr Ford—I understand the point. I am just relaying the advice that we have received.

Senator BOLKUS—We have also claimed—as the Attorney-General did on 20 February—that the Geneva convention does not apply.

Mr Cornall—That is correct. We have gone over this a number of times in estimates before. The principles that we have gone over with the committee are that the Geneva convention is based on the concept of conflict between nation states, combatants in uniform and so forth, and that the Americans came to the view that the combatants were not acting in accordance with that convention and therefore were illegal combatants. I do not have all of the detail of those arguments at my fingertips, but that is the general gist of it. Notwithstanding the fact that they did not fall within the direct definitions in the Geneva convention, the United States has undertaken to treat them, generally speaking, in accordance with the principles of that convention.

Senator BOLKUS—You are right when you say that we have touched on this, but we did so very quickly last time. In touching on it, I asked for a copy of the legal advice on which we based our assertion that the Geneva convention does not apply. I think you were taking that on notice.

Mr Cornall—If we took it on notice, I expect it has been answered. If it was overlooked in some way, I will endeavour to deal with that straight away. It may be that there was not specific legal advice in the sense that you have asked for. In any event, there are issues about providing this committee with copies of legal advice given by the department to the government or to ministers.

Senator BOLKUS—Mr Holland said that we were given assurances that these excesses—this excessive interrogation—are not the policy. I mentioned previously that a Major General Geoffrey Miller was involved. We have seen recent reports suggesting that he sought to use harsher interrogation techniques than normal at Guantanamo Bay and we have also seen reports suggesting that some of those techniques have been assessed by the Pentagon's Office of the Judge Advocate General as being illegal. Have we made an assessment of the assessments of the Office of the Judge Advocate General?

Mr Cornall—No, we have not. But since these most recent allegations the government has expressed its considerable concern at the allegations being made and has asked the United States to undertake a full inquiry into the treatment of Mr Hicks and Mr Habib to satisfy itself and us that they have not been mistreated.

Senator BOLKUS—Having been given assurances that it is not US policy, with this information coming to light do we go back to the Americans now and say that, despite their previous assurances, we want to know whether Australian citizens have been subjected to these harsher interrogation techniques, some of which may have been illegal?

Mr Cornall—I think that is encompassed in the request that we get a full report on the treatment of Mr Hicks and Mr Habib.

Senator BOLKUS—Do we know that, for instance, about a year ago the US Department of Defense approved interrogation techniques that reversed normal sleep patterns, subjected prisoners to heat/cold sensory assaults and had them interviewed naked, and some 17 other reversals of normal procedures?

Mr Cornall—Are you asserting that these things happened at Guantanamo Bay?

Senator BOLKUS—Yes, I am.

Mr Cornall—I am not aware that that is the case.

Senator BOLKUS—We do not know that now?

Mr Cornall—No. But I repeat that, in view of the general comments that are being made about the treatment of prisoners in Guantanamo Bay, we have asked the United States to fully investigate the treatment of Mr Hicks and Mr Habib and to assure us that they have not been mistreated in any way.

Senator BOLKUS—The *Washington Post* a few weeks ago referred to this reversing of normal procedures for some 20 techniques that were approved, they say, ‘at the highest levels of the Pentagon and the Justice Department’ and probably by Mr Rumsfeld—techniques allowing interrogators to use ‘physically and psychologically stressful methods during questioning’. It referred to Human Rights Watch concerns. These have been on the public record for a while. Why haven’t we sought to raise concerns about these practices and whether these practices have been practised on Australian citizens?

Mr Cornall—I come back to the fact that we have visited Mr Hicks and Mr Habib on a number of occasions, they always appear to us to be in good health and there is no reason for us to believe that they have been the subject of mistreatment. But now that there have been broader allegations about the conduct of the United States prison officers at Guantanamo Bay we have asked for assurances specifically about their treatment during their time in detention.

I should also point out that there is earlier information that tends to be contrary to the current spate of media reports—for example, on 29 October 2002 in the *New York Times* there was a report of three Afghans having been released from Guantanamo Bay. They said that they were not tortured or abused by their American interrogators. It went on to say that they did not complain about the food or medical care and they praised the American guards for respecting their religion. So there have been other media reports from released detainees which have indicated that the situation was not as it is now presently asserted.

Senator BOLKUS—I am not so sure that that follows. For instance, we do not know whether those prisoners were in Camp Echo for a start. How many thousand prisoners do we have at Guantanamo Bay?

Mr Cornall—My recollection is that the number is slightly over 600—not thousands.

Mr Campbell—That is right.

Senator BOLKUS—But there is an allegation that the bashings that have been raised recently were part of a carefully orchestrated and organised process approved at high levels in the US command structure. Would that be the sort of thing that we would raise as being of specific concern for us to be investigated by the investigating authority?

Mr Cornall—We have made general requests for the United States to investigate the treatment of Mr Hicks and Mr Habib. On all of the occasions that we have visited them, which was as recently as May this year, there has been no suggestion or no indication that they were in anything but good physical health.

Senator BOLKUS—We have been given assurances before, for instance as in early May 2003, by the US that there would be no improper interrogation. Can you tell us who gave us that assurance?

Mr Cornall—No, I cannot. I can take that question on notice.

Senator BOLKUS—And if it was in writing, can we get a copy of it? Do we know who is going to be investigating this matter in the United States?

Mr Cornall—No, I do not.

Senator BOLKUS—Are we making representations as to what sort of process should be embarked upon?

Mr Cornall—I do not know the answer to that question. My understanding is that we have asked the United States to make proper inquiries and to report to us on those inquiries. How they do that and who does it would be a matter for them.

Senator BOLKUS—There are a number of issues I have raised so far. There is the allegation by Shah Mohammed that Mr Hicks had been bashed at least three times before him. Would that be a matter that we will raise with the US as needing proper investigation?

Mr Cornall—I understand that that would be encompassed by our broad general requests for assurances about their treatment. There is again some contrary evidence that I think has to be factored into this. As I said, we have made observations about Mr Hicks's health on a number of occasions over the period of his incarceration. With the one exception that I have mentioned, Mr Hicks has not commented to us adversely on his treatment. He made earlier comments indicating that he was satisfied with the medical treatment he received. His Australian lawyer, Mr Kenny, has said that in his meetings with Mr Hicks he understood that he had been treated in a decent and humane way within the limits set by the Americans in terms of the fact that he is in a detention camp.

Neither Major Mori nor Mr Kenny has raised these matters at other times. We have received US assurances that they are being treated in a proper and humane way. Over the period of their detention, the International Committee of the Red Cross has visited the detention centre at Guantanamo Bay and monitored the condition of prisoners. Mr Hicks has had letters and telephone calls with his family. The released detainees have said that they were treated well in Guantanamo Bay—in October 2002. So there is a lot of evidence that now has

to be put into the consideration. I think the appropriate steps have been taken to ask for express assurances about their treatment while in detention at Guantanamo Bay.

Senator BOLKUS—In terms of relevant evidence, there is a gag order on Mr Kenny and Major Mori, isn't there?

Mr Cornall—Yes, there is.

Senator BOLKUS—In the interests of getting all the evidence on the table, will Australia seek a lifting of that gag order from the US?

Mr Cornall—We have asked the United States to lift the obligation imposed on Mr Kenny and the other lawyers under the military commission arrangements so that they can bring to our attention any matters that they feel need action by the government.

Senator BOLKUS—When did we do that?

Mr Cornall—It has been done recently, Senator. I do not have the exact date in my mind.

Senator BOLKUS—Could you come back to us with that?

Mr Cornall—Yes.

Senator BOLKUS—There has not been a response, I gather.

Mr Cornall—We have not had that request granted. I do not know whether there has been any other acknowledgment.

Senator BOLKUS—Also, in situations like this in the lead-up to the trial the defence is normally provided with interrogation records. Can we seek for those records to be made available to Kenny and Mori?

Mr Cornall—I am sure that Mr Mori and Mr Kenny and Mr Dratel are taking all appropriate steps in relation to the conduct of the defence. But if they are freed from the obligation not to speak about the conduct of the defence and if they have got any issues of that nature I am sure they will raise them with us. The other point is that it assumes there is an interrogation record and I do not know whether there is one or not.

Senator BOLKUS—Australia has not got any copies of interrogation records?

Mr Cornall—My understanding is that we do not, no. I am not sure that there are interrogation records in the sense of transcripts or videos. My understanding is that we do not have any if there are any.

Senator BOLKUS—You would not want there to be videos this time, would you?

Mr Cornall—I do not know, Senator.

Senator BOLKUS—You do not have to answer that, Mr Cornall. Can we seek from the US authorities as to whether there is information about whether there are interrogation records and, if so, can we seek to get copies of them?

Mr Cornall—Over the course of these estimates I will just check my brief on this. My understanding is that there is a note in the brief and I will just make sure that I am giving you the correct information in relation to that before these estimates finish.

Senator BOLKUS—I know that you said Kenny and Mori are big boys and they can handle themselves but I am asking you whether you will ask the US authorities to make any such records available to the defence.

Mr Cornall—It is our view that the defence should be conducted by the defence lawyers as they see appropriate.

Senator BOLKUS—We are talking here about a fundamental legal right and process which has not been made available to Australian citizens.

Mr Cornall—You are talking about a process in a military commission under the precise rules that are being set for that commission. But I am sure that Major Mori, Mr Kenny and Mr Dratel will conduct a very positive and firm defence of Mr Hicks if charges are brought against him.

Senator BOLKUS—Why won't we ask for this basic fundamental legal right to apply in respect of these two Australian citizens?

Mr Cornall—If Mr Kenny raises this matter with us we will obviously look into it. The point about it is that our view is that the defence should conduct the defence.

Senator BOLKUS—It is a fudgy response, Mr Cornall. I note that you have been cooperative this morning but 'if Mr Kenny raises it then we will look into the matter'. I am just asking you, as the relevant law enforcement agency here, to ask that the decent, internationally accepted principles of process apply to two Australian citizens. Why won't you say, 'Yes, we will do it'?

Mr Cornall—Because we are not conducting the defence. We have taken steps, as you know, to ensure that the process to be undertaken before a military commission, if one is held, is fair and reasonable, and the steps that we have taken to improve the terms and conditions of a trial before a military commission have been well publicised and have been well explained to this committee in previous estimates. But in terms of the conduct of the defence we think it is appropriate that that be conducted by the defence lawyers as they see appropriate.

Mr Ford—I may be able to assist with further information about the US rules relating to provision of evidence and so on. I can table this document, but the relevant paragraph from the relevant military commission order is in a section headed 'Procedures accorded the accused'. It says:

The Prosecution shall provide the Defense with access to evidence the Prosecution intends to introduce at trial and with access to evidence known to the Prosecution that tends to exculpate the Accused. Such access shall be consistent with—

and it gives the relevant provision.

Senator BOLKUS—Thank you. Mr Kenny has, on 13 May, called for the transcripts of records of interviews to be made available. What we were told by Mr Kenny was that the Attorney-General has refused to provide transcripts of those records of interviews on the basis of national security. Obviously you did not know that a few seconds ago, or did you?

Mr Cornall—Sorry, Senator. I thought you were speaking about his interrogation by the United States.

Senator BOLKUS—That is right.

Mr Cornall—We have records of interrogation of Mr Hicks by Australian authorities for Australian intelligence purposes. I think that is the record that Mr Kenny is referring to there. And that is the situation: the Attorney-General has refused to make those transcripts available on the basis that they go to national security concerns.

Senator BOLKUS—Is that the final response?

Mr Cornall—That is the current response, Senator. That is my understanding.

Senator BOLKUS—Can you elaborate on these national security grounds? That is a blanket response.

Senator Ellison—I do not think the secretary can do that, Chair. It is obvious. If there are matters of national security involved, we are not going to canvass them publicly.

CHAIR—They are certainly matters that we do not explore in open estimates hearings.

Senator Ellison—I will take it up with the Attorney-General and see whether there is anything that the Attorney wants to add to that. It is a decision by government.

Senator BOLKUS—With respect to the US investigation, are we going to seek that it be a public inquiry?

Mr Cornall—If there is a military commission?

Senator BOLKUS—No, the investigation into the allegations of practices at Guantanamo Bay—interrogation and torture.

Mr Cornall—No. We have asked the United States to make an inquiry into those matters and report back to us.

Senator BOLKUS—Do we have a problem with it being public?

Mr Cornall—I do not know whether the issue has been considered, Senator.

Senator BOLKUS—Can you consider making a request to the US authorities for the investigation to be public?

Mr Cornall—I will refer that request to the Attorney-General.

Senator BOLKUS—We would obviously like a copy of the report if and when it is tabled or produced over there.

Mr Cornall—I will take that on notice and refer it to the Attorney-General.

Senator BOLKUS—Last time we talked about an agreement for prosecution and you gave us some extracts from it. I sought to obtain the whole agreement. Have you been able to reconsider my request to make the whole agreement available?

Mr Cornall—If we are talking about the same document, it is a document which the United States has asked not to be released. The substantive provisions in relation to Mr Hicks's possible trial have been well publicised and made known to this committee as well.

Senator BOLKUS—Last time we had figures as to how many people were in detention at Guantanamo Bay, how many were sent back and how many were sent back for prosecution. Do we have an update on those figures now?

Mr Cornall—My understanding is that there are marginally over 600 people there, but we will endeavour to confirm that with proper figures during the course of these estimates.

Senator BOLKUS—We had a discussion last time about the possibility of prosecution under Australian law. You said to us that a decision had been made that we could not charge Hicks under any Australian law on the basis of the evidence that we had seen.

Mr Cornall—That is correct.

Senator BOLKUS—We have not seen the transcripts. We have not seen all the evidence, have we?

Mr Cornall—No, but Mr Hicks was visited on a number of occasions by officers from the Australian Federal Police and other inquiries were made, and on the basis of all of that information that we were able to obtain, against a background of seeing what offences may have been committed under Australian law, the material was put to the DPP and the conclusion was reached that there was not a case to be answered.

Senator BOLKUS—On the basis of the interviews with the Australian Federal Police?

Mr Cornall—That is correct, and other inquiries that were made.

Senator BOLKUS—You said to us last time—it was a fair qualification—that we do not have the evidence before us; we have not seen their interviews. How do we know that we cannot charge him on the basis of what he has said to US authorities?

Mr Cornall—I think because you have to look at what possible offences could have been committed. The fact is that there was no offence at that time which would have encompassed any of the actions alleged to have been undertaken by Mr Hicks. They were not undertaken in Australia; they did not amount to an offence under the foreign incursions act; and our terrorism legislation was at that point not passed, and when it was passed it was not retrospective.

Senator BOLKUS—If, for instance, he has told the US authorities that he had been involved in something in Australia which he did not tell the AFP, it is possible that he could be charged in Australia regarding those activities.

Mr Cornall—If that had occurred, I would imagine that would have been brought to our attention because there has been a lot of discussion about the possibility of charges being brought in Australia.

Senator BOLKUS—We had a brief mention earlier of Habib. He does not have a lawyer. Mr Holland said in February that the government has asked US authorities to move as quickly as they can to finalise or determine his circumstances. Is he any closer to getting a lawyer?

Mr Cornall—I believe the matter has been advanced by the United States but a decision has not yet been made. Under the arrangements for the military commissions and the detention of people at Guantanamo Bay, they do not have access to a lawyer until they have been nominated as eligible for prosecution.

Senator BOLKUS—There have been some recent domestic law rulings in the United States indicating that maybe these prisoners do have some fundamental rights of process, including access to lawyers. Have you seen those?

Mr Cornall—Yes, I have.

Senator BOLKUS—And they do not apply to Habib?

Mr Cornall—My understanding of the situation is that there is a case being heard by the Supreme Court; the decision has not yet been handed down. The basic thrust of that application is to determine whether American courts have the right to entertain applications for habeas corpus from aliens held by the United States not on American territory. There is American authority in the case of *Johnson and Eisentrager*, which is 1950 or thereabouts, which says that they do not have those rights. The question now is: what will the current Supreme Court determine in relation to that earlier precedent? If it were to take a different view, it would mean that American courts could consider a habeas corpus application.

Senator BOLKUS—On page 76 of the transcript from last time you acknowledged that the process he was going through was the part of the American process when the lawyers were involved—the bargaining about whether he was going to be charged and what he was going to be charged with and so on. That is what I took it to mean.

Mr Cornall—We have insisted and the Americans have agreed that, before plea bargaining negotiations are undertaken, Mr Hicks and Mr Habib have legal representation. That has been agreed and we have made that clear before.

Senator BOLKUS—Would the Americans allow a lawyer to represent Mr Habib if that lawyer was funded by the Australian government?

Mr Cornall—In terms of a grant of legal assistance—is that what you mean?

Senator BOLKUS—Yes.

Mr Cornall—Yes, I do not see any problem with that.

Senator BOLKUS—Mr Hopper does not get legal assistance, does he?

Mr Cornall—No, not yet. We would normally not discuss matters about grants of legal assistance, but my understanding is that Mr Kenny has made this public—that he has received a grant of legal assistance to defend Mr Hicks.

Senator BOLKUS—I think we made it public here. So Mr Hopper has asked for legal assistance support?

Mr Cornall—I would have to go back and check the correspondence but the fact of the matter is that until Mr Habib is nominated as eligible for prosecution before a military commission he is not entitled under the American rules to have a lawyer have access to him, so it is premature at this stage. If he is so nominated, I would expect to receive such an application from Mr Hopper.

Senator BOLKUS—If he is not eligible, or if he is, is a pretty critical decision.

Mr Cornall—It is, because if he is not eligible he may well be released.

Senator BOLKUS—That is right. Why don't we try to support him by making legal aid available to Mr Hopper and asking the Americans to factor in Mr Hopper or some other legal representative from Australia as part of the discussion-negotiation process with Habib?

Mr Cornall—Because the Americans have strict rules about how they are dealing with all the detainees at Guantanamo Bay and, at this point in the process, they will not allow and will not take any notice of a private lawyer acting on behalf of a detainee.

Senator BOLKUS—When did we last ask for legal representation to be made available to Habib?

Mr Cornall—I am not sure that we have asked for legal representation to be made available to him, because we understand the process that was followed for Mr Hicks and that is that the lawyer was permitted to be appointed and to go and see him after he was nominated as eligible for prosecution.

Senator BOLKUS—So when Mr Holland told us last time that the government has asked the US authorities to move as quickly as they can to finalise or determine the circumstances, that was not referring to a request for legal assistance?

Mr Cornall—No, that was to determine whether they are going to make him eligible for prosecution or they are going to decide that he should not be eligible for prosecution and presumably release him.

Senator BOLKUS—So you are telling us that we have not asked for legal assistance for Habib although he is a person we acknowledge has mental problems and he has been there for almost three years?

Mr Cornall—We have asked for him to be assessed and we have also asked for his case to be dealt with as quickly as possible so a decision can be made as to what is going to happen to him.

Senator BOLKUS—Do you have any idea as to what part of the process of consideration he is in at the moment?

Mr Cornall—We understand from the Americans that they have agreed to expedite the consideration of his case, as quickly as they can, and we are very hopeful that will come to a conclusion shortly.

Senator BOLKUS—They told us that about a year ago. When did we last go back to them?

Mr Cornall—I would have to check. This has been the subject of ongoing discussions with the United States and they are well aware of our concerns.

Senator BOLKUS—Last time, I raised the question of whether Hicks and Habib were being held legally and I asked for a copy of the international law office advice on this. Can we have that advice?

Mr Cornall—In accordance with the normal practice, we do not provide details to this committee of legal advice given to government.

Senator BOLKUS—Whether a person is held legally or not quite often depends on the duration of detention. When did we get this advice from the Office of International Law?

Mr Cornall—In relation to all aspects of legal advice about this matter it is just not possible for me to provide you with answers to these sorts of questions.

Senator BOLKUS—No, you do not tell me what is in the advice; but I can ask you when the advice was sought and when it was given, and it is accepted practice for you to tell me that.

Mr Cornall—The answer is: I do not know.

Senator BOLKUS—Can you find out and come back to us?

Mr Cornall—I can seek to find out.

Senator BOLKUS—And will you raise with the Office of International Law, for them to consider, the issue of the duration of detention and whether that affects the legality of detention?

Mr Cornall—I will take the question on notice and to the extent that we are able to answer that in accordance with the normal principles I will do so.

Senator BOLKUS—There has been a request for Mr Hicks to go and visit his son. Have we put that to the Americans?

Mr Cornall—I do not know. This was in the paper, I think, just the other day.

Senator BOLKUS—Yes.

Mr Cornall—We have negotiated, as part of the arrangements for any trial, that two members of Mr Hicks's family can attend the trial. The issue of visiting him prior to the trial has just been raised and I do not know the answer to your question. My understanding is that, in the negotiations we had with the United States, getting to the point where the family would be able to attend the trial was part of an extended negotiation. Visiting before the trial would be a new matter that would have to be taken up separately.

Senator BOLKUS—Could you take that up?

Mr Cornall—Yes.

Senator BOLKUS—Mr Habib seems to be of the view, we are told, that his family is dead. In those circumstances would we consider asking the US authorities to allow Mrs Habib to visit her husband?

Mr Cornall—I will take that on notice.

Senator BOLKUS—I have a final general issue. I read some stuff recently from one of the lords in the UK where he refers to what is happening here as a 'monstrous failure of justice'—2½ years in prison, isolation and so on—and says that what we have is an inversion of the system of law where you are guilty until proven innocent. Those sorts of issues were not key issues when this process first started, but 2½ years down the track I think a lot of people, including me, are starting to get really concerned about an abuse of process here where, as Lord Johan Steyn says, there has been a monstrous failure of justice. That has to be of concern to law enforcement agencies in Australia as well, doesn't it?

Mr Cornall—Firstly, we are concerned about the time being taken. We have asked the United States to expedite the determination of these matters as quickly as possible. We have done that on several occasions.

Senator BOLKUS—Have we put it to them—

CHAIR—I do not think that Mr Cornall had finished, Senator Bolkus.

Senator BOLKUS—I am sorry; I thought he had.

Mr Cornall—In relation to the other aspect to that comment, while I understand how those comments can be made, the fact of the matter is that this is not a criminal justice situation; it is detention in a war situation, and prisoners of war are held for the duration of the conflict without charge and without rights other than those set out in the convention. So it is a very different situation to the situation contemplated in a criminal justice environment. But I agree with the thrust of your remarks, that it has now been a long time. The government is very concerned about that as well and wants the situation to be resolved as quickly as possible.

Senator BOLKUS—Minister, this is obviously an intolerable situation, given the length of time it has taken and the fact that two Australians are there 30 months later without a charge over their heads.

Senator Ellison—There has been some progress in this matter. Last September, I think it was, I was in Washington discussing this matter with US officials, and the Attorney-General has gone to Washington and raised it with US officials. I understand the Prime Minister raised this matter when the President was in Australia, and there is some indication that the Prime Minister will raise it again in his visit to the United States. That is a demonstration of the Australian government's concern in relation to this matter. There has been some progress in relation to Mr Hicks since September last year. We have had an agreement put in place in relation to things such as the death penalty not being applied and a whole range of other issues. You have seen Mr Hicks with his defence counsel now in place and vigorously representing his interests; and also the Attorney-General, as a result of his visit to Washington earlier this year, indicating that he was optimistic that Mr Habib would be included in the next round of people who were decided to be eligible for trial. That is progress.

We have indicated that we would like matters to move along more quickly, and the government have said at all times that this is an issue which should be resolved as soon as possible. We have said publicly that things should not be left to go on unresolved. In our representations to the United States we have made those points very clearly and will continue to do.

Senator BOLKUS—Essentially what you are saying is that over the last six months we have got him a trial and we have got an assurance that he will not be hanged or put in the electric chair. But if you are sitting in—

Senator Ellison—And also aspects of the procedure.

Senator BOLKUS—And you have established procedures for prosecution. But we have not got him a charge, and six months after your visit he has spent another 183 days in solitary confinement. What progress is that?

Senator Ellison—I think you have to remember that, as Mr Cornall said, Mr Hicks now has representation. I cannot comment—indeed, it would be inappropriate for me comment—on what his counsel may or may not be doing in relation to the US authorities. There are all sorts of avenues that could be pursued by counsel in this situation and in the stage of

proceedings that we have. For a government to be commenting on what counsel is doing would be inappropriate. It is really a matter now for Mr Hicks's counsel.

Senator BOLKUS—Minister, I just put it to you that all we are talking about is defining processes for trial.

Senator Ellison—I can tell you if I were representing Mr Hicks I know what I would be doing. I would not comment on what counsel should be doing for Mr Hicks, but certainly I would presume that Mr Hicks's counsel are not just sitting by doing nothing. That is certainly not my impression. From what I have seen in the press, they have been extremely active in pursuing his interests. I am not privy to the negotiations between the United States government and Mr Hicks's counsel, but from what I have seen in the press they are no doubt in active negotiation.

Senator BOLKUS—Mr Kenny seems to be doing his job very well, but you are not—

Senator Ellison—And Major Mori is not doing a bad job either.

Senator BOLKUS—And Major Mori. I did not mean to exclude him.

Senator Ellison—He has been pretty vocal. In fact, one of the requirements of the commission is that there will be vigorous defence, and I think that has been provided.

Senator BOLKUS—What I am suggesting to you is that we can leave them to do their jobs—and they are doing them well—but, as minister with responsibility for the rights of Australians, don't you think you should be upping the ante? Shouldn't we be saying to America: 'Two and a half years is too long. Either put up or just do what you might do with these blokes at the end of the day and—

Senator Ellison—There is counsel on the job for Mr Hicks. I am not going to presume to tell them how to do their job. Right now they are making statements publicly and from all accounts, as I say, are pursuing this vigorously. Whilst those counsel are talking to the US authorities, it is inappropriate for the Australian government to come in over the top and be telling everybody how things should be done. The fact is that his lawyers are there working on the case and that is appropriate.

Senator BOLKUS—Minister, that is right, but I am looking to you and your responsibilities for the treatment of Australian citizens in a detention centre abroad. Given all the evidence you have heard this morning, everything you have seen and everything you know, shouldn't we be saying to the Americans that 2½ years without a charge is too long?

Senator Ellison—As I said earlier, we are saying to the United States authorities that we want the matter resolved as soon as possible. We have been saying that, I might add, at the highest level possible. Representations have been made by the Prime Minister, the Attorney-General and me to our counterparts in the United States. Officials at both levels have been working in relation to that. We are not giving up in relation to the question of moving things along at all. But when you talk about the detail of negotiation, where we are at and charges being laid, that really is a matter for the counsel for Mr Hicks. As a government we can say that we want this matter resolved as soon as possible and we are saying that.

Senator BOLKUS—Mr Cornall, why is it that we think that the Geneva convention does not apply?

Mr Cornall—The position taken by the United States is that when you read the convention it talks about armed forces, forces of a state, soldiers in uniform and so forth, and those are not conditions that are fulfilled in relation to terrorist attacks.

Senator BOLKUS—Has the A-G's been asked by DFAT for advice about the Geneva convention and its application in Guantanamo Bay?

Mr Cornall—Again we get into this issue of legal advice. The fact of the matter is that this is the United States interpretation. A reading of the convention indicates that when it was written in about 1949 or 1950, clearly, it was, with Second World War types of conditions in mind. It just does not meet the needs of the terrorist environment that we have today. The convention does not squarely sit with the circumstances that are now confronting the United States and the rest of the Western world.

Senator BOLKUS—There are two issues there. One is the legal argument as to whether it applies. The second one is the practical argument of whether we think that it is appropriate, given current events.

Mr Cornall—The United States has assured us that they would apply the principles of the convention while not acknowledging that the detainees at Guantanamo Bay are prisoners of war in the Geneva convention sense.

Senator BOLKUS—You seem to be inferring that we actually think that the convention does apply.

Mr Cornall—I do not believe that I am inferring that, but Mr Campbell wants to add to this answer.

Mr Campbell—The first point is that they are in US custody, therefore it is the US's obligations and it has made an assessment of its obligations about whether they are prisoners of war. It says that they are not combatants for the purposes of the Geneva convention. The other issue is that, of course, the US has slightly different obligations relating to the assessment of whether people are or are not combatants, because they are not a party to additional protocol 1 to the Geneva convention and we are.

Senator BOLKUS—They are our citizens, so obviously we are engaged and involved, and we have spent some time this morning on it. When did DFAT ask for advice as to whether the convention applies? Can you give me that answer?

Mr Campbell—Senator, I think you said earlier that the practice is not to reveal the contents of the advice, but our understanding was slightly broader about whether advice has been sought and the content of that advice.

Senator BOLKUS—That is not an issue, Mr Campbell. You can go back for years. It has been an established practice that we can ask whether advice can be sought and you have an obligation to answer that. We can ask when it was sought and you have an obligation to answer that. You do not have an obligation to tell us what is in the advice. I think that someone as experienced as you would know that.

Mr Campbell—That is not entirely consistent with my recollection, Senator.

Senator BOLKUS—Mr Cornall, what is your recollection of the practice? We have been through this quite a number of times in this committee.

Mr Cornall—My understanding was that we did not disclose whether advice had been sought and did not disclose dates on the basis that that itself gave an indication about matters which I think may have had an effect on the government. All I can say is that we do not know the answer to the question without notice in any event. We can take the issue on notice and to the extent that we are able to answer the matter we will.

Senator BOLKUS—In the meantime I might ask the Clerk of the Senate for his advice on this issue which you have raised this morning, which, as I say, has been established practice in the past. In considering the request, I would ask you to look at established practice. The final issue I have is FOI. I gather that there has been a request for documents to be made available under FOI.

Mr Cornall—Who has that request been directed to?

Senator BOLKUS—I gather that there was one request from the *Australian*. Do you know of any others?

Mr Cornall—To whom? To the department?

Senator BOLKUS—To the department.

Mr Cornall—That may be the case, I do not know the details of it. If we have received an FOI request, we will deal with it in the normal way and deal with it in accordance with the provisions of the act.

Senator BOLKUS—In that respect I gather that—and from your first answer you may not know the answer to this second question—there was a decision to override an AAT decision on this matter to make information available. Maybe we should raise this with your FOI section.

Mr Cornall—Can I take the question on notice?

Senator BOLKUS—Sure. Can you come back to us later in the day?

Mr Cornall—I will endeavour to do that.

Senator BOLKUS—Could you come back to us with information as to how many FOI requests have been made in respect of this matter and what the outcome was of each of them?

Mr Cornall—Yes.

Senator Ellison—The matter of Mr Hicks and Mr Habib was due to be dealt with under output 2.2.1. I take it now that we have dealt with this issue.

CHAIR—I understand that to be the case, yes.

[10.42 a.m.]

Federal Court of Australia

Senator LUDWIG—I want to get an appreciation of the number of migration matters, if you can separate those out. We have talked about this on occasion. In terms of the Federal Court's involvement in migration matters now, could you give the committee an update on

exactly where we are at with (a) the number of migration matters that are specifically being raised either at first instance or being referred from the High Court and (b) a dealt-with rate for the last 12 months or so—that is, those which have been successful, and those successful on appeal or those denied.

Mr Soden—There are a lot of questions there. I have brought with me a handout of information along the lines of what we have provided to the committee in the past. I can table that. It answers many of your questions. It does not answer questions in relation to success rate or results.

Senator LUDWIG—I was asking about those where at first instance the applicant was successful or not in relation to migration matters and, if they are on appeal in the Federal Court—whether it be before a full court or a single judge—whether those matters on appeal by the applicant have been approved or allowed.

Mr Soden—I have some information with me in relation to the results of the s157 remittals and the Muin and Lie remittals. I can take you through those—that would not take too long. I do not have with me detailed information about the results of what I would describe as the regular cases. I would have to take that on notice.

Senator LUDWIG—That would be helpful. In the interim you could take us through Muin and Lie, please.

Mr Soden—I table the usual statistics, and I can take you through that if that would be helpful.

Senator LUDWIG—Yes.

Mr Soden—In relation to the s157 remittals, I will break them down by state. There are only three states involved. There have been 45 matters received in New South Wales, 99 in Victoria and the bulk of 485 in South Australia. Of the 45 in New South Wales—and this is indicative of the trends in the other states—37 have been discontinued or dismissed; three have been allowed; and there is a combination of some transferred to the Federal Magistrates Court, one judgment reserved and one pending. In Victoria, of the 99 matters received, 45 were discontinued and there is a similar breakdown. In relation to South Australia, which is the state in which most of the s157 remittals were received, 485 matters were received, 446 of which have been discontinued or dismissed; four have been allowed; two have had judgment reserved; seven have been transferred to the Federal Magistrates Court; nine have been transferred to other registries in the Federal Court; and 17 of the 485 are listed for hearing.

With respect to Muin and Lie, most of the matters are post July 2003 remittals. In New South Wales, of the 1,318 that have been received, 190 are still listed for directions, 21 are waiting for the directions and 1,101 matters have been either discontinued or dismissed. That is similar to the trend in the s157s.

Senator LUDWIG—How many are remaining in both of those?

Mr Soden—There are about 200 in New South Wales. In South Australia there were not as many Muin and Lie matters as there were s157; there were only 18 matters. But, again, 10 of the 18 have been discontinued or dismissed.

Senator LUDWIG—Is there any reason for that?

Mr Soden—Yes, there is.

Senator LUDWIG—For both the s157 and the Muin and Lie discontinuations.

Mr Soden—It is a combination of two things, I think. One is certain; one I am not so sure about. The procedures that we adopted in South Australia and subsequently in New South Wales following the South Australian experience required the applicant or the representative of the applicant—and in South Australia that was one person—to comply with certain directions in relation to better clarifying the basis of their case. Under our rules of court, it is open to the court to dismiss a proceeding for failing to comply with directions. As it occurred in South Australia, often a matter was discontinued because the direction could not be complied with.

A similar arrangement has taken place in New South Wales with the Muin and Lie matters. All of those matters are being managed by one judge. That judge is going through a similar process: giving directions and requiring the applicant to put on a better case, in effect—that is, to put on particulars of the error that they are asserting. If there is a failure to do that then the court can dismiss the proceedings. It is a full hearing and therefore it is deemed to be an interlocutory proceeding and there can be an appeal from that dismissal. To get an appeal you must apply for leave, and there have not been many applications for leave to appeal.

The other part of the answer involves the issue of whether there was any merit in those cases in the first place. Because so many have been discontinued or failed to comply with the directions, there is a perception that there was no merit in any of those cases. On the other hand, one cannot be certain about that because it may be that the applicant has not had the benefit of individualised legal representation. In South Australia, for example, one person was representing all of those applicants and may not have had the capacity to undertake the work to identify whether there was an error that could be relied on. There are similar circumstances in New South Wales. By way of illustration of the effect of that, with respect to the usual statistics, if these could be tabled, I could talk to you about them.

Senator LUDWIG—If we could have them tabled, that would be helpful.

Mr Soden—In relation to the results of what I would describe as the routine matters in the Federal Court—that is, matters other than the S157—I will need to take on notice the question about the details of the results of those.

Senator LUDWIG—Thank you. Do you want to go to this document now?

Mr Soden—I draw your attention to page 6, which is the last page. This is an additional piece of information that I have provided, and I did it for the purpose of indicating the extent of the matters disposed of by the Federal Court in the first quarter of this year compared to the other quarters in the past. On average there would have been about 220 or 250 per quarter, leading up to this quarter, which has nearly 1,200. That high figure involves the Muin and Lie and the S157 dispositions.

Senator LUDWIG—Of those 1,187, those remitted, you are now saying that effectively there are about 200 left?

Mr Soden—Yes, I think that is the figure.

Senator LUDWIG—I am happy for you to check that to get a more precise figure.

Mr Soden—It is approximately 200. I do want to highlight that that is an example of a procedure that we implemented—

Senator LUDWIG—A court managed process that ensures that matters can be dealt with expeditiously and fairly? Those are my words but I take it that that is what you mean?

Mr Soden—That is a good summary of it, Senator.

Senator LUDWIG—Are you aware of a bill that has been sought to be introduced into parliament dealing with judicial review? Has the Federal Court been consulted in relation to that bill?

Mr Soden—We are aware of it, Senator.

Senator LUDWIG—It is in answer to S157—or purportedly in answer, by the A-G's department. Have you been consulted about it?

Mr Soden—Not that I am aware of.

Senator LUDWIG—I see from the statement of cash flow that the court is estimating a net cash deficit of \$0.703 million in 2004-05 and that the funds will be drawn from the court's appropriation receivable held in the official public account. What has caused that to come about?

Ms Hicking—In 2004-05 the court will be drawing down on the appropriation receivable for the purchase of assets. So it is a contribution to different assets that we will purchase across the court.

Senator LUDWIG—What does that mean effectively—that the budget is insufficient?

Ms Hicking—It means that, with respect to 2004-05, we have set aside some funds in previous years that we will use in the forward year.

Senator LUDWIG—How much is in those funds that you have set aside?

Ms Hicking—Within the court's appropriation receivable that is held at the department of finance, there is a budget estimate of \$12.2 million.

Senator LUDWIG—Does that mean that your budget has been exceeded for 2004-05 and that you require additional funds to be supplied from that appropriation account?

Ms Hicking—Yes. It is rather a timing issue.

Mr Soden—It is more a cash flow problem.

Senator LUDWIG—There was no additional funding that I can see, other than some small amount—not that small: \$1.457—in the court's appropriation arising from the transfer of funds from the Attorney-General's Department for the provision of library services. Are they the only additional funds that have been set aside for the Federal Court in the budget?

Mr Soden—That is true.

Senator LUDWIG—I notice that your figure 1 in relation to the PBS seems to indicate that your benchmarking for 2003-04—although it says 'part'—is 93.3 per cent. That is on page 292. It appears that the benchmark is 85 per cent. Excluding bankruptcy and native title

matters, you are in excess of that. What is causing the significant overrun from what you expect the benchmark to be?

Mr Soden—That 93.3 per cent does include bankruptcy, but it excludes native title. But the major reason for that is the large number of migration cases that have been disposed of in a very short period of time. I would not say they were young migration cases, but they were young for us if you take them from the time we received them as remittals from the High Court. That did increase our—

Senator LUDWIG—Does the migration workload file that you have handed up include the length of time it takes to settle or to resolve matters?

Mr Soden—No, it does not, but I can give you some information about that.

Senator LUDWIG—I was looking for how speedy your court might be.

Mr Soden—The last time we did a calculation on it—and I am happy to take the detail on notice, but I do not think it has changed—

Senator LUDWIG—Yes.

Mr Soden—I can indicate that we have fixed a desirable time frame of four months for applicants in custody and six months in other cases. In respect of the last financial year—and I have no reason to believe it has changed—we were able to process 68 per cent of the applicants in custody within that four-month period. In respect of the others, with the six-month time target, we were able to process 88 per cent. I do not have any reason to think that those percentages have changed dramatically, but I will take that on notice and provide that to you.

Senator LUDWIG—Do you have the figures in relation to the transfer to the Federal Magistrates Court?

Mr Soden—In the material I have provided to you, I should indicate that page 1 shows a yearly figure. We have not put any quarterly figures in there; that would distort that graph. Those figures show the Federal Court, the Federal Magistrates Court and the totals. Mr Kellow has some details.

Mr Kellow—We have some figures on the matters transferred in this financial year to date—actually to 30 April in the last two financial years. In the current financial year to date, the Federal Court has transferred 278 migration cases to the Federal Magistrates Court. In 2002-03, there were 657 migration cases transferred by the Federal Court to the Federal Magistrates Court. And in the financial year 2001-02 there were 162 migration cases transferred.

Senator LUDWIG—What about cases other than migration matters?

Mr Kellow—I would have to take that on notice.

Senator LUDWIG—Like family law matters.

Mr Kellow—We do not—

Senator LUDWIG—I will reserve that one for the Family Court. I mean matters other than family law.

Mr Soden—I do not have that information. I think the Federal Magistrates Court would have that information.

Senator LUDWIG—I can ask them how many they have received. How many have been remitted from the High Court to the Federal Court—are they in these figures?

Mr Soden—They were in the figures I mentioned earlier—the Muin and Lie.

Senator LUDWIG—But they were migration matters. I mean those more generally—those other than migration matters.

Mr Soden—There is a handful.

Mr Kellow—Very few.

Senator LUDWIG—I was just trying to get a comparison between the two as to how many are remitted outside migration.

Mr Soden—I can recall seeing the figure some time ago. It is single digits per annum.

Senator LUDWIG—Is it fair to say that the bulk of remittals are migration matters both from the High Court to the Federal Court and from the Federal Court to the Federal Magistrates Court?

Mr Soden—Yes, there is no doubt about that.

Senator LUDWIG—Are you still using FEDCAMs?

Mr Soden—Not everywhere. The new system, Casetrack, has commenced in some registries. All of the registries will be completed by the end of this year. We have started with the smaller registries first. So FEDCAMs is being used and Casetrack is being used.

Senator LUDWIG—It must be difficult.

Mr Soden—In some places we are doing two systems, but that is in the smaller registries. The biggest issue for us at the moment is the migration of the data from FEDCAMs to Casetrack. A lot of work is being done on that. It will end up being successful, but is not an easy job. It is such an old system and the categorisation of the data in FEDCAMs is different from what it will be in Casetrack. We have to go through a process to convert. I am confident that it will work well, but it is taking a lot of work.

Senator LUDWIG—Where is the money for that coming from? Is the move to Casetrack coming out of your existing budget?

Mr Soden—It is. I have provided this committee with details about that in the past. I mentioned on the last occasion that we had a budget for the project of \$3.025 million. We are going to come in a little under budget—at about \$2.9 million. The reason for that is that when we developed the costings for the project we estimated funds for what we call ‘bureau services’—that is, the bureau that provides services back to us. That is turning out to be the Family Court. We have negotiated with them a very good arrangement in terms of their costs. It is a good result for the Commonwealth.

Senator LUDWIG—When do you think that will be completed?

Mr Soden—All of the registries are programmed to go live by the end of this year. That will be the full suite of the Casetrack facilities, which will include public and practitioner access over the Web to the system.

Senator LUDWIG—Has the FMS decided to introduce the same or are they using a different system?

Mr Soden—No, they are involved in the same project.

Senator LUDWIG—What about the High Court? I can ask them separately, but I was just curious as to whether or not they have spoken to you about utilising the same system.

Mr Soden—I should indicate for your assistance that all of the equivalent of me in those courts met earlier this year to have a look at how we might all take advantage of Casetrack and how the other courts might take advantage of the other development work we did with the e-court forum and electronic filing. We are all looking at how we might be able to do that.

Senator LUDWIG—The only other issue I have is what you mentioned—the e-court. Is there an update on where you are at with that? If my recollection is correct, the last time you said that you had trialed it in the Northern Territory.

Mr Soden—Yes, we are using it at a number of places. It is being used quite frequently in large native title matters. It is more than just in the Northern Territory; it is involved in a large native title matter in the south-west area of Queensland, where there is a lot of potential respondents—land-holders and leaseholders—that are interested in what is happening with the claim. Use of the e-court enables those people to come into the e-court and see what is happening, which avoids a whole lot of other administrative work in informing all those people manually.

I should say, though, we are not proposing to extend the present e-court facility. It was really done as a pilot to test not only the feasibility but also the concept. It has worked well. What we do propose is to integrate a better e-court environment into Casetrack, because at the moment they are not integrated. We are doing work on that integration project at the moment, which means that Casetrack will be the basis upon which the information will be available in the e-court forum. At the moment e-court is separate from FEDCAMs, so there is no interactivity.

Senator LUDWIG—Was there any conclusive report in relation to the pilot program on the e-court?

Mr Soden—No, there was not. I should indicate, because we have provided it to the other courts and to the Law Council, that we did engage consultants that had a look at how to integrate e-court with Casetrack and what we ought to do by way of integration for the future. That consultancy involved a consultative process with people who had used the system and concluded that it worked well. But everyone wanted proper integration so that in e-court they could get information out of the Casetrack system and vice versa. I would be quite happy to make that report available.

Senator LUDWIG—If that consultancy report is available, the committee would be happy to receive it from you.

CHAIR—As there is nothing else for the Federal Court, Mr Soden, thank you very much.

[11.06 a.m.]

Federal Magistrates Court

CHAIR—We will move on to the Federal Magistrates Court.

Senator KIRK—I note in the portfolio budget statements that there is an extra \$34.2 million allocated for the appointment of eight additional magistrates. Is that correct?

Mr May—Yes, there is \$34.2 million. Just over \$4 million of that is an equity injection and the rest is recurrent funding over the next four years.

Senator KIRK—The \$4 million is for recurrent funding and the remainder—

Mr May—No, the \$4 million is the equity injection for the fitout and the balance is an amount this financial year of just over \$6 million and then roughly \$8 million in each of the following years. The difference in those years is that the funding this year starts in October, not in July.

Senator KIRK—I understand that the appointment of the eight additional magistrates is over four years. When is it proposed to employ these additional magistrates?

Mr May—The appointment is really a matter for the government, but the funding has been provided on the assumption that the federal magistrates will be appointed from October of this year.

Senator KIRK—How many federal magistrates are there at present?

Mr May—There are currently 23.

Senator KIRK—So eight additional magistrates is quite a reasonable increase.

Mr May—It is indeed.

Senator KIRK—Is there any idea yet as to what these magistrates will be employed to do?

Mr May—The money has been provided so that they will do migration work. The workload of those individuals will not necessarily be 100 per cent migration. The court works on the basis that federal magistrates do all of the work of the court. Because of where the new people will be located, it will be the case that they will do a substantial part of their work in the migration area, but the court's undertaking is to provide a certain number of federal magistrate equivalents to do the migration work that has been funded.

Senator KIRK—I guess it depends a lot on when these magistrates are appointed. It is provided for over four years. Is there any proposal to advertise for the appointment of these magistrates?

Mr May—They were advertised Saturday week ago in the *Australian*. The funding is in perpetuity. In the PBS it appears as four years worth of funding, but federal magistrates are appointed for life and we certainly hope that the money does not run out at the end of the four years. My understanding is that that money just forms part of the base. Currently the understanding is that six of those people will be located in Sydney and two of them will be located in Melbourne. The migration work falls very significantly in Sydney and Melbourne and the split of that work is roughly in the 25 per cent to 75 per cent ratio.

Senator KIRK—That 75 per cent to 25 per cent meaning 75 per cent migration—

Mr May—Between Sydney and Melbourne.

Senator KIRK—You said that all eight positions have been advertised in the newspaper?

Mr May—Perhaps the department could give more information about where it appeared, but there was an advertisement certainly in the *Australian* Saturday week ago. From memory, it indicated that positions would be available in the Sydney-Parramatta region and Melbourne. I cannot recall whether it indicated any other city.

Senator KIRK—And the advertisement was for eight magistrates?

Mr May—I do not think it specified the number. It might have.

Ms Leigh—I have a copy of the advertisement I could provide to you.

Senator KIRK—That would be helpful. Perhaps you could just tell us, though, whether the advertisement specified the number of magistrates or whether it was just open.

Ms Leigh—It did not specify the number; it specified the locations for which expressions of interest were invited.

Mr May—Certainly the government's announcement specified the number.

Senator KIRK—And the closing date for the receipt of applications?

Ms Leigh—This Friday, 28 May.

Senator KIRK—Is it proposed that appointments will be made sooner rather than later once the interviews are conducted? What is the normal time frame?

Ms Leigh—As you are aware, appointments are really a matter for the government in each individual case. I could not generalise, but clearly the government has indicated that this is a matter of priority and I am sure the government will be moving as quickly as possible.

Senator KIRK—The normal time between advertisement, interviews and appointment is what—two or three months?

Ms Leigh—As I have indicated, it really does depend on the circumstances of each case. I do not think generalising provides any accurate indication.

Senator KIRK—From what I understand, Mr May, those persons who will be employed will not be working exclusively on migration litigation cases; they will do the range of matters.

Mr May—Indeed. They will be doing at some stage all of the work of the court, which could be bankruptcy, trade practices or family law.

Senator KIRK—So there is no specialisation within the court?

Mr May—There is no specialisation within the court.

Senator KIRK—Could you advise the committee on the trend of migration matters over the last couple of years. Is it the case that the number of cases is increasing significantly?

Mr May—The court has only had that jurisdiction for a short period. There were some figures previously given by the Federal Court. In the first year that they mentioned, almost all of the work of the court came by transfer, not by being filed directly in the court. The

migration workload has increased almost exponentially during that two-year period—or three-year period now.

Senator KIRK—Do you have available for us the figures that show the number of migration cases?

Mr May—It might be best that I take it on notice to give the full period figures. Even in the last year we have noticed an increase month by month. But perhaps I can take on notice the issue and provide the data up to the end of the March.

Senator KIRK—That would be helpful. I am trying to understand this. The announcement in relation to the new magistrates suggested that they were being appointed in order to deal with the increased migration workload. The fact that it is eight potential new magistrates when I understand there are only 23 now is quite a significant increase in the number of magistrates. I would like to know whether or not that is proportional to the increase in the size of the migration workload.

Mr May—Of the 23, approximately 3½ would be allocated currently to doing migration work.

Senator KIRK—Exclusively?

Mr May—Not exclusively. Three-and-a-half 23rds roughly of the judicial work force of the court is currently being allocated to migration work. The funding will allow us to increase that to 11½ 31sts of the judicial workload to migration work. That resource has been provided to do the work that is currently in the court or coming to the court directly and also to do work that is elsewhere within the system, whether that be in the Federal Court or the High Court. So you cannot really look just at the current filings of the Federal Magistrates Court to determine what work the new federal magistrates will have.

Senator KIRK—And that is because those matters in the Federal Court and High Court are going to be remitted to the Federal Magistrates Court—is that right?

Mr May—I understand that some will be remitted to the Federal Magistrates Court, but there will also be a direction of the matters that are currently being filed in the superior courts toward the Federal Magistrates Court.

Senator KIRK—How is that process working? Is that a decision made by the judges in the Federal Court and the like?

Mr May—I understand that the government's announcement talked about legislation to deal with that. To some extent it is already happening in the registries, that matters are being directed at the registry, but there is nothing in the law at present that stops a person filing in the superior courts. Some matters are being transferred, and indeed we are seeing a greater trend towards transfer over recent months.

Senator KIRK—Is there a proposal for legislation that would require certain matters to be initiated in the Federal Magistrates Court or transferred to the Federal Magistrates Court?

Ms Leigh—Yes, one of the legislative reforms that the Attorney has announced is to require migration matters to be filed in the Federal Magistrates Court. At the moment they can be filed either in the Federal Magistrates Court or in the Federal Court.

Senator KIRK—But that would not affect the jurisdiction of the Federal Court. I am just thinking of the original jurisdiction of the High Court, for example.

Ms Leigh—It will not affect the jurisdiction of the High Court, and it is really a matter of channelling all the applications to the Federal Magistrates Court in the first instance. This would not prevent the Federal Magistrates Court referring complex matters to the Federal Court, but it will allow a proper assessment of matters in the one place and, therefore, a more efficient handling of matters.

Senator KIRK—Is it proposed that this legislation would only apply to migration matters, not to the other areas of jurisdiction of the Federal Magistrates Court?

Ms Leigh—In relation to requiring filings in the Federal Magistrates Court, that is correct.

Senator KIRK—What is the reason for that? Why is it only in relation to migration matters, not the other areas of jurisdiction?

Ms Leigh—I think you can make an assessment about the complexity and volume of matters and a means of achieving efficiency in the handling of the matters.

Senator KIRK—Why is that more likely in migration matters than, say, in a family law matter?

Ms Leigh—In family law matters, the issues of efficiency in handling have been dealt with differently. You are correct to say that there is a similar issue there. The particular problem in relation to migration matters has been a matter of concern to the government, so in relation to migration matters this was the solution developed. We had already previously been working on and had solutions for the problem in relation to family law matters.

Senator KIRK—When are we likely to see this legislation presented?

Ms Leigh—That again is a matter for the government but, of course, it has indicated that it is a matter of priority.

Senator LUDWIG—I hope not before June. There is already quite a full legislative program. Is it for the second half of this year?

Ms Leigh—I think I should leave that for the government to respond to.

Senator KIRK—You mentioned before that there are other processes and procedures being put into place to deal with an increasing workload in family law matters. Could you expand upon that for us.

Ms Leigh—There are probably two aspects to your question. One is the complexity of matters and the appropriate place for the matters to be filed in the first instance. The other aspect is judicial resources. In relation to judicial resources, prior to the eight positions that have just been announced, in the last few months the government has appointed four additional magistrates. That will specifically assist with the family law workload. In addition, each time there is a retirement of a judge from the Family Court, an assessment is made about where the family law workload is and, therefore, where that resource should be allocated.

Senator KIRK—So, from what you are saying, when someone retires from the Family Court quite often that person may not be replaced and an appointment might be made at the lower level—say, the Federal Magistrates Court—to compensate for that.

Ms Leigh—That is correct. It would depend on an assessment. There are two or perhaps three issues. The first issue is: should the judicial position be replaced at all; is there a need in the system for that position? Then there is the issue of where in Australia there is the greatest need. Judicial appointments are made for a considerable length of time and needs can shift over time. So that assessment needs to be made. Also there needs to be an assessment of whether it should be in the superior court or in the Federal Magistrates Court.

Senator KIRK—But appointments to the Federal Magistrates Court are also for the same period of time as for Family Court judges.

Ms Leigh—That is correct. I was simply explaining why one would not automatically assume that when a judge retired a judicial resource was needed in the same location. The appointments are for some length of time and therefore the opportunities to look at this issue arise on retirement. It would have been a considerable number of years since that appointment had been made and, over time, the needs may have shifted within Australia.

Senator KIRK—So would it be fair to say that the trend is a movement towards making appointments at the Federal Magistrates Court level rather than at the superior court level?

Ms Leigh—It is the case that we are seeing increasing workload in the Federal Magistrates Court and so because the decision is based on workload you could make that assessment.

Senator KIRK—And if there is legislation which is going to be requiring matters to be initiated at the Federal Magistrates Court level then wouldn't that mean that there is going to be an increasing workload and therefore it is more likely that the appointments are going to be made at that level in future?

Ms Leigh—Certainly channelling cases to the appropriate court. Of course some of those matters, after they are filed in the Federal Court at the moment, are then remitted to the Federal Magistrates Court, so some of those matters are already being handled there. It also relates to the issue of the efficiency of the process for identifying which court they should be considered in.

Senator LUDWIG—With respect to the legislation you are proposing, how much of it can you tell me about now? Is it a channelling legislation designed to bring about the FMS's ability to deal with cases at first instance? How would that prevent someone filing in the High Court anyway? I know from there you could then remit them, and I suspect, as the statistics now show, that many are, but I am just not too sure what other legislation you could effect. I have seen the latest one on judicial review and I would like to question you about that at some stage too, if the chair permits.

Ms Leigh—In relation to your question about the High Court's jurisdiction, no, there is no proposal to remove the High Court's jurisdiction. However, the remittal from the High Court directly to the Federal Magistrates Court would be facilitated and, again, that will improve efficiency. Currently, matters might be remitted to the Federal Court and then they might again be remitted to the Federal Magistrates Court.

Senator LUDWIG—Would you need a change to 39B to effect that?

Ms Leigh—I do not believe that it goes directly to 39B. It is to do with the procedures surrounding that.

Senator LUDWIG—So why can't they do it without legislation if it is a procedural matter? The courts make their own rules, I take it?

Ms Leigh—It is really a matter of setting a framework in place for this streamlining so that things will be remitted to the Federal Magistrates Court.

Senator LUDWIG—Have you asked the courts—the High Court, the Federal Court and the FMS—to facilitate this in their rules and they have said no?

Ms Leigh—I would not put it in those terms at all.

Senator LUDWIG—What terms would you put it in?

Ms Leigh—Those courts were, of course, consulted as part of the review that led to the government taking these decisions. I do not think there is any disagreement in the courts that this is a useful thing to do. It is not an indication that there is some conflict.

Senator LUDWIG—Why wouldn't they just change the rules to facilitate it? I am just not too sure where the estoppel is. If you say the courts all agree and are happy for the process to be dealt with—using my words—why would you need a legislative change? Why wouldn't the simple change to court rules allow the remittal of matters from the High Court to the Federal Magistrates Court?

Ms Leigh—I should probably take that detail on notice.

Senator LUDWIG—Yes. But you seemed to indicate that the legislation was framework legislation. Does it deal with matters other than that?

Ms Leigh—You specifically asked me about section 39B.

Senator LUDWIG—Yes.

Ms Leigh—I was responding to that.

Senator LUDWIG—You said that there was no intended change to that.

Ms Leigh—That is right.

Senator LUDWIG—Then I moved on.

Ms Leigh—In terms of the detail as to where these procedures are set down, that is what I would like to take on notice.

Senator LUDWIG—What I was trying to explore, of course, is this. If there was a change to an act, the first act I can think of would be the Judiciary Act. There might be others. The follow-on from that is that there might be legislative change proposed to that. But in any event why wouldn't court rule changes provide a similar outcome anyway? Then, if you ask the courts to change their rules accordingly, why wouldn't that give you the effect of being able to remit migration matters, for argument's sake, from the High Court to the Federal Magistrates Court? I am not aware—and I will go and have a look at it myself—of any legislative impediment to that. If there is, please inform the committee that there is and I will be only too happy to take your view on board.

Ms Leigh—Yes. I would like to take that on notice if I could.

Senator LUDWIG—All right. Thank you.

Senator KIRK—Can I just clarify the legislation that we are discussing. It involved only remittals from one court to the Federal Magistrates Court? When you first spoke, my understanding was that it would actually require matters to be initiated in the Federal Magistrates Court. Was that a misunderstanding on my part?

Ms Leigh—Yes. I was referring to the whole package of reforms that the Attorney has announced. Those are two components of that package of reforms.

Senator KIRK—So there is that second component that will require matters to be initiated in the Federal Magistrates Court?

Ms Leigh—That is right, as opposed to the Federal Court.

Senator KIRK—We are trying to understand how that would affect the High Court's jurisdiction. It would not prevent a person from initiating in the High Court if they chose to?

Ms Leigh—That is correct.

Senator LUDWIG—It is like an encouragement clause, is it?

Senator KIRK—That is what I was going to say. What is the point really? Is it encouragement only—to try to streamline procedures through legislation?

Ms Leigh—There are other procedures as well that will assist with that issue that the Attorney has announced. For example, when people file now they will be required to identify any previous applications for judicial review in the same matter. So if somebody takes an action—files a matter—in the Federal Magistrates Court and subsequently files a matter in the High Court they will be required to identify that other application. That will facilitate the court dealing with it appropriately so as to avoid needing to relitigate the same matter.

Senator KIRK—Could we have a copy of the Attorney's announcement? I do not think we have a copy of it here. That would be helpful to us. And could we have any other supporting documentation that you have—any other supporting documentation that might spell this out more clearly for us?

Mr Govey—I have the Attorney's press release of 6 May, which I can provide to you. That sets out the details of the legislative package and I hope will make it clear that what we were talking about is legislation that will restrict filings in the Federal Court but, for the constitutional reasons that you are very well aware of, will not have anything to say about any attempt to inhibit filings in the High Court. It will also deal with the movement of cases between the courts, both remittal down and, as Ms Leigh mentioned, where there are complex matters filed in the Federal Magistrates Court, referral up to the Federal Court.

Senator KIRK—I want to ask some questions about the ANAO report and the response of the Federal Magistrates Court to that. This copy that I have here is dated 20 May 2004. It seems, from looking at this, that the ANAO has some concerns about the timeliness of cases in the Federal Magistrates Court. For example, it says that only 72 per cent of matters out of a target of 90 per cent of all defended matters were completed within a six-month period. I also understand that the FMS has put out a response to that which suggests that it supports a number of the recommendations made but not others. Could you give us more detail about the response of the FMS to the recommendations made by the ANAO?

Mr May—Firstly, I will address the issue of timeliness. The court has a timeliness standard, which is that 90 per cent of the matters in the court—and that is all of the matters in the court—will be dealt with within six months. I could take it on notice but my current understanding is that we are meeting that standard in relation to all matters. The 72 per cent figure relates to a class of matters which are applications for final orders. Seventy-two per cent of those matters are being dealt with within the period as mentioned on page 45, I think is it, of the report.

Senator KIRK—Page 46.

Mr May—It is 72 per cent within six months and 92 per cent within 12 months. That is, in fact, quite an acceptable standard for applications for final orders, which are the applications that deal with issues such as parenting and matrimonial property. I say that because those are the types of matters that often need a little bit more time to resolve than, say, a divorce or a contravention application or a child support application or a range of other more technical applications, if I can describe them as that. The mediation process takes a considerable time and is an integral part of the process of resolving applications for final orders. So while the standard is there for the whole of the court's workload to be dealt with within a certain time, and we notionally set that timetable for the final order applications, it would be unrealistic to expect 90 per cent of final order applications all to be resolved within, say, 12 months. Indeed, many would say it is inappropriate to aim to resolve all those matters within that period. It is quite a vexed question.

The other point that I would make is that the court's workload has been increasing over the period since it was established. We started off with around 15 per cent of the family law workload. Currently we are receiving over 40 per cent of all matters coming in, excluding divorce, and 36 per cent of the applications for final orders. So there has been quite an increase in the number of matters coming to the court without, until recently, an increase in the number of judicial resources available to deal with those matters. We believe that with the recent four appointments—there have been four made since January this year—provided the volume of our workload does not increase we now have a judicial resource that will enable us to deal effectively and efficiently with the family law workload that we are receiving. That certainly has not been the case up until the recent four appointments.

Senator KIRK—So you are saying that these figures should improve considerably with the four appointments?

Mr May—Indeed. The other issue you asked me about was the general approach to the ANAO report. Indeed we have said that we agree with most of the recommendations that were made in that report. They were essentially recommendations about practices that are either being adopted within the court or, with reallocation of priorities and appropriate resources, might be adopted within the court. They were relatively unobjectionable recommendations.

The one recommendation that we took issue with was a recommendation that the court should take on the function of quality controlling PDR services provided by community agencies. We took the view that, firstly, that is not the appropriate role for the court; secondly, it is not a role for which we have been given any resources; and, thirdly, in terms of a risk

management approach, it was not appropriate for us to do it in the particular instance referred to by the ANAO because other agencies—in particular, the Department of Family and Community Services—perform that function in relation to those agencies. What we are doing in our arrangements with the agencies is operating a standing offer arrangement which had a life of two years and has been extended to a third year, but which is currently under review. A consultancy within the University of Queensland is about to give us a report on the operation of that scheme. We consider that the approach that has been taken to quality control is quite adequate.

Senator KIRK—When the report is available can it be made available to the committee?

Mr May—It will go to the court and it will be a decision for the court to make as to whether it releases that report.

Senator LUDWIG—You will make that inquiry on our behalf?

Mr May—I certainly will, Senator.

Senator KIRK—When are you expecting that? In the next month or so?

Mr May—I was hoping that it would be on a desk in Melbourne today, so it is imminent.

Senator KIRK—That was recommendation 10 that you were referring to—the one in relation to the PDR services?

Mr May—It was recommendation 9 or 10.

Senator KIRK—What about the other recommendations?

Mr May—We are generally supportive of them.

Senator KIRK—So it is only really No. 10 that you take issue with?

Mr May—Yes.

Senator KIRK—I also see in your response to the ANAO's recommendations that you indicate you are considering implementing what is called a single entry point for family law matters. Could you expand on how that would work and how you see it being implemented.

Mr May—At the moment I do not know how it might work. That is part of the discussion that we are yet to have. The single entry point is something that got picked up in the ANAO report. It is also something that has been talked about in the justice system strategy paper that was released by the Attorney-General earlier in the year. It is a matter of discussion among the Family Court, the Federal Magistrates Court and the Attorney-General's Department. The issue is really the issue that you were talking about before, Senator—directing people at the lowest point of entry to the judicial system rather than at a higher level. Indeed, that is an issue that was picked up in the House of Representatives inquiry as well—this issue about how you bring people into the litigation section of the family law system in the most effective way and in a way that reduces the scope for confusion and doubt and any unnecessary complexity.

The idea of a single point of entry has a range of possibilities. It is variously described as everyone coming in at the Federal Magistrates Court end and then either getting pushed up in the system or staying at the Federal Magistrates Court end. Alternatively, it could be a single

case management pathway running through until the point where it is determined that mediation or conciliation have not worked and the matter must go through to a judicial determination. There are a range of possibilities there. I think it is too early to say which one might come out of the discussions.

Senator KIRK—Is it only in relation to family law matters that you are considering this single point of entry?

Mr May—That discussion is happening in relation to family law matters. With respect to whether there should be a wider discussion about all of the general federal law work, we have already had the discussion about migration. Most bankruptcy work is now coming to the Federal Magistrates Court, so it is another area where possibly a single point may already be operating by default, but it could operate in a different way in the future.

The same discussion is not happening, that I am aware of, in relation to general federal law work yet, although Mr Soden mentioned the idea of a portal—I think that was what he was describing before—which could be part of a single point of entry. I think he was describing the notion of somebody going onto the Internet and finding the Australian courts and working out where to go from that point.

Senator KIRK—You talked about these discussions. What is the nature of the discussions? Are they formal?

Mr May—They are formal discussions between officials at this stage. There are some informal discussions but there is a formal structure.

Senator KIRK—Are there discussions with the department as well?

Mr May—Yes.

Senator KIRK—Do you have any idea as to the timetable in relation to the family law matters and other jurisdictions of the court?

Mr Govey—This is going to involve the usual process of policy advice to the government so I do not think it would be practical at this point to put a time frame on it. It will ultimately be a matter for the government.

Senator KIRK—Has there been any consideration of the matters going into the Federal Magistrates Court—for example, in relation to screening? Where there is possible violence or abuse has any consideration been given to a screening process in relation to the single point entry?

Mr May—That is a matter that has to be considered in those discussions, Senator. There are already a range of mechanisms for ‘screening’—if that is the appropriate word—matters involving domestic violence. There are domestic violence policies that operate in both courts. In fact they have effectively the same policy. If there were a single point of entry that would be one of the issues that would need to be considered in determining whether or not you screen out or screen up in the system particular domestic violence issues or particular family member issues. That is not an issue that I believe will be clear cut. These issues are raised and may or may not be a matter in all litigation for determining whether the matter should be in a superior court or a lower court.

Senator KIRK—In relation to the recommendations of the ANAO I see that you have put out quite a brief response. Is there any intention to implement any of the recommendations that are contained in the report and, if so, what will be the budgetary implications of that?

Mr May—Most of the recommendations of the report can be implemented or have been implemented in some way without additional resources. Some will require additional resources. There are some that go to our financial capacity to provide information materials, for example, and we may or may not be able to work with other courts to reduce those costs. We just have to work through all of that. We have no real indication at this stage about the actual costs that each recommendation might result in but we have indicated in our response where we believe resource issues arise.

Senator KIRK—You are intending to implement the recommendations?

Mr May—We are intending to implement the recommendations subject to the resources and the priorities of the court, which are determined by the federal magistrates.

Senator KIRK—Have you made any representations in relation to additional resources to implement these recommendations?

Mr May—It is too early to do that. The report is only recent and we have not made any representations about resources arising from it.

Senator KIRK—I will ask you about that next time.

Senator LUDWIG—In the PBS at page 311, it talks about evaluations. Are any of those available? It says that a review of the Federal Magistrates Court has been undertaken by the Department of the Prime Minister and Cabinet. I know that it is a matter I can ask of the PM&C.

Mr May—That is the review that has been referred to in previous hearings. I will refer that to Ms Leigh.

Senator LUDWIG—We have been fortunate that the ANAO has made its review public. Have you seen that review?

Mr May—Yes, Senator.

Senator LUDWIG—When did that come to you?

Mr May—My recollection is that that came to me in December.

Ms Leigh—That report was provided to the committee in December.

Senator LUDWIG—I was just wondering whether it was the same one or whether there have been any more.

Mr May—No, that is it.

Senator LUDWIG—So that is the one we looked at then.

Mr May—Yes.

Senator LUDWIG—The Federal Magistrates Court is also contained in the recent release. So you have your strategy paper. Were there recommendations from that strategy paper that were going to be followed up?

Mr Govey—At this stage the report has gone out for consultation and comments. Just recently the period for comments was extended until a date in June.

Senator LUDWIG—I did not see that.

Mr Govey—I think it was announced in a press release. The period was extended until 18 June. I do not have the date of the press release but we could get that for you.

Senator LUDWIG—I went through the press releases and I could not see it there. I take your word for it. How many submissions have been received so far in relation to the strategy paper?

Mr Govey—We will have to take that on notice. We may be able to get it quickly over the course of the day.

Senator LUDWIG—It is fine to take it on notice. The court has commissioned an evaluation of its PDR program. Some questions were asked of you in relation to the ANAO report about the PDR. Has that evaluation been finalised?

Mr May—That is the evaluation that I was talking about with Senator Kirk just a short while ago. I expect to receive the report this week.

Senator LUDWIG—That is the one on the email—the one you are waiting for?

Mr May—That is right.

Senator LUDWIG—If I tie these together then we do not look for other documents. In relation to the additional funding of \$34.2 million over four years, including \$4.2 million capital funding for the appointment of eight additional magistrates, is that only for employing the eight?

Mr May—It provides funding for eight federal magistrates. It also includes some funding for staff in the Federal Magistrates Court and some staff who will be located in the Federal Court registry.

Senator LUDWIG—Is there a breakdown of that anywhere?

Mr May—I will take that on notice. There is a breakdown.

Senator LUDWIG—People could get the wrong impression that eight magistrates are going to get \$34.2 million over four years. I do not think that is quite right.

Mr May—Most of that amount is for the federal magistrates and their direct support staff.

Senator LUDWIG—Yes, but that is ‘and their direct support staff’. If we had a breakdown of how many support staff, how much for additional staff into the FMS and then how much for capital expenditure—office fit-out and finish and those sorts of issues—that would be helpful.

Mr May—I can take that on notice.

Senator LUDWIG—In relation to the number of migration applications filed in the Federal Magistrates Court, in the press release of 6 May 2004 it says that it went from 182 in 2001-02 to 1,397 in 2002-03. The rise in that is attributable to what matters?

Mr May—It is attributable primarily to a transfer of matters from the Federal Court and a change in the filing pattern where litigants are now filing directly in the Federal Magistrates Court rather than the Federal Court. A secondary cause will be some increase in the system. But most of the Federal Magistrates Court increase arises because matters that were previously being litigated in the Federal Court are now being litigated in the Federal Magistrates Court.

Senator LUDWIG—Is there a breakdown of those 1,397 matters? Were they new matters—that is, were they started in the Federal Magistrates Service?

Mr May—There is a breakdown of that available. I will take that on notice.

Senator LUDWIG—Thank you. Were those 1,397 as at 6 May? When was that as at?

Mr May—My recollection is that those figures relate to an earlier period. I will take that on notice.

Mr Govey—I think the press release refers to 1,397. That is for 2002-03.

Senator LUDWIG—Can we update them?

Mr May—We can give those figures through to the end of April.

Senator LUDWIG—So with respect to the breakdown in relation to the 1,397, could you also do that in relation to 2004, as at now—or April is fine.

Mr May—We will do what we can, Senator.

Senator LUDWIG—If you need to go to exceptional lengths to do it, come back to the committee and we can—

Mr May—I do not envisage it being difficult.

Senator LUDWIG—I would imagine you would have those on file. Do they show a continual increase in migration matters?

Mr May—Certainly the current filing figures are showing an increase, month on month, in migration matters in the Federal Magistrates Court. I do not have the figures for other courts.

Senator LUDWIG—That is remittals from the Federal Court?

Mr May—I am looking at the total figures. The total figures coming to the Federal Magistrates Court have been increasing month on month, quarter by quarter. Perhaps I can include that breakdown in the figures that we provide to you.

Senator LUDWIG—That would be helpful.

CHAIR—There being no further questions in relation to the Federal Magistrates Court, we will move to the High Court.

[11.51 a.m.]

High Court of Australia

Senator LUDWIG—Have you brought with you the figures in relation to matters that have been filed—migration matters and the like?

Mr Doogan—I have.

Senator LUDWIG—Could you make those available to the committee or do you want to take us through them? I can go through the usual matters I ask but it must be pretty obvious by now, from previous transcripts of estimates proceedings.

Mr Doogan—They are in the same format as on previous occasions, Senator, and are current up to 30 April.

Senator LUDWIG—Did you want to provide those separately or do you want to take us through those?

Mr Doogan—I am quite happy to table them.

Senator LUDWIG—That would be helpful. The judicial complaints protocol: do we have an update on that? It is an issue I have raised twice, from memory.

Mr Doogan—The protocol is a matter for the department, Senator.

Senator LUDWIG—We come back to you, Ms Leigh. I think I have asked this a couple of times. Do tell me that you have finalised that.

Ms Leigh—That matter is still under consideration.

Senator LUDWIG—It is pretty slack, really, isn't it?

CHAIR—Senator, that is an observation that you are making; it is not a matter for Ms Leigh to respond to. Do you wish to redirect it, Senator Ludwig?

Senator LUDWIG—Minister, it has been going on for quite a while. Can you express to the Attorney-General that it is an issue that we do take seriously, that we do think there should be a protocol and that a protocol should be in place. The Attorney-General, from my recollection, has indicated that it would be dealt with. It is a serious matter and we think that the government should take it seriously and finalise it. There does not seem to me to be any reason why it should not be finalised.

Senator Ellison—It is a serious issue, not one we would rush into. We want to get it right; I think everybody would agree with that. I will take it on notice and take it up with the Attorney and see where we are at. It is not something that you would just do on the basis of a knee-jerk reaction. It is an important issue.

Senator LUDWIG—It is not a knee-jerk reaction. How long has this issue been around for, Ms Leigh?

Ms Leigh—I was going to say that I might be able to add a little more information to indicate that the government is active on this matter.

Senator LUDWIG—I am only too happy to hear from you in relation to how active the government is on this issue.

Ms Leigh—At the previous estimates I explained that we had only just received all of the written responses from all of the courts. Since that time the Attorney has met with Chief Justice Black to discuss his particular views on the matter, to inform him better about those issues. Now, as a result of those discussions and all of the written comments that have been provided, the government is considering what changes it might make to that draft protocol

that it provided to the courts for consideration. As the minister has indicated, it is quite a complex matter and so it does require serious consideration.

Senator Ellison—I think that outlines progress since the estimates when this was last raised, in February this year. It is now May. I think that shows some progress.

Senator LUDWIG—When do you expect it to be finalised?

Ms Leigh—I do not think I can provide a date.

Senator Ellison—I will take it up with the Attorney and see if there is anything further.

Senator LUDWIG—It does show—and I am not going to concede the point—that there has been some progress, but this matter has gone on. When did it first start, Ms Leigh?

Ms Leigh—The Attorney sought the views of the federal judiciary in late 2002.

Senator Ellison—We had to get the responses back, of course, and consider those. I am sure the judges had some views they wanted to carefully consider.

Senator LUDWIG—The matter of unrepresented litigants is an issue that we also canvas here. I am wondering about the efforts by the High Court in relation to unrepresented litigants. Last time we were speaking about it you indicated the number seemed to be increasing in relation to unrepresented litigants. I was wondering if you had available for the committee an update on those figures.

Mr Doogan—Yes, we have that and we can table that as well.

Senator LUDWIG—You outlined some matters on with how the court was dealing with the issue of unrepresented litigants. Is there an update on that?

Mr Doogan—Yes, there is. I think on the last occasion I mentioned that we had for some time been in the process of redrafting the rules of court. That project has now been completed. At the present time there are draft rules that have been provided to the Australian Bar Association, the Law Council of Australia and the solicitors-general for comment. Within those rules there is provision for a special protocol, if you like, to be applied to self-represented litigants. Going back to previous occasions, one of the issues that I have previously mentioned is the burden of additional unnecessary cost that is placed upon respondents in the special leave applications. That has been dealt with in the draft rules by creating a protocol in which documents are not served on any other party in the first instance, the aim of that being to allow the discretion of the court to determine whether or not the documents ought to be served on other parties.

Senator LUDWIG—And what do you hope that will do?

Mr Doogan—What that will do is—working on the statistics where, as we know, the vast majority are unsuccessful—prevent unnecessary cost being incurred by the respondent party or parties in the event that it is determined by the court that the application for special leave has no merit.

Senator LUDWIG—Are the draft rules published on the Internet?

Mr Doogan—No, they have not been as yet. The reason for not publishing them is simply to take account of comments that come back from the professional bodies.

Senator LUDWIG—You indicated that you sent them to the professional bodies.

Mr Doogan—Yes.

Senator LUDWIG—When do you expect them to comment?

Mr Doogan—We have asked for a response by the end of July. They will by then have had several months. My understanding is that the professional bodies have established a committee for the purpose of examining the rules and providing responses back to the court. The timing that we are seeking to achieve by this is to take account of whatever the professional bodies have to say about the content—the rules—and make any subsequent changes as a result of that consideration and table them in the parliament in the later part of the year, with the object, hopefully, of having them come into effect from 1 January 2005.

Senator LUDWIG—Thank you. In respect of the other measures that you might be undertaking in relation to the unrepresented litigants, are you doing anything with other courts? There is other research going on as to how to deal with the increasing pressures being put on people to represent themselves rather than seek legal assistance. I did not ask the Federal Court any questions today, but I recollect that they had some programs in place, and others are working on it as well. Have you had an opportunity to discuss those with those courts?

Mr Doogan—Yes. There is an informal body known as the Australian court administrators group, which comprises the senior executives that are responsible for court administration throughout the country, including the state and territory courts as well as the various federal courts. The issue of self-represented litigants is one that has been discussed on and off for several years. The aim of this body is to informally benefit from any research or review that is undertaken within individual courts so that all of the courts have the benefit of that.

Senator LUDWIG—Is the Attorney-General's Department represented on that or is it only the court administration staff per se?

Mr Doogan—It is only the court administration staff as a general rule.

Senator LUDWIG—Has anything arisen from those meetings other than what you have already indicated to us?

Mr Doogan—Nothing beyond what I have previously indicated to you. We have previously discussed the fact that, within the High Court, we have various documents that we have produced for the assistance of unrepresented litigants to assist them to work their way through the legislation and the rules.

Senator LUDWIG—In relation to migration matters—I will come back to that. Of the self-represented litigants, is there a break-up of whether they are migration matters or other matters?

Mr Doogan—No, there is not.

Senator LUDWIG—Would that be easy to undertake?

Mr Doogan—No, it would not. It would mean having to examine all of the files individually to determine—

Senator LUDWIG—I will not ask that question then.

Mr Doogan—Thank you.

Senator LUDWIG—In relation to migration matters, I am looking at the High Court of Australia immigration matters file. If I go down to 2003-04, it shows that there are 255 special leave applications.

Mr Doogan—In immigration, yes.

Senator LUDWIG—That is 43 per cent of all matters?

Mr Doogan—Yes, of all special leave applications.

Senator LUDWIG—And there are eight appeals, representing 13 per cent of all special leave applications.

Mr Doogan—Of all appeals that are currently before the court.

Senator LUDWIG—Is that all appeals or all appeals in relation to special leave applications?

Mr Doogan—No, that is all appeals filed having had special leave granted.

Senator LUDWIG—And removals are those that have been remitted to the Federal Court?

Mr Doogan—Yes.

Senator LUDWIG—And the writs of summons—

Mr Doogan—Sorry, they are removed from another court—not remitted from the High Court.

Senator LUDWIG—Right. So they may have come—

Mr Doogan—Come the other way.

Senator LUDWIG—from the Federal Magistrates Court or the Federal Court.

Mr Doogan—Yes.

Senator LUDWIG—Are the writs of summons 43 per cent of—

Mr Doogan—Three out of the seven matters are immigration matters.

Senator LUDWIG—And constitutional writs?

Mr Doogan—Yes, the same. There are 182 out of 194, which makes it 94 per cent.

Senator LUDWIG—What do those matters usually consist of? They are migration or immigration matters?

Mr Doogan—Yes.

Senator LUDWIG—Is there a breakdown of whether they are constitutional in relation to a business visa or whether they are refugee issues? Is there a way of—

Mr Doogan—No. We cannot give you that. All we can say is that these are immigration matters.

Senator LUDWIG—There is a broad umbrella under immigration matters, as you could appreciate.

Mr Doogan—Yes.

Senator LUDWIG—Is there no way of trying to distil that down any further than that?

Mr Doogan—No. Not without a lot of manual effort.

Senator LUDWIG—Then I will not ask for it now. The total is 452. That is to 30 April.

Mr Doogan—Yes.

Senator LUDWIG—The previous year was 2,384. Am I reading that right?

Mr Doogan—Yes, that is right. They are the Muin and Lie matters.

Senator LUDWIG—Were most of the Muin and Lie matters remitted to the Federal Court, or are they still within your province?

Mr Doogan—Yes, they were.

Senator LUDWIG—I am trying to ascertain if there has been a decrease in the number of immigration matters in this year by rate. It appears that there will be, unless something else crops up between May and December. Am I interpreting those figures correctly?

Mr Doogan—Yes, that is correct. You will see that a number of those Muin and Lie matters at least—I could not say how many but a number of them—will then find their way back into that first column as special leave applications for those cases where they have been dealt with and are unsuccessful.

Senator LUDWIG—We have heard from the Federal Court that there is about approximately 200 s157 and Muin and Lie matters left, if my understanding is right about that. Of those, some may end up as special leave.

Mr Doogan—Yes. That is correct.

Senator LUDWIG—So there has been an overall reduction in the number of immigration matters that have been filed and are being dealt with by the High Court and then remitted to the Federal Court in this year.

Mr Doogan—Yes, that is so.

Senator LUDWIG—It appears significant if you look at the figures now.

Mr Doogan—Yes.

Senator LUDWIG—So Muin and Lie and s157 have not continued to generate further cases. It was a spike in relation to 2002-03. Is that how I should be reading those figures?

Mr Doogan—Yes, that is right. You will recall from previous occasions that the vast majority of those cases were being dealt with by two solicitors: one in Sydney and one in Adelaide. It would appear that those individuals are not as active as they were previously.

Senator LUDWIG—I was going to get to that but it seems that the figures demonstrate that. With regard to the package of measures that have been foreshadowed or perhaps announced by the Attorney-General dealing with remittal matters, has the High Court been consulted in relation to how migration matters might be remitted or at least started in the Federal Magistrates Court or remitted from the High Court to the FMS?

Mr Doogan—We were consulted during the review process that was being undertaken but we have not yet seen the report or the draft legislation. Our involvement goes back to the time when the review leading to the report was being undertaken.

Senator LUDWIG—What are the impediments to remitting migration matters from the High Court to the FMS? Are there procedural issues involved or are there court rules or legislation that prevent it?

Mr Doogan—It remains to be seen what is in the legislation.

Senator LUDWIG—No, I am talking about now.

Mr Doogan—In the redraft of the rules, which is probably the most relevant issue, we have actually made provision for constitutional writs as the predominant area that we see these matters in. In the draft new rules we have provided for a number of steps to be taken by the person in the process of filing. One of those is to include a statement as to why the matter should not be remitted to another court or, if the plaintiff submits that it should be remitted, identifying the court to which it should be remitted. I should perhaps divert for a moment and mention that this is the first time in 50 years that they have been fully revisited.

Senator LUDWIG—You can be congratulated on that.

Mr Doogan—Thank you. We have taken the opportunity provided by past experience to write into the rules a number of procedural steps that will make it easier to deal with them at an early stage.

Senator LUDWIG—But, as of today, are there any impediments, other than the rules you have just outlined, which would prevent the High Court remitting migration matters to the FMS?

Mr Doogan—No, not that I am aware of.

Senator LUDWIG—It is not usually done, though, is it?

Mr Doogan—No, it is not usually done. The past practice has been to remit to the Federal Court.

Senator LUDWIG—This is part of the rewriting of the rules to facilitate some of these issues that have cropped up in the past about practices that might have gone on and really in modern times need revision, including this one, amongst others I suspect, that might be contained in the revised rulebook?

Mr Doogan—Yes, these revised rules are of course not designed specifically around immigration matters; they are of broad application.

Senator LUDWIG—So family law matters or other matters can be remitted?

Mr Doogan—Yes. It is simply to reflect experience from the past and to overcome some difficulties that have occurred.

Senator LUDWIG—Who instigated the revision of the rules?

Mr Doogan—It was a joint effort, if you like, between the judges and the registry staff. On the one hand you have the judges who are seeing the finished product coming before them; on

the other hand you have the registrars who are dealing with these on a day-to-day basis. It was a combined effort. There is a rules committee within the court—

Senator LUDWIG—But they had been meeting for 50 years without a revision.

Mr Doogan—I wouldn't put it that way.

Senator LUDWIG—How would you put it then?

Mr Doogan—I would say that there have been individual difficulties with the rules solved from time to time by dealing with a specific part or section of the rules on a one-off basis. On this occasion it was thought that there were many parts of the rules that were no longer relevant to today's circumstances. In particular, mentioning some aspects of how they operate, the rules were drafted at a time before there was such a thing as a Federal Court of Australia. A lot of the rules are aimed at trial work, which these days is essentially done in the Federal Court.

Senator LUDWIG—Leaving that area for the moment, the government recently announced changes to the waiver of fees for applicants in a position of financial hardship. Are there matters you have to implement in relation to the waiver of fees?

Mr Doogan—Fee waivers are a matter for the government.

Senator LUDWIG—Yes, I was going to come to the government about that, but you will have to deal with it.

Mr Doogan—At the moment the change has not been made; it requires a change to the fees regulations.

Senator LUDWIG—I see. Ms Leigh, is that on the books to be dealt with soon?

Ms Leigh—The question of fee waivers is also a matter that the Attorney announced in relation to the package.

Senator LUDWIG—I saw that, but it is a regulation that will have to be changed. When is that likely to be introduced?

Ms Leigh—The timing of that package is still under consideration.

Senator LUDWIG—How does the court propose to deal with that? It is a matter that has been announced. Have you been consulted about the announcement?

Mr Doogan—We have seen the announcement. The court does not have any involvement in the drafting of the regulations.

Senator LUDWIG—How will you deal with it when it comes in? Do you have a working group set up to then work out how you will deal with it in relation to fee waivers for people under financial hardship—how you will determine that?

Mr Doogan—No. We will simply follow the regulations as amended.

Senator LUDWIG—Are new security arrangements being put in place for the High Court—or additional security measures?

Mr Doogan—Are you referring to the budget measures?

Senator LUDWIG—Yes.

Mr Doogan—I think that is a matter for the department to deal with.

Senator LUDWIG—Ms Leigh, what can you tell me about that? What is the intention in relation to these new improved security measures for the High Court—without going to the detail? Can you just give me as much as you may be able to disclose.

Ms Leigh—The government has announced that security measures are to be taken. That is set down in the PBS.

Senator LUDWIG—I understand that. I was wondering what it means. Does it mean armour-plated cars for the judges, bulletproof glass or what? What is the intention?

Ms Leigh—In relation to the proposal as to exactly what is to be done, there was a review of security. All of the courts were involved. They all put forward proposals as to the measures they considered needed to be taken. The costing was based on an assessment of all of that advice from the courts. Each of the courts could probably provide more detail as to exactly the particular measures that are proposed to be taken.

Senator LUDWIG—Was a review conducted?

Ms Leigh—Yes. You might recall—I think I raised this at previous estimates hearings—that a review was conducted of the security needs of the courts.

Senator LUDWIG—Yes.

Ms Leigh—That formed the basis of further consideration by the government of this issue.

Senator LUDWIG—Have I asked for that review?

Ms Leigh—I cannot recall whether you have asked for that particular review.

Senator LUDWIG—Is it available to the committee?

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

Senator LUDWIG—Is the funding of the new measures something that is going to fall to you to work out, Mr Doogan?

Mr Doogan—The new security measures?

Senator LUDWIG—Yes.

Mr Doogan—No. Again, that is a matter for the department.

Senator LUDWIG—Is it new money? Will the new money be split up? How will it be split up?

Ms Leigh—As to how it will be divided between the courts?

Senator LUDWIG—Yes.

Ms Leigh—The costing was based on an assessment of the needs of each of the courts. Mr Kennedy will deal with the detail of that.

Mr Kennedy—With the security proposal, the courts identified, through the review, a number of key priorities for new security measures, which included things like weapons detection and screening. Essentially, the key locations were identified—where the new

security measures needed to be installed—and a costing was done on the cost of leasing equipment, the provision of guards to operate the equipment and associated fit-out.

Senator LUDWIG—Where will the money to do that come from and how will it be split between the FMS, the Federal Court and the High Court?

Mr Cornall—I direct your attention to page 30 of the portfolio budget statement, which indicates that the cost of the measure is being fully absorbed within the existing resourcing of relevant agencies. We are presently discussing with the courts how that is going to be accommodated within the portfolio.

Senator LUDWIG—That was the point: whether it was new money.

Mr Cornall—No, it is not new money.

Senator LUDWIG—If it is not new money they are going to have to pay for it themselves, and that is why I was curious as to how they are going to pay for it themselves out of the existing budget if they do not know the split-up.

Mr Cornall—That is currently the subject of discussion between the department and the courts.

Senator LUDWIG—When will that be known?

Mr Cornall—It has to be resolved in the very near future.

Senator LUDWIG—Mr Doogan, you have raised issues about security in relation to the High Court and now you have to fund them. What new measures have you asked for?

Mr Doogan—I do not think it is a case of identifying specific measures for specific courts, because most of the funding that makes up this sum relates to buildings that are used jointly. In the case of the Brisbane building, each of the courts are represented in that building so, for example, the introduction of airport type security to the building is a measure related to the building as a whole and hence incorporating the four courts.

Senator LUDWIG—So you have not met to determine how much it will cost yet? Or do you have a figure in mind as to what measures you require in the High Court and the costing of it?

Mr Doogan—Yes, there is a cost. It is actually in the budget measures, at \$15.3 million over four years.

Senator LUDWIG—Is that for the High Court?

Mr Doogan—No, it is for all courts.

Senator LUDWIG—What is your share of that? That is what I am trying to ascertain.

Mr Kennedy—I can provide you with the splits by court. For the High Court over four years it is \$0.8 million; for the Federal Court it is \$3.7 million; for the Family Court it is \$8.3 million; for the AAT it is \$0.4 million; and for the NNTT it is \$0.4 million, because they occupy space in the courts buildings so there is an attributed cost to them. It is \$1.7 million for the department. For the department, that is in relation to the Sydney Law Courts Building. We are funded to meet the operating costs of the building. For the Family Court of WA there

is a component attributed to the court, and the department is funded to meet the operating costs of that court.

Senator LUDWIG—This measure was announced on 6 May, but it is not a budget matter in the sense that it is not new money. I am just trying to understand. I thought I had spoken to you ages ago about how the PBS works, but perhaps you can tell me how it can be a budget matter that then comes out of existing funding if it is not new money.

Mr Kennedy—Essentially the issue was considered by the government in the budget context and it was determined that funds would be reallocated to met those costs. It determined on that basis that it was a specifically identified measure even though it was being funded from within existing resources. It does happen from time to time when the government makes a deliberate decision to reallocate funding.

Senator LUDWIG—When would the government have done that; was it just by press release on 6 May?

Mr Kennedy—It was considered in the budget process.

Senator LUDWIG—But it is not a budget measure as such.

Mr Kennedy—It is a budget measure in the sense that the government has announced that new security measures will be implemented. Even though there is no additional funding, it is essentially the government saying that existing funding will be reallocated to implement those measures.

Senator LUDWIG—On the break-up as to where the money will be allocated from, it has to come from the budgets of those courts that you have mentioned. Will it come in proportion to the amounts that you are spending on them or will one agency fund more than another? In other words, how will the proportions be determined?

Mr Kennedy—Those funding issues are yet to be fully resolved and determined at this stage, so I am not able to provide any further information.

Senator LUDWIG—When will that be done?

Mr Kennedy—That will need to be done reasonably soon, in the sense that if the measures are to be implemented they will have to be implemented with some degree of priority.

Senator LUDWIG—If that is finalised prior to the return of questions could you include that in the answers. Effectively, I put it on notice that if that is finalised and you can make it available, could you make it available to the committee please?

Mr Kennedy—Yes.

Senator LUDWIG—I was in a committee hearing not long ago in relation to the judicial review bill that is currently before the committee. An interesting issue that arose concerned those migration matters that were on appeal and were successful or unsuccessful, as the case may be. A significant number of appeals were not allowed, so they failed. I asked some questions of the department of immigration, and I am happy to retrace the transcript, if you like. But when a matter fails, is it unmeritorious as a consequence; does it lack merit, in your view? How do you categorise a case? Either an appeal is affirmed or denied, as I would expect, but the department officials indicated to me that they considered that if they failed

then they were consequently unmeritorious or had little merit. It is not always the case, though. It is my understanding that they might fail on technical grounds or on other legal grounds. Do you have a way of categorising? I am wondering whether they might have got that idea from.

Mr Doogan—It was not from the court. The only way that we categorise them is that the appeal is allowed or disallowed.

Senator LUDWIG—So you do not call them unmeritorious or meritorious, as the case may be?

Mr Doogan—No.

Mr Cornall—Senator, with respect, I am sure I recall an annual report of the High Court discussing unrepresented litigants in which it was said that the cases patently lacked merit. I may have to go back and find this.

Mr Doogan—If I could interrupt and say that relates to applications for special leave to appeal. I think Senator Ludwig was referring to cases that have been granted leave and have gone on and been dealt with as an appeal.

Senator LUDWIG—Yes.

Mr Cornall—That would be a very small minority of cases, wouldn't it?

Mr Doogan—Yes.

Senator LUDWIG—What about the issue that you have raised in relation to those matters that were for special leave—are they then categorised as meritorious or having no merit?

Mr Doogan—No, Senator. When we have talked about—

Senator LUDWIG—I thought you were right, Mr Cornall. I thought there was some suggestion that there were a number of self-represented litigants who had failed on the basis of lacking merit or being unmeritorious at least and been described as that.

Mr Doogan—You are bringing together two separate and distinct phases. The first phase, where there has been a general description that they lack merit, has been at the application for special leave to appeal phase. What we have said there is that the vast majority of matters that have self-represented litigants are unmeritorious. That expression has been used, and in fact it appears in our 'year in review' in the annual report over the last few years. But what I thought you actually went on to ask me about were appeals.

Senator LUDWIG—Yes. That was a separate matter though. I want to explore it to make sure that we have got the record right. Otherwise, people will view part of the record and will not know exactly what we were talking about—or what I was talking about at least. In relation to the special leave applications, does that also apply to migration matters? You have got self-represented litigants, and that phrase seems to be affixed to them in the sense that they are unmeritorious or lacking in merit. What about other matters, those matters that are not self-represented, that might be represented by a solicitor for special leave application, which is a migration matter, that do not get special leave to appeal?

Mr Doogan—Distinction between represented and unrepresented at the special leave phase can perhaps be dealt with like this, and I think we have previously talked about this as being

the experience largely in the registry as well once they go on for consideration by the judges. The unrepresented litigants are usually not people with law degrees or training in the law and they tend to confuse the nature of an appeal for which they are seeking special leave often on a factual basis. They will confuse their own factual situation with what they need to satisfy the court of by way of an error of law, and I refer back to something else that we have discussed on previous occasions.

Where an unrepresented litigant is successful in being granted leave to appeal, I have mentioned in the past that very often we will make approaches to the relevant bar association seeking to have pro bono assistance provided on the basis that the particular case has some merit. On most occasions when we do approach the bar associations to provide pro bono assistance they do so. So the successful unrepresented litigant at the special leave phase more often than not would become represented during the appeal phase. I think that it would not be accurate to say that appeals can be categorised as lacking merit merely because they were disallowed. Clearly, the number of judges at the special leave stage has determined that it does have merit.

Senator LUDWIG—What about those that are not self-represented litigants but are general matters on special leave applications or migration matters which are unsuccessful at obtaining special leave? How are they categorised? Are they fixed with a similar label of being without merit or is that phrase reserved only for the self-represented litigants?

Mr Doogan—That is not a phrase used within the court as such. It has just been a phrase that in fact has found its way into the annual report as a way of describing the opinion that has been expressed.

Senator LUDWIG—You wouldn't categorise even those—for argument's sake, migration matters that have been refused special leave—as being without merit?

Mr Doogan—That have been refused leave?

Senator LUDWIG—Yes.

Mr Doogan—Some would be. Yes, I would. It depends on the facts of each individual matter.

Senator LUDWIG—But not all of them. We might leave it at that.

Mr Doogan—The same issue applies. Once you step out of the migration category and into the general civil category, for example, the same could equally apply to personal injury or any other type of financial matter that comes before the court.

Senator LUDWIG—So they do not all lack merit. Some may because of the factual circumstances of each case, but that would have to be looked at and it may be highlighted in the special leave application judgment that was made. But, in total, they are not viewed as that; they are either allowed or not allowed, as the case may be.

Mr Doogan—That is right. The tables you had asked to be handed up demonstrate the success rate or otherwise of representation compared to non-representation.

Senator LUDWIG—Thank you.

CHAIR—Thank you, Mr Doogan and officers. I advise the committee that Senator Heffernan has questions he will be putting on notice in this area.

Mr Govey—I could provide some details of something we were talking about earlier, and that is the number of submissions that have been received in relation to the civil justice review. I am told that we have had 15 submissions to date. I also have the press release that the Attorney put out on 13 May advising of the extension of time, which I can table.

Senator LUDWIG—Were there reasons provided in that?

Mr Govey—I do not think so but, in essence, the reason was that we wanted to give organisations and individuals more time to provide comments and assess their views in light of the strategy paper.

Senator LUDWIG—Had organisations asked for an extension of time?

Mr Govey—Yes, there were a number of organisations that had asked.

CHAIR—Thank you very much, Mr Govey. We will now move on to the Family Court.

[12.36 p.m.]

Family Court of Australia

Senator KIRK—We always ask you for statistics on the workload. Are you able to provide the committee with them this morning?

Mr Foster—I can table the statistics if you would prefer. They are in the normal format so it shows where the workloads are in terms of filings.

Senator KIRK—Thank you, that would be helpful.

Mr Foster—There is also a paper with some detailed statistics but the photocopier outside is not performing as well as it might, so I only have one copy of those to table. They complement the other statistics which I have provided.

Senator KIRK—Seeing as I have not seen the figures—

CHAIR—They are just being copied, Senator Kirk.

Senator KIRK—I wanted to know whether or not they show an increasing workload. Can you give us an idea of the increase in the last 12 months?

Mr Foster—Yes, sure. I will talk first of all about our performance measures, because filings are only one indication of workload. That is the input of the system but, in terms of pure numbers, they are only an indication of the workload. The workload is really the work done by the judges. In relation to our performance measures on mediated agreements, our standard is that 75 per cent of matters would be resolved through mediated agreements, and we are currently running at 71 per cent, so we are very close to the standard. Before I speak about the overall delay, I should explain what we mean by that term. It is the elapsed time from filing to finalisation for all cases finalised. It includes those that are finalised in either the resolution or determination phase, so it is all cases. In relation to that, the standard is six months, and we are currently running at 14.3 months, so we are well over the standard for determining those matters.

The other important figure that we do not report on but which we collect is the elapsed time from commencement to trial, which is an indication to someone when they walk in through the door of the registry and file a final application of how long it will be before they are going to get a decision. In that case, we do not have a standard, but 75 per cent of final orders are being disposed of in the determination phase within 21 months. So once they get to the determination stage in our case management process, they are taking a further 21 months to be dealt with—again, significant delays.

Senator KIRK—What is your target?

Mr Foster—For that figure, there is no target. The target is in delay, which is six months for all those. The filings themselves on the tables I have provided show that all divorces are now filed in the Federal Magistrates Court. We are only hearing about 10 per cent of those matters in certain locations around the country. That is work that is now being transferred almost entirely to the Federal Magistrates Court. In terms of final orders, over the last three years we have shown a reduction of 25 per cent of applications. In terms of interim orders over the same period of time, we have shown a reduction of 33 per cent.

Senator KIRK—Is this primarily because the work is going to the Federal Magistrates Service?

Mr Foster—Except in terms of interim, because each court does its own interim workload. Whilst we have had our resources in terms of band 2 registrars being reduced by 80 per cent, the workload has only been reduced by 33 per cent. So we still have a significant problem in terms of dealing with our interim workload.

Senator KIRK—I notice that no new funding is made available to the court in this financial year yet the workload is still increasing. We heard before from the Federal Magistrates Service and the department that eight new magistrates will be appointed to the Federal Magistrates Service. Have you made any estimation as to how that will impact upon the workload in the Family Court?

Mr Foster—It is my understanding that those magistrates are primarily for migration work so I would expect it to have minimal impact on the work of the family law system generally.

Senator KIRK—We were told that those magistrates will deal with migration as well as other matters, but from what you are saying it seems that perhaps magistrates need to be appointed to deal with family law matters in addition. Is that correct?

Mr Foster—We would argue that we should have more judges to do family law work.

Senator KIRK—I was going to come to that as well.

Senator Ellison—I think the department has a clarification in relation to this which may assist.

Senator KIRK—Thank you.

Ms Leigh—I understood that when Mr May was explaining about the allocation of the workload of the eight new magistrates he was making a distinction between the particular people who are engaged and the resources. He was indicating that the particular eight people engaged may not do 100 per cent migration work because there would be efficiencies in how

you arrange the work within the entire resources of the court. But, as I understood it, and it is certainly the case, he also said that there would be the equivalent of eight magistrates added to the resources available for migration work within the court. That was when he referred to those figures. He talked about 3.5 out of 23 at the moment and 11.5 out of 31. He was indicating that the eight resources would be available for migration work.

Senator KIRK—So is it fair to say then that the increase of eight is primarily going to be taken up with migration work?

Ms Leigh—They will be completely taken up with migration work.

Mr Govey—Of course the earlier appointments of the four magistrates that were referred to are on the other hand primarily directed at improving the situation with family law work.

Senator KIRK—Have you seen that that has made a difference, Mr Foster, with the additional four magistrates being appointed?

Mr Foster—Two of those were subsequent to judicial retirement so it has really just been a shift in the judicial firepower between one court and another. I am not saying that that is inappropriate but that is the reality. After Justice Frederico and Justice Robinson—one in Melbourne and one in Adelaide—retired they were replaced by federal magistrates.

Senator KIRK—One was a retirement and one was a passing away, as I understand it.

Mr Foster—She actually retired.

Senator KIRK—She retired, yes. So they have not been replaced?

Mr Foster—They have been replaced by federal magistrates.

Senator KIRK—But they have not been replaced with judges. Is there any proposal to replace those two judges with judges?

Ms Leigh—Each time a judge retires, the government makes an assessment of that resource, as I mentioned earlier. The government assessed that those resources should be directed to the Magistrates Court. So the two magistrates were in place of the judges. That was in addition to the two new judicial resources—the other two magistrates—that were announced at the same time.

Senator KIRK—So effectively you are two judges down in your court?

Mr Foster—I guess it depends on what your benchmark is, but if two judges left—and that was where you were counting from—and they were replaced by magistrates then you could argue that we were two judges down. The court supports the process which the department is suggesting: that it is sensible to assess what the workload is across the country and whether it is appropriate to have a judge or a magistrate. Certainly the court has no difficulty with that process whatsoever.

Senator KIRK—How has it impacted upon the workload in the Family Court? If you are two judges down and the workload has not changed then it would surely follow that the work is not being done as efficiently as it could be.

Mr Foster—Our overall delay statistics, which show we are some significant way off meeting our standards, indicate that.

Senator KIRK—That brings me to the ANAO report that I talked to the people from FMS about. The ANAO made a number of findings in relation to timeliness targets and the like for the Family Court. Some of the figures that you cited to me are perhaps a little bit more up to date than those in the report.

Mr Foster—That is right.

Senator KIRK—What has been the response of the Family Court to the report of the ANAO? I have a brief outline here of your response but perhaps you could inform the committee about your response to the report.

Mr Foster—Certainly. We provided a detailed response, which is at appendix 1 to the report. In summary, of the 11 recommendations there are 10 that referred to the Family Court of Australia. We have agreed with those in principle. We have made some observations about some of the findings that the ANAO made in terms of detail; that is all. In terms of principles, the court has accepted the recommendations that relate to the Family Court of Australia.

Senator KIRK—Is the court intending to implement those recommendations?

Mr Foster—I think it is fair to say—as we have indicated in our response that forms part of the report—that in a considerable number of instances the court has already started work in this regard. We have certainly committed ourselves to a continuous improvement program to which there is really no end point. The ANAO report is really a snapshot of things at a certain period of time. There is obviously a need for priority setting as not all improvements can be done at once. Nevertheless, the court has undertaken a very large range of client service initiatives over the last several years. But that is not to say that we do not accept some of the comments in the report about enhanced coordination—for instance, our complaints processes needed some review and we are currently doing that. Largely, as I said, we have accepted the comments of the report. I would just like to make the point that many of the issues that the ANAO raised are already being addressed within the court.

Senator KIRK—For those matters that you intend to implement but which you have not begun to implement, will there be cost or budgetary implications?

Mr Foster—No, we will implement those things within existing resources. The ANAO commented that perhaps the court should be doing more in terms of Indigenous people. The report acknowledged that we have done quite a lot in terms of Indigenous family consultants, for example. Without additional resources it would be very difficult for the court to expand that service. Similarly, the ANAO says that we should be visiting more circuit locations. That has a resource implication within our allocation but the Chief Justice has publicly stated on numerous occasions that, wherever there is work that is appropriate to the Family Court, a judge will be made available to do that work. So we do circuit in places other than our normal circuit locations on an as-required basis.

Senator KIRK—I asked the Federal Magistrates Court about the development of a single entry access point. I wonder whether there has been any work done by the Family Court in relation to that.

Mr Foster—That is a recommendation we agree with. As I think Mr May said, it also comes out of recommendations in the pathways report. We have been working with the

Federal Magistrates Court and the department and having discussions about where that might lead us.

Senator KIRK—So, as you said, it is just at the discussion stage at this point?

Mr Foster—I think it is fair to say that it is at the discussion stage.

Senator KIRK—I also want to ask you about a breakdown of the level of use of court mediation and counselling services. Do you have those figures?

Mr Foster—Is this to do with the response to the question that I took on notice last time?

Senator KIRK—It could well be, yes.

Mr Foster—Yes, I have those figures with me.

Senator KIRK—You could table those for us.

Mr Foster—Is this to do with the question you asked about mediated numbers being reduced from 1996-97 to the current time?

Senator KIRK—Yes.

Mr Foster—In 1996-97 there were 152 and in the following year 150. In 1998-99 the numbers went down to 127. The reason for that is that, prior to that date, counselling and mediation were separate services within the court. They were amalgamated at that time and there were savings made in management structures. Some people were actually performing a management function, not a clinical services function. That is the reason the numbers were reduced in 1998-99. In 1999-2000 the numbers went down from 127 to 113. That was at a time when the court was under some budget pressures and it decided that, because there was an alternative service available in pre-filing mediation, in major centres it would step away from pre-filing mediation. The government had just announced at that time funding for non-government organisations to perform that function. Since that time the numbers have remained pretty constant. They are about 87 FTEs now.

Senator KIRK—Could you also give the committee an update on Project Magellan?

Mr Foster—Yes. The good news with Project Magellan is that the Department of Community Services in New South Wales have now responded and acknowledged that they will participate in a pilot scheme in New South Wales. The details of that are still to be worked through, but that is a significant breakthrough in terms of the Magellan project. Implementation plans for all registries are in place and are happening. I think the thing that has changed is the fact that DoCS in New South Wales have now moved forward, which is really quite encouraging.

Senator KIRK—So it should be able to be implemented in almost all registries throughout Australia now?

Mr Foster—Yes, that is right. We have also had a request—I am not quite sure yet how we will do it—from the Northern Territory. The legal profession in Darwin and Alice Springs say they have a number of cases which have Magellan features and so it would be desirable for that to happen. But we do not have a resident judge in the Northern Territory so it is a bit more difficult to arrange. Other than that, it is happening in every state.

Senator KIRK—Are there any results from any of the pilots as yet?

Mr Foster—The evaluation of the project was done in April 2002 and some of the findings at that stage showed that the number of hearings had been reduced by almost 50 per cent, from an average of five court events to three court events, and it reduced the time taken to process matters by almost 50 per cent, from an average of 17 months to eight months. It reduced the number of cases proceeding to a judicial determination from 30 to 13 per cent. The figures were really quite satisfactory.

Senator KIRK—Encouraging. So the review in April 2002 is the only one that has been done?

Mr Foster—There is a further evaluation being contemplated as we speak. The question is: would it make more sense to wait until New South Wales come in, because then we will have much larger numbers to evaluate? That is still a matter that we are having discussions with the department about.

Senator KIRK—You say there has been agreement but when are you expecting that project in New South Wales to start?

Mr Foster—The letter only arrived two weeks ago, so it is really a question now of us working closely with that department. I could not really put a time line on it at this stage.

Senator KIRK—On another matter, has the Family Court officially responded to the House of Representatives committee report on child custody?

Mr Foster—We put a submission to the inquiry. Our position has not changed since that submission was provided to the committee.

Senator KIRK—So the government has not asked you for any further comments in relation to the final report?

Mr Foster—No.

Senator KIRK—Senator Ludwig was asking the High Court representatives about security measures in the High Court. I wonder if you could inform the committee as to what proposals you have put to the government for increased security measures in the Family Court.

Mr Foster—Certainly. Can I just clear something up?

Senator KIRK—Sure.

Mr Foster—The chief justice did write a subsequent letter to the Attorney in relation to the inquiry.

Senator KIRK—The child custody report?

Mr Foster—In relation to the child custody inquiry. I want to correct that response. He has written to the Attorney subsequent to that. In relation to security, perhaps it might be useful if I set out what the position is in the court at the moment. The greatest impact for court security falls on the Family Court of Australia. Out of the \$15 million odd, \$8.3 million over four years is for the Family Court. We have done a fair bit. The total security expenditure per annum for the Family Court is in the order of \$2.1 million recurrent. We have, within our own resources, implemented airport style security screening in a number of registries across the

country—Melbourne, Dandenong, Sydney, Parramatta, Newcastle, Townsville and Canberra. Currently there are no such facilities at Brisbane, Adelaide, Darwin and a range of other registries around the country. On 27 April, in relation to the budget outcome, the chief justice was advised by the Attorney-General that the funding would have to come from within the Attorney-General's portfolio. The chief justice has responded to that letter, saying basically that we need to talk about it. The court is in a position to put in some capital money—in the order of \$500,000 a year or thereabouts over the next two or three years—but we certainly need to have further discussions about operating costs. That is basically where we are now.

Senator KIRK—There has been no response to that letter as yet?

Mr Foster—We are expecting to have discussions with the department now. The letters have only been exchanged in the last couple of weeks.

Senator KIRK—What did you say the total amount would be?

Mr Foster—For the Family Court?

Senator KIRK—Yes.

Mr Foster—It is \$8.3 million over four years.

Senator KIRK—And you are saying that the Family Court would only be able to put in about half a million dollars of that?

Mr Foster—Each year, for capital.

Senator KIRK—What is the nature of the increased security measures?

Mr Foster—It is basically to provide airport type screening at the locations where we do not have it, plus putting in place some arrangements in our circuit locations, where there is little or no security at all.

Senator KIRK—At the moment there is really no screening of items as people arrive at the court? There is nothing like that in place?

Mr Foster—In many of our courts, there are, as I explained. That has been in place for several years now. It is just that there are a number of locations that do not have it, so it is a bit mixed.

Senator KIRK—On circuit it is very difficult.

Mr Foster—Primarily on circuits, but also in Brisbane and Adelaide security screening does not exist. The advantage in a place like Brisbane is that, as it is a new building, there is very good security once you are inside the building. There is good security separation with judges, staff, clients et cetera. And with the opening of the new building in Adelaide next year, similar arrangements would be in place.

Senator KIRK—When is it likely that these measures are going to be put in place? It seems like a matter of urgency, I would have thought.

Mr Cornall—As I said before, we are working these issues through with the courts. We appreciate the urgency of the matter and we are endeavouring to resolve it as quickly as we can.

Senator KIRK—Finally, I want to ask a question in relation to children's cases. Senator Ludwig asked you a question about this last time round. Could you give us an update on the progress of the program?

Mr Foster—Certainly. I have a document I can table which provides a fair bit of detail.

Senator KIRK—Thank you. That would be helpful.

Mr Foster—As you would be aware, the pilot for children's cases commenced in Sydney and Parramatta on 1 March. The number of cases entering the program to date is not large—there are 25—but certainly the early results are quite encouraging. The figure that it is important to record now is that for 10 cases only—and 11 have been finalised out of that figure of 25—the total judge time to completion was 21 hours, compared to an assessment of 21 days of judge time for the traditional hearing. If this experiment can be sustained through a proper evaluation, we are talking about significant judicial time savings, with probably also more timely outcomes for the families involved.

Senator KIRK—Is there an end point for the 25 cases that commenced on 1 March? When will the 25 cases be resolved?

Mr Foster—Eleven have been. It will depend on the make-up of each individual case.

Senator KIRK—Naturally, yes.

Mr Foster—These early figures are showing that there has been a significant reduction in the amount of hours that judges would need to spend on this because of this direct intervention. So we are really encouraged by these early results.

Senator KIRK—Is there any proposal to extend the trial and perhaps add in more cases and other jurisdictions?

Mr Foster—The evaluation that was set up provides for 200 cases—100 cases going through the system plus a control group. We really need to get that critical mass before we start talking about extending the program any further. There is some discussion about including another judge in the program from New South Wales. We have a couple of judges in Sydney and a couple of judges in Parramatta. There is talk now of involving another judge in an attempt to get the numbers up a bit more quickly, but there is certainly no plan at this stage to expand it to any other state.

Senator KIRK—It was a 12-month pilot initially?

Mr Foster—That is right, yes.

Senator KIRK—When will you conduct the evaluation? At the end of the 12 months?

Mr Foster—The timing will depend on when we get the critical mass of numbers to evaluate. We basically need to have 100 cases that have been in the system before we can do a proper and full evaluation.

Senator KIRK—And that should be in about 12 months time or perhaps sooner?

Mr Foster—I would think so, yes. It has taken 2½ months to get 27 cases into the system. We thought it might be a bit quicker than that. Nevertheless, that is pretty encouraging.

Senator KIRK—Thank you.

CHAIR—Members of the committee have advised me that, notwithstanding that Professor Dewar has been here for some time, he is in fact not required for examination in the estimates today. I apologise for that and for any misunderstanding in that regard.

Mr Foster—I have an extra point in relation to the child custody report. There have been a number of discussions in relation to the report between the court and the department. I think it is important to record that.

CHAIR—Thank you, Mr Foster.

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

Mr Cornall—The other matter was one where there were fees advised to support the application and we have not heard further from the applicant. I think that the FOI application which Senator Bolkus was particularly directing his mind to was an application made to the Department of Foreign Affairs and Trade and has been handled by them. The inquiries would be best directed to that department.

CHAIR—I note for the record that the committee has received a number of questions on notice from Senator Andrew Murray. In his email Senator Murray asked for a return date on those questions of, I think, 15 June. However, the committee has, as you will be aware, fixed the date of 16 July 2004 for the receipt of answers to questions taken on notice. We will seek for those questions to be included in that answering process and the committee will advise Senator Murray of that.

[2.05 p.m.]

Office of Film and Literature Classification

Senator HARRADINE—When did you send the responses to my questions on notice of February of this year?

Mr Clark—I do not have the actual date, but my recollection is that they would have been sent at the due date or a day or two after that date. I could seek advice about that but I do not have that date here with me.

Senator HARRADINE—A number of my questions on notice dealt with the provision of an R category for the film *Irreversible*. What has been the response to that particular film being so classified?

Mr Clark—There has been some response from some organisations in relation to the R classification. Generally, in terms of the public, there has not been a huge reaction to the film. Are you asking about letters from the public to the office?

Senator HARRADINE—I am asking what has been the response with regard to petitions, letters and complaints.

Mr Clark—There have been some letters and complaints about the film. There have been some critical comments in the media in relation to the film, which say it is a very confronting but genuine film. There has been a mixed response to the film.

Senator HARRADINE—I understand that there is a review under way at the moment. There is an operational review of guidelines for the classification of films and computer games—is that a fact?

Mr Clark—There is an operational view which is just commencing. That is correct.

Senator HARRADINE—Who knew about that?

Mr Clark—It has been advertised in the papers nationally.

Senator HARRADINE—When?

Mr Clark—It was advertised on 1 May in nine papers around the country.

Senator HARRADINE—Were they local papers?

Mr Clark—No, they were the *Sydney Morning Herald*, the *Canberra Times*, the *Melbourne Age*, the *Weekend Australian*, the *Hobart Mercury*, the *Adelaide Advertiser*, the *West Australian*, the *Northern Territory News* and the *Brisbane Courier-Mail*.

Senator HARRADINE—When was that done?

Mr Clark—On 1 May.

Senator HARRADINE—When is the closing date for submissions?

Mr Clark—We have asked for submissions by 31 May.

Senator HARRADINE—A month?

Mr Clark—Yes.

Senator HARRADINE—How large were those advertisements, by the way?

Mr Clark—I have a copy. This is the actual size.

Senator HARRADINE—Did you contact any other organisations or individuals to notify them of the review?

Mr Clark—We have not directly contacted people about this advertisement but certainly all people who have written in relation to the guidelines were advised that an operational review would take place this year after 12 months of the operation and that it would be widely advertised in the press.

Senator HARRADINE—When was that letter written?

Mr Clark—That advice was given to correspondents over the past year, Senator.

Senator HARRADINE—You have only allowed one month for submissions. Why?

Mr Clark—One month in terms of keeping the momentum of the review under way seemed like a reasonable period of time. We have been approached by one organisation in relation to the time frame and we have said that we are happy to accommodate them provided it does not cause unreasonable delay to it, and they will be corresponding with us in relation to an extension of time. So we are not being inflexible about it; we are just setting a reasonable period.

Senator HARRADINE—Given that that operational review of the guidelines is under way, what processes have the OFLC had in place to measure or evaluate the effects of the new film guidelines and whether they change outcomes in classification when compared with the old guidelines?

Mr Clark—We have been collecting and are now in the process of bringing together classification decisions made before and after the introduction of the guidelines, which is 12 months prior to the commencement and since. So there is a lot of statistical information. We are also looking at the submissions made throughout the year. We are looking at submissions made now in relation to the guidelines and we will look at complaints. We are looking at the principal elements that have contributed to the classification of all films and computer games over that period to assess them, and that information, once it is collated, will be given to an independent expert who can assess the operation of the guidelines.

Senator HARRADINE—Who will you give it to?

Mr Clark—We have a select tender to employ someone who is expert in media and who will have some expertise in relation to looking at the work and the decisions of the board over that period to assess whether there has been any change in the operation of the guidelines.

Senator HARRADINE—There have been very serious claims that the OFLC changes in words do in fact change the administration of the guidelines.

Mr Clark—Certainly the words in the guidelines have changed. But we believe that the standards contained within the guidelines have not changed and that the operation of the guidelines has been quite smooth over that period. This review is in fact there to test that and to try to give us some measure in relation to that operation period.

Senator HARRADINE—You are aware, are you not, of the concerns of some people—quite a number of persons and organisations—about the new film guidelines in that they centre around the change of assessment approach to focus on the impact of the film?

Mr Clark—There has been no change in relation to the consideration of impact. It has always been there. A lot of work went into ensuring that the matters to be considered were clearly stated in a more orderly manner in the presentation of the new guidelines. So impact has always been a consideration within the guidelines.

Senator HARRADINE—But there have been quite clear criteria against which assessments were made. Whereas now the focus—I did not say it was not useful—of these guidelines is on the impact of the film.

Mr Clark—Those elements are contained within the impact test in the guidelines. One of the concerns we have had in the use of the new guidelines is that people have moved very rapidly to the actual pages of the classification types rather than reading the first five or six pages which outline the use of the guidelines and how that consideration of impact is to be made. I would particularly refer to pages 4, 5 and 6 of the guidelines document. In there lies the consideration of all of the factors that have been contained in the previous guidelines and their use.

Senator HARRADINE—You will admit, will you not, that the focus now is particularly on context, impact and the six classifiable elements, but context and impact receive a higher focus than under the previous guidelines?

Mr Clark—No, they do not. They have always been important; these guidelines merely clarify the fact that these considerations must take place. There has not been a change.

Senator HARRADINE—Look at the film *Irreversible*. That particular film includes a nine-minute anal rape scene but because the scene was classified as high impact rather than very high—a subjective assessment—it was given an R classification and not higher.

Mr Clark—It was given an R classification because the film was considered to be high impact. The particular scene that you refer to was a long sequence in the film but in fact it was implied sexual activity; it was not simulated sexual activity. Implied sexual activity is permitted both in MA and in R, and in R classification it may be realistically simulated. In this instance, although it was a long scene the board considered that it did fit into the R category because the amount of detail was higher than in MA but certainly did not exceed R.

Senator HARRADINE—Is it not a fact that the guidelines stipulate that realistic—that is, not implied—sexual activity is to be refused classification when it comes to R—sexual violence? For example, there is plenty of violence in this film. There is a scene that is certainly not implied—there is fellatio.

Mr Clark—There is a brief explicit depiction in the film but that was not associated with the rape scene.

Senator HARRADINE—No, it was not associated with the rape scene but it was there. When before has the classification board so allowed an explicit scene in R classification?

Mr Clark—The guideline is the general rule: simulation, yes; the real thing, no. So it does specify a general rule.

Senator HARRADINE—I know that, but I asked when?

Mr Clark—Brief explicit depictions of sexual activity were permitted in the film *Romance*, which was classified some four or five years ago now.

Senator HARRADINE—Can you remind me of that?

Mr Clark—I think the film *Romance* was classified some four or five years ago. It was classified RC by the board; it went to the Classification Review Board and was given an R classification.

Senator HARRADINE—For what?

Mr Clark—I am sorry, Senator, it predates my being on the board.

Senator HARRADINE—So you can only think of this?

Mr Clark—There was another film called *In the Realm of the Senses*—once again, classified for a brief background depiction—which was a 35-year-old Japanese film. That was submitted. The film *Intimacy* was another. That was under the old guidelines as well.

Senator HARRADINE—That will be interesting, Mr Clark. Did the OFLC acknowledge that when public comment was sought on developments and new guidelines there was no mention of the new impact approach, the focus on impact?

Mr Clark—We deliberately sought not to change the focus or the operation or the standards within the guidelines. So yes, the document, as ministers asked, is a simpler and clearer document. It brings together the considerations for the board around context and impact quite clearly, and also there were some elements of ambiguity in the old guidelines

that are not there that we were able to clarify. So the document does not, in our view, contain changes, but the operational review will test that.

Senator HARRADINE—How?

Mr Clark—By looking at decisions taken over the year prior to the introduction of the new guidelines and by looking at the period since the introduction of the new guidelines.

Senator HARRADINE—Why just a year?

Mr Clark—It seemed a logical step to consider the period immediately prior to and the period since.

Senator HARRADINE—When you say that they are merely guidelines, the whole lot are guidelines.

Mr Clark—Correct.

Senator HARRADINE—Does that mean that you can pick and choose what can come out of the guidelines on the basis of impact and context? You could excuse anything by adopting the context attitude.

Mr Clark—I do not think that is the intent of the guidelines. They are agreed to by ministers as a tool for use primarily by the board to assist them in their decision making. The board are there to apply the community standards that are contained within the act, the code and the guidelines.

Senator HARRADINE—This document is titled *Guidelines for the Classification of Films and Computer Games*. You have appealed to us to recognise that these are mere guidelines, and in this particular case of *Irreversible* you have gone outside the guidelines.

Mr Clark—That is not the case. I would suggest that the board's decision is consistent with the guidelines.

Senator HARRADINE—Why? You have clearly gone out of the guidelines when it comes to explicit sex in a violent film.

Mr Clark—There is one brief moment of explicit sexual content in the film which is not inconsistent with decisions made with both the old guidelines and the new guidelines.

Senator HARRADINE—That is an assertion made by you which will be tested, will it not, under the review?

Mr Clark—It will, Senator. Yes, I am asserting that, but that is what is contained within the board report in relation to this film. As you are aware, the review board has also considered this film and said that, if they were to review it, they would be unlikely to change that decision. So they also have applied the guidelines. As I understand it, there is to be a review by the Classification Review Board of this film anyway, so that will be a further test.

CHAIR—Which will either affirm or change the previous decision?

Mr Clark—Yes, that is correct.

Senator HARRADINE—Which will what?

Mr Clark—Either affirm or change the board's decision.

Senator HARRADINE—What will change the board's decision?

Mr Clark—The Classification Review Board will be conducting a review of the film at some point in the near future, and that will be a further test of the film in terms of the use of the guidelines.

Senator HARRADINE—And that was brought about by what action?

Mr Clark—The South Australian Attorney-General initially requested a review. The Attorney advised him that the matter had been looked at by the Classification Review Board and asked if he still wished to proceed. Attorney-General Atkinson has indicated that he wishes to proceed, and the process for a review of the film has begun.

Senator HARRADINE—By the same people who rejected—

Mr Clark—I am sorry, I cannot comment on the composition of the Classification Review Board or its procedure.

Senator HARRADINE—Why?

Mr Clark—I am the Director of the OFLC and chairman of the classification board, and we keep a good strong distance between the two boards.

Senator HARRADINE—That is admirable, but who can give me advice as to who will do this review? You mentioned that there is a review taking place. I am just asking the question: by whom?

Mr Clark—The convener of the Classification Review Board will be consulting with members of the Classification Review Board as to the procedure and who the members of the review board would be for this review, so I cannot answer that because that is something that they would be negotiating at the moment.

Senator HARRADINE—When will that be known?

Mr Clark—I should imagine this week, but as early as possible in the week is what I imagine they will be aiming for.

Senator HARRADINE—The decision regarding impact is a subjective decision, is it not?

Mr Clark—The guidelines are strictly that: they are guidelines. Therefore the board, in making its decisions, tries to be as objective as possible in using the instruments it has been given but, at the end of the day, yes, they have to make an on-balance decision. If that is subjective, that is what it is; but they are not making wayward decisions in relation to their statutory obligation.

Senator HARRADINE—On the question of the classification of computer games and so on, how do you go about that?

Mr Clark—There are two ways in which games are classified. Within the legislation, there is an authorised assessor procedure for the classification of games. The companies making a recommendation will send in a report with a recommendation for games up to and including the M classification.

Senator HARRADINE—I did not quite catch that.

Mr Clark—The companies make recommendations to the board in relation to the recommended classification for a game from G through to M, so there is a recommendation made by the company. We look at their report on a game and their assessment of the game. If we are not happy with it, we will call the game in to look at it; otherwise we may accept that we have a good report and the game is classified. A game which is MA 15+ must be submitted. The game must have a full report and supporting information. It must be demonstrated to the board and the board is also likely to want to play the game to test the content of the game. So MA 15+ is treated quite differently.

Senator HARRADINE—But with the others you rely on the industry, on the company that is selling the product. It is in their interest, is it not, to have it classified lower than it should be?

Mr Clark—This process that is followed is consistent with the legislation. The companies want to cooperate. Certainly they have an interest in getting the best possible classification, but we train their assessors. They have to behave responsibly in relation to this, otherwise their games will be scrutinised more, because we take very seriously the information they provide to us, and we seek to have a cooperative relationship with the games industry to ensure they are doing the right thing.

Senator HARRADINE—How?

Mr Clark—As I said, we provide training to them in relation to the assessment of games and we talk with the companies about our expectations in relation to the classification of games.

Senator HARRADINE—How many of those computer games under the 15+ which have received assessment from the company have been queried by the board?

Mr Clark—I do not have a figure to give you. I would have to look at that and talk with the senior classifiers in relation to those which they have sought further information on.

Senator HARRADINE—What sort of monitoring is done on those particular computer games?

Mr Clark—As I said, we will look at a game if we are not satisfied that the assessor's report necessarily accurately reflects the content of the game.

Senator HARRADINE—How do you know that?

Mr Clark—After working with games and their classification for some time, you do develop a degree of expertise. They follow particular genres, which are fairly predictable, they know at what level they are pitching a game and, generally speaking, there is a level of expertise which allows them to pick them fairly accurately.

Senator HARRADINE—What sort of consistent monitoring is undertaken on those particular recommendations for classifications coming from the industry? Your assessors view all of the MA+?

Mr Clark—MA 15+—yes, they do.

Senator HARRADINE—I am talking now about the lower classifications.

Mr Clark—The lower classifications are monitored by the two senior classifiers. One of their principal tasks is to monitor those and to refer games on for further consideration if they deem it necessary.

Senator HARRADINE—How many such classifications have been provided in the last six months?

Mr Clark—I cannot answer that question now. I can provide that information to you.

Senator HARRADINE—How many of those were referred for OFLC assessment rather than company assessment?

Mr Clark—I will seek to get that information for you.

Senator HARRADINE—Finally, I understand that the OFLC has classified the film *The Cat in the Hat*?

Mr Clark—Yes.

Senator HARRADINE—It is classified as G-rated?

Mr Clark—That is correct.

Senator HARRADINE—Are you aware of the classification given by the US in respect of this particular film, which is higher?

Mr Clark—I am not quite sure.

Senator HARRADINE—I am advised that it is and that the reason is that some parents will be concerned that there are some nasty innuendos included in the film which do not appear in the Dr Seuss book. For example, the cat digging with a hoe says, ‘I have a dirty ho,’ implying a dirty prostitute. I assume that it is implying that he has a dirty prostitute. I cannot confirm that, because I have not seen it.

Mr Clark—He actually has a garden hoe and he says, ‘You dirty hoe.’

Senator HARRADINE—Yes, that is right.

Mr Clark—I think to take that as strong or even literal sexual innuendo in the film is probably taking it too far. I think I have had two letters in which this particular scene has been raised, but it is so simple that it really is pushing the interpretation.

Senator HARRADINE—I raise the matter because, as you know and as I know, the importance of a G rating is that it should be for kids to watch.

Mr Clark—I can only agree with you 100 per cent.

CHAIR—As there are no further questions for the Office of Film and Literature Classification, I thank Mr Clark, Mr Hunt and Mr Robinson for appearing.

Mr Cornall—Chair, while we are changing over witnesses, I can report on a couple of matters that came up this morning. One question was to do with the conditions at Guantanamo Bay. There is information about the conditions there on the US Department of Defense web site under the heading ‘Joint Task Force Guantanamo’. That indicates:

Furnishings inside each cell consist of a metal bed raised off the floor, sink with running water and a floor-style toilet. Each detainee is issued a set of comfort items which include an orange jump suit,

prayer cap, thong-style shoes, foam sleeping mattress, a sheet, a blanket, a ½ inch thick prayer mat, soap, wash cloth, and towel. Detainees are also given a copy of the Koran.

Another question was whether torture is against the law of the United States and if that law applies at Guantanamo Bay. On 8 October 2003 officials from the United States Department of Defense informed Australian officials in Washington that torture is against both US law and policy, and that US military personnel at Guantanamo Bay are subject to the United States code of military justice, which contains offences that would apply to persons who are engaged in torture, such as assault.

CHAIR—Thank you very much, Mr Cornall. We will now move on to AUSTRAC.

[2.37 p.m.]

Australian Transaction Reports and Analysis Centre

Senator LUDWIG—On the last time that I was talking to you, Mr Jensen, we also dealt with an issue about the cost recovery model. I am wondering if you would like to give us an update as to where we are with that. I think it was promised ‘shortly’ the last time that we were speaking. It does not seem to have turned up.

Mr Jensen—We were asked last year, in being provided with the funding for 2003-04, to consider the application of a cost recovery model to our operations and to put forward models for consideration in the 2004-05 budget process. We did that. We put those models forward and we have now been funded for the out years, including the coming year in the out years, without any requirement for cost recovery.

Senator LUDWIG—So what happened to the cost recovery model?

Mr Jensen—It is not being pursued by the government.

Senator LUDWIG—So what happened to the research that you were doing in relation to that?

Mr Jensen—We conducted the research and provided models for consideration in the budget process.

Senator LUDWIG—So that was not picked up?

Mr Jensen—No.

Senator LUDWIG—Is there an intention to continue with the cost recovery model or has that plan now been abandoned?

Mr Jensen—I would suggest that, as we have been funded for the next four years, that would not be a consideration in that period.

Senator LUDWIG—The budget provided a total of \$7.9 million including \$2.5 million in capital in additional funding in the 2003-04 budget to tackle, amongst other things, terrorism financing and money laundering. I refer to the additional capacity, the \$36 million. Is that an additional allocation of money or is that part of your overall budget being projected?

Mr Jensen—It is part of our overall budget being projected. The funding we received last year, which was approximately \$17.9 million plus the capital, was only for one year. What we

had was a base budget level plus this additional \$8.7 million for the coming year, which covered the additional amount we got last year.

Senator LUDWIG—So how much new money has been added to your program?

Mr Jensen—That is new money because it was not allocated in the previous year. For this coming year there is \$8.7 million, which is our underlying budget money. There is also an additional \$2.5 million, which is for two projects in the South-East Asian region for strengthening regional financial intelligence units within that region. There are a couple of other smaller amounts of money. One is under the Australian Federal Police program for the Jakarta centre for law enforcement cooperation. We will be having one person working with that group as well.

Senator LUDWIG—I will come back to the cost recovery model shortly. The words that you used were not those reflected in the 2003-04 PBS. They were a lot stronger in the statement that you made in relation to the cost recovery model than in the statements you are making now. Is that with hindsight?

Mr Jensen—We were asked to provide the cost recovery model for the budget.

Senator LUDWIG—So you provided that—

Mr Jensen—Yes.

Senator LUDWIG—and nothing came of it.

Mr Jensen—No.

Senator LUDWIG—Do you have the 2003-04 statement there?

Mr Jensen—I do not have it in front of me.

Senator LUDWIG—I might come back to that then. I am just trying to identify what is in the budget which is not money that was given last year but is money that has been allocated out of this year's budget to deal with the program that you have outlined to us.

Mr Jensen—Last year we were given an amount of additional funding which enabled us to set a number of programs in process. That money was only for one year and we set those programs in process but there was no continuation of that into the out years. The \$8.7 million gives us the ability to continue those programs and keep them moving. It contains a number of components which were set in place last year, which relate to a range of the work that we are doing in our monitoring and analysis area, information technology and data mining applications in our partner liaison and support area, and in our regulatory areas. That is a program which will now continue. On top of that, for this coming year and into the out years, we have two specific, additional programs, which are the programs relating to South-East Asian financial intelligence units. That is in terms of technical assistance and training, and developing typologies.

Senator LUDWIG—I will ask you questions about that separately. I was trying to identify what new money you have got out of this budget. Last year's budget provided a total of \$7.9 million including \$2.5 million in capital and additional funding in 2003-04 to tackle terrorist financing, money laundering, drugs and organised crime. This additional funding was a one-off. The budget paper stated:

AUSTRAC is implementing a cost recovery model to take effect before the 2004–05 Budget, enabling the continuation of increased levels of service.

If we absent the cost recovery model, what money has then come in to replace that? You have said that there was the enabling of the continuation of increased levels of service. Has service come down absent the money?

Mr Jensen—If money was not provided this year then the service would have had to have come down because we were funded for that last year. That service will now continue because we have the money for the out years. Had we not been funded for it then that would have had to have been funded through a cost recovery proposal, but the government is providing that money to us and we are not pursuing the cost recovery.

Senator LUDWIG—How much is the government providing?

Mr Jensen—The figure is \$8.7 million for this coming year.

Senator LUDWIG—Is that what the cost recovery model predicted would be generated for you?

Mr Jensen—The cost recovery model considered a number of proposals. In looking at cost recovery, one of the aspects was the service as distinct from what we proactively provide to the law enforcement agencies. The outcome of that would have been a cost recovery of approximately 25 per cent of our total budget and it would have been across mainly the Australian government law enforcement agencies. So in looking at the proposals and reviewing the cost recovery program, it was considered appropriate that AUSTRAC be funded by appropriation and at or around the levels that we were funded for last year.

Senator LUDWIG—So that accounts for the \$8.7 million; it is 25 per cent of your—

Mr Jensen—That is about—

Senator LUDWIG—Mr Cornall, did you want to say something?

Mr Cornall—I hope I can help, Senator. Last year AUSTRAC put up a proposal that it required funding of \$6.7 million to do certain things, and that was approved in the budget. But there was an issue about whether it should be budget funded or whether those programs should be the subject of cost recovery. As a result of that there was an investigation of the feasibility of cost recovery and ultimately it was thought that it was not going to be satisfactory, so cost recovery was simply taken off the table and funding was provided out of the budget for these programs to continue.

Senator LUDWIG—And the cost recovery replacement was about 25 per cent of the overall program cost?

Mr Cornall—No.

Senator LUDWIG—Where did the 25 per cent come from?

Mr Cornall—Mr Jensen was referring to aspects of the program that could actually be the subject of cost recovery. It was a complicated issue and it was decided in the end that it was best to leave it alone altogether and just treat this aspect of AUSTRAC's activities as budget funded activities—100 per cent of those activities.

Senator LUDWIG—So those issues that were announced in last year's budget are not then being generated out of a cost recovery model and are now being funded out of the additional money that has been allocated?

Mr Cornall—That is correct.

Senator LUDWIG—And that is in this year's budget?

Mr Cornall—That is correct, and the out years.

Senator LUDWIG—And that is for the next three years—the whole four years in total?

Mr Cornall—Yes.

Senator LUDWIG—What it seemed to indicate to me was that the money that would be generated out of the cost recovery model would then maintain the level of service. Therefore, if you cannot proceed with the cost recovery model, you need to replace that funding if you want to maintain the continuing level of service. You have done that with the \$8.7 million but we still have the continuation of the same level of service. I am looking at whether there was additional money for extended activities being put forward to tackle terrorist financing, money laundering, drugs and organised crime, as well as maintaining the exact level of—

Mr Cornall—Some of the other specific programs that were funded in the budget are addressing those issues.

Senator LUDWIG—So apart from those other couple of programs which have been funded specifically, the money is to replace the cost recovery model money, so that AUSTRAC—

Mr Cornall—There never was cost recovery. It was just a funding option that was looked at and not proceeded with. This increase of \$8.7 million is a very significant increase in AUSTRAC's total funding. In percentage terms it is financing quite a large expansion of AUSTRAC's activities.

Senator LUDWIG—I was trying to identify whether it is maintaining the level of service that AUSTRAC is required to do. I think that is what you have been saying.

Mr Jensen—I think the answer goes back to last year's budget rather than necessarily this year's budget.

Senator LUDWIG—Yes, the expansion occurred last year.

Mr Jensen—That is right.

Senator LUDWIG—But I am looking at what is happening from here on.

Mr Jensen—Because of that expansion we have been able to meet what is required of us for last year, and we will meet what is required of us for the next year and the out years, because it was a substantial increase on our underlying budget prior to that.

Senator LUDWIG—So the injection of capital which then allowed you to expand was in last year's budget but in this year's budget there is no significant increase in funding.

Mr Jensen—That capital related to accommodation and some information technology hardware that we needed to get the program moving forward. We have been able to get the

accommodation in place and put people in the positions. We have our hardware and now it is moving forward in the operational sense.

Senator LUDWIG—In terms of this budget, next year and the out years, other than the couple of programs that we will go to shortly, there is no additional funding in this budget for an expansion or additional work?

Mr Jensen—It is marginal, but the answer to your question is basically no. It is around the levels of last year on our base funding.

Senator Ellison—There is \$10 million extra for work to be done internationally.

Senator LUDWIG—That is the FIUs?

Senator Ellison—Yes.

Senator LUDWIG—I was going to come to those separately. I said except those two additional matters that I think Mr Jensen mentioned earlier. One of them was the financial intelligence units. How will the \$36 million be spent?

Mr Jensen—It is across the board in our organisation. It is in terms of the collection of the data, doing inspections of cash dealers to make sure that cash dealers are providing us with the information they need to. It is in guidelines and education for the cash dealers. It is in identifying what we call high-risk cash dealers, particularly remittance dealers, and underground banking type systems. It is in analysing the data within the organisation and looking for matters that law enforcement and the revenue agencies are not aware of at the moment. These are things that we can identify very well and have clearly done that over a period of time. We will have that focus as well. We will then provide the data to the law enforcement and revenue agencies and national security and welfare agencies as well by online access to the data and also in proactive disseminations of the information.

Senator LUDWIG—In respect of the FIUs, the financial intelligence units, what can you tell me about them? Our information is a little bit limited at the moment. Can you explain what that money will be used for?

Mr Jensen—Over a long period of time we have had approaches, particularly from international organisations, for staff of AUSTRAC to help them, not only within the region but around the world, because of our specific expertise. There is only one of us in Australia and only one in each of the countries around the world. In the Asian region we are constantly being approached to provide that skill set and assist the developing countries with their new FIUs and look at the aspects of their work in an FIU. Last year we obtained some funding from AusAID to put two people into the Indonesian financial intelligence unit, the PPATK. That has been a pilot study in terms of what we are capable of doing and how we can help countries in the South-East Asian region to develop their FIUs. That has been extremely successful.

This model is based on providing them with a range of information, support, training and technical assistance in many of the areas that they are working on. It will not be operational in the sense of managing or working on operations with them, it will be helping them to set up their FIUs, getting the standard operating procedures in place, training them in analysis and looking at their data. The ultimate outcome of all this is that we will have a much better

working relationship with them. We will be able to exchange intelligence with them, we will know what sort of intelligence they can provide to us, what we can provide to them and the level of confidence we have in providing it to them. There are a couple of outcomes in that in getting them up to speed and then making it a useful exchange.

Senator LUDWIG—Which are the countries that you have been talking about in the Asia-Pacific region?

Mr Jensen—All of the countries in the region will be considered over the life of the funding, which is a four-year period. Initially, after consultation with the Department of Foreign Affairs and Trade, the Attorney-General's Department, the Australian Federal Police, ASIO and others, we will be looking at countries as to the highest priorities. At this stage the highest priorities particularly would relate to national security type issues. We will continue our work with Indonesia; we will continue to work with the Philippines; we will work with Singapore and a range of other countries.

Senator LUDWIG—Are there some that you have started negotiations with or where you have started dealing with financial intelligence units—setting them up?

Mr Jensen—Over a period of time, we have had visitations to our organisation, and we have made visitations to other organisations. But until we were able to obtain this funding, we were not able to set up a program to look at that in an ongoing way and provide that support in an ongoing way. That will commence from 1 July. We have advertised for positions for that program.

Senator LUDWIG—How will that be progressed? Is there a unit that will be set up within AUSTRAC?

Mr Jensen—Yes, there is. We have an international unit; this will be a unit within the international unit, which will specifically provide that expertise. We also will be providing, as a separate program, an IT mentoring program. One of the biggest difficulties with the FIUs is that many get established but the people do not have an understanding of the technologies that are needed to analyse the data, receive the reports and receive the information. We will be helping them to develop their technology. We will not be providing them with ours—we guard that quite jealously, as you would imagine—but we will certainly help them to develop their technology, which ultimately means that they will be able to exchange data with us more readily.

Senator LUDWIG—You seemed to be suggesting that the international unit was not only working on the FIUs but also doing other work. But is their dedicated staffing for the international unit to work on the FIUs?

Mr Jensen—Yes, there will be a dedicated staff. It will comprise people from across the organisation types that I mentioned before—our regulatory type, our analytical type, our partner liaison type and the IT type in particular.

Senator LUDWIG—Have they been seconded into this group?

Mr Jensen—We have advertised the positions and we will fill them as permanent positions.

Senator LUDWIG—How many additional positions are there?

Mr Jensen—There are eight positions in that area, plus some IT consultants.

Senator LUDWIG—Are there people in there now, or are eight being advertised?

Mr Jensen—Eight are being advertised, but that may well be staff that we already have—experienced staff we already have—who can move into those areas.

Senator LUDWIG—I did not understand that. You are actually setting up a separate section or unit?

Mr Jensen—Yes.

Senator LUDWIG—What will that be called?

Mr Jensen—It is just a unit within our international branch to do the work that is required here. We have not given it a name as such. Certainly if we give it a name I will let you know.

Senator LUDWIG—I am not prompting you to give it a name. Senator Payne suggests an acronym but I am not prompting.

Senator Ellison—I need another one!

Senator LUDWIG—So the work on FIUs has not started yet? Is that right—or is it that it has started in the international branch, that it will be expanded with the injection of the new capital and that you will be able to advertise for eight additional staff.

Mr Jensen—That is correct.

Senator LUDWIG—What work have they done so far?

Mr Jensen—With most of it we respond to inquiries or we have people from various countries coming in and talking to us. It has not been able to be developed to any degree at all. We get them in, have them in for a day, go through a normal process of telling them what we do and how we go about doing it. But we have not been able to evaluate what they are doing on the ground. We have done that in Indonesia; we have had two people working within the organisation in Jakarta—working very closely with the Indonesians to develop their systems. That has worked very well. If you were to look at that as a pilot, that has been the basis of what we have proposed for this unit. It will follow what we have done there fairly closely.

Senator LUDWIG—In relation to that pilot, was there a memorandum of understanding in respect of how it would operate?

Mr Jensen—We have an agreement—

Senator LUDWIG—I am just trying to understand the arrangement that you had to put in place.

Mr Jensen—We have an agreement with the Indonesians and with AusAID, because AusAID actually funded that, setting out what we would do—how we would go about doing that work and what the outcomes of that work would be.

Senator LUDWIG—Has the agreement with Indonesia been finalised?

Mr Jensen—It was set primarily with AusAID and through their contacts dealing directly with Indonesia. That has been in place for 18 months.

Senator LUDWIG—Are there any others that have been put in place?

Mr Jensen—No, this is the only one that we have been able to get under way. It is dependent on the funding.

Senator LUDWIG—Is there a priority of countries you may decide to approach to set up a similar arrangement?

Mr Jensen—As I said before, the priorities are Indonesia, the Philippines and Singapore. Then we will move on to a range of other countries and we will look at the priorities of the Department of Foreign Affairs and Trade and the Federal Police and consult widely on where we go. Many of the countries in South-East Asia are just starting to look towards the development of financial intelligence units. It is an international best practice requirement so all countries are putting it into effect. Ultimately we will be dealing with countries like Vietnam, Myanmar, Cambodia, Laos and other countries in the region.

Senator LUDWIG—What about South Korea, Malaysia and Vanuatu?

Mr Jensen—Yes. We do work with Vanuatu but this is a South-East Asian program rather than a Pacific program.

Senator LUDWIG—Will the actual FIUs receive assistance or is the money going to be directed at setting up?

Mr Jensen—They will receive assistance in the sense of the skill set that we can provide to them. It will not be a physical situation of providing them with money. The program will provide information, training and technical assistance.

Senator LUDWIG—Will that necessitate the unit within the international section going overseas to those different countries and negotiating an arrangement or an agreement and then providing the skills?

Mr Jensen—That is correct.

Senator LUDWIG—There is no financial transfer involved or contemplated?

Mr Jensen—No, not at all. I will qualify that: there are other programs available that may be funded through AusAID or something like that. So they might be able to get some assistance through those sorts of programs. Our program does not provide that.

Senator LUDWIG—Clearly, I can only ask you about your programs, although sometimes we try elsewhere. In respect of terrorist financing, do you have a special unit developed to look at how you combat that?

Mr Jensen—There is not a special unit as such but we have aspects of each of the units that are involved in that process, the main reason being that the work that we do on terrorist financing is not dissimilar to the work, for example, that we do in respect of drugs. There is interlinking between the two so that something we develop in respect of drugs will be applicable to terrorist financing and something we develop in respect of terrorist financing will no doubt be applicable to drugs. Having said that, we do have a couple of outposted positions which do have a specific responsibility with terrorist financing. We are constantly looking.

Senator LUDWIG—Are they analysts or something?

Mr Jensen—Yes, they are analytical positions.

Senator LUDWIG—How many positions do you have?

Mr Jensen—We have one with the Australian Federal Police at the moment. We are looking at one potentially with ASIO. Our outposted people all have a responsibility with regard to that as well. Within our organisation our analysts in our monitoring and analysis area also have responsibilities.

Senator LUDWIG—Are there any planned changes to that number or is that the size of the analytical unit that you have in relation to terrorist financing?

Mr Jensen—There are about an additional 13 positions that have some relevance to terrorist financing that we will be filling this year. It may not be that a whole position goes to terrorist financing. As I said it will cover a range of activities of which terrorist financing will be one. Across the board there are about another 13 positions.

Senator LUDWIG—Then there are eight in the other unit.

Mr Jensen—That includes the eight.

Senator LUDWIG—How many in total are you seeking to employ in the next couple of months?

Mr Jensen—There will be about 13 new positions.

Senator LUDWIG—Where is that money coming from?

Mr Jensen—It is coming from the \$2.5 million in respect of these two programs.

Senator LUDWIG—What was the number of analysts or persons working on terrorist financing prior to September 11 2001?

Mr Jensen—We virtually had none working prior to that time.

Senator LUDWIG—Since that time you have employed a couple of those officers and that is ramping up?

Mr Jensen—Yes, but as I said previously, every one of them will be looking at terrorist financing. We do not have a specific unit that looks at terrorist financing because there is a benefit in looking across the range of criminal activity. For example, we might be able to derive terrorist type conduct by looking at a drug related matter; they are not mutually exclusive by any stretch of the imagination. We put on approximately 40 positions last year following the funding that we received, and a number of those positions were for analysts. Those positions were non-ongoing because the funding was not ongoing. So we are advertising the positions again but they are not new in the sense of being additional positions.

Senator LUDWIG—Are you aware of any assets or related funds that have been frozen in relation to al-Qaeda?

Mr Jensen—That is not an area that we were involved in, Senator.

Senator LUDWIG—Who is; is it the AFP?

Mr Jensen—The AFP may be able to answer that.

Senator LUDWIG—I will save that question for them. What role do you play in relation to the freezing of assets?

Mr Jensen—We provide the ‘feedstock’, if you like, in terms of the intelligence to the Federal Police, ASIO or the other organisations, and they go out and investigate. They determine whether any assets should be frozen in relation to proceeds of crime et cetera.

Senator LUDWIG—Do they give you feedback or a tally sheet about how they have gone?

Mr Jensen—We get feedback from them, yes, but not in respect of any assets that are frozen. We get feedback in terms of the action that has been taken on our intelligence—and that can be two to three years down the track, once an investigation has been completed.

Senator LUDWIG—Have you generated any matters in relation al-Qaeda financing or funding in Australia that you have passed on to the AFP?

Mr Jensen—As I mentioned before, we have a person working within the AFP who is providing information to them all the time.

Senator LUDWIG—Have you received any feedback from them about freezing of funds related to al-Qaeda?

Mr Jensen—Not that I am aware of.

CHAIR—Mr Jensen and Mr Mazzitelli, thank you very much. We will move on to HREOC.

[3.07 p.m.]

Human Rights and Equal Opportunity Commission

CHAIR—I welcome the president and commissioners of HREOC and Ms Temby. And I welcome associated members of the team, who are here behind you in force I see.

Senator KIRK—I have some questions in relation to the report on children in immigration detention that was released last week—*A last resort*? It is a most comprehensive report; I commend you on it. I have to admit that I have not read all 900 pages but I have certainly read the executive summary. There has been some criticism that there was a delay in the completion of the report. I am not quite sure who I should be directing my questions to.

Mr von Doussa—I will ask the Human Rights Commissioner to deal with this, as he conducted the inquiry as a delegate of the commission.

Dr Ozdowski—We attempted to do the report as speedily as possible. However, it was a very complex inquiry which required quite a degree of procedural fairness. We received a request from the department of immigration that part of the material would be kept in confidence, so we had to stop the inquiry and have a look at what material provided by Immigration could be kept in confidence. That took special directions hearings. Then when ACM received a draft copy of the report they decided that they would like to put additional evidence—earlier, they did not put in a submission—and that required that we stop the inquiry and allow ACM to put additional evidence. Consequently it took longer than we wanted it to take. However, it was only fair to do it that way.

Senator KIRK—From what you are saying, any delays that did occur were as a consequence of affording those parties procedural fairness?

Dr Ozdowski—Exactly—as a result of requests which we received from DIMIA and ACM, either for additional hearings or for special treatment of some parts of evidence.

Senator KIRK—The full course of the inquiry was over two years—is that correct?

Dr Ozdowski—Yes, it was slightly over two years. It started in November 2001, so it took a bit longer than two years.

Senator KIRK—Had there not been those delays that you described in order to receive the additional evidence, and if you had not permitted that additional evidence to be given, could it have been said that there might have been some difficulties with the legitimacy of the report?

Dr Ozdowski—I think the additional evidence which we received only added to the quality of the report, especially the evidence which we received from ACM which was important because, at the initial stage of the inquiry, ACM decided not to put a formal submission to the inquiry and their oral evidence was rather skimpy as well. They read the draft report and saw that perhaps some of the areas of the draft report were not fair to them, and they decided to put more evidence. I welcomed very much receiving a formal submission and oral submissions from them because that added to the quality of the report.

Senator KIRK—When was the first draft of the report available?

Dr Ozdowski—I will ask the secretary to be inquiry, Ms Vanessa Lesnie, to respond to that.

Ms Lesnie—We provided the first draft of the report in two lots. The first half we provided on 7 April 2003 and then the second half on 14 May 2003. Both ACM and DIMIA got the drafts at those times.

Senator KIRK—It was at that point that ACM requested to put in a written submission—is that correct?

Ms Lesnie—It took a bit longer than that. They took some time to consider the first draft of the report—

Senator KIRK—How long did they take to consider that?

Ms Lesnie—We received the entirety of their response by September 2003, and that is when they requested an oral hearing as well.

Senator KIRK—Did DIMIA also request to put in additional information after seeing the draft report?

Dr Ozdowski—No, DIMIA did not request that; they just provided a standard response to the draft report. The delay with DIMIA was that DIMIA made a request about part of the evidence they provided to us. We gave notice to them to furnish certain evidence and we already had a date for public hearings for DIMIA, but it was also the time when the contract with ACM was under consideration. DIMIA were concerned that if some evidence were to be vetted in public the process of selecting a provider of services could be jeopardised, therefore they came to us with that question. I organised a special hearing for DIMIA to consider that request for some evidence to be kept secret.

Senator KIRK—I am just trying to understand the process here. You did your inquiries, your investigations, and produced the report in April-May and then had a series of public hearings or received further oral submissions following the production of the first draft. Is that correct?

Dr Ozdowski—No, Senator. Maybe I could take you through the whole process.

Senator KIRK—That would be good as I am a little confused.

Dr Ozdowski—We prepared a document which we would be glad to table later. It provides you with the full process. We started in November 2001 with an announcement of the inquiry and called for submissions. In April 2002 we requested statistical information from the department of immigration. We also extended the first deadline—the first deadline to provide submissions was the end of March 2002. However, a number of organisations came to us and said, ‘We had to consult with many different constituent bodies so please extend the deadline.’ We extended it until May. In May also we asked DIMIA to provide policy information to us and in May 2002 we received the written submission to the inquiry from the department of immigration. Then we conducted public hearings and visited detention centres. That was between May and December 2002. I visited with my staff all detention centres, some of them a number of times, and we conducted interviews in detention centres with children, with parents, with DIMIA and ACM staff. We also inspected a range of different facilities. Always we were accompanied by officers from DIMIA and they were quite cooperative.

In June, due to an inadequate response to our requests for information about statistics and policy—basically what we received were public documents; for example, there were annual reports and some of the web sites—we decided to issue notices to produce documents under section 21 of the human rights commission act. We asked DIMIA for very specific documents relating to the operation of migration centres and in particular the kinds of procedural safeguards that existed to protect children. We also asked for some other information which was directly relevant.

Then in August 2002 we received all the documents—about 20 boxes. For example, we did not request all the incident reports from detention centres. In order to ensure that DIMIA was not given unreasonable requests for documents we agreed to limit them to the months we wanted to have incident reports on and they provided us with these kinds of documents. After they provided us with the documents, they requested that we issue orders of confidentiality relating to those documents. In 2002 we were supposed to have a public hearing for DIMIA to discuss the documents they had provided us but because of the request relating to confidentiality I had to stop the inquiry and hold a direction hearing to hear an ACM case about why we should postpone it and why we should provide confidentiality. At those hearings DIMIA was represented by the Crown Solicitor. I considered the submission and I agreed to provide confidentiality to some documents. I also agreed to postpone the hearing. So the hearing would take place after the selection of the service provider process was finished.

We also issued two further notices asking for some further documents which were missing, which we thought were necessary for us to form a judgment. That was in November 2002. The public hearings for DIMIA and ACM took place in early December 2002. Seven DIMIA

officials appeared to give evidence. DIMIA and ACM both were represented by legal counsel. Later, after the public hearings, DIMIA took some questions on notice and they provided us with information.

So basically the original process of collection of evidence finished in December 2002, although it may have finished in September if we did not have this additional request. We then started drafting the report. In April we had the draft report ready. Between April and May we provided first draft reports to DIMIA and ACM for their comments and responses. DIMIA took a bit longer than was originally envisaged and replied in July 2003. ACM took even longer and replied in September 2003. They requested that additional oral hearings be given to ACM, because they were of the view that they needed to provide further evidence, which would be given to us under oath. I agreed to it and also invited the department of immigration to participate. The department of immigration declined, saying, 'We provided you with everything you need so we have got not much to add.'

We have had the second hearing. In November 2003 the inquiry provided a second draft report to both DIMIA and ACM for their comments. Under our legislation we are not required to provide it twice. We are required only to provide our report once to parties for comment. However, the secretary of the department of immigration wrote to the president of the commission and said that they would like to be given a second opportunity. The president asked me about it and I took the view that it was a very complex report and we could not go wrong with it, so we provided an opportunity for second comments. After we finalised the report we were also obliged, under our legislation, to provide the department and ACM with findings and recommendations so they could address it. It was my responsibility to consider it and include it in the report. In February 2004 DIMIA provided us with a final response and then the report went to the printers and was published.

Senator KIRK—Thank you for that very comprehensive coverage. That has cleared up a lot of things. When was a draft of the report given to the government?

Dr Ozdowski—On 22 April this year.

Senator KIRK—And that would have been the first draft? Sorry, I was thinking it was 2003.

Dr Ozdowski—The government does not receive an early draft. Only the department is entitled to it. We provided the finalised report to the government on 22 April.

Senator KIRK—When was it tabled?

Dr Ozdowski—It was tabled on 13 May. The government had 15 sitting days to table it.

Senator KIRK—When you provided the report to the government, was a copy given both to the Attorney-General and to the minister for immigration?

Dr Ozdowski—I will ask the secretary because she handled this aspect of it.

Ms Lesnie—No, the final copy, when it was transmitted, was transmitted only to the Attorney-General and the Attorney-General's tabling officer.

Senator KIRK—So there is no opportunity for the government, then, to provide any comments on the report. It is final by the time you deliver it to the government—is that correct?

Dr Ozdowski—That is correct. Of course we are not counting the department of immigration as the government in that definition.

Senator KIRK—So there is no opportunity for the government, as opposed to the department, to recommend any changes—and I might have already said this—to the report?

Dr Ozdowski—No. Certainly it would be not proper. The government, after receiving the report, may respond to the recommendations, and I hope the government will do that.

Senator KIRK—I will come to that. So under the legislation the requirement is only to consult with the department of immigration?

Dr Ozdowski—With the parties. In this case it was ACM and Immigration, and they are the only two bodies which got drafts of the report.

Senator KIRK—I was interested in the nature of the hearings that you held in relation to the confidentiality of the documents. Is that something which is provided for under the legislation, to conduct hearings to determine confidentiality or otherwise of information?

Dr Ozdowski—Yes. We can choose the way we conduct an inquiry, and DIMIA came with a very substantial issue because DIMIA were saying that the process of the inquiry, because of its public nature, interfered with the tendering process they had undergone and may create problems for the tendering process. There was also an issue of making some orders. I could not make the orders one way or the other without listening to why DIMIA wanted to have different sections of documents kept confidential, and the only way of doing it was to have public hearings. They took it very seriously, because they were represented by the Crown Solicitor, and I did not move on the inquiry for 30 days to allow them to appeal to a court if they disagreed with my ruling. I think the secretary to the inquiry would like to add something here.

Ms Lesnie—I just wanted to clarify that section 14 of the Human Rights and Equal Opportunity Commission Act allows for the orders of confidentiality for certain specified reasons. I could read them out to you or I could refer you to the report. It is on page 25 of the report.

Senator KIRK—Perhaps you could table that at your convenience.

Ms Lesnie—Okay.

Senator KIRK—And are the orders that you made, Commissioner, enforceable orders? I would not have thought that they would be able to be enforced.

Dr Ozdowski—Yes, they are. They clearly relate to this inquiry and clearly are binding on the parties, and therefore I allowed that month so that the Department of Immigration and Multicultural and Indigenous Affairs could appeal my orders in case they found them unfair or too oppressive. I also postponed the hearings. I gave them the December date for the hearings rather than a September date, as was planned earlier, so that the selection process of service provider for the detention centres was completed.

Senator KIRK—So there was provision there for appeal to the Federal Court on questions of law or just generally on your—

Dr Ozdowski—No, on my findings. On the subject matter of my findings there was the possibility for them to take it up.

Senator KIRK—But that was not taken up?

Dr Ozdowski—No.

Senator KIRK—As you said, there are a number of recommendations, a number of findings, in your report. Did you receive any formal response from the government in relation to your recommendations?

Dr Ozdowski—No, I did not receive any.

Senator KIRK—Are you expecting to receive a response to the report?

Dr Ozdowski—Yes. I really think that the report documented that long-term detention creates a serious mental health problem for children. For the first time ever it is documented in such a detailed way, so I would expect that the government will take note of it on the age and respond to it sooner or later.

Senator KIRK—Perhaps I can ask the department or the minister as to the timetable for a response to the report we have been discussing.

Senator Ellison—The response is within the portfolio of the Department of Immigration and Multicultural and Indigenous Affairs, but I understand there will be no formal government response to the report. That much I can tell you, but beyond that I would have to take it on notice as it is the portfolio and responsibility of the Minister for Immigration and Multicultural and Indigenous Affairs.

Senator KIRK—Can I just clarify that, because it is my understanding that the report was given to the Attorney-General rather than to the minister for immigration. Why is it that DIMIA is the party who gets to make the response, not the Attorney-General's Department?

Senator Ellison—I am advised that the Attorney was responsible for the tabling, but the Minister for Immigration and Multicultural and Indigenous Affairs is responsible for the government's position on the report's findings and recommendations. The Human Rights and Equal Opportunity Commission Act 1986 does not require a government response. DIMIA has provided detailed responses to draft reports.

There was a detailed press release, three pages in length, which was put out by the Attorney-General and the Minister for Immigration and Multicultural and Indigenous Affairs. I will table that. It outlines in some detail the government's view in relation to the report. One important aspect to remember is that in 1994, when mandatory immigration detention was introduced, there were 342 illegal boat arrival children in immigration detention. As at 5 May this year, there were only 12 unauthorised boat arrival children in mainland detention centres. Of those, seven could have moved into alternative detention arrangements if the parents had agreed to do so. So the situation has moved on a great deal. It has changed dramatically—down from 342 to 12. I will table that.

CHAIR—Thank you. I will have that collected for you.

Senator KIRK—Can the response of DIMIA and ACM to the draft report be made available to the committee?

Dr Ozdowski—The response is in the report. The response from the Department of Immigration and Multicultural and Indigenous Affairs is in the attachment on page 910. A response from ACM is on the page following the DIMIA response.

Senator KIRK—Thank you. Just to clarify, Minister, is the response from the department the three-page press release you referred to?

Senator Ellison—I am pointing to that as an outline of the government's response. It is a detailed statement of three pages. I appreciate that this is a very big report but the statement does outline the government's approach in the first instance to this report. As I have said, legislation does not require a response from the government and the government has indicated that there will be no formal response.

Senator KIRK—So there will be no formal government response whatsoever—just this three-page press release in response to two years of work and 900 pages of inquiry reporting?

Senator Ellison—That is the situation as I understand it. But remember that this report covered the period from January 1999 to 31 December 2002. The situation has changed dramatically since; 342 children in detention as opposed to a dozen is a very big change indeed. Things have moved on.

Senator KIRK—What is your response to that, Commissioner?

Dr Ozdowski—I have nothing to add.

Senator KIRK—Has the report been transmitted or given to any bodies outside Australia—to any international bodies, for example?

Dr Ozdowski—We have only the formal requirement to transmit the report to the Attorney-General for tabling in parliament. After it is tabled in parliament the report is a public document. After it was tabled it was made accessible on the human rights commission web site. If somebody requests the report a copy will be provided for a fee.

Senator KIRK—So no international bodies have requested it in any sort of formal capacity?

Dr Ozdowski—I am not aware of that but, again, I will refer the question to the secretary.

Ms Lesnie—There are some international bodies that are interested in this report and we are going to arrange to send a CD-ROM version of that report to various UN bodies.

Senator KIRK—Is that just as a matter of courtesy or is that a formality?

Ms Lesnie—It is a matter of courtesy.

Senator KIRK—Does the commission have any comment to make on the fact that Australia has refused to sign the optional protocol against torture.

Mr von Doussa—The commission made submissions in favour of Australia acceding to the optional protocol and we would stand by those submissions. It is something that we think would be in the long-term interests of Australia and the protection of people who are prisoners under a regime which would be covered by the convention.

Senator KIRK—The submissions that you refer to, were they made to the government or to the treaties committee?

Mr von Doussa—They were made to the Joint Standing Committee on Treaties inquiry. Those submissions are on our web site.

Senator KIRK—Could you inform the committee—no doubt this was included in your submission to the treaties committee—of the impact signing on to this optional protocol would have for Australian detention centres—that is, the opportunity for UN officials to visit Australian detention centres.

Mr von Doussa—Australia would accept the obligation to make available not only immigration detention centres but any place of detention to inspection by a United Nations international body. It would also impose an obligation on Australia to have an internal body that would undertake inspections of those institutions.

Senator KIRK—From what I understand, your submission supported those matters.

Mr von Doussa—Yes, it did, partly on the basis of setting an example, particularly with Australia holding the chair of the UN Commission on Human Rights at the moment, and as a preventive step towards torture or inhumane treatment in prisons. It is a step which looks rather to the future than to the past. We thought that was highly desirable.

Senator KIRK—Minister, is there any progress in relation to this matter—that is, becoming a signatory to the optional protocol against torture?

Senator Ellison—The government is considering whether or not to accede to the optional protocol that is under consideration. I will take that question on notice and see if there has been any development on that. My understanding is that there has not been as yet.

Senator KIRK—How long has the government been considering the matter?

Senator Ellison—I am not aware as to how long it has been under consideration. Again, we could take that on notice unless the officials here can help me on that. We will come back to that.

CHAIR—Certainly. When Ms Leigh has that information, if you would let us know.

Senator Ellison—We will come back to that shortly.

Senator KIRK—I will move on to another matter. No doubt you are aware of the case of *Young v. Australia*, the same sex discrimination case?

CHAIR—Where is the case occurring, Senator Kirk?

Senator KIRK—It was a UN Human Rights Committee decision.

Mr von Doussa—I will ask Mr Lenehan, who is the acting director of our legal section, to respond to that.

Mr Lenehan—Yes, the commission is aware of *Young v. Australia*. The legal section of the commission has organised a seminar where Ms Michelle Hannon, who acted for Mr Young, appeared and gave a presentation on the way the matter proceeded.

Senator KIRK—Could you inform the committee what Australia's obligations are, in particular the government's obligations, when there is such a decision handed down by a body such as the UN Human Rights Committee in relation to an Australian citizen?

Mr Lenehan—If you are asking whether the decisions are binding on the government, the answer is no.

Senator KIRK—Is there any formal legal obligation at all upon Australia arising from a decision of the UN Human Rights Committee?

Mr Lenehan—As a matter of international law the decisions of the committee are—and this is a little controversial at the moment—certainly persuasive if not binding. The committee asks the state party that is found to have breached the covenant to respond within a time period to the committee's findings.

Senator KIRK—In this case, what was the time period that was specified?

Mr Lenehan—I would have to take that on notice. Perhaps that is a question more appropriately directed to government.

Senator KIRK—I think you are right. Ms Leon might be able to let me know what the time period is and what the government's response has been.

Ms Leon—There is no legal requirement on the government to respond to a view of the Human Rights Committee. The committee gave the department their views in September 2003. They asked for a response within 90 days.

Senator KIRK—Did the government respond?

Ms Leon—The government is considering its response.

Senator KIRK—Clearly it is outside the 90 days.

Ms Leon—As I said, that is a request of the committee. There is no formal requirement on states to respond either at all or within a particular time frame.

Senator KIRK—Is it the intention of the government to provide a response? You say it is under consideration.

Ms Leon—It is under consideration—whether to respond and, if so, how.

Senator KIRK—When will that consideration be concluded? Is this an ongoing process? Will I still be asking this question in November?

Ms Leon—I cannot speculate on when the government will make a decision.

Senator KIRK—Has HREOC considered this case in the broader context of same sex discrimination issues that come before HREOC?

Mr von Doussa—We will have to take that on notice. I am sorry, I cannot answer that.

Senator KIRK—Okay. My question really went to whether, in view of the fact that the government is taking its time to prepare a response, HREOC has considered what impact such a lack of response might have on the standing jurisdiction of HREOC more generally in discrimination issues.

Mr Lenehan—I am not sure that it would have any impact upon our jurisdiction.

Senator KIRK—No, not on the jurisdiction.

Mr Lenehan—As with all decisions of the Human Rights Committee, that decision has been noted internally within the commission and it certainly informs the commission's work. The absence of a government response to that decision does not affect what the commission does.

Senator KIRK—There is no doubt that you have grown used to there not being much of a government response in relation to discrimination issues, as the lack of response that we appear to be getting in relation to the *A last resort?* report indicates. I wonder whether you have any views about how this might affect the standing of HREOC in the community.

Mr von Doussa—I do not think it would have any impact at all. This is a decision of a body quite independent of HREOC or any internal Australian organisation. It is a recommendation to a state party. It is really up to the state party to decide whether it is going to respond and, if so, how. The view that HREOC takes about all these Human Rights Committee reports is that they add to the international jurisprudence and they are persuasive in their interpretation of international law and international obligations. We have regard to those decisions, both insofar as they are matters emanating from Australia and insofar as they are matters emanating elsewhere. We take them into account in the application and interpretation of international law. To answer your question, I do not think that a response or lack of it would have any impact on HREOC's position.

Senator KIRK—I take you back to the questions that I was asking at the outset and the lack of response by the government in relation to the *A last resort?* report—the one that was tabled in parliament recently. HREOC put all of this time, money and energy into a two-year inquiry only to then receive a three-page press release from the government in response. Do you have any views about the effect that has on the standing of HREOC?

Mr von Doussa—Our responsibility is to conduct inquiries either of our own motion or at the request of the government. We do them as best we can. We publish a report which should speak for itself. It is tabled and there is no obligation to make any response to us. The report and the recommendations will speak for themselves.

Senator KIRK—I hope so. That is all I have.

CHAIR—Do committee members want to pursue areas with Dr Ozdowski specifically? I have some questions for Ms Goward if I might just ask those briefly and come back to you. Ms Goward, I understand that this year marks the 20th anniversary of the Commonwealth Sex Discrimination Act and I know that in June, in Sydney, there is a women's human rights court planned. I wondered what other events are planned nationally for the 20th anniversary.

Ms Goward—We launched, as you know, sexual harassment in the workplace resources in March this year and we aligned that with the anniversary of the act. That was launched in this building.

CHAIR—That was with the Attorney-General?

Ms Goward—Yes. We are marking the anniversary at the Women's Electoral Lobby annual conference. The Equal Opportunity Employment Network of Australia are doing 20th anniversary events in Queensland, New South Wales and Victoria and will cover the

achievements of the act. I addressed a cocktail party for EMILY's List Australia last week about the 20th anniversary. There is also the *University of New South Wales Law Journal*, forum edition, and the Castan Centre for Human Rights Law. We have marked it wherever we can by making it clear that this is the 20th anniversary, and my speeches often take that into account.

CHAIR—Thank you very much for that update.

Senator BARTLETT—I know you made some comments following on from the budget announcements about some of the movements that went towards extra assistance for working women wanting to have children. That obviously referred to some of the work that the commission had done previously with maternity leave. Is there any ongoing work that you are doing in the area of maternity leave and that work and family balance?

Ms Goward—We will be doing some more work on work-life balance. We have a planning day scheduled in the next month, so we will decide exactly what it is then. We have also intervened in the Industrial Relations Commission in the work-life balance, family responsibilities case.

Senator BARTLETT—I have a general question. I note in the PBS in your overall appropriations and other revenue that over 10 per cent is revenue from 'Other sources'. It might even be 15 per cent with my rough maths, but it is certainly over 10 per cent. Could you give me a better breakdown of what 'Other sources' might be?

Mr von Doussa—Certainly. The executive director will give it to you.

Ms Temby—Section 31 receipts are made up mostly of: receipts from AusAID for the Australia-China dialogue and work with Vietnam; receipts from the Office of the Privacy Commissioner for corporate services support and for rental; receipts from the Australian Public Service Commission for work that we do with other agencies in training; and receipts from Argus Communications for their sublease of some excess office accommodation that we have in level 7 of the Picadilly Centre—that is, \$508,000 in rent. All of this adds up to what we call the section 31 receipts.

Senator BARTLETT—Is there a general expectation that you will be required to raise a certain percentage of your overall funds from external revenue?

Ms Temby—No, I do not think there is an expectation that we will do so. But, for example, the Australia-China dialogue is an extremely important part of our work and of course must be fully paid for. It does not come out of our appropriation from government. We do that work on behalf of AusAID but we are fully funded to do so. That comes into our section 31 statements. The commission has also always had some cost recovery for its publications. We do sell some publications, although the vast majority of publications are given away for free or are downloaded for free from the Web.

Senator BARTLETT—How much is *A last resort?* selling for?

Dr Ozdowski—It will be selling for around \$50.

Senator BARTLETT—A bargain at any price, I would say—of course, I would say that, having got mine for free.

Ms Temby—We are giving the community guide away for free.

Senator BARTLETT—I am only allowed one, I am told. I would like to ask a couple questions on the report. Firstly, is it the largest report the commission has produced to date? Have there been bigger ones?

Dr Ozdowski—How do you count it?

Senator BARTLETT—The number of pages.

Dr Ozdowski—By pages, I do not think so.

CHAIR—By kilo, perhaps?

Dr Ozdowski—I do not think so. The inquiry into mental illness by the former commissioner was longer.

CHAIR—*Bringing them home* was not exactly short.

Senator BARTLETT—I was just curious. It is only one way of measuring, but it is one way. A key recommendation in the executive summary recommended that the minister transfer children into community—home based—detention. In the existing community housing projects is that what you mean by home based detention?

Dr Ozdowski—As a first recommendation we asked that all children be released within four weeks. As a temporary measure we asked that a number of measures allowed by the current legislation be used to speed up the process. It should not be read as an endorsement of home based detention or anything like that. It is simply this: we know how difficult it is to change legislation so we thought we would ask the government to use available mechanisms to take the children out, especially those children who have already spent two or three years there.

Senator BARTLETT—It is making the point that action can be taken now; they do not need to wait.

Dr Ozdowski—Straightaway.

Senator BARTLETT—You did have the opportunity during the course of this to examine the Woomera housing project. Is that right?

Dr Ozdowski—Yes, that is correct.

Senator BARTLETT—Does the use of facilities like that, or the ones in Port Augusta now, alleviate the concerns that you raised in the report?

Dr Ozdowski—I did not see Port Augusta. I intend to go there later. Port Augusta came online after the report was finished. In terms of the Woomera project, it was certainly an improvement for single women with children. I do not think that it provided an improvement for families, which had to be split up—part of the family went to that project and part of the family stayed in Woomera. The bottom line is that housing projects are detention; they are a slightly different form of detention but they are still detention. From the evidence we have seen they will not solve the problems of mental health.

Senator BARTLETT—As part of this inquiry did you examine the responsibilities of state governments in ensuring the welfare of children in detention?

Dr Ozdowski—Yes, we looked at that but only from the point of view of how it interrelated with Commonwealth responsibilities.

Senator BARTLETT—Are there areas where you think state governments could be doing more than they are?

Dr Ozdowski—Yes, especially in the early stages where delineation of responsibilities was not that clear. Later, especially the government in South Australia came up to speed and was able to make recommendations which I would regard as proper to the federal authorities.

Senator BARTLETT—In terms of other uses, if you like, of reports like these, the Human Rights and Equal Opportunity Commission would have engagement, I presume, with similar bodies internationally. Do reports like these get notified to other committees or to the relevant UN committee for them to use as resources?

Dr Ozdowski—Not as a matter of course. Our responsibility is to our Australian federal parliament and it is our audience. However, this kind of report does gain international impact in the global society and I would hope that this report will be noted by a number of UN bodies, especially regarding those problems with unaccompanied children as experienced in our jurisdiction. As I understand it, it is the first comprehensive examination of how it works and how the Convention on the Rights of the Child applies to it.

Senator BARTLETT—In the media release that was put out in response by the government it was stated:

... the report recommends a model that would in practice encourage the inclusion of children in people smuggling operations.

Was that potential consequence considered in developing your recommendations and do you acknowledge there is evidence that backs up that statement?

Dr Ozdowski—Yes, it was considered and I would like to refer you to page 883 to the chapter entitled ‘The elimination of mandatory detention may result in more children and families coming illegally to Australia’. We considered this.

Senator BARTLETT—Thank you for that.

CHAIR—I think that concludes questions in this area. I should just note for the record that the committee had indicated that we wished to call the Aboriginal and Torres Strait Islander Social Justice Commissioner but I do not believe that message was properly conveyed to the commission and so of course he is not here. There will be, as a result, some questions we wish to place on notice to Dr Jonas, which will be sent in the round of questions that come out of the estimates hearing.

For the record I also note that this is the first time the committee has met with representatives of the commission since the passing of Professor Tay. The committee would most certainly like to place on the formal *Hansard* record our sincere condolences to Professor Tay’s family and of course to all of her colleagues at the Human Rights and Equal Opportunity Commission.

Mr von Doussa—On behalf of HREOC I thank you for that expression of sadness. I would like to thank you also for the remarks that you made in the Senate some 10 days or so ago. As you indicated in those remarks, you appreciate that Professor Tay was very much respected by

everyone within HREOC and there was much sadness on her passing. The staff very much appreciated those remarks.

CHAIR—Thank you very much. That concludes questions for the Human Rights and Equal Opportunity Commission.

Ms Leigh—Before we conclude that topic I would just like to mention that I was asked before about the period of time relating to the optional protocol on the convention against torture and I wanted to respond. That optional protocol was opened for signature on 4 February 2003.

CHAIR—Thank you very much, Ms Leigh.

[4.00 p.m.]

CHAIR—We are dealing with outcome 1, An equitable and accessible system of federal civil justice, output 1.1. We are addressing general questions.

Senator LUDWIG—I have questions about an advertisement for an examiner for the Australian Crime Commission, but I am not sure whether it is a matter for the Australian Crime Commission or A-G's. They relate to the appointment of Mr Hannaford.

Mr Cornall—It might be convenient to deal with it when we deal with the Australian Crime Commission, but the department will be able to assist with those questions.

Senator LUDWIG—I am not sure that I have specific questions in relation to the ACC, so I did not really want to call them. It was really in relation to this matter.

Mr Cornall—In that case, we should deal with it in output 2.

Senator LUDWIG—All right. I now turn to the PBS, which is a good place to start, and the \$6.2 million to the department in 2004-05 for increased expenses associated with increased responsibilities. I was just trying to get an appreciation of how this funding will be allocated across outputs.

Mr Cornall—The responsibilities of the department have considerably increased over the last few years, particularly since 11 September 2001. As a result of that we have been incurring additional expenses over, if you like, the base funding that was set some years ago, which was in turn reduced by a number of savings initiatives. The way we have covered the situation of having to increase staff and take on additional responsibilities has been to utilise reserves that we have had from previous years. But that situation has now got to a point where we are presently operating in deficit. The first purpose of the new funding is to ensure that we will be operating in surplus. Then there are one or two other measures, where we need specific funding for new projects. The bulk of the funding will be to ensure that our current level of operation can be maintained to meet demands placed on the department over the last few years.

Senator LUDWIG—How is that money appropriated and which output does it then relate to?

Mr Cornall—It will be, broadly speaking, spread over a whole range of our activities to meet the current level of costs of both outputs.

Senator LUDWIG—Is that table available as to how that will be proportioned between each individual output?

Mr Cornall—The final allocation of the funding will depend on how we set our internal budget for the coming financial year. Broadly speaking, there have been increases in expenditure in a number of areas of the department, particularly in areas relating to national security, the Protective Security Coordination Centre, the criminal law area, the areas dealing with terrorism legislation, as well as a number of other areas where we have been giving advice on international law and taking part in more interdepartmental committees and interdepartmental projects than was previously the case.

Senator LUDWIG—If you look at that portfolio overview in the PBS, you see it seems to put it within different areas, such as Investing in Australia's Security. You have initiatives in there, you have initiatives within other measures and then there seem to be those in 'Capital and other measures'. If I interpret you correctly, some of that will be spent back across the areas that we have already commented on.

Mr Cornall—Yes, but not on specific targeted projects; that will be on the current level of activity across the department.

Senator LUDWIG—So will there be additional staffing or anyone relating to that to be employed?

Mr Cornall—To some extent those staff are already there, which is why we are presently running in a deficit situation.

Senator LUDWIG—So it is to continue their employment, so to speak?

Mr Cornall—Yes, it is to continue to maintain the level of operation that we have built up over the last two or three years.

Senator LUDWIG—So it is not earmarked for a particular outcome or measure as such; it is designed to ensure that your various output areas do not run in deficit on administrative expenses?

Mr Cornall—On departmental expenses, yes.

Senator LUDWIG—Is that all of the \$6.2 million?

Mr Cornall—No, that is about \$4.2 million or \$4.3 million of it.

Senator LUDWIG—So the remainder is where?

Mr Kennedy—All of the \$6.2 million has been allocated across outputs provisionally on a proportional basis until internal budgeting has been completed. There is also one other component. There is a depreciation component as well. The total resourcing is \$7.3 million. As the secretary indicated, that has at this stage been notionally allocated to all of the outputs until we complete our internal budgeting process.

Senator LUDWIG—So how much are you running in deficit?

Mr Cornall—About \$4 million.

Senator LUDWIG—Is that ongoing?

Mr Cornall—That is for this year.

Senator LUDWIG—How much was it last year?

Mr Kennedy—We have reached the position where a figure of \$3.5 million to \$4 million effectively represents our ongoing deficit against our existing workload. It has increased over the previous year—and I do not actually have that figure handy—but \$3.5 million to \$4 million is now our ongoing base deficit.

Senator LUDWIG—Is the \$23 million for fit-out costs for new office accommodation in the triangle?

Mr Cornall—Yes, that is our main departmental office. Our lease expires in February 2007. This is foreshadowing the costs that will need to be incurred between now and then to establish new offices for the department.

Senator LUDWIG—Is there a breakdown of how that money is going to be expended over the next three years? I am happy for you to take that on notice if you want.

Mr Cornall—We can deal with that now.

Mr Kennedy—In terms of how it is spread across the years, it all relates to fit-out and associated project management costs. Under capital measures on page 22 of the PBS, the second line identifies the distribution of that funding across the three years.

Senator LUDWIG—Will that all actually be spent on the fit-out of the new accommodation?

Mr Kennedy—It is all on fit-out and project management costs associated with the fit-out.

Senator LUDWIG—When is the department expected to relocate to the new address?

Mr Cornall—This is calculated on a projection that we would be shifting at the end of 2006, but we have not yet signed a contract in relation to new premises and there are negotiations going on at the present time. It may be that the time frames are adjusted depending on how those negotiations proceed, in which event we would have to then go back to Finance in relation to the allocation of these costs over the three-year period, because they are solely for the purpose of the new premises. Ultimately, if we have a slightly different time frame for the development of new premises then these costs would have to be reallocated over the relevant period.

Senator LUDWIG—What will happen to the existing premises that you are in?

Mr Cornall—At this stage it is our intention as lessee to leave those premises at the expiration of our lease, and then it would be a matter for the landlord as to what—

Senator LUDWIG—You do not own any of the buildings?

Mr Cornall—No, we do not own them.

Senator LUDWIG—They are all leased?

Mr Cornall—That is correct.

Senator LUDWIG—The \$96.7 million over five years for the refurbishment of the Sydney law courts seems to be the biggest single item of expense in outcome 1. So significant moneys are being earmarked for that. Were any other options considered?

Mr Cornall—Mr Oliver is a director of Sydney Law Courts Ltd and he would be well placed to answer your questions.

Mr Oliver—Over a fairly extensive time a range of options have been considered, culminating in the development of a business case. There was an extensive report done by a private consultancy firm, requested by the board of management of Sydney Law Courts, that recommended a way forward to both the state government of New South Wales and the federal government, represented by their directors on the Sydney Law Courts board. That report, prepared and tabled in 2003, recommended a full refurbishment of the building. The fundamental problem with the building is its base building services that are now 27 years old and no longer servicing the building particularly well. The report was prepared, and it was a very extensive report. It was considered by the department of finance in the preparation of a business case so that a proposal would be put forward to cabinet, and that was precisely what happened throughout this budget process.

Senator LUDWIG—What is the overall cost? Is \$96.7 million our share—that is, the Commonwealth government's share?

Mr Oliver—That is the Commonwealth government's share.

Senator LUDWIG—What is the overall cost?

Mr Oliver—The estimated cost by the state of New South Wales is \$49 million, but that is an in principle agreement because their budget process is in process as we speak. We are hoping that an announcement will be made on that process.

Senator LUDWIG—So this is the biggest single item in outcome 1—refurbishment of the Sydney law courts.

Mr Oliver—It is an administered item.

Senator LUDWIG—I do not know whether you actually answered my question in relation to whether other options were open or were canvassed.

Mr Oliver—In the report that was prepared by the consultancy firm CMR there were a range of options canvassed. I do not have the report with me but I could come back to you with a response on that. In effect, there was a minimalist proposal put forward. There was a greenfield site proposal put forward, there was a minimalist site put forward and then there was a more extensive refurbishment than has been agreed. The agreed proposal was, in effect, a combination of the more expensive and the less expensive proposals that was considered most appropriate by the consultancy firm and agreed by the Department of Finance and Administration and the board of Sydney Law Courts.

Senator LUDWIG—So this outcome, the expenditure of \$96.7 million, is that which was recommended by the report as the preferred option?

Mr Oliver—Yes, it was; the third option.

Senator LUDWIG—Is that report available to the committee or is it commercial-in-confidence?

Mr Oliver—I would have to take that on notice. I expect that there are some commercial-in-confidence aspects to the report, but I suspect that we could make available the business

case that was prepared for the department of finance, and that is in effect a summary of the financials and so on.

Senator LUDWIG—I was not interested in the commercial-in-confidence arrangements. In terms of the selection criteria, the development of the model and which model was finally selected as the appropriate one, I was interested in that process and its outcome and how the money is to be expended.

Mr Oliver—I can take that on notice but I suspect there is no problem with making the report available to you.

Senator LUDWIG—When the refurbishment is completed, what is the expected lifespan of the court structure or complex then? How long is it proposed to go for? If the Commonwealth is going to spend \$96.7 million of taxpayers' money, what is the return on investment? How long will it be before we have to front up again?

Mr Oliver—The building is now 27 years old and is in a situation where its services are beginning to fail quite badly. I am not sure if the report refers to this but I would expect another period of 30 to 40 years out of the full refurbishment.

Senator LUDWIG—Does the case model highlight the life span? Does it deal with it? You indicated that you were not sure whether it did or did not. There is the added issue of whether, if you are going to spend this sort of money on refurbishment, you will get a return on your investment over time—in other words, in comparison to using a greenfields site, which might have a longer life.

Mr Oliver—The report does state a return on present value for the building and its yield. I do not have those figures at my fingertips but certainly it does show a return on the Commonwealth's investment.

Mr Cornall—I should say that the site is extremely well situated in the central business district in Sydney. To find a greenfields site that could easily replace it would be a very ambitious project.

Senator LUDWIG—In Sydney, yes. I am just going to a different area now. I suspect we may be in 1.1 now. We have sort of migrated to that area. There is \$440,000 in international bodies. I have lost the page reference so I might come back to that. If we deal with it more broadly, international organisations are earmarked for \$440,000. How will that be spent?

Mr Kennedy—The \$440,000 is for outcome 1. There is also an item in outcome 2. For outcome 1, it is for The Hague conference, which is approximately \$179,000, UNIDROIT, which is approximately \$67,000, and the Berne Union, which is approximately \$195,000.

Senator LUDWIG—So they are the agencies that will benefit from that expenditure?

Mr Kennedy—These payments represent Australia's membership contributions to those international organisations.

Senator LUDWIG—Is that the full requested complement of membership or have you paid part of it? Sometimes some people only pay a proportion of what they should pay. Is that the full proportion that is expected?

Mr Kennedy—That is the full amount that we would be expecting to pay.

Senator LUDWIG—Do they provide a report on how that money is expended or do they provide an annual report that you then obtain in due course? In other words, what check on the expenditure is there?

Mr Govey—I think the general position is that they prepare a budget for the organisation as a whole. I am reasonably confident that they also provide a report on their expenditure, but we can take that on notice and check.

Senator LUDWIG—Yes. I expect that. It is just that it is always worth asking an accountability question at this time of year. I might put some of my questions on notice.

[4.20 p.m.]

CHAIR—If there nothing else in the general area, we will move to output 1.1, Legal services and policy advice on courts and tribunals, alternate dispute resolution, administrative law, human rights and procedure.

Senator LUDWIG—I have asked a number of times about the migration review. I have asked DIMIA but they decided not to provide it. It seems to be mentioned in the budget, it seems also to be mentioned in a lot of other places, but no-one has seen this report except the Attorney-General's Department, DIMIA and perhaps others you have given it to. Why isn't it available? I am not asking for it; I am just asking you why it is not available. We will get to 'Can you provide it?' but I thought you might like to provide the reason first.

Mr Govey—The release of the report is a question for the government, and the government has decided that it does not want to release the report. As I understand it, the essential reason is that it was a report prepared for government to inform its policy making decision, particularly in the context of both ordinary cabinet policy deliberations and the budget.

Senator LUDWIG—Senator Ellison, is there some reason why it cannot be released? I did not think it amounted to a document that you would hide in the cupboard.

Senator Ellison—We do not normally release advice or reports we receive which form the basis of policy, as has been indicated by Mr Govey. I do not know any more than that on this matter. It is not something that I have been dealing with, but I will take it up with the Attorney and see what I can come back with.

Senator LUDWIG—It is just that reports like the Tongue report in relation to legal services are very helpful. It is the case that the government does provide these internal reports, admittedly on an ad hoc basis, but with one that reviewed a significant area of interest such as migration review there is a question why the government does not want to make it publicly available. It does raise issues as to whether or not the recommendations were helpful to government and why the government would not want to provide the report—or a synopsis of the report or the recommendations of the report—even if certain elements of it were unfavourable. It is the same as another issue that arose with ITSA in relation to the review of the bankruptcy and family law. They originally did not want to provide the report either, but it was available under freedom of information. The Attorney-General might like to consider those sorts of issues. If it is available under freedom of information, can you save me the \$30?

Senator Ellison—Yes, that is fair enough; I will chase that up.

Senator LUDWIG—Thank you. Can we talk about any details in relation to the report—what recommendations were made, whether they have been acted on and whether it is intended to provide any details about those? How far can we go, Ms Leigh, without the report?

Ms Leigh—I do not really think we can discuss the report, for the reason you have just outlined. The government has made a public statement about what action it proposes to take. The decision that has been announced was informed by the report, so that is really the area that is in the public arena.

Senator LUDWIG—So we know that the government has flagged an intention to legislate to discourage unmeritorious applications for review—is that right?

Ms Leigh—I think that is an accurate summary, yes.

Senator LUDWIG—Is there any idea of how that is proposed to be done? Are you working on that now?

Ms Leigh—Yes, we are.

Senator LUDWIG—What can you tell me about that process?

Ms Leigh—The Attorney-General has announced the key measures that will be taken. First of all he has announced a significant increase in resources for the Federal Magistrates Court in the form of the appointment of eight additional magistrates. That is an integral part of the legislative amendments that have also been announced. That will channel the litigation to the Federal Magistrates Court, which was set up to be a high-volume court—so it is set up to deal quickly with matters. That, combined with the additional resourcing of the court, should enable these matters to be dealt with much more expeditiously. In addition, there will be a provision to facilitate remittal directly from the High Court to the Federal Magistrates Court of any matters that are filed in the High Court's jurisdiction.

Senator LUDWIG—I am sorry to interrupt you. I thought the High Court had that in hand.

Ms Leigh—It is a little difficult for me to go into too much detail at this stage, given that these measures have just been announced, but there are steps that the government will take to facilitate that.

Senator LUDWIG—In addition to what the High Court is doing, perhaps?

Ms Leigh—We will obviously be working closely with the High Court in ensuring that the measures that they are taking fit in with any other measures that the government needs to take. We have been consulting with the High Court about these issues for some time so decisions that the government has taken are informed by the advice we have received from the High Court.

Senator LUDWIG—Have you? That is not the impression I got from the registrar of the High Court in relation to these matters. I am happy for you to correct the record.

Ms Leigh—I do not think we are at odds with the High Court on that at all. We have certainly had discussions with the High Court about the range of issues.

Senator LUDWIG—Have they sent you a copy of the proposed new rules?

Ms Leigh—Yes, we received those on Friday.

Senator LUDWIG—Are you responding to that?

Ms Leigh—As I said, we just received those on Friday but obviously we will be looking closely at them to see how they fit in with the measures that the government has announced and we will discuss any issues that arise from that with the High Court, as we always do.

Senator LUDWIG—Sorry, I interrupted you before you could complete what you were saying earlier. Did you want to go back to that? I think we had got to the measures of the High Court.

Ms Leigh—In addition, applicants will be required to identify any previous applications they have made for judicial review in relation to a matter when they are filing a new matter. When they are filing in relation to the same matter they will be required to identify previous applications for judicial review that they have made in relation to that same matter. This will facilitate the court in dismissing matters which simply attempt to relitigate matters that have already been litigated. So that will facilitate options that the courts currently have available to them.

Senator LUDWIG—What can you tell me about the use of the phrase ‘unmeritorious applications for review’? How is that going to be determined? I think I tried to raise that technical phrase in discussion with the High Court registrar but I am wondering whether you could illuminate it a little bit more for me, please.

Ms Leigh—The information we have been receiving from the courts and the profession is that matters are being filed without regard to their merit, and clearly that is a matter of concern in relation to the efficient operation of the justice system.

Senator LUDWIG—Is that anecdotal? I asked DIMIA a question, in a legal and constitutional committee hearing, about what they regarded as unmeritorious. I will have to get the transcript—otherwise I might verbal them—but the gist of it, as I understood it, was that anyone who did not succeed was unmeritorious by default because they did not win. That was in relation to migration matters in the High Court—special leave applications, I think.

Ms Leigh—I am not sure of the sense in which it was being used on that occasion. I understood the sense of your question to be referring to those cases where it could not be said that the matter was properly arguable and therefore it was questionable whether the matter should have been brought.

Senator LUDWIG—So you would not agree that if a person fails either on a special leave application or on appeal to the High Court their case is by default unmeritorious?

Ms Leigh—As I say, I imagine that depends on the sense in which you are using the word.

Senator LUDWIG—However DIMIA uses it, I think—I was not quite sure either. ‘Unmeritorious’ is not, then, a euphemism for ‘failed in a special leave application to the High Court or on appeal’? You do not take it to be the same or synonymous?

Ms Leigh—In the sense in which we have just been discussing it, certainly when a case is brought there is somebody who wins and somebody who loses. That does not mean that the

case was not a proper one to be brought—that there was not a matter to be properly argued before the court.

Senator LUDWIG—That was my understanding. At least we agree on that point. I am not sure DIMIA does. Was there a money figure set aside for the review? Can you tell me how much it cost, whether any consultants were used in the process and, if so, what their costs were?

Mr Govey—We might need to clarify this later. I think the best advice we can give you at this point is that there was a cost of about \$83,500 over and above some internal costs that were incurred because of the work that was done within the department. In other words, there were some additional costs on top of that but out-of-pocket costs were about \$83,500.

Senator LUDWIG—Were any consultants employed in the process, or was that departmental expense?

Mr Govey—There were no consultants. Of course we obtained legal advice from AGS, but there were no outside consultants in the more general sense.

Senator LUDWIG—I keep forgetting about that. Perhaps when you look at this issue again to clarify it you could itemise the cost of AGS.

Mr Govey—If there is anything more to add, we will do that; otherwise we will just give you the figure that was spent on AGS legal costs.

CHAIR—If there is nothing else on output 1.1, we will move on to output 1.2.

[4.33 p.m.]

Senator LUDWIG—There was significant work done by Ms Sue Tongue in relation to the review of legal outsourcing arrangements. It was highlighted again today in the *Financial Review*. My understanding of today's *Fin Review* article is that it seems to outline a major blow-out in legal expenditure. At last estimates, or after last estimates, this was also an issue on which we put questions on notice to the department. We asked for details about outsourcing legal services expenditure for the 2002-03 year.

Based on the Tongue report, the Attorney-General's expenditure on external legal services in 2001-02 was about \$5.3 million but it shows that, in fact, it is not that at all, is it? That was the best guesstimate in that report. It rose to something in the order of \$7.82 million, an increase of something like 47 per cent. What is the reason for the increase that has flowed through? It seems to me that there has been a blow-out in the cost of outsourcing of legal expenditure in this area. What has happened to cause this?

Mr Anderson—As we have pointed out before the government has placed responsibility on the chief executive of each department and agency for the legal expenditure of their particular agency. In response to this particular department's expenditure, I can say that, over the last six years, our expenditure has fluctuated. In some years it has been higher; in some years it has been lower. We reported to Ms Tongue our expenditure of around \$5.3 million in the last year of her survey but in earlier years our expenditure had been up to \$7 million. While it has now gone back up to just over \$7.1 million in the 2002-03 year, that is not necessarily an unusual fluctuation if you look over the last six years. It just depends on the types of matters that the department is involved in. For this department for example, a lot of

the expenditure relates to involvement in native title matters, native title litigation, and also to constitutional litigation. In some years there is simply more of that litigation of both types than in other years.

Senator LUDWIG—So the Office of Legal Services Coordination does not have a monitoring role?

Mr Anderson—We do not carry out an audit of different agencies. We are not responsible for checking the level of expenditure generally, although we do carry out exercises such as Sue Tongue's report from time to time to see what is happening in the market and to see whether that indicates that there is a need for any different action to be taken. It does come down to chief executives of departments and agencies themselves being responsible, as with any other type of purchasing, for ensuring that they are receiving value for money and that they are meeting their legal services needs appropriately. They are doing that within their total budget, so it is obviously extremely important to them to ensure that they do not overspend on legal services, that they only spend the amount that is required to obtain their various departmental outcomes.

Senator LUDWIG—What role do you play then?

Mr Anderson—When the government opened up the government legal market to competition, it indicated certain key principles that it needed to protect. Those go to matters such as the provision of legal services in tied work areas: areas of key importance to the government. For example, constitutional law, advice to cabinet, national security work, public international law and drafting are all tied work categories. That is an area where we need to make sure that agencies do not go out and get legal services from a non-government legal service provider or internally. We monitor that.

There are also certain other key principles that were laid down by the government such as the model litigant obligation, so ensuring that the government as a litigant behaves appropriately and in accordance with some longstanding legal principles. We monitor that as well. There are other principles, which are aimed at consistency across government legal services. They are to do with the manner in which counsel are briefed and the rates which are paid to counsel, the provision of legal services to employees of agencies and the settlement of claims against the Commonwealth.

In those areas, while any legal service provider is able to provide legal services to a department or agency, we are responsible for ensuring that they do not do so in a manner that is contrary to the government's interest as articulated in the legal services directions issued by the Attorney-General in 1999. We do provide education as well as monitoring in those areas. We also provide some assistance in terms of purchasing. We have provided some model contract clauses, for example. And we have been prepared to assist in tenders where departments have sought our assistance.

Senator LUDWIG—So it is effectively a monitoring role?

Mr Anderson—Yes, that is correct.

Senator LUDWIG—What happens if someone does transgress the tied arrangement or transgresses what would be the usual amount of expenditure on outsourcing of legal services?

For argument's sake, say they outsourced everything, which may be considered to be inappropriate for that agency or department.

Mr Anderson—If they breached the legal services directions—for instance, if they obtained legal services in a constitutional matter from a private firm of solicitors, that sort of thing—we would intervene to ensure that appropriate remedial action is taken. That might mean insisting that constitutional submissions are settled either by the department or by the Australian Government Solicitor or it might mean insisting that the Australian Government Solicitor entirely take over the carriage of that case. The Australian Government Solicitor is able to do tied work. Ultimately, the Attorney can also issue a direction, which has the force of compelling an agency to conduct a piece of litigation in a particular manner. It might be that they make certain submissions or do not make other submissions or it might be simply about how they conduct the litigation. It is extremely rare that matters get to that. Generally we detect things very early on and it is a question of discussion with agencies and, as I say, putting in some appropriate remedial action.

Senator LUDWIG—Do you keep a schedule of how many times that occurs?

Mr Anderson—Yes, we do. We keep records of that.

Senator LUDWIG—By department?

Mr Anderson—It is not sorted by department, but it does provide information as to the departments involved.

Senator LUDWIG—How many times in the last 12 months has that occurred—where you have had to haul a department aside and say, 'We think you are breaking the rules or potentially breaching the rules and you should do something about it'?

Mr Anderson—In this financial year to date, there have been seven occasions when we have formed a preliminary view that there has been a breach of the legal services directions and we have sought information from the agencies involved. In two of those cases we are still waiting for a response from the agency. On five of those occasions we formed the view that there had been a breach of the legal services directions and we took appropriate action. Often the breach is going to be in a sense comparatively minor, in that little action is actually needed to remedy it, but it still is a breach. For example, one of the breaches was a failure to notify us of a significant piece of litigation as soon as possible. While we were notified by the agency, which was good, we were of the view that they could have notified us earlier to give us more time to consider whether the government wanted to do anything in that particular piece of litigation. While that was a breach and we have had discussions with that agency, it was not difficult to remedy because we had still been notified.

There are other potential breaches that we are notified of with respect to the model litigant obligation. Generally we get notified of them by complaint from the public or from another litigant. In this financial year to date, we have been notified of six potential model litigant breaches. We have completed the investigation of three of those. In two we found that there was a breach of the model litigant obligation; in one we found that there was no breach.

Senator LUDWIG—Can you provide the committee with details of those seven you have mentioned—what they were, what they amounted to and what remedial action was taken or

suggested by the department involved. And when you say that appropriate action is taken, can you detail what that appropriate action might be.

Mr Anderson—Certainly.

Senator LUDWIG—Do you jawbone them and say, ‘Don’t do it again?’ What else happens?

Mr Anderson—It is going to depend upon the breach, but in some cases it might be a question of actually raising something up to the chief executive of an agency and having a discussion with them as to what has been involved and as to our concern. On other occasions, it might be simply a question of pointing out that there has been a breach and ensuring that they understand why we think there was a breach and that they accept that.

Senator LUDWIG—Is that the worst-case scenario—that you get reported to the chief executive officer?

Mr Anderson—The worst-case scenario is that the Attorney actually takes some formal step.

Senator LUDWIG—I am not familiar with what you mean by that. What step would he take?

Mr Anderson—He would issue some direction. Let us go back to our hypothetical example about the constitutional litigation where a private firm of solicitors has acted in a constitutional case or has given advice in a constitutional case. The Attorney could issue a direction to that agency saying, ‘You are no longer allowed to use this firm, either at all, in constitutional litigation or in that case.’ That is quite a strong step.

Senator LUDWIG—Yes, has that happened in the last 12 months to two years?

Mr Anderson—I do not believe it has happened, no.

Senator LUDWIG—At all?

Mr Anderson—The Attorney has issued three directions since 1999. In none of those instances, as far as I am aware, has he actually said, ‘You can’t use a particular firm again.’

Senator LUDWIG—Are those directions available on the Web?

Mr Anderson—No, they are not available.

Senator LUDWIG—Are they available to the committee?

Mr Anderson—That is a matter we would need to take on notice.

Senator LUDWIG—What can you tell me about them then?

Mr Anderson—I can say that at least one case was a matter—in fact it might have been two—where it was a question of the kinds of submissions that were going to be made by government in a particular piece of litigation. One of the reasons for this particular principle is to ensure that the government does not, in order for a particular agency to get a tactical advantage, undermine its own administration of a piece of legislation.

Senator LUDWIG—So to ensure that it does not argue against its own act.

Mr Anderson—In at least one of these incidences—and possibly two—where there was a direction it was a case of ensuring that the agency would make submissions that were consistent with the government’s understanding of that particular piece of legislation.

Senator LUDWIG—It would be helpful if we could find out a little bit more about that. Could you take it on notice as to whether you can provide those instances, the particular case that was involved, what the advice was, what action was taken to ensure that the actions were consistent with the department or the executive government’s view about the issue and in which matter it was?

Mr Govey—It is perhaps worth making a general comment that our experience with breaches of the legal services directions is that agencies do take them seriously. We do not find a high level of breaches. When we do point them out our general experience is that, as I say, the agencies are very cooperative and take measures to ensure as best they can that they are not repeated. I think that is an important part of the background which perhaps puts in context why we have not found it necessary to recommend to the Attorney-General that something more extreme happen by way of exercise of those powers that he has in reserve.

Senator LUDWIG—It seems to me that in the first steps the legal firm are the people who are detrimentally affected, because they are then directed not to be used.

Mr Govey—That is what I am saying—that has not happened.

Mr Anderson—That was simply an example.

Senator LUDWIG—But it seems to be a strange sort of punishment where you are not actually going to punish the person who might have stepped over the line—that is, the department—but are punishing the firm of solicitors who might be the innocent parties, and I would put that in inverted commas, in relation to the matter.

Mr Govey—I think you would need to put that in inverted commas because the law firms themselves should be, and indeed are, very much aware of the limits on what they can do. They have their own obligations to their client agency to help them ensure that the agency complies with the obligations under the legal services directions.

Senator LUDWIG—When you look at legal expenditure you see that for FaCS it rose by nearly 300 per cent and for the Department of Defence it rose by 200 per cent. It seems that I cannot question you about that because you do not monitor it—in the sense that you might be aware of it but it appears to be outside your responsibility. What I was curious about then was who from the whole of government would be interested in that. It is a significant amount of money that is being expended on the outsourcing of legal services, and there is a significant increase in their budgets in relation to that matter. When you start to add the pieces together, it is a significant amount of money in total. If the Office of Legal Services Coordination does not have an interest in monitoring that part of it, who does?

Mr Anderson—We are certainly interested in the sense that we are concerned that agencies are able to acquire the legal services that they need in a particular situation. If it were the case that agencies were not able to acquire the type or the quality of legal services they needed then that would be a particular issue of concern to us. In terms of the level of expenditure though by an agency, that is obviously going to be of interest to the Auditor-

General because it is the expenditure of Commonwealth moneys. As we know, the ANAO is contemplating doing an audit of legal services expenditure. It is something that might be of interest to parliamentary committees such as this one.

Senator LUDWIG—Do you monitor how much the blow-outs have been across various departments? Are you aware by department whether there has been an increase or decrease in outsourcing of legal services?

Mr Anderson—We seek to monitor generally what agencies and departments are doing with respect to their purchasing—things like whether they have had a tender or whether there is a tender coming up. We have had Sue Tongue's recent review as well to give us an indication agency by agency. We surveyed 170 agencies in that instance. We are working with ANAO as part of their scoping process to seek to discuss whether they would be prepared to take forward some of Ms Tongue's recommendations about best practice guidelines for accounting for legal expenditure. That could also go to the manner in which agencies and departments report their legal expenditure.

Senator LUDWIG—If it is not your role, whose role is it, Minister or Mr Cornall? It seems that this is an area which lacks reasonable accountability in how much is spent on legal outsourcing. It started off with A-G's as a mechanism to allow departments to outsource legal expenditure and it has now grown topsy-turvy. There is no clear accountability mechanism to ensure that each department accounts uniformly across agencies in relation to their expenditure. They do not report annually in relation to their expenditure, and nor is there a check as to whether it is increasing and whether the increases are reasonable or even accountable, because you get some really strange results. Some of them, as you have indicated in your own circumstances, are explicable, but those for Defence and FaCS do not seem to be explicable to me.

Mr Cornall—I would not necessarily assume that an increase in costs is a blow-out. It depends on the period of time you are talking about and the activities that are undertaken. As Mr Anderson has said, our own legal costs fluctuate from year to year, depending on the particular aspects of our business. I would imagine that it is the same in other departments. The second point is that the principle that Mr Anderson has referred to is that chief executive officers are responsible for all of the expenditure within their department. This is an element of expenditure just as much as expenditure on staffing levels, on IT or on supplies or travel. The chief executives of agencies have to be responsible for that expenditure and to fit it within their allocated budget. That is the philosophy on which a lot of outsourcing decisions have been made. Principles were introduced in the late 1990s for giving more flexibility in managing budgets to CEOs. The inquiry by the ANAO may well produce some information which leads to some conclusions that we need to take a more whole-of-government approach, which we are tending to do in some other areas. That is really where the matter rests at the present time.

Senator LUDWIG—Who would be the lead agency responsible?

Mr Cornall—If there is to be a lead agency, it should be this department. The point is that legal expenses are just another expense which a department or an agency has to monitor like all its other expenses.

Senator LUDWIG—What about the recommendations from the Tongue report? Have they been taken up or progressed?

Mr Anderson—A number of them have already been taken up. For example, the Office of Legal Services Coordination has started publishing occasional bulletins which seek to provide education about different aspects of its role. The last one, for example, detailed the different legal services directions and the obligations placed on agencies. We have also published some additional material on our web site about the model litigant obligation.

A number of the recommendations also entail working with the ANAO about a best practice guide on accounting for legal expenditure. The Attorney wrote to the Auditor-General and there have been discussions between us and the ANAO about whether they would progress that through their audit. Certain recommendations would depend upon best practice guidelines being developed and would involve the Office of Legal Services Coordination seeking to promulgate the use of those best practice guidelines. Obviously the ANAO will have to have concluded their audit before we can move on that.

Generally we are seeking to progress the recommendations. There is another one about doing an outreach program with small agencies, because it seemed that some of the very small agencies which had a negligible legal spend were less familiar with the legal services directions requirements. Through our bulletins, we have sought to particularly reach out to small agencies and to say, 'Do you actually want anything specifically from us? What's your understanding?' So we are using a range of mechanisms to seek to progress the recommendations.

Senator LUDWIG—Are those service bulletins available on your web site?

Mr Anderson—Yes, they are.

Senator LUDWIG—From memory, the report indicated that there was a need to address the use of ADR, alternative dispute resolution, in this area. Have you done anything in this area to encourage the use of ADR amongst departments? I will preface my remarks by saying that I asked on notice a range of questions to departments about the use of ADR. I am happy to share the result with you: it is uneven, to be kind. It seems to me that it is your responsibility to ensure that they use ADR—or am I wrong about that, too?

Mr Anderson—Certainly one of our obligations is to promote the use of ADR, and that is enshrined in the legal services directions, in that departments and agencies are enjoined to avoid litigation wherever possible, which implicitly means 'use ADR'. I should just go back to Ms Tongue's report and note that, while it made comments about an apparent decline in the use of ADR, it was not actually asking express questions about ADR.

Senator LUDWIG—No, but it would be hard to ignore it.

Mr Anderson—It did not ask, 'What ADR activities has your agency been involved in?' It simply asked, 'What is the legal spend on ADR in itself?' I suspect that a lot of legal spend on ADR would be rolled up in litigation. For example, it is quite common to have mediation attached to litigation. As you would appreciate, ADR is pretty broad spectrum. You can have negotiation, mediation, arbitration and all sorts of different non-litigious mechanisms occurring at the same time as litigation. It is likely that it is all going to be wrapped up in a

total bill for a litigated case, because that is an easy way to describe the activity. We have a bit of caution about the amounts that were returned in the survey for Ms Tongue's report about the total spend on ADR. In terms of what we are doing, though—

Senator LUDWIG—Sorry to interrupt you, but have you asked the departments about ADR individually?

Mr Anderson—No, we have not.

Senator LUDWIG—Why not? If you do not think that the Sue Tongue report was reasonable or set out to specifically address that issue, why haven't you?

Mr Anderson—We are coming at it in a slightly different way. In the legal services directions issue paper, which we issued, we have raised as one issue whether there should be more guidance in the legal services directions about the use of ADR and about the expectations of agencies with respect to using ADR. It is also something that is seeking to pick up some recommendations by the National Alternative Dispute Resolution Advisory Council, which advises the Attorney on recommendations. We have sought departmental views on ADR in that context. Once we have had a chance to look at all the submissions—there are still some submissions to come in—that will give us more information to go back to individual departments and agencies with.

Senator LUDWIG—Will a report be the outcome of that or is that an internal document?

Mr Anderson—The recommendations will go to the Attorney, and they will be considered at that level.

Senator LUDWIG—So the Tongue report was not a comprehensive audit of government legal services? That is what I thought the Attorney-General announced at the time—that it was a comprehensive audit of government legal services. ADR is one of them, as is not only monitoring legal expenditure but also completely ensuring that it is properly accountable and accounted for. What we seem to be hearing from you is that it was a narrow report about certain matters. What if I give you the opportunity of telling me which it is? Was it a comprehensive audit of government legal services or not?

Mr Anderson—It certainly sets out to be a comprehensive audit of government legal services by going out to 170 agencies and asking them to detail, first of all, the total—external and internal—legal services expenditure and then breaking that down into a number of categories. We sought to get as much data from that exercise as possible. But one thing we did find was that, due to agencies having a number of different ways of recording that data internally, we did not necessarily get the level of detail that we were looking for once you had broken that down into the categories. ADR is one of those examples. For example, if an agency had been involved in ADR but not using a legal service provider, it would not actually have been picked up because we were looking at legal services and legal services usage by government. You could easily be involved in a mediation or negotiation without having a legal service provider involved. So it certainly did not purport to be a survey of ADR as such.

Senator LUDWIG—No, but it was supposed to be a comprehensive audit of legal services and it does not seem to have amounted to that.

Mr Govey—It is worth stepping back to note that the essential responsibility of the department and the Attorney in this area is to provide a framework within which legal services are acquired. The legal services directions and the associated policy guidelines are really all about providing that framework. But after that framework is provided, and subject to the monitoring that Mr Anderson has mentioned, the way in which services are acquired, the use to which they are put and the mixture between AGS, private law firms, barristers and internal employees, are matters for each agency. For example, if we are concerned about there not being an appropriate level of competition in the marketplace, or if there is something else is wrong with the framework, that is when we regard it as appropriate for OLSC to make recommendations to the Attorney for action to be taken, such as amending the legal services directions. So in that context, Sue Tongue's report was particularly useful in identifying a whole range of issues that we needed to look at. One of those that came forward both in that report and in the NADRAC report that Mr Anderson mentioned was ADR. That in turn led to that being a significant issue in this current review of the legal services directions.

Senator LUDWIG—So when will the current review be completed?

Mr Anderson—We called for submissions by the end of April. A number of entities have asked us for extensions of time until the end of this month. I think we are still waiting for eight more submissions to be received. Once we have had a chance to go through all those submissions we will put recommendations to the Attorney. At this stage we do not have a specific date in mind other than it will be in the second half of this year.

Senator LUDWIG—And that will be a report to the Attorney-General that suffers the same consequences as other reports that may not be available to the committee.

Mr Anderson—That will be a matter for the Attorney to consider.

Mr Govey—I expect this will be in the form of a traditional submission to the Attorney-General. It will not be prepared as a stand-alone report.

Senator LUDWIG—I was going to put a plug in early just in case. I will leave that for the next time, I guess. Mr Anderson, last time I think you said on page 100 of the February estimates in 2004 in relation to the intention to tighten up reporting of expenditure requirements that you only look at it every couple of years so that you can see any trends that are emerging. What you have been telling us is still consistent with that. That is the role of Office of Legal Services Coordination.

Mr Anderson—That is correct. Although, as I think I mentioned earlier, we are also looking at whether there are other ways of approaching that. One way might be to look at the type of reporting that is required of agencies.

Senator LUDWIG—The issue of whether there has been a 'cost blow-out' or whether there have been any increases which are out of the ordinary—which is another way of putting it—the Office of Legal Services Coordination does not do it. Do I have to go to each department and ask them specifically why there is an increase in the outsourcing of legal services by department and whether they can itemise those particular issues? It seems to be a complete lack of coordination as to the monitoring. You say that you do the monitoring but it seems you cannot tell me how much each department outsources legal services. You have to do a self-assessment, hopefully, every couple of years to gauge it. It seems very slack to me.

Mr Anderson—Our monitoring is focused on compliance with the legal services directions and I am seeking to see what is happening with the Commonwealth legal services market. We do not, on a day-to-day basis, monitor what agencies are doing in terms of their own purchasing, provided they are not appearing to breach legal services directions. So if you wanted to find out why a particular department's legal services expenditure had increased—as was reported today in the *Financial Review* following questions on notice—you would need to go to those particular agencies. And it would be only appropriate that you go to those agencies because they may well have very good reasons. There have been a number of changes over the last few years to the legal environment that agencies are operating in. If you go to Defence in particular and ask, 'Why is it that you are spending more money on legal services,' they may well have a number of very straightforward reasons.

Senator LUDWIG—In relation to the number of submissions to the review that you are conducting in relation to the Office of Legal Services Coordination, were they called for from at large or were they called for from the departments? I think you said you had eight that were outstanding or that would come in.

Mr Anderson—There are eight that are outstanding. We have received a number from a range of entities. They have generally asked to be confidential so I cannot name all of the entities but I can say that they range from peak bodies of professional associations to non-government organisations, departments and law firms.

Senator LUDWIG—Can you tell me how many you have received, in total?

Mr Anderson—I think we have received 18 so far.

Senator LUDWIG—You have received 18 and you are expecting another eight?

Mr Anderson—That is correct.

Senator LUDWIG—So not every department has responded?

Mr Anderson—That is correct.

Senator LUDWIG—Can you tell me which departments have not responded? Perhaps you could take that on notice.

Mr Anderson—I will take that on notice.

Senator LUDWIG—It would be worthwhile understanding how many departments do not wish to be involved in this process or have not made a submission. Or you can do it the other way around and tell me which departments have made a submission and by default it means that everyone else did not. You spoke earlier about the Auditor-General; where is the ANAO up to in examining this area? No decision has been made as yet, as I understand it.

Mr Anderson—Not as far as we are aware. Of course, you would need to ask them to find out exactly where it is at.

Senator LUDWIG—Yes, I will.

Mr Anderson—We understand that they had aimed to have their scoping study completed by the end of either last month or this month. I think there was a little bit of movement there. They hoped, if they were going to conduct the audit, to have it completed this calendar year, with a report in the first half of 2005. Our understanding is that they were highly likely to

carry out the audit but they have not actually made that decision. Their scoping study looked at four different departments as well as at the Office of Legal Services Coordination. They had been carrying out some preliminary sampling of records and looking at databases that agencies are using and things like that.

Senator LUDWIG—Did they report back to you in relation to their findings on the scoping study or is that something that they maintain?

Mr Anderson—That is a matter for them.

Senator LUDWIG—So they do not report to you what their scoping study revealed?

Mr Anderson—No, but we are hoping to keep engaging them as to, for instance, the direction in which their audit might go, having regard to the recommendations of Ms Tongue about developing best practice guidelines on expenditure.

Senator LUDWIG—Did they tell you which department the scoping studies were done in?

Mr Anderson—Yes, they did.

Senator LUDWIG—Which were they?

Mr Anderson—I would have to take that on notice.

[5.09 p.m.]

CHAIR—We will move to questions on output 1.3.

Senator KIRK—I have the press release that indicates that \$52.7 million in additional funds will be made available over the next four years. I understand that the funding is tied to a whole range of new requirements. Is that correct? Could you elaborate on that for us?

Ms Lynch—The \$52.7 million of new money over four years includes a number of components. Some of it—approximately \$3.3 million—relates to the provision of duty lawyer services in the family and federal magistrates courts. There is a component of money included in that for commissions to use in increasing fees paid to practitioners. Some of it is to be used for raising fees paid to private practitioners in veterans matters.

Senator KIRK—I understand that new funding agreements are being negotiated, beginning on 1 July this year. Is that correct?

Ms Lynch—That is correct.

Senator KIRK—Could you outline for the committee how the funding offers are going to be devised—how the amounts are calculated?

Ms Lynch—The commissions and state and territory attorneys-general were notified on the Wednesday morning following the budget of the amount of money that the Commonwealth was offering under the new agreements.

Senator KIRK—From what I have been told I understand that a couple of jurisdictions are not satisfied with the amounts that they are receiving. How was the formula devised? Who are the winners and losers out of the formula?

Ms Lynch—The increases for each jurisdiction are different from their funding under the current agreements or their funding over the last year under the current agreements. Some commissions have received larger percentage increases on their current funding than other commissions.

Senator KIRK—So what has changed? How has the formula changed? You have said they are receiving different amounts than they have in the past. Has there been a change in the funding formula?

Ms Lynch—A new funding model was developed as part of the process. That model was used to assist in the distribution of the legal aid funds. The model is a start. The funding offers also take into account particular circumstances in each jurisdiction but there was a revised funding model that was used to assist in determining the appropriate distribution of the money.

Senator KIRK—So how did the new funding model come about?

Ms Lynch—The new funding model has been developed over the last four years. The department reviewed the funding model that was used to distribute funds under the last agreement. The department has been reviewing that with the assistance of staff from the Commonwealth Grants Commission over the last few years and in consultation with legal aid commissions during that time.

Senator KIRK—I was going to ask about that. Was there consultation with the relevant stakeholders?

Ms Lynch—There was consultation with commissions along the way. At various times we provided iterations of possible models to commissions for their comment. Some were developed at the suggestion of the commissions.

Senator KIRK—Have you had very much feedback from the various legal aid commissions in relation to what they are going to be receiving this time around?

Ms Lynch—We have had a response from National Legal Aid. We have had some discussions with individual commissions.

Senator KIRK—Are most of them happy or unhappy with the amounts they are going to be receiving?

Ms Lynch—National Legal Aid have put out a press release to say that they thought more money should have been put into the legal aid program. We have had some discussions with commissions about the amounts that they have received but I am conscious that we have had officer level discussions rather than minister to minister discussions.

Senator KIRK—Are those amounts now fixed? Is there no potential for variation?

Ms Lynch—No. Essentially the Commonwealth put out its offer that this is the money that will be made available. We have not put out an opening position. What they are being offered is what they are getting.

Senator KIRK—Am I right in understanding that legal aid commissions will be required to pick up extra work from the new ATSILS structure?

Ms Lynch—There is a draft request for tender that was put out by AT SIS in relation to AT SILS. That is still the responsibility of AT SIS at present. I understand that they have received comments on the draft request for tender and I understand they have had discussions with the legal aid commissions, but that is essentially a matter for AT SIS and the matter is still under consideration.

Senator KIRK—Have you made any progress on measuring the amount of unmet demand for legal aid?

Ms Lynch—The legal aid model for distribution includes factors to identify various shifts in demographics between the states over the last four years, to identify particular groups of people who may be more likely to need legal aid than other areas of the community.

Senator KIRK—Has there been any comprehensive survey or report prepared in relation to it?

Ms Lynch—No, there has not.

Senator KIRK—So you really do not know what the unmet demand is for legal aid?

Mr Cornall—I do not think anyone can answer that question. Legal aid commissions go over this issue time and time again, and I just do not think that question can be answered in those terms.

Senator KIRK—It is a difficult one, that is true. Are you able to advise us of the breakdown of moneys between the various jurisdictions under the funding model and the amount that they are going to be receiving this year?

Ms Lynch—I have the figures for what each jurisdiction was offered in their letter of offer. I should add that these do not include the money that was set aside for duty lawyers. That is an additional payment which we will be discussing with the commissions. I can give you the funding offers that were made to each in the budget.

Senator KIRK—Yes, please, that would be helpful.

Ms Lynch—These are for next year. They are: New South Wales, \$43.23 million; Victoria, \$28.74 million; Queensland, \$30.27 million; South Australia, \$12.26 million; WA, \$13.03 million; Tasmania, \$4.64 million; the ACT, \$3.44 million; and the Northern Territory, \$3.13 million. In addition to that, we will be talking to them about the provision of duty lawyer services. If they choose to undertake that work, there will be additional funds from the \$3.3 million that have been set aside.

Senator KIRK—So that will be paid in addition once it is determined whether or not they are going to be making use of that service?

Ms Lynch—Yes. There is another \$3.3 million in duty lawyer money to be distributed amongst those states which choose to deliver the service.

Senator KIRK—On another issue, can you advise us what the current status of the Regional Law Hotline program is?

Ms Lynch—Yes. I think I mentioned at last estimates that the decision has been made to broaden the scope of the Regional Law Hotline program from the 14 regions that were covered by it, to extend it more broadly to rural and regional Australia from 1 July. We are in

discussions with a number of legal aid commissions to provide that extended service from 1 July.

Senator KIRK—So you do not have anything set in concrete yet as you are still discussing it?

Ms Lynch—The Attorney's decision last year was to seek out the legal aid commissions to provide that service across their jurisdictions, so we are in discussions with legal aid commissions. I think all legal aid commissions have responded favourably to the suggestion, and we are in discussions with legal aid commissions about how that would be managed. The plan is that from 1 July that service would be extended to all of rural and regional Australia.

Senator KIRK—Where is it operating now?

Ms Lynch—It is operating in 14 regions.

Senator KIRK—And it will be extended to how many regions?

Ms Lynch—There are 14 regions now and it will be extended to all of rural and regional Australia from 1 July.

Senator KIRK—Through the legal aid commissions?

Ms Lynch—Legal aid commissions will be providing the service.

Senator KIRK—In each of the states?

Ms Lynch—We are in discussions with legal aid commissions and they have all indicated their interest in providing the service. We have had a favourable response.

Senator KIRK—Do you have any figures on what the annual expenditure will be on the Regional Law Hotline program broken down by state and territory?

Ms Lynch—I may have to take that on notice, but I will just check. Senator, Ms Pidgeon has just filled me in on some details. At this stage the commissions who are providing the new service will be doing so for \$50,000 per year, and the savings that will come from rationalising the number of service providers will be used for promotion purposes—to promote the hotline.

Senator KIRK—Okay. What did you say you would take on notice?

Ms Lynch—I was just going to take on notice what the figures were, but I think I have now answered the question you were asking.

Senator KIRK—Thank you. Are you able to advise us of the locations for the CLCs that did have Regional Law Hotline funding but that will not have it post 30 June?

Ms Lynch—I think there are nine centres which had received extra funding to provide the service. I may have to take that on notice; I do not think I have the names of the nine centres with me.

Senator KIRK—That is nine centres that will not have the funding post 30 June?

Ms Lynch—There were nine centres that were funded to provide the service up until 30 June that will not be expected to provide the service, and the funding will be redistributed.

The funding they had for the Regional Law Hotline was in addition to their core funding that they receive under the Community Legal Services Program.

Senator KIRK—So there will be no compensation paid to them given that the funding will be withdrawn?

Ms Lynch—No. They received the money to provide extra services. Those services will now be provided by the legal aid commissions, and the Regional Law Hotline services will be extended to a broader range of catchment areas.

Senator KIRK—So their core funding will not be affected in any way?

Ms Lynch—Their core funding that they receive under the agreements we have with community legal centres is not affected. What they were getting was additional funding on their core funding to provide the Regional Law Hotline services.

Senator KIRK—What is the status of the rest of the so-called Law by Telecommunications project? Where is that at?

Ms Lynch—It is ongoing. There is work continuing to be done on it. There is still the Family Law Online and the Family Law Hotline and the Australian law and justice portal; they are all ongoing services.

Senator KIRK—All of those services are continuing?

Ms Lynch—Yes.

Senator KIRK—What is the current cost for all of those services?

Ms Lynch—Ms Pidgeon has just reminded me that we have the usual hand-up that we provide on those services, with the updated figures. That might answer the question. There are several pages of it.

Senator KIRK—Yes, that will be helpful, thank you. So the project is ongoing and there are no changes to the nature of it?

Ms Lynch—There is updating of some of the material but, yes, the program is ongoing.

Senator KIRK—Has there been any recent review of its effectiveness or usefulness?

Ms Lynch—No.

Senator KIRK—Any proposals for such a review?

Ms Lynch—Not that I am aware of.

Senator KIRK—You are happy with how it is operating, and there is no need to make any changes to it?

Ms Lynch—It is constantly—

Senator KIRK—Being updated.

Ms Lynch—being updated and being looked at to ensure that it is working, that the material is up to date and easily accessible. I hesitate to use the word ‘review’ in the formal sense but it is under scrutiny.

Senator KIRK—I see in the portfolio budget statement that there is no extra funding for community legal centres.

Ms Lynch—There was indexation in the program but no new money.

Senator KIRK—I understand that there were some strong submissions for extra funding to be provided that were put forward by the National Association of Community Legal Centres, suggesting that there were some major viability problems for some of the CLCs. Do you have any response to that? Do you have any idea why it was decided that there would be no extra funding? Is there any truth in the allegation or suggestion by the National Association of Community Legal Centres that some of them may not be viable?

Ms Lynch—I am aware of the budget proposals that were put out by the National Association of Community Legal Centres, but the decision on the amount of funding is a matter for government.

Senator KIRK—Does the government have any long-term plans for expanding community legal centres?

Ms Lynch—Again, that would be a matter for the Attorney and one that I am not in a position to answer at the moment.

Senator KIRK—Minister?

Senator Ellison—I am not aware of any long-term plan for expanding community legal centres, but I could take that on notice and take it up with the Attorney.

Senator KIRK—Thank you—and perhaps also whether or not there is any thought about providing them with greater funding or better support.

Mr Cornall—That issue was taken into account in the Attorney's balancing of the various competing demands on the available funding that was sought in the budget, and the priority was given to the funding for the legal aid commissions for the four-year period. In terms of meeting competing demands, that was the decision that was taken.

Senator KIRK—So there has not been any consideration given to the viability generally of community legal centres throughout Australia?

Mr Cornall—The Attorney considered all of the requests for funding that were put to him and ultimately made decisions as to what he put to the Expenditure Review Committee and the government made its decisions.

Senator KIRK—So there is no concern that some CLCs just might not be viable and they might have to close their doors?

Mr Cornall—That would be a matter of concern, and the Commonwealth has been quite supportive of CLCs over a number of years and continues to be supportive of the good work that the CLCs do.

Senator KIRK—We are still waiting on a formal response from the government to the report *Every picture tells a story*, the child custody report released last year. Will there be one forthcoming?

Ms Lynch—The government is still considering the report. I do not think there is much more I can add to that at this stage. The timing of any response would be a matter for government and the matter is still being considered.

Senator KIRK—So it is intended to at least prepare a response?

Senator Ellison—I do not think one has been ruled out.

Senator KIRK—Unlike HREOC, it has not been ruled out, so do you have any idea of the time frame, as to how long we are going to be waiting? I notice that the report was tabled on 29 December last year.

Ms Lynch—Again, that would be a matter for government. I am not in a position to give you a date.

Senator KIRK—Minister? It has been almost six months.

Senator Ellison—Of course in that you have the parliamentary break, so you have to take off a couple of months for that. I will take it up with the Attorney. I am not sure where that is at. I am not aware of a response being ruled out, but it is a complex area. It was a comprehensive inquiry and one which I think does require careful consideration.

Senator KIRK—Since the child custody report we have had the recent ANAO report that we have referred to a number of times today. I wonder whether or not that is going to be taken into consideration as part of the response of government in relation to the expedition of matters through the family law jurisdiction.

Mr Govey—I think it is fair to say that most of the matters in the ANAO report are matters that have been addressed to the courts themselves and so the follow-up is a matter for the courts. I also think that, to the extent that there are any broader implications, we would regard it as part of our responsibility to advise the government accordingly.

Senator KIRK—I notice that funding for the Family Relationships Services Program has decreased slightly—only slightly—from \$29.5 million to \$5 million.

Ms Lynch—I think the reason why it appears to have decreased is that there was some rephasing in a previous financial year. The sum of \$135,000 was rephased from 2002-03, which is why it looks higher than the 2004-05 appropriation. I think it is an issue of rephasing in previous years which makes it look as though there has been a reduction this year.

Senator KIRK—So there is no actual decrease—is that what you are saying?

Ms Lynch—I will leave that to Mr Kennedy.

Mr Kennedy—The main reason for the reduction in funding was a transfer to the Federal Magistrates Court for PDR services. That transfer is an ongoing amount.

Senator KIRK—Are you able to provide us with a breakdown of the allocated funds in 2003-04—that is, what organisations the money went to and whether or not there were any unspent funds?

Ms Lynch—I do not think we are in a position to provide final figures yet for 2003-04, but I can take that on notice and provide them to you later.

Senator KIRK—That would be helpful—just the organisations the money is going to, whether there are any unspent funds and such matters.

Ms Lynch—I am told there is a handout we might be able to provide now that may answer some of those questions.

Senator KIRK—That would be helpful. Can you advise us how the funding for that program relates to the funding provided by the Department of Family and Community Services for relationship support services?

Ms Lynch—The program is jointly funded through the Attorney-General's Department and the Department of Family and Community Services. The total appropriation in 2004-05 is \$57.44 million, of which \$29.4 million is allocated to this portfolio and \$28.04 million is allocated to Family and Community Services. In 2003-04 the figure was \$56.6 million, with \$29.5 million allocated to Attorney-General's and \$27.1 million allocated to FaCS.

Senator KIRK—So it is just one sum of money and it is divided almost fifty-fifty?

Ms Lynch—It is one appropriation. To clarify my earlier comment, there was no increased funding for the program in the Attorney-General's portfolio in 2004-05.

Senator KIRK—Was there a decrease in this year's budget in the amount of money allocated to it?

Ms Lynch—No. I think it is the rephrasing and the transfer that make it look like that.

Senator KIRK—As was described.

Mr Govey—Coming back to the handout which Ms Lynch referred to, it turns out that we do not in fact have figures for 2003-04 on hand. We do have proposed figures for 2004-05 and we could hand those up. Would you still like us to take the other question on notice?

Senator KIRK—That would be fine. Is there any proposal to increase resources or funding to the Family Relationships Services Program? I mention it because one of the major recommendations of the House of Representatives report was that more money go into counselling and mediation and I wonder whether or not that is being addressed.

Ms Lynch—Again, that issue is a matter for government in considering the report.

Senator KIRK—In considering the response, yes.

CHAIR—Is there anything else on output 1.3? ATSIILS?

Ms Lynch—ATSIILS remains the responsibility of ATSIILS pending the transfer of responsibilities from 1 July. The Aboriginal and Torres Strait Islander Legal Services still come within ATSIILS.

CHAIR—So in DIMIA?

Ms Lynch—Yes, in the DIMIA portfolio.

Senator BOLKUS—There were some questions attached to A-G's though which I would not mind raising here. Was A-G's consulted in the development of the new exposure draft of the new tender?

Ms Lynch—Yes, we were.

Senator BOLKUS—Which branch of A-G's?

Ms Lynch—It was the family law and legal assistance division, so it was my division that was consulted. We also involved the crime prevention branch in some of those considerations as well.

Senator BOLKUS—At what stage were you consulted?

Ms Lynch—We were consulted before the draft request for tender was put out for public comment. We had the opportunity to comment on that before then. We have since had discussions with ATSI in relation to the draft tender.

Senator BOLKUS—Were you consulted before the decision was taken to tender out?

Ms Lynch—I would have to take that on notice to check the dates on which it was raised with us by ATSI.

Senator BOLKUS—You were definitely consulted with respect to the tender document?

Ms Lynch—We saw drafts of the request for tender and we provided comments to ATSI on the request for tender.

Senator BOLKUS—Were those comments picked up?

Ms Lynch—Certainly a number of them were—not all of them.

Senator BOLKUS—Could you come back to us with what those comments were.

Ms Lynch—I will take it on notice.

Senator BOLKUS—You are saying that ATSI will be overseen by DIMIA in the future?

Ms Lynch—No, under the proposed transfer of functions the responsibility for the Indigenous Legal and Preventative Services program in ATSI which includes the Aboriginal and Torres Strait Islander Legal Services would be transferred to this portfolio from 1 July.

Senator BOLKUS—What is your role in the tender process at this stage?

Ms Lynch—We have been consulted and had discussions with ATSI on issues that arose in the public consultation on the draft tender.

Senator BOLKUS—What stage are we up to at the moment?

Ms Lynch—There was a draft tender put out. There were public consultations organised by ATSI. As I understand it, the questions that were raised in those public consultations have been put on the ATSI web site but government is still considering the comments that were received during the consultation process.

Senator BOLKUS—So what happens next?

Ms Lynch—A decision on the process would need to be made by government in light of the comments that have been received.

Senator BOLKUS—So there needs to be a final decision as to whether the service goes out to tender and the actual final tender document. Those decisions have not been made yet?

Ms Lynch—As I understand it, the decisions on those two matters, whether the tender goes ahead or what is in the request for tender, have not yet been made.

Senator BOLKUS—Do we have a timeline as to when they might be made?

Ms Lynch—I do not have a timeline on when that decision might be made. That would be a matter to raise with AT SIS.

Senator BOLKUS—I understand the service providers in the future will have greater restrictions on them than currently applies to AT SILS in terms of the range of clients and the range of cases. Is that the case?

Ms Lynch—The draft request for tender included slightly different priorities for providing assistance from what currently operates, if that is the point to which you are referring.

Senator BOLKUS—From my understanding, there will be greater restrictions on the Indigenous legal service than there are on other community legal services.

Ms Lynch—I would need to take that on notice or perhaps refer that question to AT SIS.

Senator BOLKUS—If you could take a general question on notice with respect to what restrictions are being planned and how they compare to other community legal services. One of those restrictions, I gather, is a requirement that clients cannot have prior convictions in order to receive legal assistance.

Ms Lynch—I recall there is a provision in the draft tender. I cannot remember the exact wording of it, but I think there is a reference to where applicants have previous convictions being referred to appropriate programs. I cannot remember the exact wording for it and I would need to take that on notice.

Senator BOLKUS—Can you take that on notice and also take on notice—it should be available—the number of clients that AT SILS currently has that have prior convictions. Unfortunately I would have thought there would be an overwhelming proportion of current clients that have—

Ms Lynch—I do not know that I would be in a position to provide that information. AT SILS have always been run through AT SIS rather than through the Attorney-General's portfolio. I do not think I have that information available to me.

Senator BOLKUS—You are about to take over the 'service'. Have you made any assessment as to what level of savings will be achieved by having such a requirement?

Ms Lynch—We have not made that assessment within this portfolio.

Senator BOLKUS—Are you aware of any assessment that has been made elsewhere?

Ms Lynch—On savings?

Senator BOLKUS—Yes.

Ms Lynch—In relation to?

Senator BOLKUS—A requirement that clients cannot have prior convictions in order to receive legal assistance.

Ms Lynch—No, I cannot provide you with an answer to that question.

Senator BOLKUS—That sort of requirement is contrary to the recommendations of the deaths in custody report, isn't it?

Ms Lynch—I am unable to help you there. I can take that on notice.

Senator BOLKUS—I would have thought the implementation of the recommendations of the deaths in custody report was something within the province of A-G's.

Ms Lynch—It is. It is not within my division. I could take that on notice. It is just not an issue that I deal with in family law and legal assistance.

Senator BOLKUS—Whose division would that be in?

Ms Lynch—Criminal justice.

Senator BOLKUS—Can criminal justice help us now with those questions?

CHAIR—We do not seem to have an officer available, Senator Bolkus.

Senator BOLKUS—If you could take on notice the question of inconsistency with the deaths in custody inquiry report and the question of whether any savings assessment was made in terms of that requirement.

Mr Cornall—On the savings issue, we have not made that assessment nor do we have the data to make that assessment. At this stage either DIMIA or the Department of the Prime Minister and Cabinet are making assessments about the allocation of resources, including funding and people, to the different functions which are being transferred to mainstream departments, and we have not yet been advised of the outcome of that process.

Mr Govey—I think it is also worth emphasising that, as we understand it, no decision has been made to include that particular requirement in the final tender documentation.

Senator BOLKUS—Sure, but I am trying to work out what would happen if it did include it, and what would happen if you included the capacity for profit—the tender allowing for profit, as opposed to the current arrangements. In those circumstances, how will government measure or assess the appropriateness of the profit levels—that is, whether they are appropriate in a particular case or a range of cases and what levels would be appropriate?

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

Senator BOLKUS—Given these tighter restrictions and given that you will be landed with this from 1 July, have you made any assessment as to where the non-eligible Indigenous people will go for legal advice and assistance if these arrangements were to be implemented?

Ms Lynch—As I said before, the issues that were raised in relation to the request for tender are still being considered.

Senator BOLKUS—Yes, I know. In that consideration, has anyone made an assessment of where these people will go?

Ms Lynch—It is possible that some people who are refused assistance in criminal matters may approach legal aid commissioners for assistance.

Senator BOLKUS—It is obviously possible that will happen, but has an assessment been made of where they will go and what it might cost?

Ms Lynch—I do not have the figures. I do not know whether there are any figures available on that issue.

Senator BOLKUS—Can you find out?

Ms Lynch—I can take that on notice.

Senator BOLKUS—You say the relevant officers are not here for this.

Mr Cornall—These are not assessments that we have made. These are matters that are not in our current responsibility; they are the responsibility of AT SIS and AT SIC.

Senator BOLKUS—You are about five weeks off taking over.

Mr Cornall—Yes, we are very conscious of that, we are very conscious of the significant workload and responsibility that the transfer will impose on this department and we are very keen to meet that responsibility and do the job properly. But right now we do not have the information you are seeking.

Senator BOLKUS—How can you be conscious of your responsibilities and of meeting those responsibilities if you do not know the cost and what the direct impact of some of these changes will be? Someone must be making assessments of what the flow-on effects will be of changing the current arrangements.

Mr Cornall—My understanding is that all of those sorts of considerations are being undertaken by AT SIS.

Senator BOLKUS—Mr Cornall, you will be in charge of this after 1 July. You will be in charge of the new tender process. Don't you care at this stage where people will go?

Mr Cornall—Yes, I do care very much.

Senator BOLKUS—What are you doing to find out where they are going to go and what it is going to cost?

Mr Cornall—There is a process that is being managed by the Department of the Prime Minister and Cabinet and we are part of that process. We are doing what is required of us at the time it is required of us. But there are certain things that are being dealt with by other departments at this stage and we are not privy to some of those decisions.

Senator BOLKUS—You are involved in the consultation process and, for instance, AT SILS over the years has had advocacy and law reform functions. Has there been any discussion as to who would be performing these functions in the future?

Ms Lynch—I would need to take that on notice. We have had discussions with AT SIS during the preparation of the tender. We have had some preliminary discussions with AT SIS about what is in the programs that are being transferred to us. But I do not think I can answer that question without taking it on notice. I do not have the details.

Senator BOLKUS—In all the discussions you have had, was there any discussion as to why it was desirable to remove any requirement for the new arrangements to be controlled or staffed by Indigenous people?

Ms Lynch—I did not catch the first part of the question.

Senator BOLKUS—There is a current requirement that the legal service be controlled and staffed to a certain extent by Indigenous people. It is proposed that that requirement be dropped. What is the rationale behind that?

Ms Lynch—Can I take that on notice?

Senator BOLKUS—Has there been any discussion on who will in the future provide community education on legal issues to Indigenous communities?

Ms Lynch—I would need to take that one on notice. I recall some discussions about that but I cannot remember the exact nature of them. I think I recall some discussion of that at an early stage in the discussions.

Senator BOLKUS—If you take over on 1 July you must be conscious of the direct effect of this new process in terms of ATSILS possibly having to close down and having payout entitlements. Is that something that has been considered by the department?

Ms Lynch—I understand that ATSILS have been advised that their funding is extended to the end of the year. We were provided with some detailed information about the programs on Friday from ATSIIS. I have not had a chance to go through that in detail. I am not in a position to tell you what the liabilities of ATSILS might be.

Senator BOLKUS—In terms of winding down, has ATSILS brought to your attention that they would have to close down in August-September this year?

Ms Lynch—I have not had any direct discussions with ATSILS on the tender process.

Senator BOLKUS—You may not have but in the consultations with the department has your department been made aware, Mr Cornall, that because the funding has been promised to the end of this year and because of payout entitlements and so on ATSILS will have to close up around August-September this year?

Mr Cornall—I do not know the answer to that question because we have not yet discussed the allocation of resources and funding that is proposed by the government to come with the obligations that we are taking on. I understand the point you are making. Obviously, if ATSILS are to continue operation until the end of the year then we will have to have adequate funding for that purpose.

Senator BOLKUS—Have they been given a guarantee that no existing ATSILS will close before the end of the year?

Ms Lynch—I am not aware of what guarantees might have been made by ATSIIS to ATSILS during the tender discussions.

Senator BOLKUS—The National Indigenous Justice Strategy, which has been running for quite a while, has some major elements—including that Indigenous justice be run by Indigenous people and have close community links, education programs, facilities and so on. Are you satisfied that the new tender proposal is consistent with the Attorney-General's Department National Indigenous Justice Strategy?

Mr Cornall—I do not know that we have made that comparison that you are asking for.

Senator BOLKUS—What is the status of that strategy now? Is it in effect?

Mr Cornall—I would need to take instructions on that from an appropriate officer. I am unable to answer that personally.

Senator BOLKUS—The appropriate officer would be in which division this time?

Ms Freudenstein—I am from the criminal law division. The revision of the National Indigenous Justice Strategy has been undertaken since November 2001. A discussion paper was distributed in March this year and we are currently looking at the feedback on that discussion paper.

Senator BOLKUS—So we do not have one applying at the moment?

Ms Freudenstein—No, not a national one.

Senator BOLKUS—You said this was from 2001. Which month in 2001 was it?

Ms Freudenstein—It was in November.

Senator BOLKUS—So 2½ years later the consultation process continues. Is there a timeline for the finalisation of this?

Ms Freudenstein—Yes, we are hoping to have a final report to the minister by the end of June.

Senator BOLKUS—Does that National Indigenous Justice Strategy canvass the probable tendering out of the legal service?

Ms Freudenstein—The discussion paper that was distributed in March had a feedback section which invited comments on a range of things from community organisations.

Senator BOLKUS—What was the feedback you got?

Ms Freudenstein—It is still being analysed for the brief to the minister. We have had 14 submissions to date, and I know that there are another couple still to come in.

Senator BOLKUS—Can we get a copy of those submissions?

Ms Freudenstein—That would be up to the minister.

Senator Ellison—The Attorney-General is handling that. I will have to take that up with the Attorney. I cannot speak for the Attorney right now, but I will take it on notice as to whether those submissions can be released.

Senator BOLKUS—To whom was the discussion paper sent?

Ms Freudenstein—It was sent to members of this committee. It was sent to the participants in the NAJAC summit that was held in November last year. It was sent to all state and territory government agencies that participated in the revision process.

Senator BOLKUS—Was it sent to NAILS?

Ms Freudenstein—Yes.

Senator BOLKUS—And was it sent to VALS?

Ms Freudenstein—It was sent to Aboriginal legal services that participated in the NAJAC summit—so quite a range of Aboriginal legal services participated.

Senator BOLKUS—But it was sent to those two specifically?

Ms Freudenstein—And it was sent to peak Aboriginal organisations.

Senator BOLKUS—Just to get the answer clear, it was sent to NAILS and VALS, was it?

Ms Freudenstein—It was certainly sent to NAILS, but I am not sure about VALS.

Senator BOLKUS—Can you check that for us?

Ms Freudenstein—Yes, I can find out.

Senator BOLKUS—And can you check for us when it was sent to both those organisations?

Ms Freudenstein—It was sent on 2 March. I will check.

Senator BOLKUS—You may want to clarify when it was sent to VALS.

Ms Freudenstein—Okay.

Senator BOLKUS—You said that the paper will go to the Attorney-General.

Ms Freudenstein—Yes, we are hoping by the end of June.

CHAIR—That concludes questioning on output 1.3. Thank you, Ms Lynch.

[5.55 p.m.]

CHAIR—We will move to output 1.4.

Senator LUDWIG—In relation to the optional protocol to the convention against torture, what is the position of the Australian government in respect of that protocol? Earlier we dealt with some questions about it, but I want to come back to it because it is actually in this section and we have relevant officers before us.

Senator Ellison—What was it in relation to?

Senator LUDWIG—The optional protocol to the convention against torture.

Senator Ellison—The answer I gave earlier was that that was under consideration. Are you talking about the one on children?

Senator LUDWIG—Yes. In relation to the optional protocol to the convention against torture, a number of—

Senator Ellison—Torture?

Senator LUDWIG—Yes. There was one question earlier in relation to when it was opened.

Ms Leigh—Could you repeat your question, please?

Senator LUDWIG—I had not actually got to the question. I was trying to refocus people on what we wanted to ask questions about. The report on the Joint Standing Committee on Treaties inquiry provided substantial evidence supporting the signing of the protocol, from my recollection. That was the position then. The government provided a response to that report recently, as I understand it. Just for the record, what is the current government's position in relation to whether it wishes to sign or not sign the optional protocol to the convention against torture?

Ms Leigh—The government has not made a decision about whether it will ratify the optional protocol. However, it has expressed serious procedural and substantive concerns about the optional protocol. In short, I think the position has not changed since the previous occasion on which I outlined it for this committee.

Senator LUDWIG—Since the inquiry of the Joint Standing Committee on Treaties, the government has provided a response to that report. That is right, isn't it?

Ms Leigh—Has it? I stand to be corrected, but I do not believe so.

Senator LUDWIG—I was just asking. Has there been a response or not?

Ms Leigh—No.

Senator LUDWIG—When was that Joint Standing Committee on Treaties inquiry done?

Ms Leigh—It reported on 23 March this year.

Senator LUDWIG—Is there likely to be a response?

Ms Leigh—I would like to take that on notice, please.

Senator LUDWIG—All right. My next question might be better directed to the minister. This issue has arisen a couple of times in relation to what the government's position is in respect of that. Can you articulate what are the Attorney-General's problems or issues that relate to why the optional protocol cannot be signed?

Senator Ellison—I tabled an answer the other day in the Senate. I do not have that with me at the moment, but this was covered in that, as I recall. I took it on notice in the Senate when I was asked some questions without notice. I think I can get that to you.

Senator LUDWIG—That would be helpful, just to clarify it.

Senator Ellison—I will just call my office. They can provide it to me.

Senator LUDWIG—Perhaps I can ask you a question, Ms Leigh, while we deal with some of the more general areas in respect of that protocol. The protocol was designed, as I understand it, to allow, amongst other things, external inspection of prisons and the like. So something like the recent prison issue in Iraq could have come under one of those heads if it had been in force in that country. Have I got that right?

Ms Leon—The purpose of the optional protocol—

Senator LUDWIG—I am happy to ask you, Ms Leon, if that would be better.

Ms Leon—There is somewhat a division of responsibility between Ms Leigh and I over this matter but we will organise that between ourselves. For countries that become a party to it, the protocol would allow for a standing invitation to a subcommittee of the committee against torture, which would organise its own program of visits to places of detention in states that become a party to the protocol. If Australia were to become a party to the protocol then that subcommittee would be entitled to make arrangements to visit Australian places of detention to carry out inspections to determine whether appropriate mechanisms were in place to prevent torture.

Senator LUDWIG—How many countries have signed or ratified the protocol—perhaps we can clarify which terminology I should be using—or have otherwise expressed an intention to be bound by the Optional Protocol on the Convention Against Torture?

Ms Leigh—The most recent information I have is from 2 February this year, which shows that there are 23 signatories and three ratifications.

Senator LUDWIG—Which are the three that have ratified?

Ms Leigh—Albania, Malta and the United Kingdom.

Senator LUDWIG—Is there a closing date? Or are there a number of countries that have to ratify it before the optional protocol comes into force? In other words, what is the criteria to give it effect? Ms Leon, you will probably know this.

Ms Leon—It is not a closing date; it is the number of countries. I do not have that figure with me but we could take that on notice if Ms Leigh does not have it. It will remain open until the required number of countries have ratified it. If that number of countries do ratify it then it will come into force.

Senator LUDWIG—There is no default date for closure?

Ms Leon—No.

Senator LUDWIG—Perhaps you could provide a list of the number of those countries that have signed but have not ratified.

Mr Govey—The names.

Senator LUDWIG—Yes, a list of the names.

Ms Leigh—I could table that now if you like.

Senator LUDWIG—That would be helpful, thank you. As I understand it, when they have signed, that is an expression of an intention to ratify at some future date. Is that how it is generally regarded?

Ms Leon—Yes, although it is not a guarantee that they will then ratify.

Senator LUDWIG—As I understand it, it will also allow for external inspections of our immigration detention centres.

Ms Leon—It applies to any place of detention.

Senator LUDWIG—Has the government considered this issue in light of the HREOC report that we seem to have on our tables—the kids in detention report?

Ms Leon—As I think the minister indicated, the government has not made a decision on the ratification or otherwise of the protocol, but the concerns that Ms Leigh adverted to had been expressed by the government for some considerable period of time before the tabling of the report from the Human Rights and Equal Opportunity Commission.

Senator LUDWIG—Is there a short synopsis anywhere—other than the answer that you may have provided to the Senate, Senator Ellison—that provides what those concerns are?

Ms Leon—The matter was fairly extensively discussed by Ms Leigh, me and the Department of Foreign Affairs and Trade in our appearance before the Joint Standing Committee on Treaties. There is that.

Senator LUDWIG—I am happy to go to that record. I am not a member of that committee. I was a member but I do not think I was a member at that time.

Ms Leon—There is an extensive discussion of those concerns, although the general thrust is both procedural in terms of the procedure by which the protocol was adopted in the commission on human rights and substantive in the nature of the obligations that it would impose.

Senator LUDWIG—In relation to the procedural matters, has there been any attempt by the A-G's department to find out what they were and to rectify or otherwise resolve them?

Ms Leon—The issues of procedure were about how the protocol was adopted in the Commission on Human Rights. The protocol was under negotiation for some eight or nine years without substantial progress having been made towards reaching consensus on the text of the protocol. Then at the last meeting of that working group before it was adopted a chair's text was essentially put to the vote, even though many outstanding issues had not been resolved to the point where consensus could be reached amongst states as to the nature of the obligations the protocol should impose. So they were the procedural concerns and it is not possible to go back and rectify those. The protocol has now been adopted by the process.

Senator LUDWIG—By default. Does that rule out potential signing and then ratification by Australia as a consequence of that?

Ms Leon—As the minister said, the government has not made a decision on the question of ratification. I am merely describing what the procedural concerns were that the government had about the way it was adopted, not because the procedure itself is critical but because that procedure indicated that there was a lack of consensus about the nature of the obligations and that ordinarily one would prefer that significant new human rights instruments be adopted by consensus in the Commission on Human Rights.

Senator Ellison—Relevant to what Ms Leon is saying now, I table an answer that I gave in the Senate to Senator Kirk in relation to the optional protocol to the convention against torture. This might assist.

CHAIR—Thank you very much, Minister.

Ms Leigh—To follow up on some issues that were raised, 20 ratifications are necessary for the optional protocol to enter into force. The other matter I was going to mention is in relation to the JSCOT report. As the JSCOT recommendations are consistent with the government position, there is a question as to whether a response is actually required to that report.

[6.07 p.m.]

CHAIR—We have no further questions in 1.4 and we have no questions in 1.5 so we will go straight to 1.6, Legal services and policy advice on information law.

Senator LUDWIG—The questions I have relate to the review of the intellectual property legislation under the competition principles agreement. Can you provide details of the Australian government's response to that report?

Ms Daniels—I am not in a position to provide an answer at this stage, Senator. Is there something specific in relation to that?

Senator LUDWIG—Where are we up to in relation to that?

Ms Daniels—My colleague Mr Fox might be able to assist you there.

Mr Fox—You are referring to what is colloquially known as the Ergas report—is that so?

Senator LUDWIG—The review of the intellectual property legislation, the competition principles agreement which goes by that—

Mr Fox—The government did provide a response which is available on the Attorney-General's web site.

Senator LUDWIG—There was no follow-up? That was the final report?

Mr Fox—There are a number of issues that are still outstanding in relation to that review where the government indicated it would continue to look at a couple of additional areas.

Senator LUDWIG—What has happened in relation to those matters?

Mr Fox—My understanding is that those issues are still afoot, but I cannot give you the details of the specifics of those—not because I do not wish to, but because I just do not have that information to hand.

Senator LUDWIG—Perhaps we can come back to this at the next opportunity. You can take it on notice. Could you detail those matters that are still afoot as far as the government believes so that at least we can agree on what our interpretations of the report are, what the outcomes are and what we expect the government to follow up on? I would like to know what those issues are, the time lines for how the government intends to respond or whether it does not intend to respond as the case may be and what issues, if any, may require resolution prior to the government resolving it? Have there been any subsequent legislative proposals or amendments to the Patents Act?

Ms Daniels—No. The responsibility for the Patents Act stays with IP Australia.

Senator LUDWIG—I thought that might be the case.

CHAIR—So DOCITA?

Ms Daniels—No, DISR.

Senator LUDWIG—I have to ask here just to make sure I know where to then send them.

CHAIR—They go to the Economics Legislation Committee of the Senate.

Senator LUDWIG—To the body itself?

CHAIR—Yes, to the Department of Industry, Science and Resources.

Mr Fox—I seek clarification on Senator Ludwig's request. Did the senator wish to have a list of outstanding matters in relation to all of the recommendations or just those relating to copyright?

Senator LUDWIG—Just those relating to copyright—within your area of competence, not outside. Do you deal with freedom of information?

Ms Sheedy—Yes, the division does.

Senator LUDWIG—The ANAO report on selected agencies' administration of FOIs is due in May 2004. Do we have a sneak preview of that? In other words, what do you expect to get out of the review? Does the ANAO deal with you as an agency or as a section within the Attorney-General's Department prior to the release of the report?

Ms Sheedy—We were one of six agencies who were part of that audit, so the ANAO has been dealing with us as an agency.

Senator LUDWIG—As part of that process?

Ms Sheedy—Yes. I understand its report is to be tabled sometime in June.

Senator LUDWIG—Shortly, yes. Do freedom of information officers receive training from A-G's as to how they should exercise their function under that act?

Ms Sheedy—The training is provided by the Australian Government Solicitor's Office.

Senator LUDWIG—Is that on a contractual basis?

Ms Sheedy—The AGS run the training and do it on a cost recovery basis with agencies.

Senator LUDWIG—How many officers from the Attorney-General's Department have been sent on that course in the last 12 months?

Ms Sheedy—I would have to take that on notice.

Senator LUDWIG—Do you know if any have?

Ms Sheedy—I know I have.

Senator LUDWIG—Was that in the last 12 months?

Ms Sheedy—Yes.

Senator LUDWIG—Perhaps you could take this on notice: how many officers from the Attorney-General's Department have been sent on those courses and what is total that A-G's has spent for those courses with the Australian Government Solicitor—or, if it is more relevant, the cost per person? I am not sure how it is structured—perhaps you could tell me.

Ms Sheedy—I would have to check that.

Senator LUDWIG—You do not know now?

Ms Sheedy—No.

Senator LUDWIG—Do you know how long the course is?

Ms Sheedy—There are a whole range of courses offered on a variety of parts of the FOI Act.

Senator LUDWIG—You might need to explain it a bit more to me so that we can distil the questions. The Australian Government Solicitor provides what—a composite or a number of courses in relation to the Freedom of Information Act dealing with what?

Ms Sheedy—Areas such as decision making and preparation of decisions. They break it down into all the practical aspects of agencies dealing with FOI within the agencies.

Senator LUDWIG—How do you determine what courses you require freedom of information officers to undertake to ensure that they can do their job?

Ms Sheedy—I think that most agencies would send their—

Senator LUDWIG—I am interested in your agency to begin with—Attorney-General's. I think I am limited in asking about other departments.

Ms Sheedy—Certainly. Our handling of FOI is centralised. The people in the central area have certainly done the training and then new people—

Senator LUDWIG—What training? That is the point, if there are a number of courses. I am sorry to interrupt you, but it seems to me that we should get to the bottom of the questions.

Ms Sheedy—I do not know but I would say that they have done all of the training that is on offer.

Senator LUDWIG—Is there someone who does know, Mr Cornall?

Ms Sheedy—I am just told that the people from the central FOI area of AGD have attended all of the AGS training courses that are available.

Senator LUDWIG—Is anyone from that central area available?

Mr Cornall—Not at the moment, no.

Senator LUDWIG—Would they normally be here during 1.6?

Mr Cornall—No.

Senator LUDWIG—When would they normally be here?

Mr Cornall—They would not.

Senator LUDWIG—Lucky them! We will go through it as best we can, then. The central area has how many people employed in it?

Mr Oliver—The FOI processing unit for the department has three staff—one principal legal officer and two others.

Senator LUDWIG—And they have done the Australian Government Solicitor courses?

Mr Oliver—As I said to my colleague, I am not sure precisely which courses they have done but they attend all of the relevant courses considered necessary by the head of the FOI unit.

Senator LUDWIG—And you are not aware of how many courses in total are being offered by the Australian Government Solicitor?

Ms Sheedy—We can certainly get that information for you.

Senator LUDWIG—Perhaps you could take it on notice as to how many. How does the decision-making process go? Is it that an FOI request for the A-G's Department comes into the unit and a decision is made according to the act?

Ms Sheedy—That is right. The area will consult whichever area of the department is relevant to the subject matter of the request.

Senator LUDWIG—Do you keep statistics on how many FOI requests have come into A-G's?

Ms Sheedy—Most definitely. It is all in the annual report. We collect the statistics for the whole of the government in relation to FOI, and it is all in the FOI annual report.

Senator LUDWIG—Can you take me to the page in the annual report? I will not ask you to provide the answer here if it is there. I will just make a note of it on the transcript and we can deal with it. If there are any later questions I can put them on notice.

Ms Sheedy—We are looking for it now.

Senator LUDWIG—Does that section of A-G's also coordinate other FOI requests from other departments? Does it have any involvement if there is a query about the legislation itself and its applicability to certain situations?

Ms Sheedy—If another agency has a request that is more properly handled within A-G's and it is transferred over, obviously they handle that. More general queries about FOI policy will come to the information law branch of this division which has the policy responsibility for FOI.

Senator LUDWIG—What output is that in?

Ms Sheedy—This one.

Senator LUDWIG—For argument's sake, we heard earlier today about DFAT in relation to the detention of Mr Hicks and Mr Habib and freedom of information applications. Would that come to that branch if there was a query from DFAT?

Ms Sheedy—Yes, it would have come to the central area and then the central area would have come to the information law branch and to any other area of the department that would have been concerned with that.

Senator LUDWIG—Who makes the decision then? Is it the individual department holding the records, such as DFAT, and they take advice from the policy unit, or does the policy unit make the decision?

Ms Sheedy—The decisions are made by the agency that holds the documents.

Senator LUDWIG—Is there advice provided by the policy branch.

Ms Sheedy—Yes, it may provide advice.

Senator LUDWIG—Are you aware of the recent AAT decision not to hear or to consider the failure of the government to release certain documents, I think it was in relation to the detainees, provided from the Australian Embassy in Washington and a report from the Human Rights Watch.

Mr Cornall—This was the application I referred to earlier, which was an application made to the Department of Foreign Affairs and Trade?

Senator LUDWIG—Yes.

Mr Cornall—Broadly speaking, all I know about it is what I have read in the press.

Senator LUDWIG—There has been no further investigation by the A-G's Department in relation to that issue?

Mr Cornall—No.

Senator LUDWIG—Has there been staff turnover in the FOI branch? There are three people there at the moment. How long have they been there? Sorry, I thought I had been able to avoid you, Mr Oliver, but it seems not.

Mr Oliver—The staff have been very stable. The staff of the FOI section in corporate services group have been in place for at least two years. Certainly the head of the unit has been there since I arrived in the department, which is now nearly two years, and from my understanding had been there at least a year prior to that.

Senator LUDWIG—To go back to Ms Sheedy or Mr Cornall, that earlier decision seemed to have been a reversal of what happened, that is, that there was an intention to release and then the department—A-G's or in fact, I guess, DFAT—changed its mind. Are there any instructions given out by A-G's on these issues more generally? As we have heard, the Australian Government Solicitor provides courses, but is there more general coordination by the A-G's in relation to how various departments including the A-G's should address freedom of information requests?

Mr Cornall—Not that I am aware. We have had some recent discussion at secretary level about freedom of information generally but not in the nature of instructions or anything of that nature.

Mr Ford—The other thing is that there are FOI memoranda which assist agencies in making decisions. They deal with decisions of the AAT and so on.

Ms Sheedy—They are available on our web site.

Senator LUDWIG—Yes, I was familiar with those. I did not want to say it but I guess I will. It seems that in recent times there has been a culture of not meeting FOI requests. I do not know whether I can make that allegation—I have certainly said it; but it appears from some recent experience that that seems to be the anecdotal evidence. What I was curious to see was what check you have on the process to ensure that the FOI process is fair, open and transparent. One part of it is clearly that training is provided by AGS, so that is at least separate and accountable. It appears that you have a separate branch that deals with the FOI requests and coordinates from a policy perspective. But in terms of monitoring how the external agencies and departments then administer the legislation in an open, accountable and fair way, I am just not getting enough from you about how that is actually done if you are the lead agency.

Mr Cornall—The decision in relation to any request is a matter for the agency to which the request is directed. They have to make a determination about which documents are subject to production or disclosure, which documents are partially disclosed and which documents are refused, and that can only be made by the decision maker in each agency. In terms of statistics, we produce statistics which are in the FOI annual report and you could look at those statistics to see any trends or directions. In 2002-03 there were 35,219 requests determined, of

which 71 per cent were allowed access in full and a further 23 per cent were allowed in part, with only six per cent of requests being refused in full. So that may be the source of some information for you.

Senator LUDWIG—Thank you.

Mr Cornall—Can I just come back to the question about the department's statistics. The annual report records on page 140 information about our processes with freedom of information, but in terms of our statistics it directs you to the FOI annual report.

Senator LUDWIG—All right. That is much appreciated. I do not have any further questions on this area.

CHAIR—That concludes 1.6. We will move to 1.7 after the dinner break.

Proceedings suspended from 6.26 p.m. to 7.31 p.m.

CHAIR—We will resume our consideration of budget estimates. We are about to commence output 1.7, Legal services and policy advice on native title.

Senator O'BRIEN—In March I asked the department whether a copy of the revised Commonwealth policy on native title determination applications could be made available to the committee, and the department took the question on notice and has provided a response in four paragraphs. This looks very much like a narrative from the department based on the policy directive but not the policy directive itself. I sought a copy of the policy directive approved by the Prime Minister in March 2003; is the answer you provided the actual policy?

Mr Anderson—Senator, the actual policy is expressed in correspondence and the essence of the policy has been taken out of that correspondence and put into the answer to the question on notice.

Senator O'BRIEN—It is not the policy, it is a narrative based on it.

Mr Anderson—That is correct. The policy itself forms part of a piece of correspondence.

Senator O'BRIEN—Do we need to see the correspondence to see the policy?

Mr Anderson—What is stated in that answer is the policy. You certainly would not get any different understanding with respect to the policy from seeing the correspondence.

Senator O'BRIEN—Can we see a copy of the correspondence?

Mr Anderson—That would be a matter that we could take back to the Attorney-General. The correspondence goes into details on other matters beyond the policy.

Senator O'BRIEN—Does it go into other policy matters?

Mr Anderson—It goes into other issues to do with native title. The correspondence is between the Prime Minister and the Attorney-General and it covers things beyond that policy.

Senator O'BRIEN—Are you suggesting that there is some reason it cannot be produced? Is that how I should understand you?

Mr Anderson—Senator, I feel that I would have to take that on notice and leave it for the Attorney-General to consider.

Senator O'BRIEN—We are talking about the directive issued to officers of this department who have responsibility for recommending Commonwealth action in respect of native title applications, are we not?

Mr Anderson—The policy that you had sought a copy of was referred to in our annual report and it is about the situation in which the Commonwealth will intervene or become involved in the hearing of a native title application.

Senator O'BRIEN—So what was the reason that you answered in the way you did? Is there some aspect of the correspondence that the government does not want to reveal?

Mr Anderson—I can only say that that was the approved response but I can go back to the Attorney-General and ask him whether he wishes to disclose the entire letter.

Senator O'BRIEN—I thought that was what you did last time, you see.

Senator Ellison—I have never disclosed a letter that I have written to the Prime Minister, or vice versa. So if that is the question that is being asked, if I were the minister responsible I would not reveal the letter.

Senator O'BRIEN—Are you saying, Minister, that the government has never disclosed correspondence between ministers?

Senator Ellison—I am saying I have not. Correspondence between ministers and the Prime Minister of the day is not something that is normally divulged. It can be done but, let us put it this way, the official has answered the question and the matter will be taken up with the Attorney-General.

Senator O'BRIEN—In the context of your answer, is it usual for policy approvals to pass between a Prime Minister and ministers in the form of correspondence?

Senator Ellison—Absolutely. In fact, it is an accepted process that in certain circumstances that is how you seek policy approval: you write to the Prime Minister.

Senator O'BRIEN—How is that policy normally communicated within departments?

Senator Ellison—I do not have responsibility for all the departments of the Commonwealth government. That is a matter for the departments concerned but, as a minister, I can tell you that policy approval is normally given by cabinet or by writing to the Prime Minister, depending on the issue.

Senator O'BRIEN—In terms of the *Native Title Report 2003* by the Aboriginal and Torres Strait Islander Social Justice Commissioner, there is a finding that the government's native title policy limits the potential for consent determinations to contribute to the economic, social and cultural development of traditional owner groups. Dr Jonas then illustrates what he describes as the Commonwealth's reluctance to negotiate consent determinations through the publication of extracts from Federal Court hearings that contain damning assessments of the Commonwealth's behaviour from the bench. The commissioner has also criticised what he says is the Commonwealth's encouragement of a litigation approach to native title by funding the participation of third parties in proceedings in which their interests cannot be affected. I assume this division of the department is responsible for responding to the commissioner's

direct and authoritative criticism of native title policy. How has the department formally responded to these criticisms in the latest native title report?

Mr Anderson—The government does not usually respond formally to reports of the social justice commissioner on native title.

Senator O'BRIEN—Silence implies assent to the propositions contained in it.

Mr Anderson—The report is something the government can obviously take into account in considering how it is going to proceed generally, but there is not normally a formal response.

Senator O'BRIEN—To the social justice commissioner's report on native title? When was the last time a government responded to a report on native title?

Mr Anderson—I would have to take that on notice but, as I said, it is not the usual process.

Senator O'BRIEN—Has this agency ever responded to any report on native title?

Mr Anderson—From the Social Justice Commissioner?

Senator O'BRIEN—From anyone.

Mr Anderson—The department does not respond itself but the government has certainly responded to other reports with respect to native title from, for example, the parliamentary joint committee on native title.

Senator O'BRIEN—As I said, the *Native Title Report 2003* contains damning assessments from the bench of the Commonwealth's behaviour. What do you say about those, or are you not aware of them, Mr Anderson?

Mr Anderson—I note that the social justice commissioner did not include any of the commendations that the Commonwealth has received from other judges, and there certainly have been those as well. So I think you need to have the full picture in order to appreciate how the bench or different benches have perceived the Commonwealth's actions on native title matters.

Senator O'BRIEN—So that would be the sort of response you would be recommending, is it, Mr Anderson?

Mr Anderson—I simply note that there has been favourable comment about the Commonwealth as well as unfavourable comment.

Senator O'BRIEN—Have you taken that matter up with the Social Justice Commissioner?

Mr Anderson—We did actually raise that with the social justice commissioner's staff before the report was released. They had discussions with us, as I imagine they would have had with a number of stakeholders. They put a number of views to us and we put to them the information that we were aware of. With respect to, for example, the Commonwealth's participation in consent determinations, the Commonwealth is now a party to two consent determinations and has given in-principle consent to a further two consent determinations. Those two in-principle decisions were both in November 2003, at which time there had been some media speculation that the Commonwealth was not going to consent to those matters. The Commonwealth's actions proved that to be incorrect.

Senator O'BRIEN—I did not take it from the report that he said the Commonwealth prevented them; he said the Commonwealth limited the potential for consent determinations. How does the fact that it was involved in some mitigate that?

Mr Anderson—It is hard to actually understand how the social justice commissioner felt that the Commonwealth was limiting the possibilities for consent determinations. I can say that where the Commonwealth is a party—and obviously it is only a party in a relatively small number of the total number of claims—it has itself been prepared to enter into consent determinations. So as a party itself it is not standing in the way of those.

In terms of matters where it is not a party or where it is not taking an active role, there is nothing to prevent a consent determination—indeed, quite a wide-ranging consent determination—being entered into. Indeed, you can step outside the native title system, as the Victorian government has recently done with respect to the Yorta Yorta people, and enter into an agreement that is not a native title agreement but is nonetheless an agreement with an Indigenous community. So I am at a bit of a loss to understand why the social justice commissioner thinks that the Commonwealth limits the flexibility of either consent determinations within native title or broader agreements outside the Native Title Act, because events show that the only thing that stops that is other parties who are the primary parties engaged. The Commonwealth is generally not a primary party. Generally the primary respondent is going to be a state or territory government.

Senator O'BRIEN—The commissioner said that the Commonwealth encouraged a litigation approach to native title by funding the participation of third parties in proceedings in which their interests cannot be affected. That is fairly strong criticism.

Mr Anderson—I should say that the administration of the funding for third party respondents is actually administered by a different division of this department—the Family Law and Legal Assistance Division. My division does not administer the funding, but I certainly agree that there is a Commonwealth policy that respondents in native title matters should be funded if they have an interest and wish to participate in either a litigation or a mediation—and it is common to have both litigation and mediation occurring simultaneously in native title matters.

Senator O'BRIEN—I take it from your answer that there has been no change to government policy in this regard?

Mr Anderson—That is correct.

Senator O'BRIEN—In February the committee was told that the department was a member of the Native Title Coordination Committee. Is it true to say that this department provides the chairman of the committee?

Mr Anderson—That is correct. I chair that committee.

Senator O'BRIEN—Is it fair to say then that the department takes a key role?

Mr Anderson—Yes, absolutely.

Senator O'BRIEN—The committee has recently concluded a review of the adequacy of the additional funding for the native title system allocated in the 2001-02 budget. That was additional funding over four years, wasn't it?

Mr Anderson—That is correct.

Senator O'BRIEN—Where do I find the funding increase in the budget papers?

Mr Anderson—Good question. I might call upon our chief financial officer.

Mr Kennedy—The four-year funding figures appeared in the portfolio budget statements for that particular budget. I do not have that with me but, as with all the portfolio budget statements, there is a section on the measures which sets out the additional funding that was provided. We have to actually go back to the 2001-02 budget papers. The four-year funding will end at the end of 2004-05. That is the purpose of the review which will be undertaken for the 2005-06 budget to determine what the change in funding should be.

Mr Anderson—I do have the figures here. I could read out the figures for the four years if you wish.

Senator O'BRIEN—Perhaps it would be useful to put something on the record.

Mr Anderson—Do you want that broken down by agency as well?

Senator O'BRIEN—Yes, please.

Mr Anderson—In the first year the Federal Court received \$5.3 million, the National Native Title Tribunal received \$6 million, ATSIIC received \$2.9 million and the department received \$5.6 million. In the second year—the 2002-03 year—the Federal Court received \$4.6 million, the National Native Title Tribunal received \$10.5 million, ATSIIC received \$4.7 million and the department received \$5.1 million. In the third year—the 2003-04 year—the Federal Court received \$4.1 million, the National Native Title Tribunal received \$10.3 million, ATSIIC received \$6.1 million and the department received \$3.3 million. In the 2004-05 year the Federal Court will receive \$3 million, the National Native Title Tribunal will receive \$8.9 million, ATSIIS would receive \$3.7 million—

Senator O'BRIEN—Who?

Mr Anderson—and the department will receive \$1.9 million.

Senator O'BRIEN—ATSIIS will not exist in 2004-05, according to the government.

Mr Anderson—This is how it was allocated over the four years. That money will go with the programs that ATSIIS has. Those programs will go to DIMIA so that funding will be with DIMIA.

Senator O'BRIEN—That funding will go to DIMIA or part of that funding will go to DIMIA?

Mr Anderson—That \$3.7 million will go to DIMIA.

Senator O'BRIEN—That is what I meant. You read out four numbers. I was assuming you did not mean—

Mr Anderson—Just the amount that would that have been with ATSIIS will go to DIMIA.

Senator O'BRIEN—So the \$3.7 million for 2004-05 has been provided for in the DIMIA PBS?

Mr Anderson—It will not actually appear in their PBS. As Mr Kennedy explained, it was only set out in the PBS for 2001-02.

Senator O'BRIEN—It will appear in their overall funding in the PBS?

Mr Kennedy—It will appear in the agency's overall funding for 2004-05 but they will not restate the exact amount.

Senator O'BRIEN—Is that the only amount that is being transferred out of this department, if I can put it that way?

Mr Anderson—That is not an amount being transferred out of this department; that is an amount out of the four-year funding package that would have gone to AT SIS and will now go to DIMIA because the function that AT SIS had in the native title system will go to DIMIA.

Senator O'BRIEN—What were the key findings of the review in relation to the adequacy of the funding?

Mr Anderson—One of the key findings of the review was that it would be useful if there were a greater degree of flexibility within the system for transferring funds from one part of the system to another part of the system as issues arise or needs become apparent. Another key finding was that it has been very difficult to make workload projections for future years with respect to the native title system.

While it had been estimated when this funding was first provided that by now there would have been a far higher disposition rate for native title cases, that has not eventuated for a number of reasons—for example, it takes time to get case law out of the High Court to resolve some of the key issues underlying native title and that has slowed down a lot of activity. So things like that have had an impact on the ability to make projections as to where the resource needs are going to be as well as when the resource needs are going to occur. We realise that it is going to be difficult to make future assessments.

Senator O'BRIEN—Was a rate of settlement built into the assumptions upon which the funding is based?

Mr Anderson—There were assumptions as to the rate of settlement, yes.

Senator O'BRIEN—What sort of assumption was made about the rate of settlement?

Mr Anderson—It was assumed that precedent would be established more quickly and that this would have a more marked effect on parties' ability to come to an agreement about native title. That has not been borne out. Precedent does not necessarily mean that parties do not in fact want to litigate—even if they might not have much chance of obtaining a strong native title outcome.

Senator O'BRIEN—Nor a strong chance of defending one.

Mr Anderson—I think it should be noted that the rate of consent determinations—and, indeed, the rate of determinations generally—has been increasing exponentially since the funding was initially provided.

Senator O'BRIEN—Where would I find the figures to show that?

Mr Anderson—The National Native Title Tribunal publishes fairly extensive figures. Their figures would indicate that there have now been 50 determinations of which 26 are consent determinations. In the two years before the funding was made available there were 11 determinations. In the two years after the funding was first made available there were a further 20 determinations. Certainly the disposition rate, both by settlement and by determination, has increased as a result of the funding.

Senator O'BRIEN—In February the committee was told that the review also considered the current operation of the native title system. What were its key findings in relation to the operation of the system?

Mr Anderson—There are a number of issues that the committee expressed as findings. One of the ones which the committee came to a finding on, and which has been raised in other fora as well, is the performance of the native title representative bodies in terms of whether the issue with their performance is to do with governance, funding or capacity. The committee itself did not come to a firm conclusion on that but noted that there were a number of areas that should be explored further.

Data is becoming more available—for example, with respect to the native title representative bodies because they now have performance reporting requirements to parliament. They do annual reports. Some of these things obviously come out of reviews instigated in the portfolio of the Minister for Immigration and Multicultural and Indigenous Affairs. They have had reports into native title rep bodies and how they perform. One of them in particular, the Miller report, recommended that work be done on governance arrangements. ATSI has also been running an ongoing program on capacity building for the representative bodies and that is starting to generate both results and also more information to base decision making on. That was one key finding: that the performance of the representative bodies is something to be examined further as data becomes available.

Another issue that was recognised by the committee—and, as I indicated in February, the committee does involve a number of agencies who are part of the native title system, it does include the Federal Court and the National Native Title Tribunal—is that there are really two types of native title applications. One type is where an applicant is actually seeking a determination of native title. The other type is something that is driven by a future act—driven by someone wishing to carry out an activity, such as mining or something like that, on an area of land. If you have a registered claim for native title on that land then you get procedural rights to negotiate with that party. So a certain number of native title claims are actually being driven by what we call 'future acts' and are not actually situations where the claimant necessarily wants to have a determination.

The process itself under the Native Title Act provides that once you make a determination then you are in the court and in the tribunal. This has an effect upon the disposition rate because these claims, on the face of it, should be resolved yet the applicant does not necessarily want to have them actually resolved. We recognise that we need to look at the data of the Federal Court and the Native Title Tribunal and try to separate out the two different types of claims—and not necessarily just have a disposition target for claims.

Senator O'BRIEN—Is the review report available publicly?

Mr Anderson—No, it is not. That was prepared for the government in a budgetary context.

Senator O'BRIEN—You said that it is input from a number of departments.

Mr Anderson—Yes. The Native Title Coordination Committee is my division, the family law and legal assistance division of the Attorney- General's Department, the Federal Court, the Native Title Tribunal, the Department of the Prime Minister and Cabinet, the Department of Finance and Administration, OATSIA and ATSSIS.

Senator O'BRIEN—Are you saying that this is the report upon which the current budget is based?

Mr Anderson—No, I am saying that it was prepared in the context of a budget and it will also feed into the budget for next year as part of that process. The four-year additional funding package ends in 2004-05 and the system could either go back to the base level of funding or there could be further funding. Both that report and some further deliberations of the committee will feed into that budgetary process as well.

Senator O'BRIEN—When you say 'go back to the original funding', that is currently a package of about \$20 million for the four agencies you talked about. What are we talking about as a potential reduction?

Mr Anderson—For example, in this financial year there is approximately \$120 million of Commonwealth funding. Of that, \$23.8 million is from the additional funding. So the base funding for this year would have been around \$96 million to \$97 million.

Mr Cornall—We have to be very clear that we are not saying that that is what is going to happen. We are not foreshadowing a reduction in that funding. Mr Anderson is saying that these issues are all to be considered in the budget for 2005-06.

Senator O'BRIEN—The figures we have gone through are increases. Can you tell me the amount that DIMIA will actually receive for native title funding for the coming financial year?

Mr Anderson—It is approximately \$55 million, which is about 46 per cent to 47 per cent of the total funding.

Senator O'BRIEN—For your information, in providing an answer to a question on notice—question 115—in the last round, you have given me details of the wrong organisation as being the native title rep body for South Australia. I think it is probably a transcription error.

Mr Anderson—The ALRM is the native title representative body in South Australia.

Senator O'BRIEN—Yes, it is, but it is the Aboriginal Legal Rights Movement.

Mr Anderson—Yes, sorry, that is correct.

Senator O'BRIEN—What was the department's involvement in the development of the new exposure draft for the Aboriginal and Torres Strait Islander Legal Services tender.

Mr Anderson—The department's involvement was through our family law and legal assistance division. If you have a number of questions on the tender, perhaps it would be appropriate to call them back.

CHAIR—There have already been some questions directed to that section of the department on those issues before the dinner break.

Senator O'BRIEN—Could I have the leeway to check whether the questions have been asked and add some.

CHAIR—On notice or now?

Senator O'BRIEN—On notice.

CHAIR—Thank you. Thank you, Mr Anderson. That completes output 1.7.

Mr Cornall—Madam Chair, if we are about to begin on output 2, I was asked a question about the Australian Crime Commission examiner. Maybe I can deal with that now and then Senator Ludwig can decide what he wants to do about it.

CHAIR—Certainly.

Mr Cornall—I will just go over a little bit of history with this because it sets the situation in context. Under the National Crime Authority there were three commissioners including the chair. They were all able to exercise the coercive powers of the National Crime Authority. When we moved to the new body, Jim Bennett was the only person who was a commissioner at the time of the conclusion of the NCA who came across to the new body. He was appointed as an examiner. We also appointed Mac Boulton, an employee of the National Crime Authority who came across to the ACC as an examiner. So when the organisation commenced, we had two examiners whereas previously the NCA had three people able to chair coercive powers inquiries.

Looking forward we could see a couple of things. The first was that the use of coercive powers could increase because some previous difficulties with witnesses claiming privilege had been removed by legislation so the coercive powers were likely to be more effective after that change in legislation. Secondly, with an increased focus on intelligence by the amalgamation of the Office of Strategic Crime Assessments and the ABCI merged with the new ACC and its new focus on intelligence as well, that could again increase the need to use the coercive powers. Then Mr Bennett came to the end of his term of appointment in April last year, which was the conclusion of his term as a former NCA commissioner. We were then down to one examiner and we went through a process of advertising for an examiner and conducting an extensive program of selection. There were 51 applications received for that position—

Senator LUDWIG—That was 30 May?

Mr Cornall—The advertisements were placed in metropolitan newspapers on 9 and 10 May 2003. The interview panel was chaired by Mick Keelty of the Australian Federal Police and comprised in addition Richard McCreadie, who is the commissioner of the Tasmania Police, Linda Reynolds who was then the chief of staff of the minister's office and me. We interviewed a number of people and recommended to the Attorney-General and Senator Ellison that there were two candidates who we felt were highly suitable for appointment. They were interviewed by the Attorney-General and Senator Ellison and then, after consultation with the ACC, consideration of the likely workload and having suitable candidates available, the government appointed Mr Sage and Mr Hannaford.

Senator LUDWIG—And that is the issue: how did we get from one job, which was advertised—or was it plural?

Mr Cornall—It was not specific.

Senator LUDWIG—It said:

Applications are invited from suitably qualified persons for appointment to the full-time position—it is not positions plural—

of Examiner with the Australian Crime Commission (ACC).

Mr Cornall—Initially we were seeking to immediately replace Mr Bennett but, as I said, in the process of the search process and the selection process we came to the position where there were two highly suitable candidates and then after consultation with the Australian Crime Commission, considering its future workload and considering the possible growth in that workload, it seemed appropriate that the government could appoint the two of them at that time.

Senator LUDWIG—So two were appointed because of the workload implications. When was it determined that there was a requirement to have two as a consequence of the workload implications?

Mr Cornall—The issue arose when we were able to say to the ministers that we had two candidates whom we regarded as highly suitable for appointment. That then raised the issue about what were the ongoing needs of the ACC in the future, having regard to the fact that the National Crime Authority had had the opportunity to have three people who were able to hold inquiries. Under the new structure for the ACC, the only people who can chair coercive powers inquiries are examiners; members of the board cannot do so. The opportunity was there to make those appointments and that opportunity was taken.

Senator LUDWIG—Who made that decision eventually to appoint two rather than one?

Mr Cornall—Obviously the Attorney-General, the minister and the cabinet.

Senator Ellison—Certainly the Attorney-General and I agreed with that. I would have to check if it went to cabinet. I am positive it did.

Mr Cornall—To the Governor in Council.

Senator Ellison—Yes, it would have been cabinet. If that is wrong I will advise the committee, but my recollection is that cabinet was involved in that.

Senator LUDWIG—So it was those three persons you mentioned earlier who were on the selection panel and who determined that there were two candidates, Mr Sage and Mr Hannaford. As a consequence you then—

Mr Cornall—There were four people on the panel.

Senator Ellison—When I said the Attorney, I meant the former Attorney.

Senator LUDWIG—I was going to check that one as well.

Mr Cornall—The start of the process was under the former Attorney, but my understanding is that the appointments were made after the change.

Senator Ellison—I think you will find that the agreement for two was made by the former Attorney and me, and then there was the transition and the appointment was made after Mr Ruddock took over. We will check that.

Mr Cornall—Yes.

Senator LUDWIG—How many rounds of interviews were there?

Mr Cornall—I think there was one round of interviews held on one day. I just cannot recall how many people we interviewed.

Senator LUDWIG—That was really the crux of the question: how many people were interviewed and what was the process from there? Did you conduct one round of interviews? Sometimes there is a winnowing where you might go back and have another round.

Mr Cornall—No, there was one round of interviews.

Senator LUDWIG—So there was one round of X number—and you will be able to check on how many were interviewed?

Mr Cornall—Yes, I can; I just do not have the figure here.

Senator LUDWIG—As a consequence of that, the panel of four—that is, the previous Attorney—

Mr Cornall—No, the selection panel of four was Mick Keelty, Richard McCreadie, Linda Reynolds and me.

Senator LUDWIG—And then it was decided that there were two equal firsts?

Mr Cornall—Two candidates highly suitable for appointment, yes.

Senator LUDWIG—Would the decision have normally been taken at that point? How did the decision become that you would then consider both rather than readvertise the position and allow for other suitable candidates to make an application for the job?

Mr Cornall—I do not have all the facts at my fingertips, but my recollection is that I was asked whether or not the ACC had a need for more than one additional examiner. I spoke to Alastair Milroy about that and he said that he foresaw a need for that. As I said, when you looked at the history of the NCA and the new responsibilities given to the ACC it made sense that the workload would increase. I reported that back and that led to the decision to appoint the two additional examiners right then.

Senator LUDWIG—Where did the first question come from—that is, the question as to whether there were two positions available? Who sparked that inquiry?

Mr Cornall—My recollection is that it came from the Attorney-General's office. It was an inquiry from the Attorney-General's office, to the best of my recollection.

Senator LUDWIG—Do you know who that was from?

Mr Cornall—I think it was from Miss Duffield, who is the chief of staff to Attorney-General Ruddock.

Senator Ellison—I think we should take that on notice.

Senator LUDWIG—The issue is: who sparked the inquiry as to whether or not there could be two positions?

Senator Ellison—I can tell you right now that I knew what the answer to the question would be because the ACC was under an enormous workload with these examinations, as was the NCA. You have to bear in mind that there were examinations being held around the country. They are very complex by nature. There have been examinations in Darwin, for instance, over a period of time. I remember seeing the workload of an examiner who was travelling from Melbourne to Perth to Darwin to do examinations where coercive powers were used. In those cases you have counsel representing the person and counsel assisting the examiner. They are like mini royal commissions. It was a fact that the ACC had a big workload in relation to compulsory examinations. That is why it was no surprise that the ACC would say, 'We could use two examiners.'

Senator LUDWIG—Where did that question come from?

Senator Ellison—As to where it originated, I would have to take that on notice.

Senator LUDWIG—Given the highly sensitive position that it occupies, you can understand or appreciate why I am asking the questions in relation to what could be perceived as a political appointment.

Senator Ellison—Sure.

Senator LUDWIG—Unusual processes seem to have been adopted in the selection of two candidates when one position was advertised. That just seems highly unusual and the more information you can give me to clarify that—

Senator Ellison—But in the previous National Crime Authority there had been three. The ACC's work has grown, if anything. I am sure if you looked at what these examiners have been doing you will see that their workload is substantial; it really is.

Senator LUDWIG—As you would appreciate, Minister, it is not the issue of the workload of the ACC; it is the process in selecting suitable candidates to ensure that it is free from political—

Senator Ellison—Sure, but it certainly was not creating a job where one was not needed. We will take the question of the process on notice and get back to you.

Senator LUDWIG—I have your assertion on that—it appears that way on quick examination—but any information you can give me to allay those concerns would be appreciated. I will not take up any more time on that matter. The budget provides \$20.1 million over four years for the National Community Crime Prevention Program. Is that 'N double-C PP' or 'N double-C double-P'? Have you settled on the acronym that you are going to use?

Mr Cornall—I think it is 'N double-C double-P'.

Senator LUDWIG—The fact sheet on the program states that the NCCPP will provide \$4 million each year for the national community grants program. Will that \$4 million be available for grants in total or will some administration be included in that?

Mr Cornall—There is some administration in the whole \$20 million.

Senator LUDWIG—Is a breakdown of that available?

Mr Cornall—Yes, there is. Mr Kennedy will have the facts at his fingertips.

Mr Kennedy—On page 20 of the PBS, on the second last line, the measures tabled show the \$4 million per year for the grants program and \$1 million plus a little bit of indexation each year, which comprises \$500,000 for program administration and \$500,000 for information kits and a general communications strategy.

Senator LUDWIG—Has there been any decision made as to when that information strategy or the kits and the like will be produced and made available? Do we need the minister?

Mr Cornall—No, I think we really need Dr Heriot, who is not here. My understanding is that it was not a fixed program but that there was an allocation for the production of appropriate community information.

Senator LUDWIG—It sparked my interest. If there is money set aside for kits and an information campaign, I want to know whether any work has been done on it. It sparks the usual inquiry by me: has there been any work done on it? If so, what progress has been made so far? It might be too early at this point in time; or it might already be planned, I do not know. Unless I ask, I will never know.

Mr Cornall—The advice is that it is too early. If I find otherwise, we will advise you accordingly.

Senator LUDWIG—In the crime prevention branch, there are 19 people—or has that changed?

Mr Cornall—Put it this way: there are more people than would be able to be employed out of the \$500,000. I am not sure of the exact number.

Senator LUDWIG—How many people will be involved in the program?

Mr Kennedy—There will be about four people. There was a fixed amount of funding made available for the administration of the program, and that \$500,000 will provide for approximately four people with some funding for travel.

Senator LUDWIG—Will that be additional staff or will they be employed from other areas or redeployed to you from other areas?

Mr Cornall—They will be staff that are presently employed in the crime prevention branch.

Senator LUDWIG—My understanding was that there were about 19 people in the crime prevention branch. Will four of them be tasked with the work in the program?

Mr Cornall—That is my expectation, yes.

Senator LUDWIG—What will be the responsibility of the departmental staff involved in the program? What work is tasked for them?

Mr Cornall—They will be responsible for receiving applications for grants, assessing applications for grants, making recommendations to ministers about grants to be made and

then monitoring the administration of the grants once they have been made by the government.

Senator LUDWIG—And they may then work in the field as a consequence, to monitor or otherwise contact—

Mr Cornall—They may be required to visit places where programs are delivered to verify the delivery of the programs. They will not be delivering the programs themselves.

Senator LUDWIG—No. So they may help community organisations implement strategies to implement the program—is that what is envisaged?

Mr Cornall—They may. There is a limit to what four people can do.

Senator LUDWIG—How much money has been spent on the current National Crime Prevention Program each year in administration during the last two or three years?

Mr Kennedy—The total funding for the current financial year is \$4 million. We might have to take on notice exactly how much of that is administration and program expenditure, but I think that \$1½ million to \$1.7 million would be spent on current staffing.

Senator LUDWIG—So would the current program be similar to the proposed program? Your current program is broken down into how much is being dealt with in administration, as you have just outlined. Is a similar amount being set aside for the new program? It does not seem to have been if you already have half of that going to the kits?

Mr Kennedy—The program is going to be quite different to the way it currently operates, where there is a lot of staff time involved in developing the initiatives, implementing them or overseeing their implementation. With the grants program it will essentially be a set of guidelines being developed for community groups to apply for the grant. Those guidelines will need to be developed and then you will need to have people responding to queries and assessing and otherwise dealing with the applications that come in. That is those four people.

Senator LUDWIG—So what classification level would you expect them to be?

Mr Kennedy—There will have to be at least one executive level 2 to take responsibility for the development of the guidelines and the decisions on general program administration. There will probably be an executive level 1 and perhaps an APS6 and an APS5, or APS4.

Senator LUDWIG—How many are there in the actual crime prevention branch now?

Mr Kennedy—I believe there approximately 13 or 14 full-time equivalent staff at the moment.

Senator LUDWIG—What is their range? Are they SES or APS?

Mr Kennedy—There is one SES officer. I do not know what the range is.

Ms Treyde—In the crime prevention area we have at the moment a branch head, who is an assistant secretary; two section heads, who are executive level 2s; four executive level 1s; and one APS6.

Senator LUDWIG—That is probably close enough for the purposes of comparison.

Ms Treyde—We also have executive support person.

Senator LUDWIG—That is down from 19. What happened to the others?

Ms Treyde—They have looked for job opportunities elsewhere. With the budget coming up and the changes that may or may not happen—because we knew the funding would finish—they have taken opportunities to find themselves employment elsewhere and their positions have not been filled.

Senator LUDWIG—Rather than going through it now, perhaps you could take on notice to provide the number of positions that are currently still there and which positions were vacated. I take it that they are being held as vacant positions or unfilled at the moment—is that right?

Ms Treyde—That is my understanding.

Senator LUDWIG—So there has been, effectively, a cut in the current program, because we have gone from 19 down to X number—you mentioned 13.

Mr Kennedy—Yes, I think it is 13.

Senator LUDWIG—So there has effectively been a cut in the program.

Ms Treyde—There has been a change in the nature of work that we will be doing as well.

Senator LUDWIG—I am talking about the current program, not the next program that is going to be developed under the new NCCPP.

Ms Treyde—Yes, there has been a reduction in staff.

Senator LUDWIG—Yes. It is a reduction by one-third; it is not an insignificant reduction, is it? Their work is no longer being done so there has been, effectively, a reduction in the capacity of the program to deliver the outcomes.

Ms Treyde—I think we are still struggling on trying to do the work.

Mr Cornall—It is a terminating program though and as projects are run off the work is not being replaced. So there is a run-off situation in relation to the current workload.

Senator LUDWIG—I think I asked you to take on notice those positions, who has gone and which positions are now vacant. Under the new program will it go back to 19?

Mr Cornall—No.

Senator LUDWIG—We have talked about four. So how many do we expect—

Mr Cornall—No, that is the funding for administration of the program.

Senator LUDWIG—So it will eventually go from 19 to 13 to 4.

Mr Cornall—It is not 19.

Senator LUDWIG—Sorry, it was 19—there was an allocation of 19, I guess. That was what we asked last time. It is 13 now. And there will be, what, four left by the time we go to the new program?

Mr Cornall—Of that order, yes. There will be a run-off period during the first part of next year as current programs come to an end.

Senator LUDWIG—When do we expect that to occur?

Mr Cornall—During the course of next financial year.

Senator LUDWIG—So 13 down to 4.

Mr Cornall—That is correct—of that order.

Senator LUDWIG—On the work of the four persons in the new program: I am just trying to get an understanding of their role. Theirs will not be the same role as in the previous crime prevention unit?

Mr Cornall—No, they will be assessing applications for grants and making recommendations to ministers and then monitoring the grants administration.

Senator LUDWIG—Was there any direct project funding under the current program?

Mr Cornall—Yes, there was.

Senator LUDWIG—How much of that was specified?

Mr Kennedy—It is approximately \$2.3 million of the \$4 million that was provided for the current financial year.

Senator LUDWIG—Under the new NCCPP—we're going to have to find a different acronym, guys!—there has been a slight increase of those moneys or a reduction? There seems to be a reduction in moneys available for grants.

Mr Kennedy—I think you could probably say there is an increase, because the whole of the \$4 million will be provided to community organisations that meet certain guidelines to implement programs within their communities to prevent crime. At the moment there is a lesser amount of the \$4 million that we currently have that is devoted to distributing outside of the department to other organisations to implement programs.

Senator LUDWIG—All right. But you have massacred the staff, down from 19 to four, and there will no longer be anyone directly involved in the National Crime Prevention Program because they will simply be sorting out applications from ministers for grants. It seems to me the program is significantly changed and quite different from the current program.

Mr Cornall—That is correct.

CHAIR—Although the officers are not required to accept your terminology, Senator Ludwig.

Senator LUDWIG—The fact sheet on the program also states that the minister will appoint an advisory group to assess applications and make recommendations to the minister. Regarding the advisory group, has a deadline been set for its appointment?

Ms Treyde—I am sorry, that is a matter for the minister.

Senator Ellison—I am sorry, what was the question?

Senator LUDWIG—There is an advisory group to assess applications and make recommendations to the minister under the NCCPP. Has a deadline been set for the appointment?

Senator Ellison—No.

Senator LUDWIG—Is there a recruitment process or have positions been advertised or has anything like that been set in train?

Senator Ellison—For the committee?

Senator LUDWIG—Yes.

Senator Ellison—No. The Prime Minister has announced that Mick Palmer, the former Australian Federal Police commissioner, will act as more or less an ambassador to promote the program. We are in the process of appointing the advisory committee. That is the stage it has got to. I think there is an advertisement going out soon about applications for the grants themselves. I am advised it was in Saturday's paper last week.

Senator LUDWIG—I think I saw the advertisement but I was interested in the advisory committee. You say it is in process. I am just not quite sure what that means.

Senator Ellison—The government has not advertised for the advisory committee. The government will be setting it up. I have two advisory councils or committees which are being set up without advertisement. The Sporting Shooters Advisory Council is one such body which has worked very well, and the credit card fraud advisory council was formed in the same way.

Senator LUDWIG—I am trying to ascertain how many people would be appointed. Have you determined that yet?

Senator Ellison—I would imagine it would be between half a dozen and eight or nine.

Senator LUDWIG—Has the area from which they will be drawn been decided?

Senator Ellison—Certainly there would be an Indigenous element. Crime prevention is a major feature of it so there would be someone who has experience in that area and also in a wider social aspect, because crime prevention covers a spectrum. You would look at people who have experience in education and early intervention and you would look at people who have academic qualifications and practical experience. That is the sort of range we are looking at and it will reflect that.

Senator LUDWIG—Is the intention for it to meet once a year, once a quarter or once a month?

Senator Ellison—The advertisement which appeared last week invited applications to come forth.

Senator LUDWIG—Is this for the grants or for the advisory committee?

Senator Ellison—This is for the grants, but this gives you the background to how often it will meet. The advertisement said that applications would be considered. Here is the advertisement; it said:

Early submission of applications is encouraged. A first round of successful applications is expected to be announced after 1 July 2004.

It was thought that putting an artificial time limit on it would perhaps be counterproductive. I would hope to have this advisory body in place very soon so that when the applications come in they can be assessed and that we can get a first tranche of determinations made and people advised.

Senator LUDWIG—Is it your intention to hand pick the persons on the advisory committee?

Senator Ellison—The government will pick them.

Senator LUDWIG—Who in the government will pick them—you?

Senator Ellison—I have done it in consultation with other portfolios and I am looking at such areas as family and community services, Indigenous areas, academia and police. Certainly law enforcement has to be represented there, as does crime prevention. You need someone who has crime prevent credentials—early intervention, for instance. You need someone who is actively involved in that area or someone who has involvement in drug intervention, because drugs play such a huge role in the commission of crime.

Senator LUDWIG—Is the appointment likely to be on your recommendation?

Senator Ellison—I cannot say that at the moment; it depends on what people are available. We are working through some names and we will have them in place very soon. I will take this on notice and advise you as soon as we have it in place.

Senator LUDWIG—That would be helpful. Is it likely that the first tranche of funding will be available from 1 July?

Senator Ellison—That is what the advertisement says and I would hope to have assessments made in July, and people advised.

Senator LUDWIG—So the advisory committee will be in place prior to 1 July?

Senator Ellison—I certainly hope so because they would not be able to consider it otherwise.

Senator LUDWIG—It is not very far away, Minister.

Senator Ellison—It is just under six weeks; I think I can do it.

Senator LUDWIG—Could the committee have a copy of the advertisement that was placed? That might be helpful.

Senator Ellison—Sure.

Senator LUDWIG—Is the process that you described earlier at the stage where you have lists of names that are being considered and some may have been asked and some may have expressed an interest in accepting?

Senator Ellison—I think that is a fair description.

Senator LUDWIG—So some have been accepted already?

Senator Ellison—I would have to check whether we have actually had an acceptance yet—not that I think we are having a whole lot of knock-backs, but I would have to check on that.

Senator LUDWIG—If you would not mind, Minister. The Q&A sheet on the program says:

Q: When will the grants be available?

You have indicated that the first tranche seems to be from 1 July and the local grants program will then be advertised nationally. Is that the advertisement that has gone national—the one last—

Senator Ellison—That is right.

Senator LUDWIG—Which papers did that go in—the usual national papers?

Ms Treyde—I do not have a list. It is the usual national papers in each state.

Senator LUDWIG—Could you perhaps take it on notice and let us know which papers they were put in or how many papers they were put in?

Senator Ellison—We will take it on notice. I think local media and Indigenous media were included but I will give you a detailed break-up.

Senator LUDWIG—Could you include how much had been budgeted for the media announcements and the advertisements?

Senator Ellison—We will have to take that on notice.

Senator LUDWIG—Is it the intention to evaluate the projects themselves? Is there a project evaluation put in place?

Senator Ellison—Of the program?

Senator LUDWIG—Of both the project itself and the program. Will individual projects be—

Ms Treyde—There is an expectation that individual projects will be evaluated as they are done.

Senator LUDWIG—Who will do that?

Ms Treyde—I would have to have another look at the guidelines or the application form. I think there is a section there that deals with evaluation.

Senator LUDWIG—Perhaps you could take us to that. Is it in the guidelines for the projects?

Ms Treyde—It is either in the guidelines or on the application form.

Senator LUDWIG—Perhaps the committee could have a copy of the guidelines as well.

Ms Treyde—Certainly. They are also up on the Web, as is the application form. The evaluation section is the very last section in the guidelines, 3.20. There is an expectation that the person who does the project will do an evaluation and will need to come up with an evaluation methodology.

Senator LUDWIG—Will those four officers in the department check on that, or will it effectively be a self-evaluation of the project? It appears to be a self-evaluation, I have to say.

Ms Treyde—I would say it is a self-evaluation.

Senator LUDWIG—So the four officers will not play a role in the evaluation of the project? What worries me is this: who would admit that they were going to fail or they did not meet the expectations or the outcomes if they were doing a self-evaluation? You might set out

the methodology for how you are going to self-assess and it might be quite a good methodology, but if the project fails and you do a self-assessment—

Mr Cornall—What the guidelines say is that the evaluation process is to be built into the proposal to ensure that the project is delivering the results it sets out to achieve. My understanding is that the evaluation process or methodology will be part of the assessment at the commencement of the granting of the project and that the people who receive the grant will have to report on and evaluate their achievements against the approved methodology that was part of the grant initially. That would seem to mean that—

Senator LUDWIG—You have got to be joking. It is still—

Mr Cornall—We agree on it at the beginning and then they have to produce the data that matches those criteria.

Senator LUDWIG—They already have the money and they have already spent it. If it does not work, what happens then?

Mr Cornall—Let us start again. As part of the assessment of the viability or desirability of the project, one of the things that will be assessed will be the way in which it will be evaluated as to whether it achieves its outcomes, and the criteria that would be used for that purpose. One assessment would have to be whether that is likely to be achieved—whether it is a viable process and whether it is a useful way to measure the outcome.

Senator LUDWIG—I did not particularly want to get into an argument about this, but if the project is a self-evaluation the methodology might be right but it might still fail for want of a number of circumstances that I envisage could intrude on it. The self-assessment is not going to highlight that; nor apparently is there anyone in the unit that is going to check whether or not the self-assessment actually matches the methodology and the outcome that they are saying that they got.

Mr Cornall—With respect to what was said before, I would expect one of the tasks of the people who are managing the program would be to make some assessment on the evaluation that is given to it.

Senator LUDWIG—There are only four of them.

Mr Cornall—Yes, that is right. I do not know that there are necessarily going to be a huge number of projects when you look at the potential to make grants up to \$150,000 for community safety programs and up to \$500,000 for other programs. Yes, I would think that that would be something that could be done.

Senator LUDWIG—So they will be busy. I really would have expected something more than a self-evaluation at the end of it, especially when you highlighted at the beginning that there seems to be no indication to the people who are seeking the grants that there will be an external check or a validation to ensure that they do meet the outcomes that they set out.

Mr Cornall—I am saying that that may well be the case—that there will be this external validation for material. But they will have to collect the data and they will have to report against the criteria that are agreed at the time the grant is made.

Senator LUDWIG—I understand what you are saying. It just does not appear on the face of the record that that is the case. I guess we will get an opportunity to find out later. If there is anything more you want to add, I am only too happy to receive it. I think you indicated earlier that the National Crime Prevention Program will cease funding of programs as they run out between now and—is there an end date?

Mr Cornall—You would have to look at each program. My understanding is that they will expire during the course of the next 12 months.

Senator LUDWIG—In terms of the outcomes, what mechanisms are in place to centralise or disseminate information about the knowledge gained from the projects—the outcomes from the projects? They might be transferable or useful to other locations. What mechanisms are going to be employed to ensure that they are made available?

Ms Treyde—Where reports have been prepared, I would say in pretty well all cases they are available on the Web or published.

Senator LUDWIG—Who is going to put them on the Web?

Ms Treyde—That is done through our—

Senator LUDWIG—Those four people again?

Ms Treyde—No, there is a different area within the department that puts things up on the Web. The people who are working under the old program would continue. They are still there until they finish the ongoing projects they have not quite finished. Those ones will generate the reports.

Senator LUDWIG—But they are going to go. That is the point. Eventually you will be in blue sky territory. There will be four persons in the NCCPP and projects will come to a conclusion. They will be self-evaluated and handed up as a written document, I presume. How does that then translate from that point to a point of dissemination, a point of publishing them, a point of having seminars to indicate what outcomes might be transferable to other places, an indication of what travel is involved and then taking those programs and saying, ‘This was successful in an outer suburb of Victoria, and is equally helpful in the region of Cairns.’ And who is going to ensure that they are published on the Web and that people are told they are on the Web and are useful? Who is going to do all of that? Are these four people going to do all that again? That would be what I expect. Otherwise, what would be the point of the program, the project?

Ms Treyde—Yes, they would. But we would also be working together with the department’s public affairs area.

Senator LUDWIG—Who will be writing the reports? The people who do the project will not write up a useable document that is transferable—a case study that can then be disseminated. Who will be writing that?

Ms Treyde—I think it will probably be a value—

Senator LUDWIG—Perhaps I want more than ‘probably be’. Do you know who will be doing it? These four again?

Mr Cornall—I do not quite see that these things cannot be done by the staff engaged for this purpose. You are talking about a number of staff and you are talking about them working for 48 weeks a year on these matters. I do not see that what you are talking about is beyond their capacity. As Ms Treyde has said, there is the capacity to draw on other resources in the department, from the public affairs area and so on, and to get assistance in putting things on our web site. I think some of the information could be rapidly disseminated through state governments or appropriate state agencies. I do not think it is beyond the capacity of the staff we contemplate to achieve a lot of those objectives.

Senator LUDWIG—So it is likely that the department will be writing the reports, disseminating them and utilising different mechanisms to provide broad coverage and put them on the Web.

Mr Cornall—I would anticipate that to be the case, yes.

Senator LUDWIG—Who conducted the review of the National Crime Prevention Program?

Mr Cornall—It was Alan Behm, in conjunction with another consultancy firm, Booz Allen Hamilton.

Senator LUDWIG—Was a report prepared or was there an outcome from the consultancy?

Mr Cornall—Yes, a report was prepared.

Senator LUDWIG—Is that available to the committee?

Senator Ellison—I will take that on notice. It is advice to government and, as I said earlier, in speaking about the migration review—I think that was the one we last dealt with—I will have a look and see if an executive summary can be provided.

CHAIR—Thank you.

Senator LUDWIG—Would any of the projects that were funded under the existing National Crime Prevention Program qualify under the proposed new NCCPP or would they not qualify, on the basis that they would fail as not being community based? For argument's sake, one of them was the explosives precursor project run by the national institute of forensic science to help identify and detect chemicals that could be used by terrorists. I imagine that that would not be community based.

Mr Cornall—It does not sound like it, no.

Senator LUDWIG—So that would not qualify under the new project?

Senator Ellison—I do not want to pre-empt anybody's application. You would have to see the format—whether it was done in partnership with the community, local government or whatever. It is a hypothetical question. On the face of it, it does not sound like a community crime prevention program, but we would have to assess it.

Senator LUDWIG—The other one that comes to mind is the small business crime prevention project run by the Australian Institute of Criminology to survey crime against small business. Another one is crime prevention for seniors, run by consultants Morgan Disney and Associates to provide a guide to personal and financial safety for older

Australians. Unless I am mistaken, they do not seem to be the types of projects that could easily fit, from the information that has been provided to date—the fact sheet that I am reading from, headed ‘National Community Crime Prevention Programme’. It says:

The objective of the National Community Crime Prevention Programme, and its centrepiece local grants programme, is to provide practical and flexible support for local projects and to trial new approaches to ...

It goes on to list three dot points. If that is the case, how will these sorts of projects be funded in the future? They seem helpful for crime prevention generally. If they miss out here, and they are in need of funding or seek funding, where would they go?

Senator Ellison—Madam Chair, as the decision maker, I think it would be inappropriate for me to pre-empt a decision. Specific cases and entities have been mentioned by Senator Ludwig. I can appreciate what he is driving at, but if someone can bring their application within the guidelines, that application can be considered. Whilst the focus of it is on community crime prevention, I am not saying that, if there is anything that would assist in community crime prevention, that would not be relevant. For instance, a case which has been cited by the Leader of the Opposition, and one which I have personally seen, is a study on urban design carried out by the City of Gosnells. On the face of it, you would not think that had much to do with community crime prevention, but indeed it has quite a lot to do with it. That sort of research has come up with some very interesting details in relation to how houses are planned, open park space and the effect those things have on break and enters into residential homes. It really is hard to pre-empt what will pass and what will not. It depends on the application. Each one will have to be considered.

Senator LUDWIG—But they will still have to meet the criteria.

Senator Ellison—They have to meet the criteria, but if you have done research which can assist in community crime prevention or research that will result in that, it is relevant.

Senator LUDWIG—I understand that you might be the decision maker, but the more I read the Q&A the more I get into difficulty. The Q&A says what sorts of projects will be funded. It says:

We anticipate that grants will be highly competitive ...

Grants will be available to projects addressing a broad range of community concerns, including: property crime such as robbery ...

The programme will not fund operational or core expenses, or ongoing programmes or services, particularly the establishment of crisis or counselling services ...

It seems to really lean towards those projects which are community based or focused. My question is this: what about the ones that are currently funded under the crime prevention program that is currently in place and that do not seem to have that partnership or focus but are still, at least in my view, worthwhile? Where will they get their funding if they fall outside this umbrella? Perhaps you can take that on notice.

Senator Ellison—Part 2.2.8, dealing with the selection criteria, says:

The Advisory Group will consider projects based on the following ...

Of course, the organisation has to be eligible. It goes on to talk about ‘likely community safety and crime prevention benefits of the project’ and ‘how the impact/success of the project/strategy will be measured’. It mentions ‘agreement of any community groups involved in the project’. There may be community groups involved, as I have said, if they form a partnership. It mentions ‘opportunities for broad community involvement and participation in the project, including in its evaluation and assessment’ and the ‘organisational capacity of the applicant organisation’. I do not see that anything that Senator Ludwig has mentioned would necessarily be fatal to the criteria I have just touched on. It may be that the bodies concerned have to rejig themselves by way of being an eligible organisation. For instance, they might not be incorporated. You now have to be incorporated. There may have to be some changes in the style or the pitch. But it does not necessarily exclude that sort of work.

Senator LUDWIG—Thank you. I will turn to another matter. The civic governance budget provides \$11.4 million over four years to establish a South Pacific section in the Attorney-General’s Department and establish a financial intelligence support team in Fiji. As I understand it, the basic purpose of that is to assist specific island countries to implement the declaration on regional security that was provided for on 17 August 2002 at the 33rd Pacific Islands Forum in Suva. Have I got that right?

Mr Cornall—Yes, I think so. I did not hear all of what you just said. The gist of it is that we are doing an increasing amount of work in relation to assisting South Pacific nation states, and Papua New Guinea in particular, to improve their governance, and that is placing increasing pressures on staff in the department to assist with things like money laundering legislation, counterterrorism legislation and so on. The purpose of this funding is to ensure that we have adequate resources to meet some of those demands on the department for work in our region to improve the total capacity in our region in those areas.

Senator LUDWIG—Would the assistance include in country drafting assistance?

Mr Cornall—Yes. It has for some time, but there is more need for that now than there was before.

Senator LUDWIG—What other forms might it also include?

Mr McDonald—Some of the things which would be included would be additional resources to provide what is called back-office support for the department’s increasing role in providing legal support and assistance in placing Australians into the Papua New Guinea law, order and justice sector and assisting Pacific jurisdictions generally. This will include provision of expert advice and assistance on strategic legal policy, good governance and legal drafting to Pacific Island countries.

Senator LUDWIG—Is the intention to employ new staff in this area or is it to draw staff from the Attorney-General’s Department into this section?

Mr McDonald—Essentially there is a process in choosing who would go. As it often works out, there will be people with skills within our organisation. They will often be in a position to fulfil this role.

Senator LUDWIG—How many in total?

Mr McDonald—For example, in Papua New Guinea there are two senior officers from our department who would be taking up positions there.

Senator LUDWIG—Where else?

Mr McDonald—I do not have any details of anyone specifically going anywhere else.

Senator LUDWIG—Perhaps you could take that on notice.

Mr McDonald—It is at the stage where I can only specifically say that I know that two people are going. Obviously, there is a range of work there where there would be people with qualifications from many different places. It is not completely rolled out at this stage. I doubt whether I would be able to, at this stage, be specific about other people and from where they would be coming.

Senator LUDWIG—When will you know which countries, how many staff and whether there will be new staff or whether they will be drawn from the existing staff?

Mr Cornall—I think we might be getting off track here. The South Pacific section is basically 3½ staff in the department to provide support to the work we do in the Pacific region in terms of assisting with legislation and so on to improve their money laundering and counterterrorism laws and so on. Where we are, for example, seeking to put staff into Papua New Guinea as part of the enhanced cooperation program, that will be separately funded through the cost of that program. It is outside our budget costs. Staff will be effectively leaving the department and signing on with the enhanced cooperation program for the duration of their secondment to PNG. That is not coming out of this funding.

Senator LUDWIG—Where is that pot of money? Who owns that?

Mr Cornall—It is not us. Some of it is a redirection of AusAID funding and some of it is new funding that is coming out of the enhanced cooperation program. I would expect it is in the budget of Foreign Affairs.

Senator LUDWIG—So I should ask Foreign Affairs these questions?

Mr Cornall—I think so. The one thing that I do know is that it is not in our budget.

Senator LUDWIG—So you have 3½ staff. Is there an intention to increase that?

Mr Cornall—No. To some extent we have been doing some of this work in the past with it being part of our base costs, but it is an expanding area of responsibility. There is more and more to do. This formally recognises that we have a small section to do that and will fund staff to do that. It will basically put it onto a proper footing financially.

Senator LUDWIG—So where will the South Pacific section be located? Is it an adjunct to the—

Mr Cornall—It is in our criminal justice division.

Senator LUDWIG—So it will be a section within your criminal justice division.

Mr Cornall—Yes.

Senator LUDWIG—Where will the financial intelligence support team be? It is the easy questions that are tricky.

Mr Cornall—It is going to be based in Suva.

Senator LUDWIG—How many staff will be allocated to that?

Mr Cornall—Eight people.

Senator LUDWIG—Will they be drawn from the A-G's department or are they new employees?

Mr Cornall—They will be drawn from wherever we can find people who want to take part in the project.

Senator LUDWIG—When will that commence?

Mr Cornall—The funding is now in place for the year starting 1 July, so the process will now start.

Senator LUDWIG—Is there a time when you would expect the financial intelligence support team to be up and running in Suva?

Mr Cornall—As quickly as possible. Without Ms Blackburn here, I am sorry, I just do not have the details.

Senator LUDWIG—That is what I was missing. Where is she tonight?

Mr Cornall—She is not very well, I understand.

Senator LUDWIG—I am sorry to hear that. We might move on to the International Criminal Court. The budget provides something of the order of \$6.7 million. Before we do that though: we worked out that the financial intelligence support will be located in Suva, but what section will it be in? Will it be in the criminal—

Mr Cornall—Yes, the criminal justice division. It will be a group administered by the criminal justice division.

Senator LUDWIG—Will you have a new section? You now have two new sections, I presume. Is there a new branch that you then break out and call it?

Mr McDonald—I understand that there is some thought going into this at the moment. Clearly we have new functions. I cannot say at this stage exactly how it will be organised.

Senator LUDWIG—So which branch will the South Pacific section be in?

Mr McDonald—I would prefer not to say at this stage because I do not think it is completely settled.

Senator LUDWIG—Perhaps you could take it on notice. If it is settled before the return date for questions you could perhaps provide us with an outline. I was interested in whether or not you intend to create another output or branch, or how you intend to deal with these two new sections.

Mr McDonald—I think the intention is to include it within the current branch structure, but I have not really had a chance to confer with Ms Blackburn about that.

Mr Cornall—I do not think we would be seeking to create another output. I do not think there would be a need to do that.

Senator LUDWIG—I was just trying to rule out possibilities or perhaps encourage you to provide an answer if you knew one. We will turn now to the International Criminal Court. The budget provides \$6.7 million over four years for Australia's contribution to the ICC. That is in addition to the amounts allocated in last year's budget—is that right?

Mr Kennedy—Yes. We have approximately \$1.4 million per year from this current budget. The budget measure of approximately \$1.6 or \$1.7 million will bring the total annual funding to approximately \$3 million per year.

Senator LUDWIG—Is that going to continue through in the forward estimates? How will that work?

Mr Kennedy—That is what is currently in the forward estimates, but the issue for us may be that if the ICC's budget keeps on changing—increasing, for example—then we will need to seek additional funding to cover any increase in Australia's contribution.

Senator LUDWIG—Do you know what that is likely to be?

Mr Kennedy—No.

Senator LUDWIG—Do you have any guesstimate?

Mr Kennedy—The court has only been operational for a relatively short period of time, and I think it is yet to establish its ongoing funding requirements.

Senator LUDWIG—So the \$6.7 million is in addition to the funding which was continuing to the forward estimates—the increased contribution announced in the 2003-04 additional estimates?

Mr Kennedy—That is correct. The additional estimates funding was just for this financial year. The budget measure now effectively takes that additional estimates amount and puts it into each of the forward estimates years.

Senator LUDWIG—How much is that?

Mr Kennedy—The total is approximately \$3 million per year.

Senator LUDWIG—So you announced \$3 million in 2003-04?

Mr Kennedy—That is correct.

Senator LUDWIG—I want to have a look at the new Commonwealth fraud control guidelines. In question on notice No. 120 from additional estimates concerning the new Commonwealth fraud guidelines, paragraph (c) of the answer stated that the majority of agencies were unable to provide a dollar figure for fraud for the 2002-03 financial year. Under the new guidelines, should agencies be able to provide that information? This might be a question for you, Mr McDonald.

Mr McDonald—I am afraid I will have to take that on notice.

Senator LUDWIG—What information are the agencies required to provide?

Mr Cornall—I do not think Mr McDonald is able to answer that question.

Senator LUDWIG—What seems to be the problem? Who are we missing.

Mr Cornall—We are missing Ms Blackburn, for a start. This is a relatively detailed question about the administration of the fraud control guidelines, which is done by staff who are not normally at these estimates in any event. Detailed questions about the survey or the administration of the guidelines we would probably need to take on notice or deal with tomorrow.

Senator LUDWIG—Will Ms Blackburn be available tomorrow?

Mr Cornall—I do not know the answer to that. I will have to make inquiries.

Senator LUDWIG—I can foreshadow that I have a few questions in relation to the guidelines, such as the one I have already asked. Could the relevant extract of the guidelines be provided to the committee? I want to ask questions in relation to them.

Mr McDonald—I can arrange that.

Senator Ellison—We can do that overnight.

Senator LUDWIG—The other issue is what compliance mechanisms have been put in place, whether the department has an assessment of those compliance mechanisms and whether the agencies are satisfied with them. There are a range of things that I want to explore on that. I foreshadow that now, and we will see what you can do between now and tomorrow.

Mr Cornall—Yes.

Senator LUDWIG—That would be helpful. Do agencies have to report a dollar fraud figure—or are we better off leaving that till tomorrow?

Mr McDonald—You are better off leaving it until tomorrow. I have nothing to do with it.

Senator LUDWIG—And Ms Blackburn would normally be the person who—

Mr Cornall—She would need to be briefed by Mr Schneider and the people who deal with this area.

Senator LUDWIG—And none of them are here tonight?

Mr Cornall—No.

Senator LUDWIG—In respect of the extradition of Messrs Voigt and Hendy—or perhaps the non-extradition, as the case may be—I think this is one for you, Minister.

Senator Ellison—What was that? We have gone to the extradition issue. What role does the Attorney-General's Department play in the extradition process in Australia? It is probably a more general question that the department can answer.

Senator Ellison—The department is best to answer that one first.

Senator LUDWIG—As we distil down, Minister, we might get to you eventually.

Ms Warner—The department receives all incoming extradition requests, processes them and liaises with the Commonwealth DPP and the Australian Federal Police and state DPPs for outgoing extradition requests as well. The department is the central authority, if you like, for extradition requests to and from Australia.

Senator LUDWIG—Is the Attorney-General's Department responsible for advising the minister on extradition?

Ms Warner—Yes, it is.

Senator LUDWIG—Who in that section does that? Is there a section dedicated to that?

Ms Warner—There is an extradition section in the international crime branch.

Senator LUDWIG—Does Attorney-General's give specific advice regarding the use of the minister's discretion to block extraditions that have been ordered by Australian courts?

Ms Warner—There are certain stages in the extradition process where submissions are made to the minister concerning the extradition process.

Senator LUDWIG—Could you outline that? It might be helpful to understand how that process works. At what point does the minister make a decision, does he take advice and from whom?

Ms Warner—There are two points at which the minister makes a decision. The first is called the section 16 submission which is made to the minister. That is a submission where the minister determines whether a magistrate will then have a section 19 hearing to determine whether an alleged fugitive is eligible for extradition. That is the first stage at which the minister makes a decision. Where a magistrate does determine that a fugitive is eligible for extradition and the fugitive does not appeal, there is a second stage where the minister then makes what is known as a section 22 decision, which is a determination that the person be surrendered to the requesting country.

Senator LUDWIG—Is it a determination that the person be surrendered or can the minister determine that the person not be surrendered?

Ms Warner—It is either/or.

Senator LUDWIG—On how many occasions has the Attorney-General's Department been asked to supply advice on extradition matters in relation to the minister's use of his or her discretion to block extradition orders by the courts since, say, January 2001 in relation to both section 16 and section 22.

Ms Warner—I would probably have to take that on notice.

Senator LUDWIG—Do you keep records of this?

Ms Warner—Yes, and in the annual report there are extradition statistics each year.

Senator LUDWIG—Do the statistics in the annual report advise or do you keep records on whether or not the advice recommended the use of the minister's discretion or not?

Ms Warner—No.

Senator LUDWIG—You advise in relation to both section 16 and 22 but do you provide advice as to whether or not the minister should exercise his discretion, either favourably or not favourably, in relation to, for argument's sake, section 22 or section 16?

Ms Warner—The annual report statistics do not break down those issues but those recommendations are made in submissions.

Senator LUDWIG—Do you know how many times the Attorney-General's Department recommended that the minister use his discretion since January 2001? How many times did the Attorney-General's Department recommend that the minister not use his discretion?

Ms Warner—I would have to take that on notice.

Senator LUDWIG—Does the Attorney-General's Department keep a record of whether their advice in those matters is followed?

Ms Warner—Records of all submissions are kept.

Senator LUDWIG—Could those records since January 2001 be made available?

Ms Warner—I think the content of submissions would not be releasable.

Senator LUDWIG—Why is that?

Ms Warner—I think it is normal practice that those are internal government decisions and are not releasable.

Senator LUDWIG—Why would they not be available to a Senate committee? You need to come up with a better reason than that, unfortunately.

Mr Cornall—It is advice to ministers about the discharge of their responsibilities. It seems to me that it is a matter for the minister to decide whether the matters should be released.

Senator LUDWIG—That may be so but I am entitled to ask the question and the public servant is required to justify why the matter should or should not be made available to the committee.

Mr Cornall—That is what I am seeking to do, Senator.

Senator LUDWIG—Thank you. It is not my idea to fill in the gap, though. I am not required to do that. So you say that it is advice to the minister and is not required to be provided.

Mr Cornall—It is a matter for the minister to determine whether he wants to provide it.

Senator LUDWIG—Minister, did you want to provide those?

Senator Ellison—It is very much the exception that advice given to ministers is provided. I am not aware of any brief given to a minister in relation to extradition which has been made public. There are many reasons for that. Privacy is one. Another is the requirement that advice be given without fear or favour. The principle behind it being given without fear or favour is that it is confidential. The Public Service would be very wary of the advice they give you if it were made public. We have seen that in recent court cases in relation to confidential reports to government. It is very difficult to get people to do confidential reports to government when they are then made public. So there are a number of reasons why they are not made public.

In this instance, it is not unusual for that to be not made public. It never has been before. In relation to matters such as a request for extradition there are issues that could be raised which would preclude the making of it public. I also point out that I think the department refused an FOI request for information in relation to the brief on a number of grounds. And that was made by the department, not the minister, I add.

Mr McDonald has just advised me that with extradition there can sometimes be comment about other countries. It is a government to government request. Certainly, where there are representations government to government, we are very wary about divulging details that

might be sensitive to either Australia or the other country concerned. There is a range of reasons why these matters are not made public.

Senator LUDWIG—Thank you, Minister. What matters are likely to be taken into consideration by the Attorney-General's Department when advising the minister in relation to his or her discretion to block court ordered extraditions, for instance?

Ms Warner—A range of circumstances. There are humanitarian circumstances and the personal circumstances of the fugitive. There are a number of issues under the act that are taken into account. There are certain mandatory objections to extradition. For instance, where the offence attracts the death penalty, extradition would take place only if there was an undertaking by the country requesting the extradition that the death penalty would not be imposed or would not be carried out. That is just one. For instance, there might be the issue of torture. That is another one where that is a mandatory objection to extradition. Those things are taken into account. There are things like threshold penalties. You have to reach a certain threshold under a particular treaty with a bilateral partner before the offence will be an extradition offence. There are those issues as well.

Senator LUDWIG—You mentioned personal circumstances. What sort of personal circumstances would the Attorney-General's Department take into account when giving such advice?

Ms Warner—Serious illness of the fugitive, family circumstances.

Senator LUDWIG—What sort of personal circumstances of family members would you expect to encounter in providing that advice or advising the minister in relation to the extradition or non-extradition of the person who is subject to the extradition order?

Ms Warner—There may be serious illness within the family circle. That would be one issue. Where the person was a single parent, that would be another issue that would be taken into account.

Senator LUDWIG—Do you consider the legal system which the person might be going to?

Ms Warner—Yes. Issues of due process are taken into account.

Mr Cornall—On that point, that is one of the issues concerning with whom we have extradition arrangements. Before we enter into extradition arrangements, as a normal premise we have to be satisfied about the fairness of the justice system in that country. We would have to be satisfied of that before we would agree to extradite people to be tried in that country.

Senator LUDWIG—I know that, but that opens up a Pandora's box. Different criteria now apply to different countries—the UK as against Brazil, for argument's sake. I think you are aware of that. It was raised in JSCOT some time ago, and it took the government two years, I think, to provide an answer. At the moment, my understanding is that in civil law countries you run into difficulties. Effectively you use templates to encourage extradition arrangements, but, as you are aware, they are not based on the same level of proof that is required in the UK, which has a similar common law system to ours. I did not want to go down that track, but if you want to add anything to it, by all means do so.

Mr Cornall—I do not really. I just wanted to make the point that that is a factor that is taken into account in establishing extradition arrangements. I appreciate that we have different levels of extradition arrangements with different countries.

Senator LUDWIG—Which means that, effectively, you might have a standard of proof required in England which is different from the standard of proof required in Brazil?

Ms Warner—Yes.

Senator LUDWIG—I understand what you are putting to me, but I think it also applies differently depending on the country that we have recently entered into arrangements with, especially if they are civil law countries. You take those sorts of matters into consideration when providing the advice to the Attorney-General in relation to these issues?

Ms Warner—Yes.

Senator LUDWIG—You are familiar with the issue we have just canvassed about the different levels of proof required?

Ms Warner—The lowering of the different evidentiary standards with different countries and different bilateral extradition partners, yes.

Senator LUDWIG—Effectively there is a lesser standard required in civil law countries than in common law countries, isn't there?

Ms Warner—There is a prima facie standard with many of the Commonwealth countries and a no-evidence standard with many of the civil law countries.

Senator LUDWIG—So no evidence means no evidence, as against a prima facie case in relation to, say, the United Kingdom?

Ms Warner—Yes.

Senator LUDWIG—Notwithstanding what happens when it joins the EU—it has joined the EU—and whether or not that might change the circumstances in the future?

Ms Warner—Yes.

Senator LUDWIG—We will not go there now. In the advice, do you consider also the bona fides of the particular prosecution the person who is the subject of the order is facing?

Ms Warner—Could you repeat that?

Senator LUDWIG—Of the particular prosecution the person or the subject is facing—in other words, the type of charge they are being prosecuted with in the country.

Ms Warner—Yes.

Senator LUDWIG—Is that an issue that you consider?

Ms Warner—The fundamental prerequisite is dual criminality for an extradition. It must be an offence in both countries. If a country requests that we extradite someone from Australia for a particular offence, it must also be an offence here in Australia.

Senator LUDWIG—What about whether it is a fair dinkum prosecution and not a trumped up charge? That is another way of putting it.

Ms Warner—We require a warrant, for instance, to have been issued in the particular country for the offence. If there was to be any evidence that it was a trumped up charge, that would also be something that we would need to take into account.

Senator LUDWIG—Has the Attorney-General's Department supplied any advice to the minister relating to the extradition of Australian citizens to Hong Kong since January 2001?

Ms Warner—Yes. We have a number of active existing extradition requests from Hong Kong. They are going through the normal processes within the section and submissions have been prepared on those requests.

Senator LUDWIG—Are you able to provide more details in relation to those?

Ms Warner—Just that we have four active formal extradition requests from Hong Kong at various stages in the extradition process.

Senator LUDWIG—Does the Attorney-General's Department have any concerns about the legal system in Hong Kong that would cause them to advise against the extradition of an Australian citizen to face prosecution in Hong Kong?

Ms Warner—No. We have an extradition arrangement with Hong Kong which is quite an active one.

Senator LUDWIG—When was it negotiated?

Ms Warner—I think it is a 1997 treaty.

Senator LUDWIG—What basis was it on? The no-evidence or the prima facie case? Was it one of the models?

Ms Warner—I think it is a no-evidence one.

Senator LUDWIG—It is a civil law country model?

Ms Warner—Yes.

Senator LUDWIG—Are there any concerns from the Attorney-General's Department about the bona fides of any outstanding prosecutions involving Australian citizens in Hong Kong?

Ms Warner—Not as far as I am aware, no.

Senator LUDWIG—Do you want to check that just to make sure?

Ms Warner—Yes.

Senator Ellison—I might point out that in the last week there has been a decision to surrender someone to Hong Kong. Hong Kong has been advised of that. I do not want to divulge the name of the person, because I am not sure if the person or the person's family have been advised.

Senator LUDWIG—Does the Attorney-General's Department have any concerns about the general proposition of extraditing Australian citizens to face prosecution in Hong Kong based on the legal or political system currently in place in Hong Kong?

Ms Warner—No.

Senator LUDWIG—Did the Attorney-General's Department supply any advice to the minister on matters related to the extradition of Roger Hendy or Carl Voigt?

Ms Warner—Yes, submissions were made to the minister on both those cases.

Senator LUDWIG—Are you able to specify what sort of matters were included in the advice?

Ms Warner—No. As was previously stated by the minister, those matters are for internal government decision.

Senator LUDWIG—So you cannot say whether they were personal matters, family matters, concerns about the prosecution, or concerns about the Hong Kong legal system?

Ms Warner—No.

Senator LUDWIG—Perhaps you could rule out the Hong Kong legal system or the concerns about the prosecution itself being bona fide.

Ms Warner—No, I prefer not to go into the content of advices to the minister.

Senator Ellison—I can say that an extensive list was tabled in the Senate in relation to Mr Hendy and Mr Voigt as to the correspondence that was received and the nature of that correspondence. Certainly while I have been minister that level of disclosure has not been made. On the grounds again of privacy, the correspondence itself will not be disclosed and the FOI—I think on that basis and others—was refused by the department. One can glean from those seven pages of correspondence and the list there the sorts of things that were put to the department in relation to the consideration of this matter.

Senator LUDWIG—Did the minister ask for any advice in relation to those two persons? Was the request from the minister's office?

Ms Warner—Normal submissions were made to the minister in the course of the extradition process.

Senator LUDWIG—I am not too sure how it works in relation to this section. Was this a section 16 or a section 22?

Ms Warner—In both cases there were section 16 submissions and section 22 submissions.

Senator LUDWIG—Did the Attorney-General's Department or the minister ask for those or were they generated as a matter of course?

Ms Warner—They are generated as a matter of course.

Senator LUDWIG—Was there any request from the Attorney-General's Department for more specific information or further advice in relation to those two persons?

Ms Warner—In the normal course of an extradition submission there are often further conversations between the minister's office and the extradition section throughout the course of the process. So there were a number of conversations and discussions about the cases.

Senator LUDWIG—Are you able to say what the substance of those requests were in relation to those two persons?

Ms Warner—No, again that would be a matter for advice to the minister.

Senator LUDWIG—What about the specific legal principles that might have been involved? Were there any queries from the minister in relation to the law?

Ms Warner—The issue of how the Extradition Act applies to a particular case and the extradition treaty concerned was covered in the submissions and certainly in some of the conversations and discussions between the minister's office and the section.

Senator LUDWIG—Are you able to say what the substance of the advice was then in relation to those two persons?

Ms Warner—No.

Senator LUDWIG—And you are not able to say whether that advice was followed?

Ms Warner—No, because there is advice given on a range of issues there, and they are usually all covered in the submissions.

Senator LUDWIG—Did the Attorney-General's Department have any contact with Hong Kong authorities in relation to the extradition of those two persons?

Ms Warner—Yes, we did. As a matter of course in all extraditions we have contact with the requesting country's authorities.

Senator LUDWIG—Are you able to say what the nature of that was, when it was and what it was about?

Ms Warner—No, there would have been quite a few contacts with the Hong Kong authorities about the cases in question. In the normal course of events there are quite a number of contacts back and forth.

Senator LUDWIG—Is there any reason why you cannot tell the committee what those communications between the Hong Kong authorities and Australia involved?

Ms Warner—Frequently they were just to do with the progress of the request. They were normally to do with the progress of the request.

Senator LUDWIG—Were there any representations from the Hong Kong authorities as to what the problem was or whether there were any delays? Were there any remonstrations that these persons were wanted for prosecution and why couldn't the Australian government extradite them?

Senator Ellison—On the list that I mentioned there is a description of correspondence which was received and the nature of that correspondence. That mentions correspondence received from Hong Kong. Again, for the same reasons which have been indicated in relation to the other correspondence, that is not disclosed. It is, after all, correspondence from another government, and certainly we are not in the habit of disclosing correspondence received from another government. But the nature of the correspondence is described there, and from whom it was sent. There is one description there: Joseph To, Senior Government Counsel, Department of Justice, Hong Kong. It describes measures used by Hong Kong to combat the spread of SARS in its prisons. That is a typical extract.

CHAIR—Thank you, Minister. The committee appreciates the information. I think we understand the caveats you have to put on that.

Senator LUDWIG—I understand that was tabled in the Senate. I wonder if that could be provided to the committee as well.

Senator Ellison—Yes. I have a copy here and I will ask for that to be copied and provided to you.

CHAIR—Thank you, Minister.

Senator LUDWIG—Thank you. Did the Attorney-General's Department have any contact with other Australian government authorities in relation to this matter?

Ms Warner—In all extradition requests we have contact with the prosecuting authority, and that might be the Commonwealth Director of Public Prosecutions.

Senator LUDWIG—What is the nature of the contact there?

Ms Warner—Just looking at the nature of the request when it comes in and looking at the elements of the offence and whether there is dual criminality.

Senator LUDWIG—Can you tell us whether there was any determination in relation to Mr Voigt and Mr Hendy?

Ms Warner—Again, I think that is a matter of advice for the minister.

Senator LUDWIG—Were DFAT or any other departments contacted in relation to the extradition of these two persons?

Ms Warner—In many of these cases DFAT are contacted as a matter of keeping the other country involved. Very often, extradition requests are sent through the diplomatic channels so DFAT are automatically involved.

Senator LUDWIG—Where they involved in this matter?

Ms Warner—Yes.

Senator LUDWIG—Did they provide any advice or input into the process?

Ms Warner—DFAT in this case was the channel for the request. Certainly they were contacted at different points during the course of the process.

Senator LUDWIG—Did DFAT express a view about the issue?

Ms Warner—Again, that is a matter of advice for the minister.

Senator LUDWIG—Do you know whether or not the Attorney-General's Department had any contact with other ministers in relation to the matter or whether other ministers made any representations?

Ms Warner—Not as far as I am aware.

Senator LUDWIG—In this instance was any contact made in respect of private citizens or were representations made by private citizens to the Attorney-General's Department about the matter?

Ms Warner—In the list that the minister mentioned there is a list of representations made in relation to the matter by private citizens.

Senator LUDWIG—Is that the full list? Have you had a look at it?

Ms Warner—Yes, we have had a look at it.

Senator LUDWIG—Did you prepare the list?

Ms Warner—Yes; the department prepared the list.

Senator LUDWIG—Is that all of the representations that were made or only the correspondence? Were there other verbal ones or phone messages?

Ms Warner—There could have also been other representations which were not on that list, yes.

Senator LUDWIG—Can you describe the nature of those?

Ms Warner—We will also get contacts from, for instance, the legal representatives of the fugitives by phone. That will certainly be part of the matter as well.

Senator Ellison—I think we should clarify that. I understand when the department prepared that list that that was all of the correspondence that was—

Senator LUDWIG—I am sorry, I was not sure what was headed on the list.

Senator Ellison—Yes, but I just want to make it absolutely clear that, as I understand it, that list of correspondence is exhaustive, there is no other correspondence, and if there is I am not aware of it. That list was prepared by the department. As for telephone calls, of course they were not the subject of the request of the Senate and they are not on that list accordingly.

Senator LUDWIG—Thank you, Minister. Are you able to provide a list of those contacts that were made by telephone or email by private citizens in relation to the extradition request of Mr Hendy and Mr Voigt? Do you keep a record of those things and the nature of the inquiry—such as where the file is up to by the solicitor or someone like that, those which have more substance or are making a representation? Are you able to prepare that?

Ms Warner—We certainly do keep a record of any email or phone contacts we have on the file. If an FOI request was made they would become the subject of that FOI request as well.

Senator LUDWIG—I am making the request. I guess the committee is making the request.

Senator Ellison—Do I understand that the request is for a list of all the telephone calls and emails that were received on this matter?

Senator LUDWIG—Yes, in relation to representations.

Senator Ellison—We will take that on notice. That has not been requested but we can accommodate that as much as we can within the records of the department.

Senator LUDWIG—Thank you.

Senator Ellison—We can do that. I provide the same caveat as I did with the correspondence. In the same way that we have set out the correspondence we can set out the telephone calls received and emails.

Senator LUDWIG—That would be helpful.

CHAIR—With the descriptor, as you indicated before.

Senator Ellison—We will do that.

CHAIR—Thank you, Minister.

Mr Cornall—If I could just interpose, when Ms Warner said that these documents would be the subject of the request, that means they would be looked at to determine whether they are disclosable or whether or not they are covered by any of the exemptions in the act.

Senator LUDWIG—I am not sure we are covered by the exemptions. Are we? I do not think I am but I am happy to be.

Senator Ellison—There are some that apply. Government to government is one. Advice to ministers, matters which are sub judice and matters which could prejudice the operation of an investigation are all matters which—

Senator LUDWIG—I mean, outside the usual; in the sense that we both know that we asked for those but we expect an answer from you along those lines.

Senator Ellison—Yes, but I just gave you those as examples which apply.

Mr Cornall—I cannot remember whether it is in *Odgers' Australian Senate Practice* or in one of the government guides to responding to committees, but I am sure that I have read that the exemptions under the FOI Act are treated as a rough guide to the sorts of indications of material that should be supplied to committees.

Senator LUDWIG—Going on the fact that some of it has already been supplied by way of correspondence, it probably falls within that which can be provided. Subject to the caveats we have already discussed, I am happy to receive what information you can provide, Minister. Was the Attorney-General's Department contacted by the Department of the Prime Minister and Cabinet on the matter?

Ms Warner—Not as far as I am aware.

Senator LUDWIG—You wouldn't mind checking with the department on that issue?

Ms Warner—Yes.

Senator LUDWIG—We are up to output 2.2.

CHAIR—Thank you very much to those who have assisted in 2.1. We will move to output 2.2.

[9.43 p.m.]

Senator LUDWIG—The budget provided \$29.9 million over four years to the Attorney-General's Department for critical infrastructure protection. Has there been any determination as to what initiatives or programs this funding will be spent on and how much will be spent on each initiative—in other words, the types of initiatives and the appropriate funding?

Mr Cornall—There has. Mr Clement can answer that question.

Mr Clement—The department was able to successfully put a bid forward for \$50.2 million over four years for nine government agencies to progress three key areas of critical infrastructure protection. The first of the three key areas in CIP is national coordination and leadership. That attracted \$11.9 million over four years. The second point is infrastructure identification, analysis and remediation. That attracted \$23.7 million over four years. The

third area is infrastructure interdependencies modelling and analysis, which attracted \$14.6 million over four years.

Senator LUDWIG—Are there specific programs—or is there a better description of what the initiatives entail under each of those headings?

Mr Clement—I can go through a bit more detail with you on each of those.

Senator LUDWIG—Perhaps you can provide it on notice. What initiatives will the Attorney-General's Department be spending on?

Mr Clement—Within national coordination and leadership, Attorney-General's Department received \$5.1 million of the allocation over the four years to increase the effectiveness of the trusted information sharing network and for bilateral and multilateral information exchanges with other countries on CIP initiatives. That is basically what we are doing in that area. In the infrastructure identification, analysis and remediation area the Attorney-General's Department received \$13.9 million of the allowance over the four years for a range of activities including the review of protective security arrangements for national critical infrastructure, enhancing the capabilities of the Australian computer emergency response team, AusCERT, and undertaking computer network vulnerability assessments for the national information infrastructure. In the third category, infrastructure independency modelling and analysis, the Attorney-General's Department received \$10.9 million of the allocation over four years to lead a major cross-portfolio project to develop, maintain and refine a capability to model and analyse the interdependencies and the consequences of critical infrastructure failure across sectors.

Senator LUDWIG—The total, then, is what?

Mr Clement—Of the \$50.2 million for the budget initiatives for critical infrastructure protection, Attorney-General's Department received \$29.9 million. It is the lead agency in most of the activities.

Senator LUDWIG—Some of it will be used to provide expanded secretariat support to the Trusted Information Sharing Network for Critical Infrastructure, the TISN. Is the secretariat within the critical infrastructure protection branch of the department?

Mr Clement—Yes. Within my branch I have a small team that provides secretariat support to the many subelements that make up the trusted information sharing network. Those elements include the Critical Infrastructure Advisory Council, which is the senior level. At the next level down, each of the sectors within the trusted information sharing network has a secretariat support element, and I have officers who are assigned to each of the different sectors and provide administrative support as required.

Senator LUDWIG—How many staff are employed in the critical infrastructure protection branch?

Mr Clement—The branch was created in April last year and was formed on the basis of an existing section that had five permanent officers. I was appointed the branch head, which took our total to six at that stage, with a structure that allowed us to fill a number of temporary positions up to 10 officers in total. For the past year we have been operating in that condition. The funding that the department has received will allow us to move the temporary officers to

permanent positions and expand in a number of key areas where we have major projects to undertake.

Senator LUDWIG—Are all of those staff involved in the TISN secretariat?

Mr Clement—They are all involved in different aspects of the workings of the trusted information sharing network. It is a very diverse group with a separate work program for each of the sectors. There are some major projects that cut across sectors so it is not a simple answer to say they all work for a secretariat, but they all contribute to achieving the aims of the trusted information sharing network.

Senator LUDWIG—Will you employ additional staff under the new funding arrangement?

Mr Clement—Yes. The branch structure has expanded to allow us to do the extra work that we have been given funding to tackle—that is, we will be going from 10 positions to 23 positions.

Senator LUDWIG—Can you provide a breakdown of the classifications of those additional positions and their perceived roles?

Mr Clement—I will have to take that on notice.

Senator LUDWIG—And can you provide us with the cost each year of employing those extra staff—you might want to take that on notice as well—and their duties or what you expect their area of work will be? In other words, what will the extra staff do over the period? DFAT has announced a terrorism white paper. It was announced on 29 March this year—I think my information is correct. Was the Attorney-General's Department consulted in relation to that white paper?

Mr Cornall—The department has been consulted about the outline and scope of the paper. I am not quite sure whether we have seen further drafting at this stage. Ms Sheedy has just advised me that we have now seen a draft of the paper so, like a number of other departments, we have been given the opportunity to comment on it but the drafting is being done within the department of foreign affairs.

Senator LUDWIG—There have been a number of drafts and you have the latest iteration—is that right?

Mr Cornall—There was an outline paper and then a draft.

Senator LUDWIG—There was an outline paper and a draft, and you have received the outline paper and you now have the draft?

Mr Cornall—Yes, Senator.

Senator LUDWIG—Did DFAT consult you in relation to the outline paper?

Mr Cornall—Yes, Senator.

Senator LUDWIG—What form did that take?

Mr Cornall—It was a series of chapter headings with a short synopsis as to what was to be covered in each chapter.

Senator LUDWIG—What sorts of consultations were had with the department about the outline?

Mr Cornall—We were shown it and we were asked if we had any views about it.

Senator LUDWIG—How did you respond? Did you have any views?

Mr Cornall—I do not think we put anything in writing to them. It was discussed at a meeting that I was at.

Senator LUDWIG—You verbally communicated your views about the outline to them?

Mr Cornall—I made one point about it, yes.

Senator LUDWIG—Was it you who made the response?

Mr Cornall—Yes, it was.

Senator LUDWIG—What was that?

Mr Cornall—I would prefer not to say; it will be taken up in the document. It was just a drafting point about a matter that could be included in the draft if they chose to do so.

Senator LUDWIG—Has it been included in the draft?

Mr Cornall—I do not know because I have not seen the draft.

Senator LUDWIG—Perhaps you could get back to me on that. I am sure Ms Sheedy could show you the draft.

Mr Cornall—It was just a comment. We were asked to comment about it and I just expressed a point of view about one part of one chapter.

Senator LUDWIG—Were any comments made by anyone else within the department or was that the only comment that was made?

Mr Cornall—I am just checking, Senator.

Senator LUDWIG—Thank you.

Mr Templeman—Emergency Management Australia has been consulted by the Department of Foreign Affairs and Trade, through a couple of people attending some scoping discussions, particularly in relation to emergency and consequence management arrangements in the region in relation to, say, issues around a capacity of particular countries to address and respond to natural disaster implications or in relation to the impact of terrorist related acts. That is the extent of our involvement in ensuring that there was adequate understanding in that particular area. Related to that, of course, there has been a significant amount of work which has been undertaken post Bali in the context of having a reasonable appreciation of capacities to be able to respond to, say, an event like that within a region. That is within our own sort of arrangement and the sorts of things that we needed to address to improve in that particular area. There have been a number of initiatives which have been taken up. It has been about ensuring that there is a much broader whole-of-government multiagency appreciation of the issues to ensure that, in the white paper, there is a thorough understanding of that. Last week I had a discussion with the Ambassador for Counter-Terrorism to ensure that some of the issues that we need to make sure are addressed in that paper are included. I have been assured that they will be given a copy of the draft to comment on.

Senator LUDWIG—Emergency Management Australia commented on the white paper then?

Mr Templeman—We have not seen a draft yet. I would imagine that with the draft, which has been mentioned here by Ms Sheedy, we would end up being one of the other agencies within the department having the opportunity to provide a coordination comment within the department back to DFAT so that there is a total Attorney-General's Department comment on the paper.

Senator LUDWIG—What about the white paper then?

Mr Templeman—That is what I am answering. I have not seen the white paper.

Senator LUDWIG—If I have it right, there was a white paper which was an outline and then subsequently a draft. I was using different terminology to try to convey that.

Mr Cornall—There was a synopsis, if you like, as to how it would look.

Senator LUDWIG—Is that the white paper?

Mr Cornall—There was a synopsis of what will become the white paper. Then there is a fuller draft.

Senator LUDWIG—Who has seen what?

Mr Cornall—I have seen the synopsis.

Mr Templeman—We have only been involved in working group discussions in terms of the outline to ensure that the issues relating to emergency management and consequence management were addressed. That is the extent of our involvement to date.

Ms Leon—The office of international law has seen both the outline, when it initially came, and the draft that has been produced since then. At the time that the outline came, as the secretary mentioned, it consisted of a series of chapter headings and a short synopsis of what would be covered in each of those areas. The office of international law liaised with DFAT to ensure that one of the initiatives that we are working on jointly with Foreign Affairs was going to be included in the section on regional and multilateral initiatives. We were assured that it would be and in the draft it has been taken up. It has just been the normal process of interdepartmental coordination and communication over a matter with shared responsibility.

Senator LUDWIG—Ms Leon, the synopsis and then the draft, are they similar? In other words, is the draft a reworked synopsis or a fuller document?

Ms Leon—It is a much fuller document. I would not swear to the exact details of this but the draft outline was, of course, a very short outline of what would be in the paper and the draft white paper is a much longer document. As to whether the chapter headings have changed or not from one to the other, I could not comment without going back to look at it. My recollection is that it largely followed the outline that was put around but with much more material put in, no doubt reflecting the consultation that had occurred.

Senator LUDWIG—What of the process from here? We now have the draft, I take it?

Mr Cornall—Yes, we have. Ms Sheedy said that.

Senator LUDWIG—That will be circulated around the department for comment and I take it that it will come back to you, Ms Leon, at some point—or do you have it already?

Ms Leon—I have seen it, and I know that other parts of the department either have seen or will see it—those who have been involved in the process. Whether or not it comes around in a further draft, I do not know. That matter will be a matter for the department of foreign affairs.

Senator LUDWIG—What will happen then? Have comments been sought by DFAT in relation to the draft?

Mr Cornall—Yes, that is why we have it.

Senator LUDWIG—Sometimes that is not always the case. Has a date been set for return?

Mr Cornall—I do not know the answer to that, but this is going to be white paper that the government will put out in a form and at a time that suits the government. I think we have been very cooperative in the answers we have provided to you so far but, realistically, it is not our project, and the time frame will be set by the government. I think we have probably told you as much as we can usefully tell you.

Senator LUDWIG—Perhaps we can bring the questions down to what work you have done in relation to both the synopsis and the draft. Perhaps you could detail what sort of work commitment is being provided by the Attorney-General's Department in relation to both the synopsis and the draft—those sorts of issues: how many branches within the department, how many person hours have been spent and whether or not it was a significant event that you undertook to examine the document.

Mr Cornall—We will take it on notice and see what we can do. We do not keep records of hours worked on particular projects. This sort of interdepartmental cooperation occurs all the time, and it would not be an overly challenging task for our different sections to read the paper quickly and make useful and helpful comments. But we will see what we can say.

Senator LUDWIG—So you did not allocate any specific staff to either the synopsis or the draft? I take it a headshake, Ms Sheedy, is a no.

Mr Cornall—No.

Senator LUDWIG—I guess that becomes yes, then. Did you receive any response from DFAT in respect of the comments that were provided in relation to the synopsis?

Mr Cornall—Which comments are you referring to?

Senator LUDWIG—You made one, I suspect, and I think Ms Leon mentioned that she made a couple.

Mr Cornall—I have not seen the draft, so I—

Senator LUDWIG—No, this is the synopsis.

Mr Cornall—I made the comment, they heard the comment and I do not know whether they—

Senator LUDWIG—That is the general thrust of the question: we had your response but Ms Leon also indicated that she had made some comments in relation to the synopsis.

Mr Cornall—She also said she felt they had been taken up in the draft.

Senator LUDWIG—Yes. My question then went to whether there was any response from DFAT about that—yes, we have taken this on board; no, we have not. I do not want to put words in your mouth, obviously. I am just curious as to the process, not so much within DFAT but in terms of your involvement in relation to both the white paper and the synopsis to date. We cannot talk about the draft because it appears not to have got around yet.

Mr Cornall—Ms Leon has seen it, and she is able to say that she felt that some of the points she made have been taken up in the draft from the synopsis stage and other people are yet to look at the draft. But, ultimately, the drafting of the document is a matter for the department of foreign affairs, and they can take advice on it or they can ignore the advice.

Senator LUDWIG—When did the draft copy come to you—just the other day?

Ms Sheedy—I think it was about a week ago.

Senator LUDWIG—Did it provide a date for the return of comments?

Ms Sheedy—I do not know; I will have to take it on notice.

Senator LUDWIG—Yes, if you do not mind, please. In relation to the involvement of the Attorney-General's Department, were you asked to endorse the white paper in any way? How is that process undertaken?

Mr Cornall—No, we have just been asked for comments and suggestions.

Senator LUDWIG—Are you able to say whether you were satisfied with any part or not satisfied with any part?

Mr Cornall—Ultimately this paper is being drafted by the department of foreign affairs and it will be endorsed by the government. As I say, we are providing input on an as required basis, as other departments will be, to ensure that the document reflects accurately those matters that are within our responsibility. Otherwise, I do not think we can take this much further.

Senator LUDWIG—That is why I was trying to limit my comments to your involvement. The questions I asked go to your specific involvement with both the synopsis and earlier with the draft. Were there any specific comments by the department that you can recall being provided about the synopsis? Were any concerns expressed to the effect that it was great and that it was a good job? Were any concerns expressed about particular sections?

Mr Cornall—Not concerns, no.

Senator LUDWIG—There were no concerns raised, as far as you are aware, regarding the synopsis?

Mr Cornall—Not that I am aware, no.

Senator LUDWIG—Ms Leon?

Ms Leon—No, we did not raise any concerns.

Senator LUDWIG—Was anyone else within the department consulted? Is Ms Blackburn someone who also would have been questioned or would have seen it?

Mr Cornall—In relation to the draft, we are circulating it to various people—

Senator LUDWIG—Sorry, the synopsis?

Mr Cornall—In relation to the synopsis, did you see the synopsis?

Mr Templeman—Emergency Management Australia was consulted through a working group which involved a number of other agencies. It was just an outline to ensure that specific issues such as the ones I mentioned previously covering the emergency management agenda were addressed. I had discussions last week to ensure that there was some understanding, for instance, among the states and territories in relation to their support for capacity building initiatives in the Pacific, particularly in relation to fire support and the like. More importantly, this built on a very positive workshop that we were involved with in June last year with Foreign Affairs and Trade, under the auspices of the ASEAN Regional Forum, which addressed the consequence management arrangements within the ASEAN region. We alerted DFAT to the benefits of having a reasonably good understanding of the significant progress that had been made in countries like Singapore and South Korea.

Senator LUDWIG—Was anyone else consulted?

Mr Cornall—Not that I am aware of, Senator.

Senator LUDWIG—Perhaps you could take it on notice and get back to me if need be.

CHAIR—We will now move to output 2.3.

[10.07 p.m.]

Senator LUDWIG—The budget provided \$23 million in capital over three years for accommodation fit-out costs of co-locating the Attorney-General's Department in a single site. I understand that Emergency Management Australia has two premises, one in Turner in the ACT and another in Victoria. Is EMA going to relocate as part of this overall program or will you remain in the two sites?

Mr Templeman—Emergency Management Australia has been established in a number of forms but always in two sites since 1974. In fact, post the Second World War the Defence organisation had a civil defence school located at Mount Macedon. It is a purpose built facility for training and education. For the last 20-odd years emergency management training has been undertaken at Mount Macedon. I do not see that there is any issue in that regard. The issue of relocation has not been raised. That would also be a matter for government consideration.

Senator LUDWIG—No-one has talked to you about relocating?

Mr Templeman—No, Senator.

Senator LUDWIG—What about here in the ACT?

Mr Templeman—We have just today relocated from Northbourne House in Turner—having been there for 30 years—to a new facility in the innovation centre of the University of Canberra complex in Bruce.

Senator LUDWIG—Are you familiar with the portfolio budget statement? Page 30 seems to suggest that the government will provide \$23.4 million over three years for the Attorney-General's Department relocation and fit-out to co-locate to a single site. You are part of the department, aren't you?

Mr Templeman—That is correct. That discussion does not involve Emergency Management Australia being relocated to a single site. There are arrangements whereby my organisation, Emergency Management Australia, provides a backup and redundancy facility to the Protective Security Coordination Centre. It is important that both those organisations have that reciprocity and backup arrangements should one fall over or be needing to have that backup in a time of crisis.

Senator LUDWIG—You think you will be staying both in Victoria and in Bruce in the foreseeable future?

Mr Templeman—That is the plan I am working to.

Senator LUDWIG—Is it the intention to have a single site for the Attorney-General's Department? It seems to say in the portfolio budget statement that it will be co-located to a single site. Is it co-located to a single site except for Emergency Management Australia, which will have two existing sites?

Mr Cornall—Yes. We were thinking very much in Barton terms. We have staff in Arts House, Robert Garran Offices and Brisbane Avenue. I am sorry, it was not our intention to include EMA in that because it is important that we have a site separate to the PSCC so that if anything happens to EMA they can use PSCC's services and offices and if anything happens to PSCC they can use EMA's offices. So we do need the two sites for that redundancy purpose.

Senator LUDWIG—I do not want to say it but it seems a bit misleading to say in your PBS that you are co-locating to a single site when it is not the case really, is it?

Mr Cornall—I agree. I am sorry: we were thinking in terms of our situation in Barton. I take the point and accept the criticism.

Senator LUDWIG—I meant the budget papers. Is there anyone else that is not co-locating?

Mr Cornall—No. We have the site at Mount Macedon that you referred to and we have the EMA site but we do need the two sites for safety purposes.

Senator LUDWIG—There is nobody else?

Mr Cornall—We have a training facility in State Circle. We are not proposing to relinquish that.

Senator LUDWIG—What do they do?

Mr Cornall—It is a training site which is used by the PSCC. It is a protective security training centre.

Senator LUDWIG—That is where I am going next—to output 2.4. That may have jogged your memory. It concerns the Protective Security Coordination Centre.

CHAIR—We will now move to output 2.4.

[10.12 p.m.]

Senator LUDWIG—The PSCC is in Arts House, isn't it?

Mr Cornall—PSCC is in Arts House at the moment.

Senator LUDWIG—They are not co-locating?

Mr Cornall—It is intended that the PSCC will be in the department's facilities. At the present time they are in Arts House.

Senator LUDWIG—What about the training centre in State Circle?

Mr Cornall—That will stay there. It is a training centre.

Senator LUDWIG—It will stay where it is but the PSCC will co-locate to the new premises.

Mr Cornall—The PSCC, which is principally based in Arts House, will move into the one office.

Senator LUDWIG—When will that occur?

Mr Cornall—When we establish the new office.

Senator LUDWIG—We have gone through that earlier. What about the Australian Security Vetting Service? What will happen to them?

Mr Cornall—That is part of the PSCC and that will come across to the one office.

Senator LUDWIG—Will the fit-out costs attributable to the PSCC be absorbed in the PSCC's budget?

Mr Cornall—It is part of the funding that we have to establish the new office accommodation.

Senator LUDWIG—I thought that was being 'fully absorbed from within the existing resources of the Attorney-General's Department'.

Mr Cornall—Where are you reading from, Senator?

Senator LUDWIG—That is on page 30.

Mr Oliver—The line that you see in the PBS is really discussing the staffing of a project team to facilitate the integrated fit-out. The government has allocated \$23 million to an integrated fit-out for a new departmental facility. The staffing costs associated with the project team for that project are to be absorbed within the departmental budget.

Senator LUDWIG—Where does the \$23 million come from? What relocation costs will be borne by the PSCC? How much will you have to bear?

Mr Tyrie—It will be absorbed as part of the department's costs of moving back into a central building

Senator LUDWIG—Do you have a budget?

Mr Tyrie—Yes, I do.

Senator LUDWIG—Will they call on that to pay for the relocation?

Mr Tyrie—I hope not.

Senator LUDWIG—That is the question I am really asking, at the end of the day.

Mr Tyrie—My budget is part of the departmental budget.

Senator LUDWIG—Yes, I understand that but at some point, Mr Oliver and Mr Cornall will be able to—

Mr Cornall—The PSCC is not mentioned here. Where is the PSCC mentioned on page 30?

Senator LUDWIG—It is not but you are co-locating to a single site and there is \$23 million set aside for that—

Mr Cornall—But that includes establishing the offices and all those expenses.

Senator LUDWIG—Yes, and we know from earlier questioning that the PSCC is going to continue to have a training centre at Yarralumla. They are then going to co-locate to the new premises from Arts House, so it begs the question: who will pay for that?

Mr Cornall—It is in the \$23 million.

Senator LUDWIG—Will it come out of their interdepartmental budget or is there a separate pool of money that you have set aside?

Mr Cornall—This funding is to cover that cost.

Senator LUDWIG—It says that the relocation cost of this measure is being fully absorbed from within the existing resources of the Attorney-General's Department.

Mr Cornall—It means the project management costs—having staff within the department to manage the process and deal with consultants, builders and so forth. That is the cost that is referred to there.

Senator LUDWIG—How much is that?

Mr Cornall—It is the cost of the staff member to administer the project from within the department.

Senator LUDWIG—Has a figure been set aside for that?

Mr Cornall—Not specifically, no.

Mr Oliver—What we have done at this stage is relocate existing staff members to set up the project team. At this point in time I have a project director, a project manager and one other staff member who has been involved in the development of documentation and the coordination of the project to date. The requirement of government is that the department absorbs those costs.

Senator LUDWIG—And we do not know how much that will be?

Mr Oliver—We have not worked out what we expect it to be across the three years of the project at this point in time.

Senator LUDWIG—I will turn now to the issue of the National Security Hotline and the public awareness campaign. The budget provides \$6.2 million for the continuation of the National Security Hotline, which includes \$1.5 million for a public awareness campaign. Is it correct to say that \$4.7 million has been allocated to deliver the hotline service itself? Is that the simple maths that might be involved in that process?

Mr Cornall—It is my understanding that that is the cost of running the hotline for one year.

Senator LUDWIG—Last year's budget provided \$5.2 million in 2002-03, \$6 million was provided in 2003-04 to the Attorney-General's Department to provide the hotline and \$21 million was provided in 2002-03 to the Department of the Prime Minister and Cabinet for a public awareness campaign. When you look at the comparison of those, the 2004-05 funding to provide the actual hotline service is slightly lower than in the previous year. It seems to be a lower allocation. Nothing seems to have been taken into consideration for increases or incidentals; it seems to have been a lesser amount. Is there any explanation for that?

Mr Tyrie—I am not sure I understand your question. In the first year there was \$5.2 million allocated—

Senator LUDWIG—It is \$4.7 million now.

Mr Tyrie—Yes, you might recall that the \$5.2 million hotline was actually set up in late December and the department was reimbursed the costs of setting the hotline up—there was the actual setting up, recruitment of staff and putting in place the hotline itself. Then the following year, that is 2003-04, there was an allocation received for one year of \$6 million—of which \$3 million was for employee costs, \$1 million was for supply costs, \$0.5 million was for IT costs and \$1.5 million was for public affairs in regard to the public campaign.

Senator LUDWIG—But that is the point I think: it seems to be \$4.7 million as against \$6 million.

Mr Tyrie—My figures indicate that there was no allocation for the public campaign for the hotline in 2002-03.

Mr Kennedy—That is correct. In 2002-03 there was essentially a half year's worth of funding to establish the hotline—that was \$5.1 million. It was from this current financial year, 2003-04, that the total funding—which this year is just over \$6 million—included \$1.5 million for the public awareness campaign. That is being replicated in 2004-05.

Senator LUDWIG—So it is comparable: \$4.7 million against \$1.5 million out of the \$6 million which leaves \$4.5 million.

Mr Kennedy—That is about the strength of it, yes.

Senator LUDWIG—So of the \$4.7 million there is no allocation for public information or awareness?

Mr Kennedy—That is correct.

Senator LUDWIG—How many staff are employed in the hotline service?

Mr Tyrie—At the present time the National Security Hotline employs 11 full-time staff and 30 casual operators.

Senator LUDWIG—And does it run 24 hours a day seven days a week?

Mr Tyrie—Yes, the hotline runs 24 hours a day seven days a week.

Senator LUDWIG—When did go it go 24/7?

Mr Tyrie—Immediately on operation. It was set up in December 2002.

Senator LUDWIG—Has that number of staff, 11 full time and 30 part time or casuals, remain unchanged for 2003-04 or has there been a change in the mix of numbers?

Mr Tyrie—There have been changes. When the National Security Hotline commenced operations in 2002 there were 98 staff with a significant backup capacity. Over time we have seen the need to reappraise that and we are now down to the staff that are in place now—as I mentioned earlier, 30 casual operators and 11 full-time staff giving a total of 41.

Senator LUDWIG—Is there a figure that expresses the equal ordinary time for the 30 casuals? There could be 30 people doing one hour a week or 30 people doing 35 hours a week.

Mr Tyrie—It is 30 people who on average work 20 to 25 hours per week.

Senator LUDWIG—How has that changed over the last 12 months?

Mr Tyrie—I have a feeling that we have been virtually stationary over the last 12 months. The significant move was in the previous period.

Senator LUDWIG—Perhaps you could take a look at that and take it on notice if there has been any appreciable change.

Mr Tyrie—Yes, I will.

Senator LUDWIG—Is that expected to stay the same for the ensuing 12 months?

Mr Tyrie—Yes, I would think so.

Senator LUDWIG—Are any reductions planned in the number of staff or hours and the number of casuals?

Mr Tyrie—Not to my knowledge at this stage.

Senator LUDWIG—I take it you have taken out an advertisement in the phone book this time for the hotline number.

Mr Tyrie—Some time ago, yes.

Senator LUDWIG—What will the public awareness campaign consist of?

Mr Tyrie—I might pass to Ms van den Heuvel to answer that question.

Ms van den Heuvel—The money allocated to the public awareness campaign is for more than just concentrating on the hotline. It includes ongoing communication about a range of national security measures. It also includes updating and regular maintenance on the national security web site. To date we have been doing low-level follow-up public relations activity from the major campaign, which has comprised brochures and flyers promoting the hotline number. We have had some articles published in magazines and journals, we respond to public inquiries for further information about the online and we distribute information through state and territory police jurisdictions.

Senator LUDWIG—Is there a campaign strategy that has been employed to determine the most effective use of those resources you have available in the public awareness campaign?

Ms van den Heuvel—Yes, we have continued to build on the work that Prime Minister and Cabinet did with the overall strategy and continued to consult throughout. At the moment we are in a maintenance phase.

Senator LUDWIG—Has the campaign strategy being approved by the minister?

Ms van den Heuvel—The Attorney has approved the strategy, yes.

Senator LUDWIG—Was there any input from the Attorney-General's Department in relation to the strategy?

Ms van den Heuvel—Yes.

Senator LUDWIG—What did that consist of?

Ms van den Heuvel—We consulted with different areas of the department about the issues and we talked to other agencies involved in national security.

Senator LUDWIG—Was there any input from the Attorney-General's office?

Ms van den Heuvel—We certainly talk to them about national security matters, but not so much about the direction of the strategy when we put it up.

Senator LUDWIG—In relation to the campaign strategy that has been adopted, is there a document that sets out the mix or the type of distribution—that is, that some will go to strategies to write articles or put them in circulation and some will go to other measures? Is there a document that sets out the actual strategy that is going to be adopted, and is that available?

Ms van den Heuvel—There is certainly a document that focuses on the public relations side. It does not allocate specific funds against particular activities. It looks at the nature of brochures, posters, articles written. The bulk of that work is done internally by staff within the department's public affairs unit in consultation with the line areas that have the expertise.

Senator LUDWIG—Is that document available to the committee?

Ms van den Heuvel—It is really an advisory to the minister.

Senator LUDWIG—Do we know whether the campaign strategy has been approved by the Ministerial Committee on Government Communications?

Ms van den Heuvel—No, it has not.

Senator LUDWIG—Why wouldn't it have been?

Ms van den Heuvel—At this stage it is a low-level ongoing public communications activity.

Senator LUDWIG—How much is it again?

Ms van den Heuvel—It is \$1.5 million, but that includes ongoing resourcing around things like the hotline which come in under that category, so it is not all to do with the hotline.

Senator LUDWIG—Is it the intention to obtain approval by the Ministerial Committee of Government Communications at some time?

Ms van den Heuvel—We certainly consult with the Government Communications Unit within Prime Minister and Cabinet which services the ministerial committee. I would think that at a point we would put it through to the committee.

Senator LUDWIG—When would that be?

Ms van den Heuvel—I have no timing on that. We have been updating this strategy consistently; it is more like a working document within the department. When we feel it is at a stage that we are confident it is not going to change greatly, I think that would be the point we would put it forward.

Senator LUDWIG—Have you developed a media strategy yet?

Ms van den Heuvel—No.

Senator LUDWIG—Advertising strategy?

Ms van den Heuvel—No, not as part of \$1.5 million.

Senator LUDWIG—So you might get Ministerial Committee on Government Communications approval before the election?

Ms van den Heuvel—I do not know when the election is going to be.

Senator LUDWIG—Does the campaign require external research?

Ms van den Heuvel—Yes. We have been conducting ongoing evaluation of the campaign that was originally run out of the task force.

Senator LUDWIG—Who is that research with?

Ms van den Heuvel—Worthington Di Marzio.

Senator LUDWIG—How much is that for?

Ms van den Heuvel—We have extended the contracts we have with Prime Minister and Cabinet and we are doing tracking every two months. It is about \$30,000 a month. We have allocated \$180,000 over this financial year for that, with some other funding set aside if we want to do more intensive focus groups.

Senator LUDWIG—Is that the only research that is being undertaken?

Ms van den Heuvel—With Worthington Di Marzio, yes.

Senator LUDWIG—Is there other research being undertaken?

Ms van den Heuvel—No. We do not have another research company on board.

Senator LUDWIG—Are you getting feedback from them at the moment?

Ms van den Heuvel—Yes.

Senator LUDWIG—So that would be inputted into the strategy?

Ms van den Heuvel—That is inputting into the strategy about what direction we might take.

Senator LUDWIG—What is the value of the contract? How long will it run for?

Ms van den Heuvel—It runs through until December 2004. At this stage, it is based on about \$220,000 until the end of this financial year. In the new financial year we would be reviewing whether we would continue to track every two months or go to three-monthly. A decision has not been made on that at this stage.

Senator LUDWIG—When will a decision be made?

Ms van den Heuvel—Probably towards the end of this financial year when we are looking at availability of funds.

Senator LUDWIG—They do—what?—focus groups and the like?

Ms van den Heuvel—They do an analysis every two months of the tracking of the original campaign. They will also do qualitative groups to test the mood.

Senator LUDWIG—Has any TV or radio been booked for advertising at this point in time in relation to the campaign?

Ms van den Heuvel—No.

Senator LUDWIG—Is it the intention to book print advertising or television advertising space?

Ms van den Heuvel—Certainly not within this existing strategy.

Senator LUDWIG—What is this existing strategy?

Ms van den Heuvel—This is the strategy with the \$1.5 million, which includes a low-level PR campaign.

Senator LUDWIG—We have established that the National Security Hotline works 24 hours, seven days a week. Is there a list or an overview of the number of calls that are being taken and their break-up?

Mr Tyrie—As of today there have been in excess of 32,000 calls, letters and email messages.

Senator LUDWIG—If a person calls will they be put through to someone who can take down the information they wish to report? How does it work?

Mr Tyrie—An operator receives the call. Do you want me to go through the exact details?

Senator LUDWIG—Yes. Perhaps you could remind me. I think we have done this before but it was a while ago.

Mr Tyrie—When a call is received at the 1800 number the caller first receives a recording that if it is an emergency call they should ring the triple 0 service from wherever they are making the call. The call is then answered by an operator who takes the information with as much detail as possible and records that in a database, which is sent to the state and territory police relating to the incident. A copy is sent to ASIO and a copy is sent to the Australian Federal Police.

Senator LUDWIG—Do they enter it into a database?

Mr Tyrie—Yes.

Senator LUDWIG—What sort of database is that?

Mr Tyrie—It is a specially designed database to take the calls. It was designed in the setting up of the hotline. It has been varied since but it is basically the same.

Senator LUDWIG—They have a visual display unit with a keyboard and there are certain criteria or fields that they can then enter text into?

Mr Tyrie—Yes, they have a visual display in front of them. There is a prompt in the screen for the operator to fill in as they are talking.

Senator LUDWIG—Since the opening of the National Security Hotline, has it experienced any technical difficulties?

Mr Tyrie—Technical difficulties?

Senator LUDWIG—Yes; for example, lines or computers down.

Mr Tyrie—I just have to check. I think there was one occasion when the line went down. My understanding is that the line went down last week for about four hours but that is the only major hiccup there has been. We have normal day-to-day problems with the telephone like any telephone service but that is the only time it has gone down.

Senator LUDWIG—And that is from the telephone lines coming in?

Mr Tyrie—At any one time there are about eight operators on. I would have to take the exact detail on notice, but I am advised that there are about six operators on with about 20 lines coming in. We vary it on night shift. For instance, after the Madrid bombing there was a surge in the calls, and there is when there are other incidents overseas. Generally there are about 40 to 50 calls per day.

Senator LUDWIG—You can monitor that and then increase the availability of—

Mr Tyrie—That is exactly right.

Senator LUDWIG—Can you increase the number of lines that come in or just the number of people to take calls?

Mr Tyrie—We can do both, and we have a Telstra backup facility should there be a major increase—if there was an incident where we were taking calls.

Senator LUDWIG—If there was a spike in the number of calls coming in—

Mr Tyrie—We can respond.

Senator LUDWIG—They do not remain unanswered? What happens?

Mr Tyrie—We try to answer each call within 10 seconds, and we have achieved that since it has been stood up. That is the best I can do at this stage. If there was a major incident anywhere, and the calls went to more than about 150 or 200 an hour, we would have to call on the Telstra facility to help us back up.

Senator LUDWIG—You have just advised us that it went down for four hours. I take it that during that time no-one could ring in and no-one could record any data.

Mr Tyrie—Not exactly. We moved to a backup facility to take the calls.

Senator LUDWIG—Did all calls get answered by the backup facility?

Mr Tyrie—To my knowledge, yes.

Senator LUDWIG—So the line did not go down in that sense—or did it?

Mr Tyrie—I am advised of something I did not know. In actual fact, we did not know that the line was down for four hours last week. Telstra have now put in place a facility that will advise us if that happens again. We did not know it was down last week for four hours.

Senator LUDWIG—So you could not take any calls for four hours.

Mr Tyrie—That is right.

Senator LUDWIG—How do you tell if the system went down in February, March or April if you did not know that it went down a week ago for four hours? Have you spoken to Telstra to determine whether the line has gone down in previous months? If so, which months might it have gone down in?

Ms Mack—Normally we can tell if a line has gone down because we have calls coming in and we would be receiving on average at least a call every hour. By and large, we are getting between 30 and 40 calls a day on average. Last Wednesday when the line went down, there was a research task that the operators were undertaking. The line went down at a time that also included a shift break and staff were particularly busy so we had not particularly noticed that no calls had come through. Now Telstra has a process where an alarm rings on our line. We asked them to go back through their records and check whether the line had been down in the past. Their indication to us was that the line had not gone down in the past. In addition to the Telstra process of putting an alarm on the line, we have a new procedure whereby, for every hour that passes, if a call has not been recorded or received into the hotline, we will ring the line ourselves from one of our separate phone lines to check whether the line is in fact working. The shift managers have that procedure today.

Senator LUDWIG—You do not have a lot of confidence in Telstra advising you when the line is down?

Ms Mack—I just like to have a little bit more control myself. It is not that I do not have faith in Telstra. It is just nice to have the double fail-safe.

Senator LUDWIG—Were there any glitches or problems in relation to the database during the last couple of months?

Ms Mack—No. There have been no glitches with the database. The database is like a word processing facility: it has free text and it has forced fields. We have the usual hiccups, as you do with technology from time to time, but the database has not been down. The database has not been faulty. We have had no problems with our database.

Senator LUDWIG—Is there an investigation or an undertaking to ensure that what Telstra advised you—that the line had not been down other than for the four hours—was correct?

Ms Mack—Would you repeat your question? I am not sure that I understand it.

Senator LUDWIG—You indicated that Telstra advised you, after you inquired of them, that, no, there was no other time that the line was down and that the only time that the line was down was for four hours last week. Has any investigation or further work been done to determine whether Telstra's advice is right?

Ms Mack—We will continue to work with Telstra on that, but that was in relation to last week. On the Wednesday we asked them to go back and have a look at that. Their initial advice is that the line had not been down prior to then, but we will continue to work with them. We have a very close partnership with Telstra, and we will continue to improve our service.

Senator LUDWIG—In relation to counterterrorism exercises, the Attorney-General indicated—after the Mercury 2004 counterterrorism exercise in March this year—that there have been some problems of slowness in communication. That seems to have been reported in various articles. Could you outline to the committee what problems were highlighted by the exercise?

Mr Tyrie—Yes. The purpose of the exercise—as with any exercise, particularly this one—was to identify lessons we might learn in relation to the national counterterrorism arrangements. This was the most ambitious exercise that there has ever been in the history of the national counterterrorism arrangements. There were five jurisdictions involved, including the Commonwealth. There were 3,000 people involved and 15 Commonwealth agencies. The whole purpose of the exercise was to identify issues now, when you are using that many people across jurisdictions. What I would call ‘low-level communication and coordination issues’ were identified, but then that was the purpose of the exercise. It was to identify any of those issues so that we could correct them. We are going through the process of holding a lessons-learned forum, with a report due later in the year, in order to correct some of those issues.

Senator LUDWIG—Are there any further counterterrorism exercises planned for this calendar year?

Mr Tyrie—Yes, there are. There is one that I think took place in the Australian Capital Territory last week. I say ‘I think’ as I was out of the country last week. From memory, I think there was one in the ACT last week. There is one planned for New South Wales in coming weeks which involves both Commonwealth and state agencies and Emergency Management Australia. A whole series of discussion exercises and types of tactical exercises are being conducted. There is a rolling program that goes on over the year.

Senator LUDWIG—Is that rolling program available?

Mr Tyrie—Yes. I do not see any reason why it cannot be made available. It is a timetable of exercises.

Senator LUDWIG—Perhaps you could make that available, please.

Mr Tyrie—Yes.

CHAIR—As there are no further questions, we will proceed to output 2.5, Management and coordination of the delivery of security and guarding services to meet diplomatic, consular and other Commonwealth responsibilities.

[10.43 p.m.]

Senator LUDWIG—The budget provided \$15.6 million in 2004-05 for the protection of foreign diplomats and consular interests. The equivalent measure in last year’s budget for

enhanced guarding services for diplomats and Australian office holders provided \$20.7 million. What accounts for the difference, the smaller amount?

Mr Tyrie—There were savings achieved in that area between last year and the following year in terms of the fact that the call on guarding was less over the past year. That accounted for the lower level over this financial year. The amount allocated for guarding for this year is therefore reflective of the savings that have occurred. There is a draw-down amount and an actual base guarding amount that is provided.

Senator LUDWIG—What are those two amounts? Perhaps you could take that on notice.

Mr Tyrie—Yes, I will. There is a base guarding amount and then there is a draw-down account to use if there is a change in the threat levels and we need to put on more guarding.

Senator LUDWIG—Was there a change in the threat level which required less funding?

Mr Tyrie—There was to certain foreign interests in the country, yes.

Senator LUDWIG—Are you able to say which ones?

Mr Tyrie—I would have to take on notice the change from last year to this year.

Senator LUDWIG—If you would not mind, please do. The budget provides, I think, \$3.7 million over four years to replace the fleet of 10 armoured vehicles. What kinds of vehicles is it intended to purchase?

Mr Tyrie—The vehicle is a Holden Calais. It is a particular requirement of the government that it is serviced with Australian made vehicles.

Senator LUDWIG—How old are the current vehicles?

Mr Tyrie—They range over a number of years. I think the oldest one at present is about seven years old.

Senator LUDWIG—What is the time frame for the tender?

Mr Tyrie—I will check that.

Mr Cornall—On the question of the dollars, we have in our base funding a figure of \$10.6 million for diplomatic guarding. That has proved to be inadequate in the heightened security environment of the last few years, and we have had additional funding granted in budgets to enable us to meet the demand. As Mr Tyrie has said, the demand has varied slightly from year to year. The figures that we are allocated in the budget are reflective of the anticipated demand for guarding for the coming 12 months, but the figure of \$15 million is strictly for guarding and if we do not expend it it simply goes back into the budget.

Senator LUDWIG—I see. It is returned.

Mr Cornall—Yes. It is not funding we have any access to. Because it is a slightly uncertain figure, we have this arrangement that we have a variable figure each year and it is calculated on anticipated demand. But if it is overallocated then the money goes back to the budget.

Senator LUDWIG—What is the time frame for the tender for the vehicles?

Mr Tyrie—I thought you asked me how old the oldest one was.

Senator LUDWIG—Yes, I did. The oldest was seven years.

Mr Tyrie—There are 10 armoured vehicles. I do not have the age, at this stage, of the oldest one. The request for tender was issued in July 2003. That is still in the process of being finalised at present.

Senator LUDWIG—When is it expected that the new vehicles will be operational?

Mr Tyrie—If the tender process goes to plan, the first vehicles should be available by about November this year.

Senator LUDWIG—What size is the armoured limousine fleet—how many will be in it?

Mr Tyrie—The program will replace the fleet. Part of the problem has been that in the past vehicles have had to be armoured overseas. There was no Australian facility.

Mr Cornall—There will be 10 cars in the fleet.

Senator LUDWIG—How many replacement limousines have been delivered? Have any replacements been delivered?

Mr Tyrie—Not at this stage.

Senator LUDWIG—So we are still running on the current 10?

Mr Tyrie—The fleet of 10, yes.

Senator LUDWIG—And we do not know when the new Holden Calais will become operational?

Mr Tyrie—As I answered, at this stage we think the first vehicle will become available in November.

Senator LUDWIG—And the last one? Is the program that in the next three years you will get the 10, or will it be sooner?

Mr Tyrie—The 10 vehicles will become available as they are manufactured.

Senator LUDWIG—How long does it take to manufacture them?

Mr Tyrie—I do not know how long each one takes, but the 10 vehicles will be replaced.

Senator LUDWIG—Last year's budget provided \$4.3 million over four years to replace the fleet of armoured limousines. This budget provides \$3.7 million over four years to replace the fleet of 10 armoured vehicles. Will they be finished in the three years?

Mr Tyrie—Initially the vehicles were to be replaced over a number of years.

Senator LUDWIG—The oldest is seven. You might be missing what I am driving at. It seems that the same item, so to speak, comes up in the budget twice—one last year and one this year—to replace the same fleet, yet the oldest is seven years and we do not have any new ones.

Mr Cornall—There is a reason for that. One of the requirements last year was that we seek to identify an Australian supplier of armoured cars—previously we had had these cars armoured overseas—and it has taken us some time to identify an Australian supplier. That has now been done. We have gone through a tender process and we are virtually on the verge of signing a contract to bring that process to a conclusion. That will enable us to go forward with

the purchase. Part of the arrangement with the Australian supplier is that we need to rearrange the purchase program to make it cost-efficient for them to manufacture the cars. Mr Kennedy can give you the breakdown of the financial details.

Mr Kennedy—Funding that we received in this financial year was in a sense imposed on the department. We had sought capital funding up front to purchase the vehicles and then replace them on a three-year program but, with the way the funding was provided, it effectively did not allow us to do that. So through the tender process it has been determined that it is going to be more cost-effective to purchase the 10 vehicles up front as one lot. In order for us to do that—it is approximately \$350,000 a vehicle—we need to have the \$3.5 million up front. The measure provides \$2.5 million for 2004-05 to add to the \$1 million we have this year which we have not spent because we have not actually entered into a contract to purchase the vehicles. That will provide us with the funding to purchase the vehicles and then we will replace the vehicles on a three-yearly cycle, with, effectively, depreciation funding being provided to us to enable us to replace the vehicles every three years.

Senator LUDWIG—What is the total cost of the fleet replacement?

Mr Kennedy—It is \$3.5 million to purchase 10 vehicles. That is the replacement cost; there are operating costs associated with the vehicles as well.

Senator LUDWIG—So I do not add the \$4.3 million and the \$3.7 million to get \$8 million.

Mr Kennedy—No.

Senator LUDWIG—Was the money rephased or did you hand it back?

Mr Kennedy—We are effectively putting aside the annual funding of \$1 million to enable us to replace the vehicles in three years time, but the measure gives us the money up front to purchase that first lot of 10 vehicles, which we will then keep for three years. We have depreciation funding, and we will then be able to replace those vehicles in three years time.

Senator LUDWIG—I think I understand that. On Olympic security: were officers of the Attorney-General's Department involved in any advance missions sent to Athens to check security arrangements for the Olympic Games?

Mr Tyrie—Yes, there were.

Senator LUDWIG—How many officers were involved in that?

Mr Tyrie—One.

Senator LUDWIG—When did they undertake that task?

Mr Tyrie—There have been a number of visits to Athens by a group led by the Department of Foreign Affairs and Trade. I do not have the exact dates of the visits but I can tell you that there have been about—

Senator LUDWIG—One officer took a number of trips?

Mr Tyrie—One officer was involved in the task force that has been set up.

Senator LUDWIG—Perhaps you could take it on notice and advise how many trips they undertook, when they took them and which departments they went with or whether they went as part of a task force.

Mr Tyrie—I have just been shown a note that they attended on 17 to 21 November but there has been one since that time so I need to take that question on notice.

Senator LUDWIG—Perhaps you could also take on notice the issue that I raised subsequent to that: whether they went alone or as part of task force, what other departments were represented on that task force and how many times they went. You have indicated that perhaps they went twice but you might like to check your records to see whether that is correct.

Mr Tyrie—I will take that on notice.

Senator LUDWIG—What agency had lead responsibility for the task?

Mr Tyrie—The Department of Foreign Affairs and Trade.

Senator LUDWIG—What role did the officer undertake in the mission?

Mr Tyrie—He provided protective security advice and coordination advice.

Senator LUDWIG—Are you aware of what other Commonwealth agencies were involved in the mission?

Mr Tyrie—I will take the question on notice. I am aware of most of them but to ensure that I give you a comprehensive answer I will take it on notice.

Senator LUDWIG—Were the Greek agencies consulted during these missions? Were they aware of the tasks and what the mission was about?

Mr Tyrie—Yes, the Greek government has been very cooperative.

Senator LUDWIG—Are there any outstanding issues relating to security arrangements for the Athens Olympics that the officers of Attorney-General's intend to raise in the consultations with Greek authorities? Were any issues raised and if they were raised were they resolved? Are there any outstanding?

Mr Tyrie—There is ongoing consultation with the Greek authorities with regard to the security at the Olympics and the Greek government is being very cooperative in relation to those issues.

Senator LUDWIG—So there are still some ongoing issues?

Mr Tyrie—Yes.

Senator LUDWIG—What are they?

Mr Tyrie—I cannot detail them but there are continual negotiations with the Greek officials with regard to the security issues.

Senator LUDWIG—Did the mission produce any findings or reports? There were at least two that you have mentioned; was there any outcome?

Mr Tyrie—The outcome was the advice that the PSCC provided to the Department of Foreign Affairs and Trade.

Senator LUDWIG—Have those reports been finalised?

Mr Tyrie—Yes, they were, but they deal with security issues.

Senator LUDWIG—Are you saying that the findings of those reports are able or not able to be divulged to the committee?

Mr Tyrie—I would say they are not able to be divulged.

Senator LUDWIG—Are you able to tell the committee whether the Attorney-General's Department, based on the knowledge gained on those missions or any other information that is available, is satisfied with the security arrangements in place for our athletes at Athens?

Mr Tyrie—The PSCC's position is that we are happy with the progress of the issues that have been taken forward with regard to the security arrangements at the present time.

Senator LUDWIG—Is that belief similarly held by other agencies of the Commonwealth government?

Mr Tyrie—My understanding is that that is right.

Senator LUDWIG—Has the Attorney-General's Department made any recommendations regarding security in Athens arising from these missions?

Mr Tyrie—Yes, we have, because that is why we are there: to provide advice on the security issues to the Department of Foreign Affairs and Trade, from a whole of government perspective.

Senator LUDWIG—Were they shared with other departments or agencies?

Mr Tyrie—Yes, there is an interdepartmental committee considering these issues and the PSCC is part of that interdepartmental committee. So it is shared with the other members of the committee.

Senator LUDWIG—What about foreign governments or international organisations?

Mr Tyrie—I am not sure that I understand you.

Senator LUDWIG—Was that information from the Attorney-General's Department shared with foreign governments or international organisations?

Mr Tyrie—I would have to take that on notice on.

Senator LUDWIG—Such as the International Olympic Committee?

Mr Tyrie—The International Olympic Committee is involved in the consultation through the DFAT process. As to whether we shared it with foreign governments, I would have to take that on notice.

Senator LUDWIG—Are you able to say whom those recommendations were made to?

Mr Tyrie—The recommendations are part of the IDC process—that is, they are part of the whole of government process in relation to the security issues. They are part of the process that DFAT is leading, so they are taken into account in the development of the security arrangements.

Senator LUDWIG—So have all the matters that have been raised by these missions been resolved? Are they satisfied or are there still some outstanding concerns about the security of our athletes at the Olympic Games?

Mr Tyrie—I think it would be true to say that there are still ongoing negotiations but that they are proceeding satisfactorily.

Senator LUDWIG—Can you tell us anything about those ongoing negotiations? I will preface my remarks with this: it is within the public interest and I think Minister Downer has indicated that these sorts of issues should, as much as they can, be put on the public record. But I am happy for that to be corrected; I am happy for you to take that way and check it. I think it is in all our interests to understand that these things are handled sensitively but that information is shared as much as possible.

Mr Tyrie—I will answer that in two parts. One, they concern security issues, which I do not think should be discussed in public because they address the security to be put in place. Two, I think you can rest assured—and the public can rest assured—that the government is putting in place the necessary arrangements to ensure the safety of Australians, insofar as they possibly can.

Committee adjourned at 11.05 p.m.