



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

THURSDAY, 27 MAY 2004

CANBERRA

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Thursday, 27 May 2004

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

Senators in attendance: Senators Bartlett, Crossin, Greig, Kirk, Ludwig, Mason, O'Brien, Payne and Scullion

Committee met at 9.04 a.m.

**IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS
PORTFOLIO**

Consideration resumed from 26 May 2004

In Attendance

Senator Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs

Department of Immigration and Multicultural and Indigenous Affairs

Executive

Mr Bill Farmer, Secretary

Mr Ed Killesteyn, Deputy Secretary

Ms Philippa Godwin, Deputy Secretary

Internal Products

Financial Services

Mr James Malizani, Acting Chief Financial Officer, Financial Strategy Division

Parliamentary and Legal Services

Mr Des Storer, First Assistant Secretary, Parliamentary and Legal Division

Mr Douglas Walker, Assistant Secretary, Visa Framework Branch

Information Technology and Office Services

Ms Cheryl Hannah, Chief Information Officer, Business Solutions Group

Human Resource Services, Internal Investigations and Property

Mr John Moorhouse, First Assistant Secretary, Corporate Governance Division

Ms Lesley Daw, Assistant Secretary, Property and Performance Improvement Branch

Outcome 1: Contributing to Australia's Society and its Economic Advancement through the Lawful and Orderly Entry and Stay of People

Output 1.1: Non-humanitarian entry and stay

Mr Abul Rizvi PSM, First Assistant Secretary, Migration and Temporary Entry Division

Mr Neil Mullenger, Acting Assistant Secretary, Migration Branch

Ms Arja Keski-Nummi, Assistant Secretary, Temporary Entry Branch

Mr Bernie Waters, Assistant Secretary, Business Branch

Ms Jacki Hickman, Acting Assistant Secretary, Delivery Innovation Branch

Output 1.2: Refugee and humanitarian entry and stay

Mr Peter Hughes, First Assistant Secretary, Refugee, Humanitarian and International Division

Mr Robert Illingworth, Assistant Secretary, Onshore Protection Branch

Ms Rosemary Greaves, Assistant Secretary, International Cooperation Branch

Ms Robyn Bicket, Assistant Secretary, Humanitarian Branch

Output 1.3: Enforcement of immigration law

Mr Steve Davis, First Assistant Secretary, Unauthorised Arrivals and Detention Division

Mr Jim Williams, Assistant Secretary, Unauthorised Arrivals and Detention Operations Branch

Mr David Doherty, Assistant Secretary, Detention Contract and Infrastructure Branch

Mr Garry Fleming, Assistant Secretary, Detention Policy Branch

Mr Vince McMahon PSM, Executive Coordinator, Border Control and Compliance Division

Ms Yole Daniels, Assistant Secretary, Compliance and Analysis Branch

Mr Todd Frew, Assistant Secretary, Entry Policy and Systems Branch

Ms Cath Wilson, Acting Assistant Secretary, Identity Fraud and Biometrics Branch

Mr Greg Phillipson, Director, Entitlements Verification Policy Section

Mr Des Storer, First Assistant Secretary, Parliamentary and Legal Division

Mr John Eyers, Assistant Secretary, Legal Services and Litigation Branch

Output 1.4: Safe Haven

Mr Peter Hughes, First Assistant Secretary, Refugee, Humanitarian and International Division

Ms Robyn Bicket, Assistant Secretary, Humanitarian Branch

Output 1.5: Offshore asylum seeker management

Mr Vince McMahon PSM, Executive Coordinator, Border Control and Compliance Division

Mr John Okely, Assistant Secretary, Offshore Asylum Seeker Management Branch

Outcome 2: A Society Which Values Australian Citizenship, Appreciates Cultural Diversity and Enables Migrants to Participate Equitably**Output 2.1: Settlement services**

Mr Peter Vardos PSM, First Assistant Secretary, Citizenship and Multicultural Affairs Division

Ms Jennifer Bryant, Senior Assistant Secretary, Settlement Branch

Mr Bernie Hackett, Financial Strategy Division

Output 2.2: Translating and interpreting services

Mr John Williams, State Director, Victoria State Office

Mr Con Pagonis, Director, TIS National

Output 2.3: Australian citizenship

Mr Peter Vardos PSM, First Assistant Secretary, Citizenship and Multicultural Affairs Division

Ms Mary-Anne Ellis, Assistant Secretary, Citizenship and Language Services Branch

Output 2.4: Appreciation of cultural diversity

Mr Peter Vardos PSM, First Assistant Secretary, Citizenship and Multicultural Affairs Division

Dr Thu Nguyen-Hoan PSM, Assistant Secretary, Multicultural Affairs Branch

Outcome 3: Sound and Well-Coordinated Policies, Programs and Decision-Making Processes in Relation to Indigenous Affairs and Reconciliation**Output 3.1 Indigenous Policy**

Mr Peter Vaughan, Executive Coordinator, Office of Aboriginal and Torres Strait Islander Affairs

Ms Dianne Hawgood, Executive Director, Indigenous Community Coordination Taskforce

Migration Review Tribunal

Mr Steve Karas, Principal Member

Mr John Lynch, Registrar

Mr Rhys Jones, Deputy Registrar

Refugee Review Tribunal

Mr Steve Karas, Principal Member

Mr John Blount, Deputy Principal Member

Mr John Lynch, Registrar

Mr Rhys Jones, Deputy Registrar

Indigenous Land Corporation

Mr David Galvin, General Manager

Ms Jodie Lindsay, Chief Finance Officer

Torres Strait Regional Authority

Mr Mike Fordham, General Manager

Australian Institute of Aboriginal and Torres Strait Islander Studies

Dr Luke Taylor, Acting Deputy Principal

Mr Tony Boxall, Director, Corporate Services

Aboriginal and Torres Strait Islander Commission

Mr Mick Gooda, Acting Chief Executive Officer

Mr Rod Alfredson, Director, Office of Evaluation and Audit

Ms Caroline Joske, Commission Support Branch

Aboriginal and Torres Strait Islander Services

Mr Wayne Gibbons, Chief Executive Officer

Mr Bernie Yates, Executive Coordinator

Mr Geoff Scott, Executive Coordinator

Mr Pat Watson, Group Manager Corporate

Mr John Kelly, Group Manager Network

Ms Ros Kenway, Legal Counsel

Mr Brian Stacey, Group Manager Land and Development

Ms Adrienne Gillam, Acting Group Manager for Economic and Social Participation

Ms Kerri Tim, Group Manager Social and Physical Wellbeing

Mr Les Turner, Group Manager Culture Rights and Justice

Mr Peter Schnierer, Group Manager Coordination and Review Policy

Mr Brian McMillan, Investigations and Compliance Branch

Mr Paul Barrett, Chief Finance Officer
Mr Peter Taylor, Branch Manager Housing and Environment
Mr John Boersig, Manager Law and Justice Branch

Aboriginal Hostels Limited

Mr Keith Clarke, General Manager

Indigenous Business Australia

Mr Ron Morony, General Manager
Mr Ian Myers, Deputy General Manager

Office of the Registrar of Aboriginal Corporations

Ms Laura Beacroft, Registrar

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 service of the year ending on 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 today continue its examination of the Immigration and Multicultural and Indigenous Affairs portfolio, proceeding according to the order on the circulated agenda. The committee will start with the migration and refugee review tribunals, which will be followed by outcome 3 of the department.

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 welcome again Senator the Hon. Amanda Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs, and Mr Bill Farmer, Secretary of the Department of Immigration and Multicultural and Indigenous Affairs, officers of the department and associated agencies.

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 draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, procedures to be observed by Senate committees for the protection of witnesses, and in particular to resolution 1(10) which states in part:

Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken.

I also draw attention to resolution 1(16) which states:

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.

Evidence given to the committee is protected by parliamentary privilege. I remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Minister or Mr Farmer, do either of you wish to make an opening statement?

Senator Vanstone—Other than it is a pleasure to be here, no thank you.

[9.07 a.m.]

Migration Review Tribunal

Refugee Review Tribunal

CHAIR—I welcome Mr Steve Karas, Mr John Lynch and Mr John Blount from the Migration Review Tribunal and the Refugee Review Tribunal. As we have previously, we will take the questions en globo as opposed to trying to delineate between the two tribunals. I ask senators to assist me in that process.

Senator KIRK—I might start with some questions on the Migration Review Tribunal. Thank you for the figures that you gave us last time in relation to finalisation of cases since 1 July last year. Would you be able to update the committee with figures up to the present, to include the cases since the last estimates?

Mr Karas—Do you want me to deal firstly with the number of cases lodged with the Migration Review Tribunal?

Senator KIRK—Yes.

Mr Karas—To 30 April 2004 there have been 6,722 cases lodged with the Migration Review Tribunal, down 701 cases from the 7,423 cases lodged to the same time last year, which was about 9.4 per cent. Of those cases, there have been 5.9 per cent more cases finalised to 30 April 2004 compared to the same period last year—that is, some 7,953 cases were finalised compared to 7,506 cases finalised for the same period last year. Out of the cases finalised, 3,561 cases set aside the decision of the delegate of the minister—that is, some 44.8 per cent of all the cases finalised. There were 3,158 cases affirmed, which is 39.7 per cent of the case load, 701 were withdrawn and 533 were otherwise finalised. As at 30 April 2004, there were 6,043 cases on hand with the Migration Review Tribunal compared to 8,050 cases that were on hand for the same period last year, which is a reduction of 2,007 cases or some 24.9 per cent.

For the Refugee Review Tribunal, as at 30 April 2004, there were 2,827 cases lodged, which is down 1,355 cases from the 4,182 cases that had been lodged for review for the same period last year, which constitutes a 32.4 per cent decline in the cases lodged. To 30 April 2004, 4,999 cases were finalised compared to 5,081 for the same period last year, which is down 1.6 per cent. Of all the cases finalised, 469 cases were set aside, which is some 9.4 per cent; 4,188 cases were affirmed, which is 83.8 per cent of the cases finalised; 275 were withdrawn; and 67 were otherwise finalised. As at 30 April 2004, there were 1,510 cases on hand with the Refugee Review Tribunal, down some 2,668 cases from the 4,178 cases that were on hand for the same time last year, which is about 63.9 per cent down on the cases that were on hand for the same period last year.

Senator KIRK—Thank you for those figures. Now I have to try to make some sense of them. It seems with the MRT, from what you have said, that the figures are down only marginally in terms of the cases that have been lodged—is that correct?

Mr Karas—Some 9.4 per cent. They are about 701 cases down from the same period last year.

Senator KIRK—And is the number finalised a similar figure too, 5.9 per cent?

Mr Karas—Yes, there are almost six per cent more cases finalised to 30 June 2004, which was 7,953 cases finalised, compared to 7,506 for the same period last year. There has been a slight increase of about six per cent.

Senator KIRK—So the amounts are not significantly different. How do you attribute the changes that have been made?

Mr Karas—In relation to more cases being finalised?

Senator KIRK—Yes.

Mr Karas—There was an intake of 17 new members last year. They are now producing more cases than they were previously. At the same time, with the ongoing training program and with the new case load and productivity targets or policy that is going to be introduced on 1 July there has been, I suppose, an upsurge, so to speak, in productivity and cases finalised by the membership as such. I think also that the intake of new members last year does assist in relation to that. There are, of course, ongoing programs within the tribunal by way of training and also streamlining policies, introducing changes to the case management system and things of that type which, I think, have also assisted in the increased productivity for the year.

Senator KIRK—Are MRT members reaching their case load targets now?

Mr Karas—I am not sure of the exact percentage, perhaps Mr Jones might have it, in relation to the number of members who are meeting their targets. I think it has increased from the past.

Mr R. Jones—We are running at about 86 per cent of target so far this year. The fact is that the new members are now operating at higher productivity levels than they were during the year, so we are expecting a better outcome of close to 90 per cent by the end of the year. I think that we have 40 per cent of the membership meeting or exceeding target.

Senator KIRK—You mentioned that there was a new case load target coming into effect on 1 July—is that correct?

Mr Karas—Yes. In relation to that, for argument's sake, if a member were to work 230 days it is averaged out that that member would produce some 327 cases for that period of time, for a New South Wales member, and for a Victorian member the expectation would be some 320 cases for the 230 days, with a pro rata adjustment for part-time members.

Senator KIRK—How does that differ from the existing case load target?

Mr Karas—It is quite similar. You may recall that the last time we appeared before you we talked about two standard cases per day. The new constitutions and case load policy will have standard complex and more complex divisions of the case load. In relation to that, the cases expected to be finalised for the period are 1.41 or thereabouts for a Sydney member and about 1.38 or thereabouts for a Victorian member. There is a slight difference in relation to the case loads between the two registries. I think it would be true to say that there are more applications for permanent visas in Victoria than there are in New South Wales. That explains the slight difference in the case finalisation expectation between the two registries.

Mr Lynch—Each member has a case target which is based on estimated attendance days. In particular, this affects part-time members, and performance is measured against actual attendance days. The targets are substantially unchanged from last year.

Senator KIRK—The other significant figure that you read out at the beginning, Mr Karas, was the 24.9 per cent set-aside rate, if we can call it that, of DIMIA decisions.

Mr Karas—The set-aside rate?

Senator KIRK—Yes. Was it 44?

Mr Karas—It was 44.8 per cent. There were 3,561 cases set aside of the 7,953 cases that were finalised.

Senator KIRK—That seems like a high rate. How does that compare with the rate in previous years?

Mr Karas—I do not think there is a lot of difference.

Mr Lynch—It is consistent with previous set-aside figures. They are in the 40 range. They have fluctuated since 1999 in the 40, 42, 43 or 44 per cent range. Of course, the set-aside rate will differ for individual visa classes, but that is the average set-aside rate across tribunal activities.

Senator KIRK—Is there any process within the MRT for notifying the department when there appears to be an increase in the number of setting asides of departmental decisions?

Mr Karas—We do meet with the department every six months in what is called a liaison meeting, where matters of interest between the tribunal and the department are discussed. On occasions, there are agenda items to raise perceptions about situations. For argument's sake, if there is a high set-aside rate for student cancellation visas on the part of the tribunal, it may reflect a particular interpretation or a situation which the tribunal members have considered in relation to it. Another example would be the partner cases, where there is usually a high set-aside rate. In relation to that, we are in the process now of doing a more in-depth study, but there have been occasions where the application has been made some time previously and, by the time it gets to the tribunal for review before a member and a hearing is held, almost 2½ years have transpired and quite a lot of information, material and other evidence has come in.

In comparison, the delegate of the minister has first looked at the matter after the application has been made and it is usually a matter of weeks before they have to make their decision. In the meantime quite a period of time has transpired and, as a result, there is usually much more evidence which the tribunal can consider. That is one of the reasons why there has been a high set-aside rate in department cases.

Mr Lynch—There are informal processes apart from the formal meeting mechanisms. We do correspond with DIMIA at a senior and middle management level on an ongoing basis throughout the year to identify issues where concerns might arise regarding tribunal decision making, in terms of interpretation, as Mr Karas has said, or just in getting it wrong sometimes. We value that feedback. Equally, we provide feedback on primary decision making, which I think reflects a robust and healthy relationship between the department and the tribunal.

Senator KIRK—With the 44 per cent set-aside rate, from what you are indicating, some of the categories of visa, whether they are student visas or partner visas, have a higher set-aside rate. Do you have figures that break down the categories of visas and the set-aside rates for categories?

Mr Lynch—We might not have those available for you today, but we can certainly take that on notice. We do report on visa classes and the distinction regarding set-aside rates between the visa classes. As Mr Karas foreshadowed, spouse and student cancellations in particular perhaps differ from some of the other visa classes in terms of the level of set-aside. But we keep those under active consideration. Currently we have a review of our partner decision making going on, flowing from an interest in the high set-aside rate for spouses. That is a current review and I hope we will be in a position to report to you on that at our next appearance before you. We like to ensure that members are testing the evidence appropriately in establishing whether a relationship is genuine and ongoing. We have a set-aside rate which is in the 60 per cent region for spouse matters. It is an area about which we are concerned to ensure that we have quality of decision making and the correct and preferable outcome in as many cases as possible.

Mr Karas—I can assist you, Senator, if you would like the top five set-aside rates to 30 April 2004. The partner refusal set-aside rate was 60.4 per cent; the family refusal figure was 38.4 per cent; the student cancellations figure was 37.4 per cent; student refusal cases represented 49.2 per cent; and visitor refusal cases represented 62.1 per cent. They are the top five set-aside rates for the tribunal as at 30 April 2004.

Senator KIRK—You mentioned a review or a study into the set-aside rates for spouse visas—is that correct?

Mr Lynch—That is correct.

Senator KIRK—When was that review initiated and who initiated it?

Mr Lynch—The joint management board of the tribunal initiated that review following discussions within the tribunal. We have a quality assurance program which the board oversees between the two tribunals. We ensure through our senior management group meetings that we regularly review the quality of decision making against timeliness, set-aside rates and so forth, to ensure members have adequate training and professional development. This is part of that process. Certainly we took very seriously the concerns expressed by the Senate at our last appearance and have initiated that review since that time. We also take on board the discussions that we have with DIMIA in terms of our performance. That has culminated in the review. We are hoping to report on that to you at our next appearance. Hopefully it will reflect well on the tribunal's decision making, but where we see shortfalls in training or understanding of the regulatory criteria for this visa class or any others, we certainly get our legal officers involved in a training regime to ensure that members learn where they are making mistakes. This applies to Federal Court remittals. Where criticisms are made, we take those very seriously and attempt to improve the quality of decision making.

Senator KIRK—When was that review initiated; what date?

Mr Lynch—In February. I do not have the exact date but I can certainly let you have that in our full report on the review.

Senator KIRK—Thank you. And when is it due to report?

Mr Lynch—We are hoping it will be ready in the next few weeks.

Senator KIRK—Can that be made available to the committee when it is completed?

Mr Lynch—Most certainly.

Senator KIRK—Thank you. So that is the partner or spouse category. I notice that the visitor category of visa is also very high in its set-aside rate of 62 per cent. Is there any proposal for a review into that category or any of the other categories that are in the top five?

Mr Lynch—We keep all of our decision making under review, but there is no specific intention at this stage to review the visitor set-aside rate.

Senator KIRK—Why did you choose to review the partner or spouse category and not some of the other categories?

Mr Lynch—We thought it was appropriate because of the sustained level of set aside and as part of our quality assurance program, but also in response to concerns that had been brought to the tribunal's attention we thought it an appropriate time to review our performance against that particular visa class.

Mr Karas—The partner visa class forms about 30 per cent of our workload. Of the lodgments that are made to the tribunal for review of delegates' decisions, almost 30 per cent are those in the partner category.

Senator KIRK—Is that the highest category, the 30 per cent?

Mr Karas—It is the highest category, yes.

Mr R. Jones—It is by far the largest category.

Senator KIRK—And the visitor visa category is what sort of percentage of the total workload?

Mr Karas—I was going to say six per cent off the top of my head. I do not know if Mr Jones could assist, but it is much lower.

Mr Lynch—I thought it was closer to eight or 10 per cent, but we can give you that.

Senator KIRK—So it is about 10 per cent. But it is an ongoing process so that, if you do identify that the set-aside rate is becoming high in a particular class, you could well initiate a review down the track?

Mr Lynch—It is not a regular feature of the tribunal's activities that we identify a review and devote resources to it in the way we are doing with the spouse review. In the past there has been a degree of ad hocery in reviewing performance levels against particular visa classes. I think this is part of our establishing quality management processes within the tribunals. The joint management board, in particular, has been able to identify across both tribunals the need for mechanisms and new systems to be put in place. We are looking at a new computer system as well that will assist us with reporting against trends with particular visa class decision making which will enable us to identify problems before they come to the parliament's attention, for example.

Mr Karas—Just to go back to your question about the visitor visa applications, for the 2002-03 financial year there were 534, or six per cent of the total 8,856 that were lodged.

Senator KIRK—That is fairly low. You mentioned about the resources being devoted to the review for the partner visa. What sorts of resources—staff and other resources—are you having to commit to this review?

Mr Lynch—Apart from the high-level discussions that have taken place in the tribunal at the board and senior management level, which includes senior members of the tribunal and the district registrars, I have allocated an executive level 1 officer who heads up the policy and procedures section of the tribunals to take this project on board. She has identified an APS6 officer for a period of two months to identify a range of cases in that visa class group. She has the assistance of a legal officer who is helping her identify any legal interpretation issues or legal error issues in the cases under review. So probably two officers are engaged in this process, one very much more closely day to day than the legal officer. The APS6 officer is fully occupied. As I said, we should have that review wound up in the next few weeks.

We have taken some time to settle the scope of the review and identify the nature of the review itself, to make sure that there is some value added and that we have not just picked a range of cases that would not assist, so our sampling across the registries has been fairly focused. We have examined cases of both experienced and less experienced members to establish how they deal with these applications for review and the level of testing of the evidence that they undertake, whether it is sufficient in all circumstances and whether there are difficulties in their interpretation of the criterion and the regulations.

Senator KIRK—You say there has been sampling of individual members across the registries. Has that been done by way of interview or have they made submissions?

Mr Lynch—No. It is a case analysis against decisions that have been made by the members. Subject to the findings of the review, it may well be a healthy thing to workshop with members some of the findings. But we will be consulting with members in settling the review outcome, because the members have the most valuable ideas on why particular trends or developments have occurred.

Senator KIRK—Finally, you mentioned a new computer system that you are moving towards. Could you give us a few more details about that.

Mr Lynch—Yes, we tendered for an IT company to develop a system for us, but we have not settled the outcome of the tender. We are reviewing that particular project at the moment. The joint management board is expecting to review where we go from here. It is a joint case management system development whereby we need to identify a tenderer who we think could undertake the job successfully and blend the two processes of the tribunals in a way that is going to value add from a case management point of view but also a reporting point of view for management.

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

Mr Lynch—We hope that in the next two months we should have a successful tenderer identified and serious work will have commenced. We hope to have a new system in place after co-location of the Sydney registries, which will occur, we hope, by this time next year.

So we would not introduce the system immediately before co-location—it would be too disruptive—nor would we do it at the end of the financial year, because members are highly pressed now in trying to get out as many decisions as possible.

Senator KIRK—What is the likely cost for the new computer system?

Mr Lynch—It is in the \$3 million range, but there are three options that we are examining as to precisely what system we will introduce. One of the options includes a document scanning option which is fairly expensive, so we have not quite settled which direction we are going to go in but we think that, at the end of the day, our needs would be satisfied by a system that is going to cost up to \$3 million. I think that is the ballpark figure we are looking at at the moment.

Senator KIRK—I would now like to look specifically at the RRT and some of the figures that you gave me there. The figures that I wrote down indicate quite a significant decrease in the applications that are being made. I wrote down a 32 per cent decrease. Is that the correct figure?

Mr Lynch—Yes, there has been a 32.4 per cent decrease in the number of cases lodged with the tribunal.

Senator KIRK—What do you attribute that to? There has been a considerable decrease from last year.

Mr Karas—There are perhaps a number of reasons. Firstly, there are not as many lodgments being made on the basis of the decisions of the department and the number of cases that the department is dealing with. But the figures I have given you do not include what is anticipated to be the case load for the temporary protection visas and the FPVs.

Mr Blount—The level of lodgments is something beyond our control. It is often difficult to know. It depends upon events elsewhere in the world and so on. Certainly one of the things that has declined over the last two years is the number of direct unauthorised arrivals. That obviously makes a difference. It is something which it is very hard to anticipate very far ahead. It would not take much of a change in some particular country—whether convention related or not—for onshore claims to increase. There are large numbers of people in Australia who might take up claims if situations in their countries changed. But essentially we have seen the fall both in those cases coming through the detention category and in those normal cases in the community.

There is, as Mr Karas has mentioned, a potentially large number of TPV cases around—that is, people who have temporary protection visas which have already expired or will do so over the next three or four years—and who might be expected to apply for further protection visas. That has the potential to add very significantly to the present rate of lodgments, but that depends on the rate at which these people apply for further protection visas and the outcomes of departmental decisions. While there are perhaps 8,500 to 9,000 potential cases over the next several years, not including normal community cases, any estimate of how many of those might come to the tribunal, and when, is somewhat speculative. It is not something over which we have a great deal of control, as you can understand.

Mr Lynch—If I could add to that, it may also be that some of the policy initiatives that have been introduced by government have had an effect in terms of the integrity measures directions, the increasing MARA powers and investigatory capacity from within the tribunal. From the registrar's point of view, I think there has been greater activity in improving the quality of migration assistance that is given to would-be applicants, and the professionalism of the migration industry is under close review by government. The industry itself is taking substantial steps to lift its game, and that has impacted on the rate of application in both tribunals. As Mr Karas pointed out, there has been a drop in the lodgment rate in the MRT as well.

Senator KIRK—In relation to TPV applications for further protection, last time you gave us a breakdown between various nationalities—I should say country of origin. Could you update those figures for us today?

Mr Blount—I can give you an indication and then we can provide some more precise figures subsequently. The situation is that overwhelmingly they have been Afghans. The number of non-Afghan cases would be about 10 or a dozen in all. There are a handful of cases from Turkey, Syria and Iran. We can provide those precise figures subsequently. With regard to the Afghan FPV case load, which has been the overwhelming number, as of 24 May we had had 663 lodgments with the tribunal this financial year, not including 10 applications for the review of a cancellation of a temporary protection visa. Of those, 238 have been finalised so far.

Senator KIRK—Last time you gave us a figure of 387, so was that just until November, for Afghan—

Mr Blount—They are starting to flow through fairly steadily—not at the rate that we originally thought they might have by this stage but they are coming steadily in the order of about 80 a month at the moment.

Senator KIRK—And there is that potential for the 8½ thousand or 9,000 that are still out there to flow through your system?

Mr Blount—As I understand it, there are between 8½ thousand and 9,000 temporary protection visa holders whose visas will expire over the next several years. Absent any changes to legislation and policy, it is a question of what proportion of them apply for further protection visas and what the outcomes of DIMIA decisions are and then who applies for review. But there is certainly potential there for a very significant flow, depending on all these factors that are beyond our control.

Senator KIRK—We have noticed that the department has lifted the freeze that apparently was on the Iraqi TPV applications for further protection. Does the RRT anticipate that this might lead to an increase in its case load as a consequence?

Mr Blount—Certainly there is the potential for that. Again, it depends on the number of decisions that the department makes and, obviously, on the outcomes of those decisions. There are very practical questions for the department regarding the rate at which it processes these. I understand that that has commenced. It might be another couple of months before we see any lodgments arising from that. I would anticipate that we might well get a flow from that but the size of that is a bit hard to speculate about at this stage. The Iraqi case load, as I

understand it, is about 40 per cent of the total number of TPV holders out there. Potentially, there could be some thousands of cases over a period.

Senator KIRK—As you say, it is only really a potential increase in case load but do you—

Mr Blount—It is a very significant potential increase but the exact size of it relates to the timing of the flow, which is rather hard to know.

Senator KIRK—Bearing in mind that it is going to be potentially a significant increase, have you put into place any contingency plans or forward planning for this potential becoming a reality?

Mr Blount—Yes. Although there are so many inherently unknowable factors involved, our forward planning is based on, if you like, a prudent assessment of total numbers we might get from the community, from the categories—FPV and so on. As Mr Lynch could explain, there are mechanisms to deal with the case flow varying above or below the figure that we have estimated. With regard to the Iraqi case flow, we will be doing as we have done with the Afghans—initiating the collection and dissemination of country information and training for members. We have had over the last nine months a number of sessions for members in relation to country information and other issues in handling the Afghan cases, including, for example, briefing by a UNHCR officer from Afghanistan. We would be initiating a similar process with regard to Iraq. We have not committed resources to doing too much beyond what we would normally do to this point because of the volatile situation. But now that there is a more predictable time frame, we will be looking at providing country information, training sessions, an online resource package for members and those kinds of things, as we get to the point where a flow starts.

Senator KIRK—In relation to set-aside rates for RRT decisions—we canvassed MRT decisions—could you refresh my memory on what those rates are? We have already done some figures but I am not quite sure which ones are which.

Mr Karas—It was 9.4 per cent to 30 April 2004. Out of the 4,999 cases finalised, there were 469 cases set aside and 4,188 affirmed, which is some 83.8 per cent.

Senator KIRK—So 83 per cent were set aside?

Mr Blount—No, it is the other way around.

Mr Karas—It was 9.4 per cent set aside and 83.8 per cent affirmed.

Senator KIRK—Yesterday we were advised that, of the 150 TPV cases that the RRT has finalised, 130 of them had the DIMIA decisions set aside. Can you confirm that is correct in relation to TPVs?

Mr Blount—As for the figure for the Afghan FPV case load, as of 24 May we had finalised 238 Afghan FPV cases in total, all this financial year. They include 214 set aside, 21 affirmed and the other three or four were ‘departed’ and ‘no jurisdiction’. So 214 were set aside out of 238.

Senator KIRK—Yesterday we were advised that the reason for this very high set-aside rate was changing circumstances in Afghanistan from the time of the DIMIA decision through to the time of the RRT decision. Is that an accurate observation?

Mr Blount—That would certainly be a substantial element. The outcomes have been on the basis of the assessments by the individual members of the country information and the situation in relation to the overall situation—whether there has been substantial change—or, in other instances, looking at the specific information about the particular circumstances of applicants in particular areas. You will understand this has been a country situation in which there has been a good deal of additional information flowing through since about September last year with a lot of additional focused information, particularly from bodies such as UNHCR. In some respects it has become more complicated. I expect that will be a continuing, evolving situation. It is one that will vary somewhat depending, as one would expect, upon the situations in particular places, which are variable.

Senator KIRK—So there have been 238 Afghan visas finalised. You said there were 663 lodgments—is that correct?

Mr Blount—There have been 663 lodgments this financial year and, of those, 238 cases have been finalised to date. In the case of the Afghans, almost all of those cases would probably involve only the one applicant.

Senator KIRK—Only the one applicant?

Mr Blount—Yes, in most instances. DIMIA normally counts the number of applicants. Our figures count the number of cases, which can lead to differences depending on how many applicants are included in a particular case. With regard to the Afghan case load, there would be very little difference on that basis because most of them would be single, unaccompanied male applicants.

Senator KIRK—So, of the 400 or so that still need to be finalised, is there a reasonable chance that a number of those will be set aside as well?

Mr Blount—I expect a number of those would be set aside as well, yes.

Senator KIRK—On the basis that the country information has changed?

Mr Blount—I do not know on what specific basis any particular future case might be set aside but, on the basis of what has happened to date, I would imagine there would be a continuing significant proportion of set-asides. But I should say that it is not necessarily the case that what we are getting now is exactly the same as what we were getting three months ago, in the sense that I understand the department's own approval rate for this case load has changed over the last six months as country information has changed. That might be reflected in the results at review of those that are not approved, because you are not looking at exactly the same profile. I would expect it would continue to an extent, but as to what extent I probably could not speculate.

Senator KIRK—We can ask you about it again next time, can't we?

Mr Blount—I look forward to it.

Senator KIRK—So do I. You mentioned that in the MRT there is a review of the decision making in relation to the spouse visa. Is there any similar review going on in relation to RRT decisions in any of the visa categories?

Mr Blount—Not as such. We continue to provide people with feedback on country information that is available. I anticipate that in due course there will be some relevant jurisprudence and that will be passed back. We have a thorough system of keeping people very much up to date with what is happening in the courts and with jurisprudence, and we provide a continuing flow of that sort. But you will understand that on the RRT side it is not a question of looking at whether we are interpreting immigration regulations in exactly the same way as Immigration and so on. We are looking at country information and we are looking at the refugee convention, on which there is a great deal of Australian jurisprudence. The factors that are feeding in are somewhat different from the kinds of considerations on the MRT side.

Senator KIRK—They were all the questions that I had.

Senator BARTLETT—Just to clarify a few things about the resourcing of the MRT, you mentioned that in prior years appropriation was based on a purchasing agreement and you have now entered into an ongoing arrangement to receive funding based on a formula: 75 per cent fixed costs and 25 per cent variable costs, depending on the number of cases. Can you explain to me what difference that will make in practical terms?

Mr Lynch—Yes. The approach is designed to give more accountability and to give the parliament more control of the use of taxpayer funds by the tribunals. We have taken an identical approach with the purchasing agreements for both tribunals. The new agreement for each tribunal will come into effect on 1 July. Unlike the existing agreements, which were based on the average price per case finalised, the new agreement is going to deliver a fixed appropriation component, which you mentioned. That relates to the fixed costs, which will be 75 per cent, as you mentioned, of the appropriation, and a variable component, which is going to relate to the movement between agreed targets for case finalisations. That is 25 per cent of the new appropriations. In the case of the RRT, for example, the increases in appropriation relate primarily to the new funding agreement, supplementing the RRT for the discontinued use of cash reserves.

You may remember that at our last appearance we identified that we had accumulated up to \$7 million in cash revenue from 2000-01. Under the current purchasing agreement we have with DOFA we were required to run that amount down. In a sense the price per case was not actually reflective of our total operating costs. So we have moved away from that dynamic where, because of the case volatility, the fluctuations in case finalisations and case lodgments rendered us very seriously exposed: if we came in under target we would be penalised by DOFA to the cost of the price per agreed case, which in the RRT's case was \$3,500 this year and in the MRT's case, \$1,900 approximately. Under the new funding agreement we will have a capacity to meet any dynamic in the case load fluctuation, so if we do not meet target we will be penalised by a certain price per case, which will be less than the real cost; equally, if we exceed target we will not be accumulating, in the case of the RRT, \$3,500 per case because that is not reflective of the real cost per case finalised to the tribunal. There will be a 10 per cent variation capacity below target or above target; if we exceed that we will need to get approval from the Expenditure Review Committee.

Essentially, we have established a much more satisfactory model, particularly in relation to the MRT. The situation is that we have a total appropriation of \$21.6 million, with revenue

from other sources amounting to \$63,000. That is \$21.617 million, which will give us a small operating surplus of about \$125,000 in 2004-05. In the case of the RRT, we anticipate that we will meet our budgeted and approved operating result of a deficit of \$2.6 million for this financial year, and subject to us reducing—

Senator BARTLETT—You said \$2.6 million?

Mr Lynch—It is \$2.6 million, if I am not mistaken. That is the anticipated.

Senator BARTLETT—I am sorry, it is not that big a deal but I am just looking at table 3.1 for the RRT and it reads as \$2.026 million deficit. I am probably reading something wrongly again.

Mr Lynch—We are really in the position in the RRT of having to review our employee related costs and make administrative savings, as our 2005-06 appropriation would require us to reduce expenditure, probably in the sum of about \$1½ million. So we are taking steps to allow for natural staff attrition, we are moderating our recruitment policies for staff and we are looking, with co-location of the tribunals and through other means like the joint case management system, to achieve fairly substantial savings in the next year to three years—the next few out years will see these savings being felt. We are hopeful that we will avoid the previous situation we have been in where we have achieved this substantial cash surplus, the cash in hand, and will operate on a basis where there is a nil surplus and a nil operating loss.

Mr R. Jones—I will just add that the \$2 million you referred to is the outcome for this year, 2003-04. This year is the old purchasing agreement, and this is the final running down of reserves that was envisaged as part of the current purchasing agreement.

Senator BARTLETT—So the \$2.6 million figure you were referring to is for the future financial year in anticipation of a deficit—is that right?

Mr R. Jones—We are anticipating a balanced outcome for next year—no surplus, no deficit.

Senator BARTLETT—Is that \$2.6 million figure you mentioned anywhere in the documentation?

Mr Lynch—Yes, that is an approved additional estimate. You will note that there was a provision made for a planned deficit, and we are on target with that.

Senator BARTLETT—Can you point me to a page to help me with my navigation of the accounts?

Mr Lynch—It is in the additional estimates for 2003-04. I think there is an explanation at page 169 of the revised appropriations for 2003-04 additional estimates—a total sum of \$23.8 million.

Senator BARTLETT—The co-location in Sydney has been on the board for a little while, as I understand it, and you are already co-located in Melbourne—is that right?

Mr Lynch—That is correct.

Senator BARTLETT—Are you anticipating some savings out of that?

Mr Lynch—Yes, we are. In the case of Sydney, we are hoping to take advantage of lease incentives that are available in the current climate. We hope that the high vacancy rate of 10 or 11 per cent that exists in Sydney at the moment is going to produce a windfall result for us.

Senator BARTLETT—In table 3.1 on page 338 of the PBS for 2004-05 you have an estimated revenue in the upcoming financial year of pretty close to \$25 million. In two years time that is down to \$21.7 million, which is a reasonably significant drop—over 10 per cent. What is that due to? Are you anticipating fewer cases or just efficiencies?

Mr Lynch—Both. The forecast case load going out to the out years from 2004-05 is 5,400 for the next financial year, 5,000 for the succeeding year, 4,400 for the year after that and 4,400 for the year 2007-08. As Mr Blount pointed out earlier, these figures are forecasts. The volatility of the case load in both tribunals might render those figures inaccurate at the end of the day, but the new funding agreement makes provision for case load fluctuations within and outside a 10 per cent variation ultimately up to a 25 per cent variable factor.

Senator BARTLETT—Does that 25 per cent variance mean that at some stage through the financial year you would make an application for an additional appropriation for the remainder of the year?

Mr Lynch—Exactly.

Senator BARTLETT—In table 1.7 on page 308 you have the MRT fees remaining steady at \$11 million in revenue. Is the fee still about \$1,400?

Mr Lynch—That is right.

Senator BARTLETT—I presume that means you are anticipating pretty much the same number of applications?

Mr Lynch—We are anticipating a fairly constant level of applications. They have plateaued between 8,000 and 9,000. The financial performance of the MRT is such that we anticipate a nil surplus. Currently we are materially on budget. There may in fact be a small operating surplus in 2004-05—in the region of about \$100,000.

Senator BARTLETT—That \$11 million is revenue, but you pay a fair chunk of that back?

Mr Lynch—That goes back to the official public account. We do not see that money except where we need to pay refunds of \$5½ million for remittals.

Senator BARTLETT—So it is \$11 million in and \$5½ back in refunds for successful applications?

Mr Lynch—Yes.

Mr R. Jones—That is administered funds. None of it goes into the tribunal's operating expenses. It is just paid into consolidated revenue, if you like.

Senator BARTLETT—But the \$11 million is not the total? It is not net?

Mr R. Jones—Net, it is about half of that.

Mr Lynch—I might just add something to what I said earlier about performance this financial year. It is premised on us meeting the target. We are currently behind the target, which is a fairly normal situation at this time of year, but in the last two months of the

financial year we have a tradition of getting to target or very close to it—or actually exceeding it. We are hopeful that that will also occur this time around.

Senator BARTLETT—With the RRT fees—page 332—there is a drop in estimated revenue from \$5½ million to \$4.8 million. You are not anticipating a drop in the number of claims next year, are you?

Mr R. Jones—On the RRT side, we are expecting a reduction in the number of cases dealt with. I think the registrar mentioned that we are anticipating about 5,400 finalisations next year, down from about 6,100 this year.

Senator BARTLETT—And the fees come at finalisation by the RRT rather than on application?

Mr R. Jones—That is right.

Senator BARTLETT—What is the current fee for RRT?

Mr R. Jones—It is the same, \$1,400.

Mr Lynch—It is a post-decision fee.

Senator BARTLETT—Is this \$5½ million actually paid? It is a fairly low number that actually pay the fee, isn't it?

Mr R. Jones—I do not have the exact figure, but I think about 20 per cent of the fees are recovered.

Senator BARTLETT—And this reflects the amount actually paid rather than the amount charged?

Mr Lynch—If you are talking about the MRT, the \$5½ million—

Senator BARTLETT—No, that is the RRT.

Mr Lynch—I beg your pardon. What page are you referring to?

Senator BARTLETT—Page 332 of the PBS.

Mr Lynch—The RRT fees—the estimated fees—to be charged are set out as \$5.5 million for 2003-04 and \$4.8 million for 2004-05. The recovery of those fees, though, is pursued by DIMIA. I do not have the exact percentage recovery rate available.

Senator BARTLETT—Mr Jones suggested as a guide that it is about 20 per cent. So this figure of \$5½ million is not actually money that is going to come in; it is a charge that has been—

Mr Lynch—That is correct.

Mr R. Jones—Table 3.6 on page 343 has the estimated amount that would be written down or not recovered—\$3.75 million.

Senator BARTLETT—Let us go to that table on page 343 just to make sure I am interpreting the figures correctly. The current estimated actual revenue for this year is \$5½ million. Is the \$4.3 million 'Write-down and impairment of assets' an accounting term for 'We won't get it'?

Mr R. Jones—Exactly.

Mr Lynch—The \$3.75 million for 2004-05 is for bad debts basically.

Senator BARTLETT—You are pretty much writing off 80 per cent of it already?

Mr Lynch—That is right.

Senator BARTLETT—Do you get the remaining amount? Does that become part of your operating revenue?

Mr Lynch—Correct.

Mr R. Jones—Sorry, the amount that is recovered is paid into consolidated revenue. It does not become part of our income for spending on our activities.

Mr Lynch—I am sorry, I thought you were talking about the revenue from other sources with the appropriation.

Senator BARTLETT—Does that money from the fee that gets charged for unsuccessful applications to the RRT go back into DIMIA general revenue or DOFA general revenue?

Mr R. Jones—Consolidated revenue.

Senator BARTLETT—That is Treasury?

Mr R. Jones—Yes, that is right.

Mr Lynch—It is the official public accounts—I am not sure how that works.

Mr R. Jones—It is the same arrangement for both tribunals. We are just administering the collection of the fees. They are paid into consolidated revenue.

Senator BARTLETT—I know the fee for the RRT has been subject to at least three examinations by a separate parliamentary committee and that one of the rationales for it was that it was to be a disincentive for unmeritorious applications. Do you have a view about the effectiveness of that or have you any evidence to shed any light on that question one way or the other?

Mr Lynch—Not really. It is really a matter that might best be answered by others.

Mr Blount—For a start we do not really have any authoritative figure for what might be the proportion of unmeritorious cases. ‘Unmeritorious’ is not simply synonymous necessarily with ‘unsuccessful’.

Senator BARTLETT—Indeed.

Mr Blount—I am not sure that we have even got that starting point from which one could even start to form an opinion. Really this is something that has developed and a policy that has been adopted and implemented as a matter quite independently of the tribunal and its processes.

Senator BARTLETT—It would be in the tribunal’s interest to reduce its case load of unmeritorious claims, though, I would assume? They would chew up your time and resources.

Mr Blount—I think it is probably in the interests of everybody to reduce unmeritorious cases. This is a matter that the minister has made clear. The difficulty is the fact that ‘unmeritorious’ is not necessarily synonymous with ‘unsuccessful’ in determining what they

might be. Certainly I think it is in everyone's interest that public resources are spent in relation to those matters which are substantive.

Senator BARTLETT—Yes. I could get into statements about what the minister has or has not made clear, but I am not sure that that would be a terribly productive use of time. I am glad to hear you make it clear. Are you able to discuss individual cases that have been assessed by the tribunal in this forum?

Mr Karas—No, Senator. Legislation prohibits express identifiers of individuals and we have always had the situation where the tribunal does not enter into discussion in relation to individual cases.

Senator BARTLETT—Thank you for making that clear. The very high set-aside rate was outlined in previous questioning from Senator Kirk. You stated that that was at least in large part to do with change in country circumstances. At the start of questioning you also mentioned that a very small number of Iraqi TPV renewals, for want of a better word, have started to be considered. Have any of those applications reached the tribunal yet?

Mr Blount—No. I would not expect to see any of them for another couple of months, but that is in the hands of the department.

Senator BARTLETT—You mentioned before that the figures you gave were separate from 10 applications that were for review of cancellation of a TPV. Do all or some of those 10 relate to identity issues?

Mr Blount—I have not looked into all 10, but that is my impression—that most of them at least would be to do with identity issues.

Senator BARTLETT—This would be the Afghan-Pakistan query?

Mr Blount—I imagine so. I could not say that authoritatively, not having looked at all of them, but that is my impression.

Senator BARTLETT—I have read some cases—a number; not mountains—that revolve around issues of identity, particularly around the Afghani-Pakistani question. You deal with individual cases as well, don't you?

Mr Karas—Yes.

Senator BARTLETT—I acknowledge how difficult it must be trying to weigh up all the different evidence before you. Certainly, with some of the ones I have read there has been a mass of contradictory identity documents and other things. In some cases the tribunal member has, on the weight of evidence, come down on the side of saying, 'I think this person is who they say they are.' Obviously, there has to be a fair number of false documents in there. If you are going down on the weight of evidence that the person is who they say they are then the other documents that suggest otherwise are presumably the ones you are assuming have less validity. Is any work being done to follow up on that issue of where these fraudulent documents come from to try to establish some sort of pattern?

Mr Blount—Are you talking specifically about the Afghan cases?

Senator BARTLETT—Yes.

Mr Blount—It has not really featured very much in the current case load as opposed to the earlier one a couple of years back. I do not think a great deal of weight has been placed one way or the other on the Afghan documents because of the whole history and context of administration and documentation in Afghanistan over a couple of decades. In instances where it has arisen in recent times in relation to cancellations, for example, there has been an issue of looking at the Pakistan documents.

But normally there is a range of matters that a member has before them, relating to an applicant's familiarity with the physical and social context of the place they claim to come from, language issues, questions of consistency and documents to which some weight might be given. It is normally looking at a pattern rather than relying on just one thing. The number of identity related cases in the Afghan case load is, I think, quite small. It is not very significant in the current case load at all. Certainly there is a problem with any documentation going back in Afghanistan, particularly identity documents, which are often provided on request at a local level. Even ones that are inherently genuine or relate to a person may have been created at a fairly late stage. I think members avoid getting distracted too much on those issues. There are usually more reliable indicators. Certainly I would be reluctant to rely on whether a particular Afghan birth certificate was genuine or not, for example. I do not think that would necessarily take you very far.

Senator BARTLETT—I realise it is quite small in the current case load. However, as you say, there is still a small number, some of which may or may not deal with this. I realise it is a small number, but obviously they are still very serious for the people concerned. I am not suggesting you are saying otherwise. I just emphasise that fact. I appreciate, obviously, that you do not just rely on one bit of paper but take the weight of a whole range of evidence. Even if it is a small number of cases, it is still a number. There have been some—I have read a few, and there have probably been more—where documents were provided that suggested the person may be Pakistani but on the weight of evidence the member has decided that they are not. Where do these fake Pakistani documents come from? Is there a pattern?

Mr Blount—Do you mean documents that suggest they are Pakistani which are fake?

Senator BARTLETT—Yes.

Mr Blount—Assuming they are found to be fake. I understand that where they are said to be fake it is normally put forward by the applicant that these were obtained by him in Pakistan en route to establish something or other—to help him work there, to help him get a passport or something like that. Certainly I am aware from other case loads that in that part of the world, including Pakistan, it is fairly easy to arrange to get false documents of various sorts. In cancellations that have come to us, on occasion there has been some more direct checking as well. Certainly in those that are found to be fake it is not normally the case that the applicant says, 'I've never seen these before,' but that the applicant says, for example, 'Yes, I got a fake Pakistan ID card because I was working there for six months and I had to have this, and I paid someone for it.' That is the kind of thing. I do not know whether that helps. There is quite a trade in those kinds of things.

Senator BARTLETT—Do you do or are you able to do any quality control or internal auditing in terms of the translation of documents, for example? I presume you pay for those when you have to get documents translated.

Mr Blount—If an applicant is providing, in support of their case, material which requires translation, normally they would submit the translated material. Where we have material that needs to be translated, we get it commercially done by a qualified translation service.

Senator BARTLETT—Is there any type of random process of just checking the quality of those sorts of things either way, or would you just wait until you got a complaint or something? Have you ever had to double-check?

Mr Blount—If there is reason to think that there is a problem with, for example, the translation of something that is submitted to us we might get that checked. That would not be a random process; it would be in a particular case where the member thought that that might be warranted. I do not imagine it would be terribly frequent; it is normally relatively straightforward. Our own material that we get translated is done by a properly qualified translation service, and I do not think a question normally arises about that. If something is disputed then obviously you would want to have a further look. I do not think we are aware of any particular problems in that area.

Senator BARTLETT—One area where I have certainly received a few complaints—I do not know how representative that is—is the accuracy of some of the voice analysis of accents and those sorts of things in trying to assess where people are from.

Mr Blount—There was a paper done—from memory, I think it was early last year—by some academics which was circulated fairly widely about the limitations of this. I think it is fair to say that that is something we acknowledge. It is particularly a complication where, as in the Afghan case load, they might quite legitimately have spent some months at some time in, for example, Pakistan. Indeed, it is complicated where people have now perhaps spent three years in Australia, which affects accents. I do not know whether you are aware of the paper I am referring to, but it refers in its footnotes to a number of RRT decisions. One of the things that that underlines is that these analyses have very rarely been relied upon in an unqualified way in RRT decisions. They quote a number of qualifications and comments that have been made in RRT decisions. Again, particularly if it is a qualified assessment, the member would normally have looked at the issues and gone through quite some detail about the person's physical surroundings and life, social customs and so on, in Afghanistan to form a view about that. There are normally questions of consistency or otherwise in evidence that go to the same issue, but at the time when these were being submitted and primary decisions were made largely on the basis of these—and we are looking at the inflow probably a couple of years ago now—there would have been very few, if any, RRT decisions that relied simply on that analysis, because people were aware of the inherent weaknesses and that it is something that should be used as part of a pattern, to fit in with other consistent information, rather than as a sudden-death test by itself. I do not think it has come up to any significant degree at all in the current FPV case load.

Senator BARTLETT—What is the FPV?

Mr Blount—Sorry; I do not want to confuse my terminology. Those people who had temporary protection visas have applied for further protection visas, or FPVs. What we are reviewing are not TPVs; we are reviewing applications for further protection visas from people who have held temporary protection visas.

Senator BARTLETT—Which may be for TPVs or PPVs.

Mr Blount—It gets very confusing.

CHAIR—We will be issuing a glossary with *Hansard* soon.

Senator BARTLETT—If you are able to dig up the reference for that paper, I would be interested to see it.

Mr Blount—Certainly. I think it was very widely circulated at the time. It was by some academics and was, I think, an eight- or nine-page paper published in about February last year. I am sure I can find it for you.

Senator BARTLETT—Thank you. This is only a half-serious question, but I am developing a growing interest in this area. Do people ever submit evidence one way or the other relying on lie detectors?

Mr Blount—I do not think I have ever experienced that. We prefer to form our own views on the weight of the evidence. To my knowledge it has not arisen in the RRT.

Mr Karas—To my knowledge as well.

Senator BARTLETT—Given that you are not a court of law, I guess it would be the same sort of thing as the evidence of the voice analysis, which is just something you can use as a guide and not something you have to either formally admit or exclude as evidence in a court sense. You could discard it or give it whatever weight you chose to give it.

Mr Blount—I must say personally I would be very wary of treating it as a sudden death litmus test.

Senator BARTLETT—You do not treat anything as a sudden death litmus test. Very rarely would you rely just on one—

Mr Blount—Exactly.

Mr Lynch—Culturally and for language reasons it may not hold much promise, but that sort of technology may well develop to the point where it could be a useful tool.

Mr Blount—I think we would probably treat it very cautiously.

Senator BARTLETT—I was not thinking of you guys doing it. I was thinking more of someone presenting it—

Mr Blount—Yes, submitting it. I think we prefer to conduct our own questioning of the applicant rather than rely on somebody else's assessment, whether it be mechanical or otherwise.

Mr Karas—I do not think any tribunal would ever accept such a document or finding as conclusive one way or another, but that is just my view.

Mr Lynch—Courts and tribunals would be out of business very shortly if they did.

Mr Blount—Not necessarily.

Senator BARTLETT—I will not pursue it at this stage. You have not got any Iraqi cases yet, but obviously you expect to get some in the not too distant future. Do you do anything by way of preparation? Are you already collecting country information or will you wait until the time comes?

Mr Blount—For all of the countries in which we have an interest, we have an ongoing process of collecting information by one country research area, but we will be putting a more proactive approach into Iraq now. As I mentioned earlier, there was no point in doing it too far in anticipation of the event, because it is such a volatile and changing situation. That is in process and we would expect to build up to country information sessions with members, providing a consolidated information package on our intranet for our members and so on. But, yes, that is certainly something that we have started working on.

Senator BARTLETT—With all the FPV claims that you are currently dealing with—and I think you suggested before you have fewer than you expected at this stage, but you will certainly have a fair few coming down the line soon enough—do you have a view about whether there are signs of inadequate assistance in the preparation of those claims? It obviously makes your job, which I acknowledge is an extremely difficult one, easier if you have a comprehensive, fully prepared, well-done claim as opposed to one that is not. Has that issue been apparent in any way with this cohort of claims?

Mr Blount—I know that it has been a concern, particularly for the non-government agencies that have been assisting with this case load, but I must say that a significant proportion of the cases I have personally seen so far have had assistance of one sort or another. We have also made it clear to the NGO bodies that if they have generic material—as they have in the past, and I think they did about 12 months ago—about the case load or the country situation then we are happy to bring that to the attention of all members who are dealing with it. But certainly it is helpful to have the claims clearly formatted. In most instances, there has been a fairly comprehensive fresh submission and statement at the time they have lodged their further protection visa application, which in some cases was immediately after they were actually granted the temporary protection visa and in other cases more recently, but there has generally been a fairly comprehensive statement of their post-Taliban claims in a statement on the primary file. Then, of course, we have the opportunity to work through all that at a hearing.

Well-focused assistance to an applicant assists not only the applicant but the tribunal. I have to say, looking at the tribunal's case load overall, that there are many instances where people are nominally receiving advice or assistance from agents and so on where it is not necessarily helpful. I can think of a couple of instances where FPV applicants have had submissions prepared with the assistance of private migration agents where it confused their claims to the extent that there had to be a good deal of unravelling subsequently, which was not necessarily helpful to the applicant and the actual claims they were seeking to clarify. So good assistance is helpful to all concerned. All migration assistance is not necessarily helpful either to the applicant or to the tribunal. It is variable, I am afraid.

Senator BARTLETT—I appreciate that, although I am sure you are not advocating that people do not seek it. I understand the point you are making. One area where there have been some claims is where people are in detention and seeking a bridging visa application. When those decisions are being appealed—obviously, unsuccessful decisions—they would go to the MRT, wouldn't they, rather than the RRT?

Mr Karas—The application for a bridging visa would come to the MRT, yes.

Senator BARTLETT—I know there is a range of things you have to consider in relation to that, not least of which is whether or not they are a flight risk. Normally, with those, there would be a person who would be a guarantor or who would offer to provide them with accommodation and those sorts of things.

Mr Karas—On some occasions, yes.

Senator BARTLETT—Does the character of the guarantor come into play at all? Can it come into play?

Mr Karas—It would depend on the individual case and whether it is one of the particular matters that the member may wish to consider. If a bond or a surety were being offered—people offering it, the ability to meet the conditions of it et cetera—yes, that would all be looked at. The tribunal generally looks at the criteria as set out in the legislation and, if it is an application for a bridging visa E, one would look at all of the requirements for the 050 subclass visa.

Senator BARTLETT—Do you have any discretion to refund the fee for MRT decisions even if they are unsuccessful?

Mr Karas—No, my understanding is that the refund is only applicable if in fact the decision has been set aside. However, there are provisions for the tribunal to waive the fee anyway in the case of impecunious circumstances.

Mr R. Jones—I will just add that, in relation to bridging visas for people in immigration detention, no fee is payable.

Senator BARTLETT—Finally, Mr Karas, in relation to your ongoing dual role, you hear cases as well, don't you? Do you hear with both tribunals?

Mr Karas—Yes, but not a great number.

Senator BARTLETT—Do you just keep your hand in or do you deal with the very difficult ones?

Mr Karas—I have dealt with what is regarded as some difficult ones, yes. I have had constituted to me one that has come back from the Federal Court in relation to an old 816 claim, meaning the 1989 regulations—and there are not many tribunal members who are au fait with the earlier regulations. Fortunately or unfortunately I am one of those, and I have to get that case.

Senator BARTLETT—Which makes me think of asking: how long does your term have to go?

Mr Karas—Until June 2007, I understand.

Senator BARTLETT—There is still plenty of time.

Mr Karas—There is some time, yes.

Senator BARTLETT—It is just as well you are enjoying it so much.

Mr Karas—Yes.

CHAIR—That brings us to the end of consideration of the estimates for the Migration Review Tribunal and the Refugee Review Tribunal. Thank you very much, Mr Karas and your officers, for attending this morning.

Proceedings suspended from 10.40 a.m. to 10.54 a.m.

[10.53 a.m.]

Aboriginal and Torres Strait Islander Commission

Aboriginal and Torres Strait Islander Services

CHAIR—We reconvene to continue our examination of the Immigration and Multicultural and Indigenous Affairs portfolio and we now move to output 3.1, Indigenous policy, and the agencies associated in this area.

In the circumstances it is very important to note for the record the committee's sadness at the passing of Mr Djerrkura, and to note our condolences to his family and the entire community.

At this point we have brought together for questions Mr Vaughan and officers from both ATSIC and ATSIIS, so that we are examining those areas together. Good morning and welcome. Senator O'Brien, will you begin.

Senator O'BRIEN—With your indulgence I would like to recognise this hearing as being conducted during National Sorry Week, I express my hope that it is not too long until we have a government who will actually say sorry. I also record my sadness at the passing of Mr Djerrkura who died yesterday in east Arnhem Land at the age of 54. I want to recognise his contribution to the welfare of Indigenous Australians and the cause of reconciliation and to say that Australia is a poorer place for his passing.

Thank you for the combination of these groups. It makes eminent sense and it is something that we were actually suggesting a little while ago. I am glad that we are able to deal with it in this manner. I presume there is no opening statement in relation to these agencies?

CHAIR—Not that I am aware of.

Senator O'BRIEN—In February this committee was told that the total cost of the ATSIC review was running at \$759,609 with \$245,523 still to be billed by DIMIA. Has DIMIA sent the invoice yet?

Mr Gibbons—The latest figure that I have, the final figure, which has been adjusted to include an invoice from Defence, as I understand it, is \$783,361.95.

Senator O'BRIEN—How much remains to be billed?

Mr Gibbons—I think that is the complete cost. There is nothing further, as I understand it.

Senator O'BRIEN—So that is the final cost for the review?

Mr Gibbons—That was the cost in 2003-04.

Senator O'BRIEN—But what is the total cost of the ATSC review?

Mr Gibbons—The overall total is \$1,394,518.70.

Senator O'BRIEN—Is a full breakdown of the updated figure available?

Mr Gibbons—Yes, we can provide that.

Senator O'BRIEN—Can you tell us now? Is it a long list, a short list or is there a document you can table?

Mr Gibbons—If you will bear with me I will read through the list. I have yearly totals for various components.

Senator O'BRIEN—That is fine.

Mr Gibbons—I will read the 2002-03 column first then the 2003-04. Advertising was \$26,475.51; office requisites administration, \$24,807.75; freight and cartage \$200,707.84; computer services, \$3,039.05; communications, \$3,686.69.

CHAIR—Mr Gibbons, I think it might be easier to hand up a copy if you have one rather than trying to do this with Senator O'Brien taking notes and Hansard trying to keep up as well. Do you have a copy or is it in a form in which you can provide it to the committee?

Senator O'BRIEN—It certainly would be easier, if it is available.

CHAIR—If you need to amend that sheet, Mr Gibbons, there is no problem with that. Just give the committee what you can.

Mr Gibbons—I can table this document, if you are happy with that.

Senator O'BRIEN—That would be good. We could have it shortly?

Mr Gibbons—Yes.

CHAIR—By all means amend it if you need to.

Mr Gibbons—It has just got some handwritten amendments at the bottom, but I will table it.

CHAIR—Thank you, that would be helpful. One of our secretariat staff will take it and copy it for the senators.

Senator O'BRIEN—In February we discussed the differential payments to the three members of the review panel—Mr Hannaford, Ms Huggins and Mr Collins—and some information was provided in answer to L&C91, the question taken on notice in the previous round. I think, in interpreting the answer, that Mr Hannaford or his entity was paid \$2,000 a day for his work, which is \$500 a day more than Ms Huggins and Mr Collins. Can someone tell me why his daily rate was one-third higher than the rate paid to his two panel colleagues?

Mr Vaughan—That was the sum negotiated with Mr Hannaford, for which he was prepared to undertake the review.

Senator O'BRIEN—Who did that negotiation?

Mr Vaughan—I did that negotiation with him.

Senator O'BRIEN—Did that require approval of the minister?

Mr Vaughan—I informed the minister's office after the negotiations were concluded.

Senator O'BRIEN—Was it open to the minister to reject that rate and seek further negotiations?

Mr Vaughan—The minister's office simply noted the matter.

Senator O'BRIEN—But I am asking you if it was open to the minister to ask you to renegotiate.

Mr Vaughan—I suppose it would have been within the purview of the minister to say that that seems like a reasonable or an unreasonable figure, but no such view was proffered.

Senator O'BRIEN—So we can take it that the minister approved of that rate?

Mr Vaughan—I think the minister noted the rate. It was a consultancy with the department and it is not normal in such circumstances for ministers to negotiate the price of the product.

Senator O'BRIEN—The answer to the question does not mention Mr Hannaford but I have interpreted reference to ADR Solutions as a reference to Mr Hannaford's entity. Is that a correct interpretation?

Mr Vaughan—That is correct. That is the corporate entity through which he operates.

Senator O'BRIEN—So Mr Hannaford was engaged but an entity was paid?

Mr Vaughan—Mr Hannaford operates through a corporate entity. He has incorporated his company as ADR Solutions.

Senator O'BRIEN—To have him we—that is, the Commonwealth; the department—on behalf of ATSIIC engaged a corporate entity?

Mr Vaughan—ADR solutions—that is with whom the contract was.

Senator O'BRIEN—And the company provided Mr Hannaford, which was consistent with what the Commonwealth wanted?

Mr Vaughan—That is correct.

Senator O'BRIEN—The answer says that ADR Solutions was paid \$2,000 a day excluding GST. Does that mean there was GST paid as well?

Mr Vaughan—Yes.

Senator O'BRIEN—So what is the total figure, including GST?

Mr Vaughan—I actually have to take that on notice. It is the standard GST.

Senator O'BRIEN—It would be 10 per cent on the whole bill?

Mr Vaughan—Yes.

Senator O'BRIEN—Is there some reason that there was no reference in the panel's report to the fact that the entity contracted to participate was ADR Solutions?

Mr Vaughan—In entering into the contract with ADR Solutions, we were contracting for Mr Hannaford's services. Mr Hannaford was the one who did the report, not ADR

Solutions—ADR Solutions simply being a corporate abstract for the purposes of entering into a legal relationship.

Senator O'BRIEN—The contract was with ADR Solutions, not with Mr Hannaford. Is that what you are telling us?

Mr Vaughan—Yes, as a matter of law, it was.

Senator O'BRIEN—Do I correctly presume that the contractual relationship with ADR Solutions and not with Mr Hannaford was at Mr Hannaford's request?

Mr Vaughan—That is correct.

Senator O'BRIEN—Is it the normal procedure when the Commonwealth engages a person to conduct a review such as this that the legal relationship is with the corporate entity?

Mr Vaughan—Most independent consultants these days have incorporated themselves for tax and liability and other legal reasons. It is very unusual for someone not to.

Senator O'BRIEN—And usually when there are questions asked about the relationship in the parliament we are told that the relationship is with the corporate entity. Indeed, the corporate entity is the name on the report that comes forward. That is my recollection. Correct me if I am wrong.

Mr Vaughan—It would have been up to Mr Hannaford to sign the report in the name of ADR Solutions, but the contract specified him as the personnel required. He was the only person from ADR Solutions involved and he was selected as John Hannaford; he was not selected as ADR Solutions.

Senator O'BRIEN—So the arrangement was purely and simply for Mr Hannaford's services and for nobody else's from ADR Solutions?

Mr Vaughan—That is correct.

Senator O'BRIEN—So we are not talking about paying Mr Hannaford and someone else with the \$2,000 a day?

Mr Vaughan—No, not as far as I am aware.

Senator O'BRIEN—As at 17 February Mr Hannaford's company, ADR Solutions, had billed 137.5 days at a total cost of \$275,000, presumably plus GST; Ms Huggins had billed 77 days at a cost of \$115,000; and Mr Collins had billed 54 days at a cost of \$81,000. That means that, counting GST, Mr Hannaford received \$100,000 more for his work than did the other two members of the panel combined. I think that is quite extraordinary. His claim is so out of step with the others. Has it been audited?

Mr Vaughan—I think we need to exclude GST in both cases.

Senator O'BRIEN—Let us refine it down to \$77,000.

Mr Vaughan—The difference is accounted for by two factors: one is the difference between \$1,500 a day versus \$2,000 a day and the second is a product of the number of days. As you indicated, he spent 140-odd days compared to 80-odd and 50-odd days for the other two panel members.

Senator O'BRIEN—I have 137½ days.

Mr Vaughan—I am just rounding it for simplicity.

Senator O'BRIEN—Huggins and Collins billed a total of 131 days between them; ADR Solutions, Mr Hannaford, billed more than that for himself and at a higher rate.

Mr Vaughan—That is correct.

Senator O'BRIEN—How was that justified?

Mr Vaughan—He spent more days on the exercise than did the other two panel members.

Senator O'BRIEN—Are we satisfied that that occurred?

Mr Vaughan—Yes.

Senator O'BRIEN—Was this claim audited?

Mr Vaughan—The process involved each of the panel members submitting a monthly statement testifying to the time they had spent on the project. Most of the project involved interstate travel for them, so if necessary we would have been able to cross-check the asserted number of days with interstate travel. That would not necessarily account for any work they did at their home base. As I understand it, most of the billed days were for interstate work. So there would be an audit trail if we had reason to disbelieve the invoices that they submitted.

Senator O'BRIEN—There was no panel chair. The two people on the entity were equally engaged to perform the review, weren't they? There was no determination that the role of one of the reviewers was more important than the others in the appointment.

Mr Vaughan—How they actually related among one another was subject to some degree of ambiguity as far as I understand it. I think I have previously used the phrase that Mr Hannaford functioned as a convenor or primus inter pares, but that was a de facto situation rather than a formalised situation.

Senator O'BRIEN—Is that what the two other panel members told you or is that what Mr Hannaford told you?

Mr Vaughan—That is the impression I formed from dealing with them.

Senator O'BRIEN—But there was no audit. There was no checking off the claim against travel and other matters, given the great divergence between the Hannaford ADR claim and the claims of the other two.

Mr Vaughan—We were aware from the secretariat that Mr Hannaford, for example, was more actively engaged than the other two panel members. So it was not, therefore, surprising that his invoices totalled a greater number of days. As I said, if we had genuine doubts or misgivings about the veracity of the invoices he was submitting, it would have been open to us—it would still be open to us—to crosscheck the movement requisitions and the travel bookings. But we did not undertake such testing of any of the three members. We accepted their invoices, since they were consistent with our understanding of the meetings and travelling commitments they were undertaking in conjunction with the secretariat. Usually whenever they travelled they were accompanied by a member of the secretariat.

Senator O'BRIEN—Do you know whether the billing times of travel involved billing the whole period irrespective of the amount of time engaged on the work?

Mr Vaughan—It was a per diem rate, and I cannot actually recall how the contract dealt with partial days.

Senator O'BRIEN—Are you saying that you are not sure that there was a provision for him to charge less than a day if he did less than a day's work?

Mr Vaughan—There was a half-day, wasn't there?

Senator O'BRIEN—Yes. That is why I am trying to understand the answer.

Mr Vaughan—I would have to check what the contract said in respect of less than a full day—whether it provided for an hourly pro rata or a minimum of half a day. I would have to check how the contract was worded.

Senator O'BRIEN—What was the last calendar day for which Mr Hannaford's company sought payment?

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

Senator O'BRIEN—That is how it worked, isn't it—ADR would submit the bill?

Mr Vaughan—That is correct, yes.

Senator O'BRIEN—When was the response to question on notice LC92 prepared and when was it provided to the minister's office?

Mr Vaughan—It was cleared in the department on 1 March.

Senator O'BRIEN—And when was it provided to the minister's office?

Mr Vaughan—I cannot answer that off the top of my head.

Senator O'BRIEN—According to the material we have received from the committee—and there may be an update that I am not aware of—as at 3 May the committee had not received an answer to this question. Why is that?

CHAIR—Say that again, Senator O'Brien.

Senator O'BRIEN—According to a response that I have received, as at 3 May the committee had not received an answer to that question. I want to know why.

CHAIR—As I understood it, the committee had had two interim responses to which we were awaiting complete responses, but I did not think that this was one of them. The issue is that the answers were not received in time to be incorporated in the volume but they have since been distributed to senators in the normal way by email.

Senator O'BRIEN—When were they distributed?

CHAIR—Over some period of time. As they arrive in the secretariat they are distributed very promptly. I have hard copies in my hand. Do you want me to give you those?

Senator O'BRIEN—I would love a copy.

CHAIR—I do not know whether that one is here, but I will hand these over and see what else I can get. If you continue with questions, I will try to find No. 92. I am not sure it is there.

Senator O'BRIEN—I will come back to that. Has the expensive PinPlan material that is now in the possession of the Commonwealth been used for any purpose since the conclusion of the review?

Mr Vaughan—I understand that it is in the custody of ATSIIS.

Senator O'BRIEN—So it becomes DIMIA's property shortly? As I understand it, DIMIA becomes the lucky department that gets the cloud cut-outs, the markers and the heavy-duty bags.

Mr Vaughan—It sounds an attractive prospect.

Senator O'BRIEN—Yes, I thought you would be overjoyed at that. Has it been used at all?

Mr Gibbons—I do not believe that the methodology has been used, but the equipment was distributed.

Senator O'BRIEN—The equipment was distributed?

Mr Gibbons—The equipment that is used in the methodology—the standard whiteboards, pinboards et cetera.

Senator O'BRIEN—Have the cloud cut-outs and heavy-duty bags been useful for ATSIIS?

Mr Gibbons—I have no idea.

Senator O'BRIEN—I understand that subsequent to the completion of the ATSIIS review Mr Hannaford was fortunate enough to gain another government appointment, as Australian Crime Commission examiner. Was the department required to be a referee for the job he did on the ATSIIS review?

Mr Vaughan—Not to my knowledge.

Senator O'BRIEN—Can you check that and let us know?

Mr Vaughan—Certainly.

Senator O'BRIEN—And I would be appreciative if you could let us know if the minister was required to be a referee.

Mr Vaughan—We would not necessarily know that.

CHAIR—That is the question which was asked by Senator Crossin, which was distributed on 14 May.

Senator O'BRIEN—Thank you for that. Mr Vaughan, the answer says that a search of the ASIC national names register of companies was made for the companies mentioned in Mr Hannaford's letter. It was undertaken by OATSIA. What was the outcome of that search?

Mr Vaughan—The search verified that the companies concerned existed.

Senator O'BRIEN—Was there a search done of Mr Hannaford's directorships—in other words, did you search for his name rather than the company names or was that deemed not relevant?

Mr Vaughan—I will have to take that on notice. I am not sure that you can search the ASIC records by individual.

Senator O'BRIEN—I think you can.

Mr Vaughan—Can you? For an individual as opposed to a corporate entity?

Senator O'BRIEN—I think you can, certainly for directorships and office holders. I am not sure that you can do it for shareholding, but my recollection is that I have seen searches of individuals' names.

Mr Vaughan—I will take that on notice.

Senator O'BRIEN—How did the government consult the ATSIC review panel members following the conclusion of the review? For example, on how many occasions did the Prime Minister or Minister Vanstone meet with the panel to discuss its findings and the government's response?

Mr Vaughan—I am not aware of the extent of subsequent formal consultations between the government and the review panel after the panel's report was submitted, because in a sense the panel's report was the end of the task for the review panel members. There was obviously some subsequent administrative contact with members of the panel about housekeeping matters, but I am not aware that there was further formalised consultation with the panel members subsequent to the report.

Senator O'BRIEN—On the *Insight* program on 27 April, a panel member, Ms Huggins, was asked whether she expected the government's ATSIC announcement. In reply she said:

Well for me personally it was completely a bolt out of the blue. ... I was very much shocked and embarrassed and disappointed that as an Indigenous member, the only Indigenous member, of this review team and a woman, that the rightful opportunity to tell us about the review was not given by the government.

She then said she found out about the government's response to the review from a journalist. I take it from your answer that you are not aware of any consultation with panel member Ms Huggins before or after the government's announcement of its effective rejection of the review findings.

Mr Vaughan—I am not, Senator, which is not to say there might not have been communication between the minister or the minister's office and the panel members, but I am not aware of such communication.

Mr Farmer—Senator, could I add a footnote. You referred to the government's rejection of the review's findings. I am not aware that the government has spoken in those terms.

Senator O'BRIEN—I think I used the word 'effective'. I do not think they said, 'We reject the findings,' but effectively they have with their announcement.

Mr Farmer—I think there are a number of elements of the arrangements that the government has foreshadowed that actually accord with the review's findings—a number of elements; I am not saying all, of course.

Senator O'BRIEN—No doubt we will have an opportunity to explore that when we understand fully what is being proposed. What communication has been made to ATSI or the department from Indigenous Australians or Indigenous organisations over the past month with regard to the government's announcement? In particular, what sorts of responses which

cannot be categorised as very positive reactions to the decision have been made to both OATSIA and ATSSIS?

Ms Hawgood—In relation to the first part of your question, if I have understood it—what communication has there been with Indigenous organisations in the last month?—Senator Vanstone has written to Indigenous organisations during early May. She has also written at least once to regional council chairs.

Senator O'BRIEN—Thank you for that. My question was about the communications that have been received rather than initiated. I am just wondering whether there have been lines of communication from Indigenous Australians and Indigenous organisations with regard to the government's decision. Have you received correspondence? Have people been ringing up or sending emails?

Mr Gibbons—The correspondence or the communication that I am aware of with ATSSIS has been from organisations that are in receipt of funding, querying whether the announcement was going to disturb the funding arrangements we have with them. Our response has been to assure them that as far as ATSSIS was operating we were intending to ensure that there was no disruption to the normal funding arrangements.

Senator O'BRIEN—That means until 30 June, doesn't it?

Mr Gibbons—No. The funding arrangements are till that date but we are in the process of organising new funding round offers next month.

Senator O'BRIEN—ATSSIS is?

Mr Gibbons—Yes.

Senator O'BRIEN—I thought the government said ATSSIS was to be abolished.

Mr Gibbons—Yes, but before ATSSIS is abolished the funding offers for next financial year will be made and processed so there is no disruption to services which continue on 1 July. At this time of the year we normally do this sort of thing. But I am just making the point that the communication with us has mainly been from people anxious to learn whether or not services were going to be affected in any way.

Senator O'BRIEN—So you are not aware of any expressions of significant concern about the government's announcement.

Mr Gibbons—In correspondence that I have seen, I have not seen that, but I will check. I do not read everything that comes into the organisation, but in correspondence that has come to me I have not seen that.

Senator O'BRIEN—How many communications have there been that have expressed concern about the government's announcement? What is the process for drawing those matters to the attention of the minister or the government? Is there one?

Mr Gibbons—As I said, Senator, I am not aware of communications to me expressing major concern with the announcement. They have been more of an operational nature.

Senator O'BRIEN—You are not aware of a process to draw them to your attention or to the government's attention? Is that what you are saying?

Mr Gibbons—If a piece of correspondence arrived in my office and I thought it was needing the minister's attention, I would draw it to her attention.

Senator O'BRIEN—They do not open the mail in your office, do they? What is the process for dealing with those matters? Are they diverted to somebody else as a matter of course? Would you see them if they were addressed to the department?

Mr Gibbons—If they were addressed to me, I would see them. If they were addressed to AT SIS generally, I would not. They would go into the organisation for processing.

Senator O'BRIEN—Why was it that Mr Hardgrave issued the media statement as Acting Minister for Immigration and Multicultural and Indigenous Affairs saying:

... the Government has settled its intended allocation of AT SIC - AT SIS programme ... to mainstream agencies.

Was that because the minister was unavailable, on leave or out of the country?

Mr Farmer—What was the date?

Senator O'BRIEN—It was 30 April.

Mr Farmer—The minister, Senator Vanstone, was overseas.

Senator O'BRIEN—Mr Hardgrave listed a range of programs and their recipient departments in his statement. However, the budget papers say that all assets and appropriations of AT SIS and AT SIC will be transferred to DIMIA pending a decision of the Prime Minister. Why don't the budget papers reflect the government's intention to transfer many Indigenous programs, including those listed in Mr Hardgrave's release, to departments other than DIMIA?

Mr Farmer—I think Mr Hardgrave's release says 'subject to final approval'.

Senator O'BRIEN—What does that mean?

Mr Farmer—Those approvals go through a number of processes and if there are changes to the administrative arrangements orders they are matters for final approval by the Prime Minister. In other words, there is a process whereby officials, after consultations between departments and sometimes between ministers, make recommendations and then the Prime Minister's department puts a recommendation or perhaps a series of recommendations to the Prime Minister for approval.

Senator O'BRIEN—I take your cue: it does say, 'subject to final approval', but it says: ... the Government has settled its intended allocation ...

Does that mean it has final approval by the Prime Minister? Or is the process not actually settled and there is a whole lot of processes to be conducted before we get to that point?

Mr Farmer—The formalities are that the Prime Minister makes a decision and the changes are then approved by the Governor-General and gazetted. That has not happened yet.

Senator O'BRIEN—Which have not happened? There are a number of processes you have just mentioned.

Mr Farmer—That is right.

Senator O'BRIEN—None of them have happened?

Mr Farmer—As I understand it, none have been approved by the Governor-General or gazetted.

Senator O'BRIEN—Have they been approved by the Prime Minister?

Ms Hawgood—The Prime Minister made a decision about preliminary allocations. The secretary of PM&C then advised secretaries of departments of that decision on preliminary allocations on 28 April and Minister Hardgrave made his announcement a couple of days after that. But the AAOs, as Mr Farmer said, are still being settled through discussions amongst a number of agencies—DIMIA, the APSC, the receiving agencies and DOFA—because there are matters around staffing and resources that still need to be settled.

Senator O'BRIEN—Can we come to that? The media release does not say that this is a preliminary settlement, but you are telling us that whatever Mr Hardgrave announced was some preliminary arrangement—is that how I should understand that?

Ms Hawgood—On the basis that the final administrative orders are settled through an executive council decision when instruments are signed by executive council.

Senator O'BRIEN—Does that mean that the Prime Minister has approved the distribution of programs in accordance with Mr Hardgrave's press release?

Ms Hawgood—Yes.

Senator O'BRIEN—I take it from your answer—correct me if I am wrong—it is promulgated in a document subsequently approved by the Governor-General.

Ms Hawgood—That is right.

Senator O'BRIEN—Has the document been prepared and submitted to the Prime Minister for signing?

Mr Farmer—I think that is the Prime Minister's department that does that.

Senator O'BRIEN—I am curious to know why the budget seems to place the overwhelming majority of the programs in DIMIA and not in the department announced by Mr Hardgrave. Are you saying that the budget could not have contemplated the announced decision? Was there some legal reason the budget could not reflect that?

Mr Farmer—Essentially, the formal approvals had not been given, and that is why the budget documents were done as they were, bearing in mind the timing of the government's announcement of this matter and the timing of the budget and the relatively short intermediate period.

Senator O'BRIEN—Does this interim period mean that many programs and probably staff will be moved twice in a short space of time, first to DIMIA and then to another agency?

Mr Farmer—The short answer is no. The very intensive work that is going on now is aiming to have the new arrangements in place by 1 July. In other words, at the moment, ATSI exists. As Mr Gibbons has said, it is working, it is processing grant approvals for next year and so on. Before 1 July decisions will be announced about the allocation of programs and staff and those decisions will be implemented from 1 July, so there will be a continuity of

programs, and it will only be one step. Many of the programs and funds will not come to DIMIA at all; they will go directly to other departments.

Senator O'BRIEN—What is this very intense work that you just mentioned?

Mr Farmer—It has a number of phases and I will ask Ms Hawgood to give you the details. The essence of it is that decisions have to be made about which programs will go to which departments. You then have a process for allocating those programs and the staff who administer them, together with the program funding to the requisite departments.

Senator O'BRIEN—That is not impeded by the fact that the funding is appropriated to DIMIA in the budget?

Mr Farmer—No, it is not, because the funding is available from 1 July and part of the arrangements will be that that funding will be allocated to other departments. Of course, that will form part of the announcements in due course.

Senator O'BRIEN—Irrespective of what is in the appropriation bills?

Mr Farmer—I do not know whether that is an accurate characterisation.

Senator O'BRIEN—I am inviting you to fill me in on how that will work.

CHAIR—We have Mr Watson to help us with that.

Mr Watson—There is provision under section 32 of the FMA Act for the appropriations to be distributed to the other agencies once there is a formal decision taken by the Prime Minister in the administrative arrangements orders. Those changed appropriations are then reflected at the additional estimates.

Senator O'BRIEN—So there is no impediment to the government implementing whatever it wishes, subject to the promulgation of that order, in terms of the distribution of the programs?

Mr Watson—I am not sure of the intention of your question, Senator. There is provision under the act for the government to transfer the appropriations. It does not give them the go-ahead to increase or decrease the appropriations. It is still the total appropriations that were provided in relation to this suite of programs. It is just that the actual distribution is then notified within additional estimates so that it is appropriately reflected.

Senator O'BRIEN—Under the new mainstreaming arrangements, which department or agency will have responsibility for the CDEP program?

Mr Watson—The Department of Employment and Workplace Relations.

Senator O'BRIEN—Do we know when that responsibility will be vested with Employment and Workplace Relations?

Mr Watson—That comes back to the timing of the decision taken by the Prime Minister and the Governor-General. Our expectation is that that would take place on or about 1 July.

Senator O'BRIEN—Which agency or department will have responsibility for the Business Development Program?

Mr Farmer—I would like to consult my colleagues, because I am not sure whether the final decisions have been taken on all of these detailed—

Senator O'BRIEN—I am happy for you to tell me that you do not know.

Mr Farmer—I am saying that I would like to consult my colleagues. I do not believe that estimates is the place for officials to make announcements on matters not already in the public domain. That is something I would just like to consult on. I will certainly try to be helpful, but I just do not want to do anything that is inappropriate in either direction.

CHAIR—Thank you, Mr Farmer.

Senator O'BRIEN—Do we need the minister here?

Mr Farmer—What I would like to do is consult briefly on this, if that is possible.

CHAIR—Certainly, Mr Farmer.

Mr Farmer—Madam Chair, thank you for the committee's indulgence.

CHAIR—That is okay, Mr Farmer. I understand the minister is on her way back as well. If you wish to wait until that time, I understand.

Mr Farmer—No. Announcements have not been made on those matters. Those are not really matters which officials should utter on, certainly not with this portfolio, because it is not our responsibility to advise the Prime Minister on those matters. We should certainly not announce them. Nor is it Senator Vanstone's area of responsibility. I am not trying to be unhelpful.

Senator O'BRIEN—The moneys for these programs are in the PBS and, if they are not going to this agency, we are entitled to know where they are going. If it is the case that that has not been decided, equally we should be told that that is the case. If you cannot tell me that, presumably the minister can.

Mr Farmer—The formal position, as Mr Watson said, is that the moneys have been included in this portfolio's budget statements. The government's intention is that arrangements will be made for the transfer of programs, funding and staff from 1 July, and announcements will be made as to those decisions. But the announcements have not been made yet. The announcements will be made between now and 30 June.

Senator O'BRIEN—Minister, I am asking which department or agency will have responsibility for the business development and assistance program.

Senator Vanstone—Apparently, the answers that have been given are correct.

Senator O'BRIEN—No announcement has been made, but has a decision been made?

Senator Vanstone—I would not regard that matter as being entirely settled at all.

Senator O'BRIEN—So it is undecided as to where that actually will go.

Senator Vanstone—It is obviously a work in progress. It is closer to finalisation than not. One change, at least, was made to the plan yesterday. Another might be made today and more might be made in ensuing days.

Senator O'BRIEN—I was making the point, no doubt as you were making your way here, that the funding for these programs appears to be in this department. I am asking, given other answers, where it is likely to end up, given that we are asking this department about its

intentions and about the expenditure of funds. Apparently these funds will not be with this department, so I think we are entitled to know—

Senator Vanstone—I do not dispute that. I am just saying that we are giving serious and careful consideration to it and, as soon as it is settled, we will make it public.

Senator O'BRIEN—Which department or agency will have responsibility for the home ownership program?

Senator Vanstone—Haven't we just done that in the sense of—

Senator O'BRIEN—I did refer to the Business Development Program.

Senator Vanstone—Sorry. Obviously, if we are working on the proper allocation and the best and most efficient allocation of programs to whichever departments—and that was the answer to the first matter you asked about—that is true in relation to all of the others as well. In other words, it is not completely settled and I am not going to go into it bit by bit until it is.

Senator O'BRIEN—I am told that CDEP is going to Employment and Workplace Relations. Is that not settled?

Senator Vanstone—I think that is an obvious choice, isn't it?

Senator O'BRIEN—Yes, it may be obvious to you and me and it may be obvious to the Prime Minister, but if that is not decided—

Senator Vanstone—I did not say that it was not decided. I said that I am not going to go into it until the whole matter is settled.

Senator O'BRIEN—I think we are entitled to know if matters have been decided. As I said, you have a whole swag of funds in this portfolio budget statement and we what to ask questions about them. Effectively, we are being told that an order is going to be made, probably on 1 July or thereabouts given other events that may or may not make that possible, and that funds are going to be transferred to somewhere else—if I understand what you are saying now.

Senator Vanstone—That is right. What you are being told is that as soon as the matter is settled, which is what the secretary indicated—that is, when the whole decision has been made—we will obviously make that public.

Senator O'BRIEN—What was the purpose then of Mr Hardgrave's media statement of 30 April, while you were overseas, Minister, when apparently he was the acting minister, which talked about certain departments receiving certain programs? Is that not something we can rely on?

Senator Vanstone—The press release you are referring to gives a general outline of where you might expect things to go. It does say 'subject to final approval' in the second paragraph.

Senator O'BRIEN—It does. It says:

Subject to final approval, the Government has settled its intended allocation of ATSIC ...

Senator Vanstone—Perhaps if I had been here I might have pointed out to Mr Hardgrave, if I had wanted to be a pedant, that you cannot really say 'subject to final approval' and

‘settled’ in the same sentence. Because he started with ‘subject to final approval’, he is making clear the point that I am making to you now.

Senator O’BRIEN—Let us explore this, because you are right: you can use all sorts of interpretations of language. Two paragraphs down, he does say:

The Community Development and Employment Program and the Business Development Program will be transferred from ATSYS to the Employment and Workplace Relations portfolio.

I would have taken that to mean that that was one of the areas that was settled and that ‘subject to final approval’ was simply a procedural matter. It is very definite language. He does use that language throughout the release. He does not say ‘not likely to’ or ‘at the moment we are thinking’; it is a very definite statement.

Senator Vanstone—I feel like I am watching grass grow, Senator. This release was put out to give people an indication of what would happen. There are some things that are obvious and some things there might be more debate about. I think Mr Hardgrave’s release is very helpful to the community generally. What I have said to you is that any more than that the government will say when it has settled the whole package.

Senator O’BRIEN—Can you tell us when that will be?

Senator Vanstone—Probably not until it is, but I think we are closer than perhaps the end of June. There may be a variation on a theme that somebody proposes which will require one or other matter to be looked at again. The essential point here is that all of this work is still going on under these programs and will continue to go on. What we are talking about now—which is why I said it was like watching the grass grow—is which departments will be administering the programs. We are not talking about the substance to the programs or changes to them or any suggestion of a decrease in their funding. What you and I are talking about now is which departments will be responsible for them, and that is all we are talking about.

Senator O’BRIEN—Does that mean we are also talking about which minister will be responsible for them?

Senator Vanstone—Yes.

Senator O’BRIEN—Does that mean that individual departments and ministers may bring their own emphasis to particular programs?

Senator Vanstone—The whole idea of putting programs that are not at the moment mainstreamed—and there were some that Labor did not mainstream when they did, as you well know, mainstream health into the health department—is that there will be specialists, for example in employment services, working on CDEP rather than people who are trying to be specialists in a whole range of programs. I would hope they would bring their specialty and their expertise to bear. But do not forget the additional point that the government has learnt from the COAG trials in working with the states and territories—both levels of government—on trying to reduce the silo effect within their own governments and between them: that all ministers and bureaucrats will be working much more closely together in a much more coordinated way, taking the COAG trials as a good example of what needs to be done. So this is not the old-fashioned notion of mainstreaming where you just parcel some money over to a

department and say, 'Here, that is your problem'. It is very much the government committed to a whole of government approach and working in a unified way in partnership with the states and communities.

Senator O'BRIEN—I ask again: is the emphasis a matter for the minister and the department or is that something which you or a subsequent minister in this portfolio will have a final say on?

Senator Vanstone—The final responsibility in any department is with the minister but, as I hope you never get to experience, cabinet government requires other ministers to have their say as well so as to run as a government, not just as individual cowboy outfits. So in the end a lot of the serious decisions of government are in fact made by cabinet.

Senator O'BRIEN—I guess it is going to depend on a full development of the model and a complete understanding of how it is going to work to get an appreciation of what you really have in store. There have been some press releases at this stage and we have just been dealing with one which does not appear to mean what it says, so forgive me if I am of the view that we need to get a lot more detail to completely understand how your model will work, other than a few throwaway lines.

Senator Vanstone—There has been a quite significant outline of how the government will work. I can draw to your attention a couple of articles written by Peter Shergold, the head of PM&C. I can refer to various press statements and quite lengthy interviews with the Prime Minister. You can see material that was put out in association with this change and subsequent to that. We have outlined, for example, the ministerial task force and the Indigenous coordinating centres. I am not sure what part of this you do not understand but I am happy to give you further briefings.

Senator O'BRIEN—I am quite happy to pursue these matters so that the public can understand a process such as this. Certainly the committees of the parliament are a good venue for testing these sorts of matters. What I want to establish, and I think we are coming to a point of understanding, is whether actual decisions have been made about the moneys which are in the portfolio budget statements we are examining and where they will be. One of the problems with this process is that I want to ask questions of the agencies that will have responsibility for the moneys from 1 July but what you are saying is, 'You can't because we can't tell you yet where those moneys will be.' That is the problem that I have with your approach. It may be that is simply an unfortunate coincidence, but that is a practical problem with the examination of the portfolio budget statements.

Senator Vanstone—There are transitional difficulties in the sense that I think it is a very unhappy accident that the estimates committees happen to be sitting now rather than when those matters are settled. But, because these things have not yet been transferred, you can ask any questions you want in relation to the future, as we now know it for these programs, of the people who are here today.

Senator O'BRIEN—That is the problem. It will be as they now know it, not as the other agencies know it. I accept your caution and your officers' caution that this is still, in a sense, a work in progress.

Senator Vanstone—It is a frustrating situation for you. I understand that, although I do not know that you can go and sit on every—

Senator O'BRIEN—I know you do not have any sympathy for that.

Senator Vanstone—estimates committee to put questions. But you can put your questions here in relation to Indigenous affairs. You have a venue for pursuing questions. But as to the suggestion that you now, for example, cannot go and question one department because you are not sure if they are going to get a particular program, even if we did know that now they would not yet have the program and they would not yet have responsibility for it, so they would not be answering your questions now anyway. There we are—you see?

Senator O'BRIEN—I do not know if they would. That is a presumption you make about the questions we would ask and the way they would answer them, which I do not think either of us can do at the moment. That is the difficulty.

Senator Vanstone—At estimates, ministers and officials cannot answer questions on things they do not yet have responsibility for. That is the situation. The responsibility now lies here. You can put your questions here. When the responsibility shifts you can put your questions to another place. It is like watching grass grow.

Senator O'BRIEN—I fully understand that, Minister. I suppose you can try to fertilise the grass in whatever way you like, but we will just have to go through this process.

Senator Vanstone—Don't give up your day job.

Senator O'BRIEN—I do not intend to give up my day job; I am here doing it. In March I think I asked you, Minister, question on notice No. 2711 about ATSSIS and ATSSIC staff numbers. In the answer to that question you have told me that ATSSIS has 1,146 ongoing staff whereas ATSSIC has just 18. Are those numbers still accurate?

Mr Gibbons—They were accurate at the time. The figures have moved a bit. As at pay 24, which was 20 April, the number of staff in ATSSIS was 1,321. I do not have the figure for ATSSIC; my colleagues might.

Mr Gooda—It is in the vicinity of 50. My area has about 13 staff but we count the commissioners, PAs and research officers as ATSSIC staff as well.

Senator O'BRIEN—Can you take me through the number of ongoing ATSSIS staff by state and territory?

Mr Gibbons—I do not have those figures with me. Maybe Mr Watson has a breakdown.

Mr Watson—My figures are as at a different point in time. Broadly, the national network offices have around 650 staff and the state offices have around 86, giving a total of 736. The national office total is 471.

Senator O'BRIEN—So you cannot give me a state by state breakdown?

Mr Watson—No, I do not have a state by state breakdown.

Senator O'BRIEN—What proportion of the staff are Indigenous?

Mr Watson—About 44 per cent.

Senator O'BRIEN—Of those general numbers you gave me, would the number in the ACT all be in the national office?

Mr Watson—We have two main out postings of national office staff: one in Adelaide and one in Melbourne. There are some smaller numbers of out posted national office staff in Brisbane and one or two other centres.

Senator O'BRIEN—Is it possible to get a breakdown of staff by state and territory, rather than by the way you have broken it down?

Mr Watson—Yes.

Senator O'BRIEN—And the number of Indigenous staff in each of the regions?

Mr Gibbons—Yes.

Senator O'BRIEN—Is it possible to get it by regional office area?

Mr Gibbons—Yes.

Senator O'BRIEN—That would be good.

Mr Gibbons—I am just reminded, though, that we count staff who declare their status as Indigenous. It might understate the situation, but that is the figure we will give you.

Senator O'BRIEN—Can you give me the same information for the ATSIC staff?

Mr Gooda—I will take that on notice.

Mr Gibbons—Are you asking for information about ongoing staff or all staff, Senator?

Senator O'BRIEN—Ongoing. Mr Gibbons, the document you tabled earlier is already in the answer to question No. 99 taken on notice so it is on the record.

Mr Gibbons—The only addition to the information that was provided in that answer is in the handwritten figure at the bottom, of \$239.

Senator O'BRIEN—Sundry items?

Mr Gibbons—Yes.

Senator O'BRIEN—What does that mean?

Mr Gibbons—That had to do with an adjustment for GST. I have given you the final total in that document.

Senator O'BRIEN—So that is all done, all finished? There is nothing more either in or out?

Mr Gibbons—Yes, as we understand it, that is the final figure.

Senator O'BRIEN—That has come from the ATSIC appropriation in 2002-03 and the ATSSIS appropriation in 2003-04?

Mr Gibbons—No, I am reminded that they are both from the ATSIC appropriation.

Senator O'BRIEN—They are both from the ATSIC appropriation?

Mr Gibbons—Yes.

Senator O'BRIEN—Were these approved by the board or as a result of a delegation?

Mr Gibbons—As I recall, at the time the ATSIC review was set up there was an amount of money put aside for the ATSIC review and the expenses were authorised out of that money.

Senator O'BRIEN—How did that process work? Was there a budget put forward to the board and they approved a budget?

Mr Gibbons—It was appropriated to ATSIC for the ATSIC review within the ATSIC budget. It was not a question for the board; it was a question for the administration to pay the invoices as they came in.

Senator O'BRIEN—What was that total appropriation at the beginning?

Mr Gibbons—We might come back to you a bit later in the day with that figure, but we can calculate that for you.

Senator O'BRIEN—The overall total according to your handwritten note is \$1,394,518.70—that is the accurate figure?

Mr Gibbons—That is right.

Senator O'BRIEN—On 15 April the minister issued a media statement announcing the government's plan to abolish ATSIC and mainstream Indigenous programs. That statement said:

To ensure improved outcomes and better coordination a Ministerial Taskforce will be established ...

Has that task force been established?

Senator Vanstone—No, but it is very close.

Senator O'BRIEN—Could you tell us why there is a delay in establishing it?

Senator Vanstone—It is close enough for us to have set a date in June for the first meeting.

Senator O'BRIEN—Is there some reason it has taken two months to get a first meeting? There seem to have been a lot of things going on; that is why I am asking whether the task force has been relevant to running the process to date.

Senator Vanstone—No. The task force will be there for the future conduct of Indigenous affairs policy.

Senator O'BRIEN—Is this task force to be a cabinet committee?

Senator Vanstone—No.

Senator O'BRIEN—I do not want to put words in your mouth. Could you remind me of its purpose.

Senator Vanstone—As I have indicated to you before, we have learnt a lot from the COAG trials. I think your state and territory colleagues will tell you they have learnt a lot, as well. One of the key things is to coordinate Commonwealth inputs so that, in any one area, not only do communities not have to deal with so many different people from different departments—and that they are all from the Commonwealth—but also, equally importantly, we maximise the value for the dollars that we spend. An example of that might be that there is little point in adding more seats in a school if the kids that go to school cannot get sufficient housing and have not got time to do their homework. So there is an interrelationship regarding

the money you spend in an area, and we want to better coordinate that. That will be the task of the task force.

Senator O'BRIEN—So I take it it is known which ministers will form the task force?

Senator Vanstone—That is pretty close to being settled. That is what I said to you a minute ago; it is pretty close to being settled, pretty close to being announced.

Senator O'BRIEN—A date has been set for early June?

Senator Vanstone—Yes.

Senator O'BRIEN—I take it that ministers know they are under consideration, although they have not yet been appointed.

Senator Vanstone—They would know, but no announcements have been made.

Senator O'BRIEN—You say 'they will know'; do they know now?

Senator Vanstone—Yes.

Senator O'BRIEN—But you are not prepared to tell us now who they are?

Senator Vanstone—I think the Prime Minister might make that announcement.

Senator O'BRIEN—Is there a date set for that announcement?

Senator Vanstone—Not that I am aware of.

Senator O'BRIEN—Is there some reason the government is being coy about this?

Senator Vanstone—It is not being coy. It is just methodically going about its work and, when there is an appropriate time for an announcement, it will make it. There is nothing coy about it.

Senator O'BRIEN—I guess that is a matter for judgment. I accept that. It seems that if the ministers know, that implies that the decisions are as good as made.

Senator Vanstone—It is up to the Prime Minister when he wants to make an announcement.

Senator O'BRIEN—Will the role of the secretaries group on Indigenous issues change under the government's proposed new arrangements?

Senator Vanstone—It is going to be a sort of support group to the ministerial task force, so that is an additional task.

Ms Hawgood—Its membership has also been increased. It is now chaired by the secretary of Prime Minister and Cabinet and has two additional members, the head of the Attorney-General's Department and the head of the Department of Communications, Information Technology and the Arts. In relation to its role of supporting the ministerial task force, it will also be responsible for preparing a public annual report on the outcomes of Indigenous specific programs.

Senator O'BRIEN—Does that mean it will report to the Prime Minister?

Ms Hawgood—It supports the ministerial task force.

Senator O'BRIEN—You talked about preparing an annual report. Where does that report go?

Ms Hawgood—It goes to the ministerial task force.

Senator O'BRIEN—What will happen to that annual report, Minister, after it has gone to the task force?

Senator Vanstone—The ministers will consider it. It is going to be a public document so I suppose everybody else will have a view as well. And you will be able to ask questions at the next estimates committee—God willing that the election puts you in the position of asking questions.

Senator O'BRIEN—Or maybe you will.

Senator Vanstone—Yes—you never know.

Senator O'BRIEN—According to page 142 of the PBS, the Office of Indigenous Policy Coordination will 'take over the policy functions of ATSIIS and the current responsibilities of the Office of Aboriginal and Torres Strait Islander Affairs and the Indigenous Communities Coordination Taskforce'. How many staff work in the OATSIA, the ICCT and the policy section of ATSIIS now?

Mr Gibbons—We do not have the policy figures, but in policy and programs I think the number is 38.

Senator O'BRIEN—In ATSIIS?

Mr Gibbons—It is 32 in OATSIA and six, I think, in the ICCT.

Ms Hawgood—Eight at the moment.

Mr Gibbons—Eight. So 40 all up.

Senator O'BRIEN—I am sorry, was that 32 in OATSIA and eight in ICCT?

Mr Gibbons—Yes.

Senator O'BRIEN—And 38 in ATSIIS.

Mr Gibbons—No. We are saying that between the two—OATSIA and ICCT—there are 40 all up, but I do not have a breakdown on policy. In terms of the staff in ATSIIS, we have a day or two to go before we finalise the mapping of staff to functions.

Senator O'BRIEN—Just so that I am clear on your answer, you have got 32 in OATSIA, eight in the ICCT—that is 40 all-up. What is the story with ATSIIS—as the PBS says, 'the policy functions of ATSIIS'?

Mr Gibbons—We are in the process of identifying which staff and which resources will go to which agency and we have not completed that. We are in the final stages of that, which involve negotiation with the Public Service Commission and the receiving agencies before we have a firm figure. I do not have in my mind the number of policy staff. I have got a broad figure for staff who map provisionally to ATSIIS but I do not have in my mind the policy component. I can take that on notice.

Senator O'BRIEN—So there is some component to be added to the 40?

Mr Gibbons—Yes. But your question related specifically to policy staff—

Senator O'BRIEN—Policy functions of ATISIS.

Mr Gibbons—I do not have that in my mind. I will have to take that on notice.

Senator O'BRIEN—I guess my question is a new revisiting of the PBS and that is why I am using the terminology. What does the 'policy functions of ATISIS' mean as referred to in the PBS?

Mr Gibbons—When you look at the functions of ATISIS, on the advice available to us at the moment—the indicative advice that we have referred to earlier—there are staff involved currently in Indigenous rights, in international issues, in repatriation of human remains issues and in a number of small programs: community participation agreements, communities in crisis and some areas of Indigenous capacity development. There is regional council support policy work that is involved in supporting regional council planning. On top of that there is corporate and IT financial support. As to the break-up between each of those, I do not have the figures with me.

Senator O'BRIEN—Taking it from your answer—and correct me if I am wrong—there would be considerably more staff involved in those functions as described in the PBS than 40?

Mr Gibbons—The 40—

Senator O'BRIEN—Combined. I am not saying in ATISIS; I am saying combined.

Mr Gibbons—Yes.

Senator O'BRIEN—Is there a range of numbers between X and Y that would fit the ATISIS policy functions?

Mr Gibbons—I can say that we are in the middle of a process and we have identified reasonably clearly the staff that need to transfer to other agencies with the functions that are going to those agencies. Out of the 1,300-odd staff I mentioned earlier there are just over 800 that transfer in that first tranche of mapping. We are now working on the ATISIS component. We have not finished our work on that. You will appreciate that in some situations staff work on more than one activity. Mapping the amount of time they spend on one activity as opposed to another and then getting agreement with the agencies involved takes some time and we have not finalised that yet.

Senator O'BRIEN—I take it that you are assembling information on the particular policy skills that are available in ATISIS at the moment?

Mr Gibbons—We are mapping what people do now. The basic rule is that people follow functions so where an individual is working exclusively on a program that moves to another agency it is pretty simple. Once that has been identified they go on the list that maps to the agency. But in many areas, particularly in the network, staff might work on monitoring grants across CDEPs, arts funding, broadcasting and maybe housing or municipal services. It is a question of logging the amount of effort that is put into each of those programs by those staff over a period, coming to a judgment on what percentage should be allocated to each department, aggregating the figures and then negotiating with the receiving agencies the

transfer of a sufficient number of identified staff to continue the function. That is necessarily a time consuming process because it starts with the individuals identifying what they do and that being checked all the way up the line. The methodology has to be reviewed and signed off by the Public Service Commission. The other agencies are exposed to it and they have to agree that it is representative of the effort that is going into program administration in the area that they are receiving et cetera. We are coming close to the end of it but we are not at the end of that process.

Senator O'BRIEN—Is there a time you can point to when you expect that process will be completed?

Mr Gibbons—Yes, I think it will be complete or almost complete at the end of next week. We have reached a stage where this week we have been having trilateral discussions that have involved ourselves, the receiving agency and the Public Service Commission exposing the data and the names of the staff that have been provisionally mapped. Those trilateral discussions will continue through until next Tuesday. If there are no serious issues with the data—that is, if we can get agreement—we will proceed to the final stage and hopefully by the end of next week, subject to the Prime Minister's settling the administrative arrangements, we will be able to put in place the arrangements to effect the transfer. While all of this is going on we are trying to maintain regular business, particularly to ensure that services are not disrupted at the changeover period.

Senator O'BRIEN—I would like to know—and you will probably need to take this on notice, Mr Gibbons—what was expended on these policy functions by AT SIS in this financial year. Obviously that would take an element of prediction.

Mr Gibbons—We will take that on notice.

Senator O'BRIEN—Can I get an answer on that matter from OATSIA, Mr Vaughan? What was expended by the Office of Aboriginal and Torres Strait Islander Affairs in the areas affected by the budget measure indicated on page 142 of the PBS, entitled 'Indigenous Australians—better service delivery'?

Mr Vaughan—The office does not manage programs or service delivery to members of the public. We exist solely to support the minister, so everything we do, in one way or another, is effectively a policy function.

Senator O'BRIEN—So presumably the 32 staff can be identified?

Mr Vaughan—They are identifiable, yes.

Senator O'BRIEN—Can we get the staff costs, at least?

Mr Vaughan—Yes, certainly. It is basically the departmental expense component in the PBS but I will give you the figure.

Senator O'BRIEN—Are there any other identifiable cost components that will move to the Office of Indigenous Policy Coordination?

Mr Vaughan—There will only be departmental expenses. There is no administered item.

Senator O'BRIEN—What page of the PBS should we be looking at to find those expenses? If they are already there, I do not want to send you on a chase that has been answered in the PBS.

Mr Vaughan—If you want to go on to some other matters, I will give it to you when I find it.

Senator O'BRIEN—What about ICCT? Can we get some figures on how much was expended on these functions in relation to the staff that were transferred to the Office of Indigenous Policy Coordination?

Ms Hawgood—I need to clarify that currently, until the end of this year, those staff are actually on secondment from other agencies and their salaries are paid for by other agencies; therefore that is not currently reflected in the DIMIA PBS. At the end of the year, the Office of Indigenous Policy Coordination will need to take on that function. Certainly on notice I can get you some information on the current costs of staffing for the task force.

Senator O'BRIEN—Thanks for that. Should I take it from the answers so far that the number of staff that will make up the new Office of Indigenous Policy Coordination is not finalised?

Mr Gibbons—That is correct.

Senator O'BRIEN—Is it known where the staff will be based?

Mr Gibbons—The functions of the office involve the management coordination of Indigenous coordination centres in remote Australia. There will be approximately 48 staff associated with that activity. There is a Commonwealth-state relationship activity that will necessitate state based staff in the state capitals. There is native title. The Aboriginal Land Rights (Northern Territory) Act and the ABA account management will see some staff in the states as well. I think roughly 50 or 51 people will be associated with that. As far as the national office is concerned, I do not have firm figures yet.

Senator O'BRIEN—I am not sure that I completely took in that answer. It was a bit hard to hear. I am not trying to be critical.

Mr Gibbons—In summary, there will probably be about 100 staff in state or remote regional locations. The size of the national office is not yet clear, although in addition there will be a corporate services component that will integrate with DIMIA's corporate areas. Currently there are about 105 staff who are working in regional offices supporting regional councils. They will exist for the next year and are over and above the number that I gave you. There are a small number of people in the national office associated with regional council support as well, but we have not yet finalised the national office arrangements.

Senator O'BRIEN—You say that the positions of the 105 regional council staff will exist for the next year?

Mr Gibbons—They are not regional council staff; they are staff who work in ATSI supporting regional councils.

Senator O'BRIEN—Thanks for that clarification. Their positions will exist for the next year?

Mr Gibbons—The bill that has been introduced today proposes that regional councils cease to function from the end of next financial year—July 2005—but until that point in time we are continuing to provide the support that we give now to regional councils. There are some 105 staff currently in regional offices involved in that activity and some in the national office. They are being preserved for the next 12 months in those functions.

Senator O'BRIEN—Where is the money in the PBS to pay those staff and where will their employment sit, if I can put that way?

Mr Gibbons—They will be employed by DIMIA and the money for them is in the departmental appropriation.

Senator O'BRIEN—How much money is there for that?

Mr Gibbons—Off the top of my head, I do not know. We can get you some details on that.

Mr Vaughn—If I could interrupt, the figures you were after for the Office of Aboriginal and Torres Strait Islander Affairs and the Indigenous Communities Coordination Taskforce are on page 133 of the PBS. Contrary to what I said earlier, there is an administered item component of \$1½ million for legal costs in the case of the office and \$3 million for the flexible funding arrangements in the case of the task force.

Senator O'BRIEN—Which number should I be looking at?

Mr Vaughn—The number for this coming year is \$10.4 million. It is on the bottom right. The actual staff costs comprise the figure of \$5.807 million essentially.

Senator O'BRIEN—Why is there is such a large growth in Indigenous affairs litigation as part of that budget? It is sevenfold plus.

Mr Vaughn—It is the way that item is budgeted for. At the start of the year there is a provision—in the case of next year it is \$1½ million—and the actual amount required is sometimes more and sometimes less than that. The corresponding figure in last year's PBS was about \$1½ million, but the actual requirement looks like ending up at about \$210,000. It has got more to do with the way the budget provision is made than a projection about what the actual outcome will be. It fluctuates from year to year. We had a very limited amount of litigation this past year. In previous years it has been as high as \$2 million or more.

Senator O'BRIEN—The additional just under \$2.5 million for 'Output 3.1—Indigenous policy' is an estimated transfer of staffing costs from ATISIS, is it?

Mr Vaughn—These figures combine ATISIS and the DIMIA aspects of the Indigenous Communities Coordination Taskforce. They are combined on page 133.

Senator O'BRIEN—So the change from \$3.351 million to \$5.807 million is explained by the change that you have just described?

Mr Vaughn—I have been advised that, should that question arise, someone from our resource management area can explain it.

Mr Macek—Basically the movement that we have from \$3.3 million to \$5.8 million reflects a rebasing exercise that we undertook within DIMIA over the last 12 months. The \$2.2 million increase in outcome 3 reflects a rebasing of corporate activity and other indirect costs associated with the delivery of that outcome.

Senator O'BRIEN—You said \$2.2 million? Shouldn't it be \$2.45 million, or am I looking at the wrong number?

Mr Macek—It is \$2,282,000. If you look at table 2.1.3.2 on page 135—

Senator O'BRIEN—Okay. We were looking at the table on page 133. That is where I am looking at the numbers.

Mr Macek—The figure on page 133 is the aggregated amount. The table on page 135 will give you that disaggregated amount.

Senator O'BRIEN—You are admonishing Mr Vaughan for taking me to the wrong page, I think.

Mr Macek—No, I am not at all. We are just trying to provide a bit more of an explanation or breakdown of what makes up the \$5.8 million.

Senator O'BRIEN—Could you translate what rebased means, please?

Mr Macek—As part of the DIMIA review of business processes and costs over the previous six to 12 months, we reattributed some costs associated with our internal products, such as our corporate support and other indirect costs. Things like the financial strategy division and corporate services do not fit neatly within any particular outcome within the outcome structure. We need to apportion those costs across our various outcomes. With the reattribution of the costs we have looked at our activity based costing data and reattributed some of the costs associated with our indirect costs to more accurately reflect the cost of producing that outcome.

Senator O'BRIEN—Thank you for that. Mr Vaughan, let us go back to the original question, which is: how much of that money reflects the transfer of ATSI staff back to DIMIA?

Mr Vaughan—None of that money reflects the transfer of ATSI staff back to DIMIA. That money represents existing DIMIA staff involved in Indigenous matters.

Senator O'BRIEN—Where would I find the transfer of ATSI staff back into DIMIA's financial responsibility?

Mr Gibbons—At the moment the total departmental budget for ATSI is incorporated into the DIMIA departmental budget. When the details of the staff who are to transfer to other agencies is settled and agreed, the funds will be transferred with those staff from DIMIA to those agencies.

Senator O'BRIEN—The question I am asking is: where is it in the PBS?

Mr Watson—On page 154, in table 2.1.5, in the right-hand column, where it says 2004-05, it indicates the 'total revenue from government (appropriations)' is \$173,035,000. That is basically the appropriation that would have been provided to ATSI had it remained in place.

Senator O'BRIEN—Is the comparable figure from 2003-04 the same figure?

Mr Watson—The comparable figure is \$168,924,000, yes—although that is an estimated actual outcome rather than necessarily what the appropriation was for 2003-04.

Senator O'BRIEN—What was the appropriation for 2003-04?

Mr Watson—I do not have that with me but someone may.

Senator O'BRIEN—Someone may be able to draw our attention to last year's PBS at some stage.

Mr Watson—It was \$168,440,000.

Senator O'BRIEN—So the funds to employ all the staff from ATISIS have been transferred across.

Mr Watson—That is right.

Senator O'BRIEN—Has it been determined who will lead the Office of Indigenous Policy Coordination?

Mr Farmer—That will be a Public Service appointment. I am going through those processes now.

Senator O'BRIEN—Has an advertisement been lodged or is there something on the *Gazette* about the position?

Mr Farmer—That may not be necessary. It depends on decisions that are yet to be made about how the position will be filled. As a Public Service position, it could be filled on promotion or on transfer, by an appointment from inside the service or from outside.

Senator O'BRIEN—So there will not necessarily be any advertisement or selection process?

Mr Farmer—As for other Public Service appointments, that is right. There could be, but that is not necessary.

Senator O'BRIEN—Is there a short list?

Mr Farmer—I am involved in that at the moment, and I really do not have anything to say about the process.

Senator O'BRIEN—Is there a schedule available which will show the proposed location of Indigenous coordination centres?

Mr Gibbons—They are the locations of the regional and remote ATISIS offices now. I can give you a list of those. I will take that on notice for you.

Senator O'BRIEN—So they are the current regional and remote access offices?

Mr Gibbons—Yes, the ICCs will be established within the existing ATISIS accommodation, initially with the ex-ATISIS staff who are transferring to the agencies. They will be supplemented later by staff from other agencies, such as Education and Health, which currently do not work in those centres.

Senator O'BRIEN—Will they be located in urban and regional centres?

Mr Gibbons—The ICCs are for rural and remote areas. As I understand it, there will be coordination arrangements in urban centres, but the staff from ATISIS who transfer to the mainstream agencies will physically relocate to the offices of those agencies in the capital cities. There will be a coordinator in the OIPC state office to perform a role similar to that of the OIPC ICC manager in the rural and remote areas.

Senator O'BRIEN—Which department will have overall responsibility for the coordination centres?

Mr Gibbons—DIMIA, through OIPC.

Senator O'BRIEN—What can you tell me about the transition task force within ATSSIS which is to manage the process of transferring ATSSIC and ATSSIS programs to DIMIA and then the mainstream agencies?

Mr Gibbons—It is a group of senior officers led by Mr Yates. It includes Mr Watson, the corporate group manager, and his HR, finance and IT property managers, together with the network manager, Mr Kelly, and his assistant. They are looking at a number of tasks. The first is the completion of the mapping exercise. Running concurrently with that, we are preparing for the transfer of financial and program systems arrangements to the receiving agencies and looking at accommodation and the follow-on accommodation consequences. At the same time, some of them are involved in the oversighting of the arrangements to ensure a smooth transition in terms of the ongoing services.

Senator O'BRIEN—Do you head the task force, Mr Gibbons?

Mr Gibbons—Mr Yates does, but I am involved almost on a daily basis with all of these activities.

Senator O'BRIEN—Its membership is flexible.

Mr Gibbons—It is flexible depending on the particular issue that we are looking at.

Senator O'BRIEN—Does it report to you, Mr Gibbons?

Mr Gibbons—Yes.

Senator O'BRIEN—How often does it meet?

Mr Gibbons—Almost daily.

Senator O'BRIEN—When did it commence?

Mr Gibbons—From memory, it was the day of the announcement. I certainly announced the intention to establish it on that day, which was the 15th. I think we had our first meeting that day.

Senator O'BRIEN—On 16 April the CPSU issued a media release saying that it had received an assurance there would be no job losses as a result of the abolition of ATSSIS. I have not heard the minister or anyone else repeat the pledge, so let me ask now: will any ATSSIS ongoing employee lose employment with the Commonwealth as a result of the government's decision to abolish their employing agency?

Mr Gibbons—At this stage we have given an absolute assurance to people in the network of regional offices that ATSSIS holds that there is a job for them all if they wish to remain. It might be in a different agency but there is a job for everybody. That is in our regional and remote areas. In our state offices we have given the same undertaking to all of our non-SES staff. In our national office we have said that we are aiming to ensure that there are no involuntary separations. We cannot guarantee a placement in OIPC for everybody. The exercise is not about reducing staff numbers, but some staff will have to be relocated to other

agencies, and over time some of those jobs will have to move out of Canberra into regions. Particularly in the corporate areas there are likely to be excess staff who will need to be redeployed to other agencies. I have offered a number of voluntary redundancy opportunities to people who are interested in order to ease the problem and I have had a fairly good response to that.

Senator O'BRIEN—So when the CPSU says that it was assured at the meeting that there would be no job losses, that is not quite right.

Mr Gibbons—We were talking about there being no forced redundancies.

Senator O'BRIEN—I am hearing your language and I am reading their press release which uses the terminology, 'There will be no job losses.' So that is not right?

Mr Gibbons—It is true in one sense: if we have offered a voluntary redundancy to an individual who accepts it then the job that is occupied by that individual is not lost. The job will be relocated probably to a regional centre and to another agency to employ somebody. The government has made it clear that the resources currently used for servicing Indigenous Australians are not to be reduced, but there is a need for redeployment.

Senator O'BRIEN—The union says it was told that all employees would be offered positions with the agencies that will be taking over ATSI work after it closed. Is that accurate?

Mr Gibbons—That is correct.

Senator O'BRIEN—What about all the SES staff in state offices?

Mr Gibbons—They are being mapped into DIMIA but it has been made clear that, like the heads of the ICCs, which are being advertised as new positions, the positions of state representatives of OIPC will be advertised as well.

Senator O'BRIEN—So it is not true that all employees will be offered positions with the agencies that will be taking over ATSI work? It uses the term 'employees', not 'positions'. This is not your press release; I am just testing this.

Mr Gibbons—At the end of the day we made it clear that some staff will have to relocate to other agencies. We are offering people retention of work but we cannot guarantee it in a particular location or a particular agency. To the extent that people want to leave—and leave now—that gives us more flexibility to accommodate the people who wish to remain. But neither I nor my colleagues in other agencies can rule out that at the end of the day there will not be a handful of cases that cannot be accommodated. We are approaching this with the intention of accommodating all of those people that want to remain.

Senator O'BRIEN—That want to remain?

Mr Gibbons—Yes.

Senator O'BRIEN—You said that in the national office you are aiming to ensure no 'involuntary displacement'—I think that was your terminology. So you envisage there will be a number of positions that will cease?

Mr Gibbons—There are functions that ATSI is currently performing that come to an end. Rather than declare those people excess and treat them in the normal way that excess staff are

treated, we are aiming to have them relocated into agencies that are involved in Indigenous servicing. We are currently working through the planning to give effect to that. We are not at the end of that process. We are approaching this in good faith with the intention of protecting the jobs.

Senator O'BRIEN—How many SES staff are there in state offices who are not the subject of any guarantee?

Mr Gibbons—There is one state manager in each of the mainland capitals.

Senator O'BRIEN—As for the employees we have been talking about, are we talking about ongoing employees in all cases?

Mr Gibbons—We are talking about ongoing employees.

Senator O'BRIEN—In answer to question on notice No. 2711, the minister advises that ATSiS has 165 staff on fixed task or fixed term contracts. Is that number still accurate?

Mr Gibbons—I think it would have changed. That figure moves about. They did include IT contractors and the like. I can get an update for you; I do not have it with me.

Senator O'BRIEN—I presume there are no guarantees for those staff?

Mr Gibbons—No. They are contractors for fixed purposes but there is almost certainly going to be a requirement for the receiving agencies, and indeed for DIMIA, to engage contractors in the future. The resource available to employ those people has been quarantined for use in Indigenous services, so given where the functions go, if there is a need for IT contractors or whatever it is, those agencies will be engaging fixed term contractors again.

Mr Watson—There are some non-ongoing staff whose contracts were only up until 30 June in any case. Their contracts would normally expire at that time. Those non-ongoing staff who have a contract which goes beyond 30 June will be translated to the receiving agencies, as is the case with the ongoing staff.

Senator O'BRIEN—Can you update us on the number who are affected?

Mr Watson—No. I do not have a current number at this stage.

Proceedings suspended from 1.00 p.m. to 2.04 p.m.

CHAIR—I reconvene the consideration of budget estimates for DIMIA. We are dealing with outcome 3, Sound and well-coordinated policies, programs and decision-making in relation to Indigenous affairs and reconciliation.

Mr Farmer—We undertook yesterday at the committee hearing to deliver some information today to the committee on organisations funded in this financial year under the community settlement services scheme which have not received funding for the next financial year. I have the details on a piece of paper for the information of the committee.

CHAIR—Thank you, Mr Farmer. We will continue with questions.

Senator BARTLETT—I believe the legislation dealing with the abolition of ATSiC was tabled in the House of Representatives this morning—is that right?

Senator Vanstone—Yes.

Senator BARTLETT—When this issue was announced by the Prime Minister and you, Minister, in the joint press conference, the words used by the Prime Minister according to the transcript were:

ATSIC itself will be abolished with immediate effect and the passage of the legislation. The regional councils will be abolished by 30 June 2005.

What is the distinction between the abolition of ATSIC and the abolition of the regional councils?

Mr Gibbons—I will attempt to give you some background to that. The Prime Minister also announced that he was going to take up at COAG the issue of consultation arrangements with Indigenous Australians at the regional level. I understand that for that reason regional councils will remain for another year to allow that process to be followed through.

Senator BARTLETT—I note that the original information provided to all senators at the start of May did not list the ATSIC Amendment Bill as a bill that was intended to be put forward for debate and passage by the Senate in this session. It is obviously on the public record that many changes are planned from 1 July, such as those we have been discussing this morning. I also note that the three parts of the bill are scheduled to commence from 1 July 2004. Is it now the desire to have the legislation dealt with by the Senate before the end of June?

Senator Vanstone—Yes.

Senator BARTLETT—Without pre-empting that debate, which is not the purpose of this committee, what will the impact be on the transfer arrangements we have been talking about—the proposals to terminate the commissioners et cetera—if the bill is not passed by the end of June? We can leave aside amendments and what may or may not be agreed to but with the pressure of business—

Senator Vanstone—Generally speaking, the consequences are that the discredited arrangements, in a sense, will stay in place. It is a discredited structure—that is the government's view. I also understand it to be the view of the opposition, and I am absolutely certain it is the view of a large number of people in the community, particularly in the Indigenous community. Most of the arrangements we want to make are not dependent on the bill. Most of the ATSI programs will be transferred to mainstream departments in any event. We can do that. We can establish the Indigenous coordination centres. The clients of ATSIC and ATSI will continue to be paid. Staff will continue to be paid. The regional councils will continue. What will actually happen if the Senate is unwilling to cooperate with the government in this respect, have the debate and get it out of the way is that the discredited structure will continue to exist. What we want to do—in terms of mainstreaming, in terms of having the Indigenous coordination centres and in terms of better coordinating our inputs in the ministerial task force and the secretaries group—will happen in any event.

Senator BARTLETT—Let us leave aside what is discredited and what is not. When you say the structure will be left, what specific things will be left?

Senator Vanstone—If the Senate does not pass the bill, what is there now will stay there.

Senator BARTLETT—But without staff?

Senator Vanstone—ATSIC and the board, essentially, are what would stay that otherwise would not.

Senator BARTLETT—So the existing shell of ATSIC—which might be a bit pejorative—would pretty much stay as it is in terms of the commissioners and their pay and desks, computers, phones and those sorts of things?

Senator Vanstone—Yes, I think that is a fair description of it. You would have the commissioners and they would continue to be paid.

Senator BARTLETT—I know you went through this this morning and put that caveat about the finalisation of decisions and what things might go where. I know there is a memo which may have already been referred to. I think it was sent out to all staff by Mr Gibbons last Friday, 21 May. It was headlined ‘Transfer of staff and functions, issues and proposed structures’. In that there was a statement that a range of functions or smaller programs would not be continuing. Are you able to outline which smaller programs will not be continuing?

Mr Gibbons—In that note I was referring to the fact that there are some functions that are currently performed in ATSI that will cease with the abolition of the board. The people who are performing those functions will no longer be required for that work, and we are making arrangements in due course to redeploy them in other agencies that are working on Indigenous matters. There are some small programs that are not translating or mapping into DIMIA that are specifically targeted at the moment, but over a period of time these are going to be cashed out to become a flexible funding pool and that has consequences for some staff who are associated with those activities at the moment.

Senator BARTLETT—Are you able to identify those programs?

Mr Gibbons—The community participation agreements program is one example. It is probably better if I read from the list. Other examples are programs associated with Indigenous rights and Torres Strait on the mainland community participation agreements and some of the planning and partnership development program. The funds are being pooled to allow more flexibility in meeting need, and that will have some impact on the staffing arrangements.

Senator BARTLETT—Without getting into the political debate about it, there have been statements about discredited structure and ATSIC having failed. When ATSIC staff or ATSI staff who have been working in their various roles hear the government saying that ATSIC has failed, the potential is there for them to perceive that that does not reflect terribly well on them. Have there been specific measures undertaken to address potential problems with staff morale or satisfaction in light of these changes?

Mr Gibbons—I think the key to addressing staff morale is to clarify where they are going and get them focused on the new activities as quickly as possible. Apart from the priority of maintaining existing programs and ensuring that there is no disruption over the transition phase, progressing that has been our major concern over the last few weeks. We have been trying to keep staff informed as we go through that process, which is often difficult because some of it is occurring in the context of negotiations with other agencies and there is a limit to how much I can put out in what is effectively a public environment. But we have attempted to

keep staff informed as we go along, and the core message in that information has been that we are doing our best to make sure that everyone who wants to remain has a job.

Senator BARTLETT—Has it been made clear that when it is said that ATSIC has failed it did not reflect any dissatisfaction with the staff?

Mr Gibbons—In many meetings with staff that I have had and that my senior managers have had we have been very careful to draw a distinction between their role as public servants administering programs in accordance with policies and rules determined by the board or the government or ATSIC.

Senator BARTLETT—The new Indigenous coordination centres for regional and remote areas are meant to be up and running by 1 July this year—is that right?

Mr Gibbons—They will come into existence on 1 July. They will be located in the existing ATSI regional offices. They will be staffed with the staff currently in ATSI that will transfer to the mainstream agencies. DIMIA, through the new agency, the OIPC, will be recruiting a coordinator for each of those locations. Those positions were advertised last weekend in the national media. Subject to the selection process being completed in time, there will be managers in place. If not, there will be arrangements made to have some temporary management in place. So it will be a few weeks beyond 1 July before they are fully functional. The critical issue over this transition period is to make sure that the services provided through the funding that we make available to Indigenous organisations and contractors are not interrupted.

Senator BARTLETT—Can you tell me how many existing regional offices there are?

Mr Gibbons—Twenty-two will remain in remote and regional Australia as ICCs. In addition to that 22 there are another seven in capital city environments—urban centres.

Senator BARTLETT—You will have the existing staff for the regional offices and the ICCs and the regional councils will remain for another 12 months. What support will the councils themselves receive?

Mr Gibbons—In the appropriation there is of course a line for the running costs of regional councils—the salaries and other support costs. In addition to that, DIMIA through the OIPC will retain an average of three staff per region to assist regional councils in their ongoing functions and there is a small number at the national office level also involved in that work. Also, the strategy for coordination—joining up government support investment services for Indigenous Australians—involves a tiered process of regional partnership agreements at the regional level and, at the community level, shared responsibility agreements. Regional councils will be involved in the development of those regional agreements and the support necessary to conclude those agreements will be within the ICCs provided by the OIPC and other agencies. To the extent that regional councils are engaged seriously in that work they will be supported over and above the specific resources that I have mentioned.

Senator BARTLETT—Will regional councils and the ICCs have extra responsibilities?

Mr Gibbons—I would not put it as extra responsibilities; they certainly have changed responsibilities and they have lost some responsibilities. They are no longer involved in funding decisions, as you know, in relation to contract offers, et cetera. Their role in planning

will shift and in some ways change. The Commonwealth will take a more proactive role in approaching regional councils in the context of the development of these regional partnership agreements than it has in the past. That will, I think, draw them into different areas from those they have traditionally been involved in—not all of them; some of them have been quite proactive and have developed relationships that are quite important or relevant in the context of this new agreement making arrangement. Others will have to learn that.

Senator BARTLETT—Pardon me if I overlap with some of the issues that Senator O'Brien has already raised. I understand, with the staff transferring, that anyone who wants to stay in the job retains a job. Obviously, there is a fair bit of upheaval involved in this, unavoidably. Are specific efforts being made to retain staff? There is obviously a fair bit of expertise there that you would want to retain in many cases.

Mr Gibbons—There are two dimensions to this. There is the network, which is where the bulk of the staff work. There is very little physical disruption. On 30 June they will cease working for AT SIS and on 1 July they will be working for a different agency but in the same physical location, with the same colleagues and, in most cases, on the same activity.

Senator BARTLETT—They will just be changing letterhead, business cards and things.

Mr Gibbons—Over time there will be a different emphasis as other agencies join the ICCs. For example, Education are going to place their remote staff in these centres. Health will do the same. In some states the state governments are already talking to us about co-locating some of their staff in these centres. The nature of the activity will change over time. We have made it clear to all staff in the network that we are not expecting any downsizing or any loss of jobs. There should not be a question about staff security in that situation. There will be the usual wastage that is common in any large organisation. Below the SES level in the states the same situation applies in respect of job security, although some of the staff will relocate to the offices of the mainstream agencies that they are mapped to, with their functions.

The more difficult challenge is in respect of the national office, where there will be a need for fewer staff in DIMIA—OIPC. But, here again, the message that has gone to them is that, while job security will necessitate relocation, if they want to remain there is a job available. The resources that are currently used in AT SIS and AT SIC for Indigenous servicing are to be quarantined for that purpose, which means they are not to be used by mainstream agencies to supplement other non-Indigenous activities. They have to be tracked. Staff who are surplus in one area are to be deployed in another area according to need. Over time I think there will be a shift in numbers with an increase in the number of people in the remoter areas where there is a clear need for much more engagement with the organisations that we fund.

Senator BARTLETT—One of the things that, quite understandably, AT SIC and AT SIS have done is to provide, both formally and informally, a special level of support for their Indigenous staff, particularly young Indigenous staff, to help them stay in their jobs and to build up the expertise. Are any specific measures being taken to ensure that Indigenous staff do not become marginalised, tokenised—for want of a better word—or lost in the mix?

Mr Gibbons—Certainly. On day 1 I raised with the Public Service Commissioner, who has a keen interest in this issue anyway, what special measures we might need to take to assist the

transition of Indigenous staff into mainstream agencies. We have not finalised the plan yet, but we are looking at providing a level of support over and above what regular staff would get, including mentoring. We are looking at making available a resource within the Public Service Commission to coordinate that.

Senator BARTLETT—Who is involved in developing those plans?

Mr Gibbons—At the moment it is ATSI and the Public Service Commission. We will be progressing that between now and transfer time in July. We have also raised this issue with the receiving agencies in the context of the discussions we are having with them now. I do not sense any lack of commitment on the part of any of the receiving agencies to put in place special arrangements to welcome transferring staff and, in particular, Indigenous staff.

Senator BARTLETT—I am not suggesting there is a lack of commitment to the idea; I am just making sure the structures and programs are in place to do it. How are you going to guarantee, or do your best to guarantee, that ATSI programs also will not become marginalised or lost in the wash within mainstream departments?

Mr Gibbons—The structure outlined by the government involves at the highest level a ministerial task force, chaired by the Minister for Immigration and Multicultural and Indigenous Affairs, involving all of the mainstream ministers and supported by a group of secretaries of departments, the secretaries from the mainstream agencies and DIMIA. That is then supported by this new Office of Indigenous Policy Coordination, which has a role in the network in the management and coordination of the ICCs providing services in urban areas and at the national level in ensuring there is coherence and coordination in the policy development context. Of course, all of the funds that are being moved into mainstream organisations are quarantined for Indigenous services.

Senator BARTLETT—Obviously it is a challenge for every area, but one area, in particular, that strikes me as potentially challenging is cultural services. Is specific attention being given to Indigenous cultural services and how to protect that in the mainstream environment?

Mr Gibbons—Discussions are under way on that. One of the reasons that I suppose the Prime Minister has not announced final arrangements is that there is some finetuning around issues like this. Broadly speaking, the programs that are run by ATSI are programs that involve granting funds to Indigenous organisations to protect Indigenous language, to support arts or cultural activities, to protect sacred sites and the heritage of Indigenous Australia. Those programs will transfer to mainstream agencies but the delivery of those programs on the ground will continue through the Indigenous bodies that are currently involved. I do not think that mainstreaming in itself puts that at risk.

Senator BARTLETT—I want to ask about something which I think might have been raised in one of the papers today—the art collection that is currently with ATSI that has come through from the old department. What is going to happen to that?

Mr Gibbons—There are a number of collections in ATSI. There is a photographic collection; there is a video collection; there are very valuable paper records.

Senator BARTLETT—Audio recordings and things like that?

Mr Gibbons—Yes. It has been provisionally agreed that the photographs, the video recordings and the records of value will go to AIATSIS, the Australian Institute of Aboriginal and Torres Strait Islander Studies, which is an appropriate custodial body for those items. They have already been through the archive of our paper records and have chosen what they believe needs to be preserved. We are in the process of cataloguing our vast photographic collection. When that cataloguing is finished AIATSIS will receive it. Similarly, we will be working with the video collection.

With respect to the art collection, from my last brief on this matter, the head of AIATSIS, Professor Mick Dodson, and the National Gallery of Australia were consulting over the future of the ATSI art collection. There are some objects in that collection which need special environmental protection if they are to survive, and others that are not only valuable but culturally sensitive. I am not quite sure about the destination yet, but certainly attention is being given to make sure that the collection is observed and is available for display in a culturally appropriate manner.

Senator BARTLETT—Who is involved in the negotiations or decisions on that?

Mr Gibbons—I would need to update where it is at the moment but from my last understanding it was ATSI, AIATSIS and the National Gallery.

Senator BARTLETT—Being a Queenslander, I would like to clarify what the policy changes and legislation will mean for the Torres Strait Regional Authority.

Mr Gibbons—There is no change to the TSRA arrangements at all.

Senator BARTLETT—So it will just continue on, untouched?

Mr Gibbons—Yes.

Senator BARTLETT—With respect to the regional officers that we touched on before, you stated that regional managers are guaranteed positions within recipient agencies and are free to apply for ICC manager positions. What is the difference? Is the regional manager position going to continue?

Mr Gibbons—No. The regional manager positions will cease. With respect to the role of coordinator of the ICCs, which is a multiagency outfit, those positions were advertised in the media last weekend. There is an interdepartmental selection process being set up for that. Managers of the ATSI regional offices are invited to apply. If they are not successful, we have guaranteed them jobs in the ICCs at their current level, but it will be with one of the receiving agencies. They have all been mapped to one of the receiving agencies as a contingency.

Senator BARTLETT—So they would be guaranteed to maintain their current level and if they get to ICC manager that is a higher level, is it?

Mr Gibbons—It could be so in some cases but the level for each office is yet to be determined. It will be in the range of the top of the EL2 band to the SES band 1 level.

Senator BARTLETT—What is the process that has been followed for determining the head of the new Office of Indigenous Policy Coordination?

Mr Farmer—I answered questions on that topic this morning.

Senator BARTLETT—Okay, I shall read the transcript. There was a statement that the minister made on 16 April, just after the announcement of the abolition of ATASIC, about an officer of ATISIS that had been suspended without pay over an alleged fraud involving \$400,000. When did that suspension take place? Are you able to tell me that?

Mr Gibbons—It occurred on the day that officers of our investigation and compliance unit confronted the officer with evidence. I suspended that officer on that day. Subsequently the officer has been charged, has appeared in court and has been granted bail. There is a hearing set for next month in a Brisbane court. That is all I can say, except that he subsequently resigned.

Senator BARTLETT—How long prior to the announcement did this suspension happen? You say he was suspended on the day that he was challenged with the evidence. How long was it between that happening and this being made public?

Mr Gibbons—I have not got the record with me. I would have to check that. I cannot recall.

Senator BARTLETT—Yes, if you would. I would be happy to get the correct date, but was it a week or a few months after?

Mr Gibbons—Can you refresh my memory as to the date of the minister's statement?

Senator BARTLETT—It is 16 April, according to the report I have here.

Mr Gibbons—We will check that for you.

Senator BARTLETT—I think it might have been mentioned in the Senate rather than in a release.

Mr Gibbons—I will come back to you on that.

Senator BARTLETT—So that person has been charged and has appeared in court?

Mr Gibbons—Yes, they have appeared in court and a date has been set for the hearing next month.

Senator BARTLETT—Was that \$400,000 figure just about the relevant amount that we are talking about?

Mr Gibbons—I would have to take advice as to whether I should say anything like that in light of the matter being before the courts.

Senator BARTLETT—If they have been charged, have they been charged on a certain amount?

Mr Gibbons—The charge is not specific as to the amount.

Senator BARTLETT—I think the following matter came up in a certain way before. It may well have even been while the minister was out earlier this morning. I refer to the review by Mr Collins, Ms Jackie Huggins and Mr Hannaford, which was referred to this morning. The government has referred to that; the minister has referred to that in statements. Is it planned that there will be a formal response or is it still being considered? Are there any further specific processes to go through with that review?

Senator Vanstone—I will have a look at that, but I would have thought not, though. I think events have overtaken that report.

Senator BARTLETT—It has been stated there is an intention to set up an advisory panel of some sort. Has that got any more flesh on the bones at this point?

Senator Vanstone—Not at this point.

Senator BARTLETT—Have there been any broader consultation processes with Aboriginal communities or information sessions about what the government is planning to do—I do not mean specifically with the advisory panel but with this whole area with changes to ATSIC et cetera?

Senator Vanstone—There was some correspondence by me with the regional councillors and with, I think, the associations they work with very early on in the piece to make sure that we could keep the communication channels as open as possible. I visited a number of communities, but I mention that only because it is a fact, for there were only a few. I think that communication with the regional councillors is the main way of getting out to all communities what the government is looking at doing.

Senator BARTLETT—Is there any plan or any consideration being given to having information sessions, community forums, or other forms of communication with Aboriginal communities about the changes once they are bedded down?

Ms Hawgood—Yes, there is. Currently in the pipeline there are plans for all of that. There is information material to go out to people at community level and also information sessions are to be held probably at regional level.

Senator BARTLETT—Did you outline a likely date for that?

Ms Hawgood—As soon as possible after 1 July.

Senator BARTLETT—Is there any ongoing communication between the government and ATSIS with the ATSIC commissioners? Are they involved in any way with providing views or inputs or opinions about any of these changes that are happening?

Ms Hawgood—I am not aware of any communication with the commissioners, but certainly regional councils will play a part in those sessions at the regional level. They will be important players in those sessions.

Senator BARTLETT—Is there any other communication with the ATSIC commissioners at national level?

Senator Vanstone—I have met with a couple of them.

Senator BARTLETT—Are they having any input into any of the decision making that is going on now about where things might go?

Senator Vanstone—I have had a number of discussions with a number of them—not a majority of them. I have listened to their views and I will take them into account.

Mr Gooda—At the most recent board meeting the chairman placed that issue on the agenda. Subsequent events of the board meeting did not allow them to discuss it. The

opportunity was presented but the commissioners themselves decided that they did not want to address it.

Senator BARTLETT—Can you just elaborate a little bit on that? So it was on the agenda at the last meeting but the commissioners decided not to address it?

Mr Gooda—They obviously thought that they had more important issues to consider. ATSIK staff and ATSIK staff were available to come and brief them but they declined that offer.

Senator BARTLETT—So as far as you are aware, from the ATSIK end there is no formal communication. Obviously individuals can talk to individuals any time they want but there is no formal attempt or desire to engage with the government?

Mr Gooda—Not with the commissioners.

Senator BARTLETT—And there is nothing from the opposite direction, from the department or ATSIK or the minister? There is no intention to formally engage with the board in the next month?

Senator Vanstone—Sorry, there was an interchange while you were finishing your question.

Senator BARTLETT—I was just tracking things from both directions and asking whether there was any intention of any formal communication between either the government, the minister or the department and the board of commissioners between now and the end of June.

Senator Vanstone—Some people say you should avoid cliches in communicating, but other people say they convey the message. My door is always open. If commissioners want to discuss something, they are always welcome to do so. As I say, I have had discussions with a number of them.

Senator BARTLETT—I was thinking beyond individual informal conversations. Is there anything more formal than that?

Mr Gibbons—Almost on a daily basis I keep the Chairman of ATSIK informed on what we are doing with the transitional arrangements.

Senator BARTLETT—Mr Quartermaine?

Senator O'BRIEN—The Acting Chairman.

Mr Gibbons—The Acting Chairman, yes.

Senator BARTLETT—Is there any specific feedback coming the other way?

Mr Gibbons—On quite a lot of things that I would not want to reveal here.

Senator O'BRIEN—Were you aware that the legislation introduced today is introduced on the anniversary of the 1967 referendum?

Senator Vanstone—No.

Senator O'BRIEN—It is just a perverse coincidence then.

Senator Vanstone—Perverse to you—there are plenty of people who believe that the changes this government wants to make will improve the situation for Indigenous Australians beyond that which we have already been able to do.

Senator O'BRIEN—I will meet some of them some time, I suppose! Going back to the issues I was raising before lunch, Mr Gibbons, in which staff category do personal assistants to ATSI commissioners fit?

Mr Gibbons—They are ATSI staff. Mr Gooda could answer that.

Senator O'BRIEN—What happens to ATSI staff on 1 July?

Mr Gooda—ATSI staff will be transferred and in the main follow functions as Mr Gibbons has described before. The staff you talk about who are either research officers or personal assistants to commissioners fall into two classes. One class are ATSI staff who transferred into those positions. They will return to ATSI and their positions will be secure in the transfer. The others are staff who were engaged who would be on a contract that is tied to the tenure of the commissioner.

Senator O'BRIEN—They would be or they are?

Mr Gooda—They are.

Senator O'BRIEN—So the term of their contract is irrelevant—is that what you are saying?

Mr Gooda—The term of the contract is tied to the tenure of the commissioner. When the commissioner ceases to be a commissioner, their contract ends.

Senator O'BRIEN—That is a specific provision of their contract, is it?

Mr Gooda—It has been the provision of any personal assistant that has been employed for a commissioner from the beginning of the time commissioners have had personal assistants.

Senator O'BRIEN—The termination of the commissioner terminates the personal assistant in whatever circumstances?

Mr Gooda—If they are a non-ongoing officer.

Senator O'BRIEN—What happens to the contract if a commissioner is suspended?

Mr Gooda—The resources are not available to a commissioner suspended from his duties as commissioner.

Senator O'BRIEN—Is that a specific provision in the contract?

Mr Gooda—I could not answer that.

Senator O'BRIEN—Are we talking about a common contract?

Mr Gooda—It is a common non-ongoing contract that is general across the Public Service. It is the case with all non-ongoing officers in ATSI and ATSI. There is no guarantee of employment past 1 July.

Senator O'BRIEN—There is, actually, because those on contract in ATSI transfer across into the new agency. We were told that before lunch.

CHAIR—I think Mr Gibbons was just about to make a contribution on this issue.

Senator O'BRIEN—I was giving him a chance to deal with certain things.

Mr Gibbons—To follow on from what my colleague said about the non-ongoing staff in ATSIIC in the situation where a commissioner is suspended, I recall that that would not terminate their contract and that they would be redeployed because the commission would not have access to personal staff on suspension. The difference with the contract that was used for the employment of personal staff for the elected arm is that their tenure is tied to the tenure of the commission. The contractors employed in ATSIIS in, say, IT or building maintenance have fixed term contracts for a piece of work or a time period. If that has not been completed on 1 July, the receiving agency will get them for the duration of their contract.

Senator O'BRIEN—So the issue is what the terms of their contract are?

Mr Gibbons—That is right.

Senator O'BRIEN—That is why I am asking about the suspension issue. It has been an issue with one ATSIIC commissioner and events may take place which will affect others—I do not know. So there is a standard contract that each of these personal assistants would have signed which differs only as to the name of the person and who they are contracted to serve? Do I understand that correctly?

Mr Gooda—That is right.

Senator O'BRIEN—Can the committee have a copy of that contract form?

Mr Gooda—Yes.

Senator O'BRIEN—So the research staff for ATSIIC commissioners will be employed past 30 June in some circumstances, will they?

Mr Gibbons—There are some circumstances where ATSIIS staff on secondment to ATSIIC will have their position with the commissioner terminated, will come back into ATSIIS because they are permanent public servants and will be relocated into the mainstream agencies. There are others who are not public servants but are employed under contract whose contracts will end by virtue of the termination of their commissioner's role. I understand there is some examination at the moment of payout arrangements, but I am not sure if that has been resolved yet.

Senator O'BRIEN—So the contracts are essentially the same as those for the personal assistants?

Mr Gibbons—Yes.

Senator O'BRIEN—It is the same sort of contract?

Mr Gooda—Yes.

Senator O'BRIEN—Is it the same contract for both? Do you just change the title of the job and the person's details on a form?

Mr Gibbons—It may not be, because the personal assistants for commissioners go back some years and the research assistants were introduced only in the last year. There may be different contracts, but we would have to check that.

Senator O'BRIEN—Can we see a copy of the contract form?

Mr Gooda—Yes.

Senator O'BRIEN—Apart from those two classes of ATSSIC staff, are there any others that have not been mentioned?

Mr Gooda—There are staff who work in the commission support area. They will be transferred along with the other ATSSIS staff.

Senator O'BRIEN—So the ATSSIS media section will continue to be employed?

Mr Gibbons—The ATSSIS media people are being distributed to all the agencies, including DIMIA. Each agency is getting a share of the media resource.

Senator O'BRIEN—Is that on a follow function basis?

Mr Gibbons—It is a bit hard, given that most of those staff do the same thing, but the agencies are getting their share of the available resource.

Senator O'BRIEN—Do I understand correctly that the government's criticism of ATSSIC does not extend to its staff or to ATSSIS staff—that is, there is no criticism of the performance of the staff in this challenging area of public policy and program delivery?

Senator Vanstone—The government's view in relation to ATSSIC is, as a whole, certainly not directed to the staff. It is a question of the structure and whether the structure was ever able to deliver the hopes people had for it.

Senator O'BRIEN—I do not recall any such acknowledgment before. I suppose the staff can take that as an acknowledgment now. How has staff morale being affected by these proposed changes?

Mr Gibbons—Staff morale has been affected. Anything that draws a cloud over job security for staff has that impact. As long as that uncertainty remains, morale is low. I think the steps we have taken in the last week to clarify the security issue have helped but I acknowledge that, until we have reached the end of the mapping exercise and staff are assigned to their new functions and are in the new organisations, we will still have a problem with morale. That is perfectly understandable, I think.

Senator O'BRIEN—Since the minister's 15 April announcement, have any ATSSIS staff been asked to reapply for their positions?

Mr Gibbons—There may be a case, in determining who goes where, for some positions to be advertised. For example, where there are three people performing a particular function and there is only one person needed in the future, the advice from the Public Service Commission is that there should be a merit based selection for that one available position before the other two staff are deployed to another agency. We are adopting that advice. Where it is necessary we will follow that approach.

Senator O'BRIEN—That answer suggests that any such reapplying for positions will be in the future and that it has not happened yet.

Mr Gibbons—It has not happened and, outside the national office, it will not happen.

Mr Doherty—Have any promotions within ATSSIS been determined between 15 April and today?

Mr Gibbons—I am not aware of any. I have not imposed a total freeze on recruitment, because that might prejudice operations in some areas, but by and large we have said that there is a hold on recruitment and promotions pending the finalisation of this exercise. I am told by Mr Watson that there have been a small number, connected with ongoing servicing of programs.

Senator O'BRIEN—But generally you have put some sort of soft hold on it?

Mr Gibbons—That is right.

Senator O'BRIEN—Is there a special process for obtaining approval for exceptions?

Mr Gibbons—Yes. I am not so concerned about the situation in the network because all the resources remain in the network and we will be supplementing the network with resources in due course. My main concern is in areas where we are likely to require fewer staff, such as the national office.

Senator O'BRIEN—Were staff ever told that no voluntary redundancies would be offered?

Mr Gibbons—I was asked about it very early in the piece, on day one, by my regional managers, who I had called in to brief on the announcement. I said that I did not expect many voluntary redundancies. Certainly, it was not open season on VRs. That is generally the case in the network now. The only voluntary redundancies that I have offered are in areas where there are likely to be excess people in DIMIA after 1 July, and it is totally voluntary.

Senator O'BRIEN—When was it decided that there would need to be voluntary redundancies?

Mr Gibbons—When we had had a chance to examine the implications of the decision and the intent of the government's policy. We judged it desirable to make available a small number of VRs to people in the national office who were not mapping to mainstream agencies.

Senator O'BRIEN—Can you tell us how many, the function involved and the classification of the staff?

Mr Gibbons—How many of the—

Senator O'BRIEN—How many voluntary redundancies it is intended to offer.

Mr Gibbons—I have not put a particular figure on it but I would be confident that about 50 people from the national office might be interested.

Senator O'BRIEN—Will they be offered redundancies because they are interested or do you have a target number of positions that are going to be surplus?

Mr Gibbons—That is getting close to my upper limit. It is offered because they are interested, and it is offered to staff who are in areas where their functions are not continuing or in the corporate areas, as the number of corporate staff will necessarily reduce as a consequence of the amalgamation with other agencies, and in some situations where people want to job swap. The aim really is to free up the resource so that it can be deployed in areas where there is an ongoing need, particularly in the network, where we will want to increase the number of staff.

Senator O'BRIEN—So what is the upper limit?

Mr Gibbons—I have not set a figure that I have announced, but it is around that level. I am not confident that I need to go much above that to resolve any difficulties. We are just reviewing it as we are going through with the mapping exercise.

Senator O'BRIEN—The *Hansard* will show that you are not confident; I am not sure that is what you meant. You are confident that you will not have to go beyond the 50?

Mr Gibbons—I am sorry; I am confident that I will not have to go much beyond that to resolve the problem that we may have with too many staff in DIMIA.

Senator O'BRIEN—Has any instruction been given in DIMIA—you may or may not be able to tell me about other agencies but I would be interested to know if you could—to freeze recruitment until ATSSIS staff have been placed?

Mr Gibbons—I am not aware of other agencies. The staff they are getting under the mapping exercise in the staff follow function context are fully funded and any staff that are assigned over and above that, because they are surplus to the needs of DIMIA, will be fully funded. In that sense I am not aware that they have a particular need at this stage to freeze their own recruitment. In DIMIA there is a soft hold on positions in OATSIA.

Senator O'BRIEN—Will staff with accrued entitlements take all their entitlements with them to their new position?

Mr Gibbons—Yes.

Senator O'BRIEN—I believe ATSSIS staff have been told they will follow function in the transfer to DIMIA and, I guess, to other agencies. Is that correct?

Mr Gibbons—Yes. That will be in stages, depending on what work they are performing now. For example, staff who are working in the regional council support area will map to DIMIA on 1 July and will continue to work in that function as long as is necessary. At the end of that, they will then be assigned one of the mainstream agencies operating in their office, and that will resolve their situation. In the national office some will map on 1 July and, soon after, will be relocated to other agencies. There will be some who were working on regional council support, who, subject to the passage of the legislation, would move at the end of the first year, and there are some who would move into mainstream agencies at the end of two years.

Senator O'BRIEN—Have staff members generally been asked to submit to a skills audit since the announcement of the abolition of ATSSIS?

Mr Gibbons—I would not call it a skills audit. As I explained this morning, in areas where staff perform a number of functions across programs, it has been necessary to identify precisely what they are doing and how much of their time is spent on a particular activity so that we can properly not only map them to the agencies but convince the agencies that they are getting their appropriate share of the resource. That is all I am aware of.

Senator O'BRIEN—Are there any circumstances in which ATSSIS staff currently located in a regional office would find their function transferred to Canberra under the government's changes to program administration?

Mr Gibbons—No, on the contrary.

Senator O'BRIEN—I have heard what you said about the contrary, but I was thinking about staff who administer regional budgets but, under the new arrangements, find that budgets are managed by a national cost centre within a Canberra based agency.

Mr Gibbons—I understand what is behind that question. Essentially, we need more staff in the field actively involved in engagement with communities and the organisations that are providing services. Nine months ago I commissioned a risk audit which threw up the need to put more people into the field to do this work. There are people involved in corporate activities in network offices, and they are being mapped to mainstream agencies. It is quite possible that mainstream agencies will consolidate some of those corporate functions in their headquarters or their state capitals. That will free staff to be deployed on some of the field work that is needed. So the aim is not—

Senator O'BRIEN—If they are equipped for it.

Mr Gibbons—If they are not equipped, they can be trained. I cannot speak for every case at this stage. I am naturally talking in terms of some principles that we are following, and one of those is that we do not want to withdraw staff from network offices. And there are staff who are performing functions that are no longer needed or will cease in a year that we want to deploy into the field activities.

Senator O'BRIEN—How much is budgeted for relocation expenses?

Mr Gibbons—At this stage I cannot say. When you talk of relocation, what do you mean?

Senator O'BRIEN—There may be some people who are going out into the regions. There may be some people—you might not envisage this; I am not sure whether you have made provision for it—who would go the other way. I am just asking whether there is any provision for it—how much is set aside in the budget?

Mr Gibbons—I cannot answer how much is set aside until we get to the end of the mapping exercise and have some understanding of who the people are who are being relocated and what is involved. But the resourcing transfer to the agencies with each individual is a generous one and should enable them to accommodate any costs involved. I do not think that there is anything significantly expensive in the relocation exercise, over and above the on-costs that go with each position. In most cases people are transferring within their capital city.

Senator O'BRIEN—You want more positions in the regions, you say. That is achieved either by people leaving and being replaced by people from the regions or by moving people there.

Mr Gibbons—When you are dealing with a large number of staff, as we are here, and you have normal turnover, over a reasonable period of time you can achieve quite a significant relocation of staff just by not backfilling departures in one location and allowing people to recruit in another.

Senator O'BRIEN—Does that mean people will not have to be compulsorily relocated?

Mr Gibbons—At this stage my understanding is that that is true and that no-one will be compulsorily relocated.

Senator O'BRIEN—Anywhere within the structure?

Mr Gibbons—You are asking me, as we are two-thirds of the way through a process, to give an absolute assurance and, in that context, also to speak on behalf of all of the other secretaries involved who are going to receive staff. I cannot do that. We are approaching this from the principle that the government wants to preserve the jobs of the people who are involved. It is quarantining the resources for Indigenous services. Over a two-year period it might be possible to see staff who have to be relocated in the national office between departments—some of that resource—moved into regional centres or absorbed into other activities in the mainstream agencies, thereby releasing a position that can be relocated. We also need to keep in mind that there are a number of vacant positions that transfer as well. So there is capacity to—

Senator O'BRIEN—Transferring a position, not a person, is quite a different thing.

Mr Yates—The only location where geographical movement is expected is in the capital cities, where the ex-ATSI staff will, over time, join their mainstream department colleagues in their state offices. They will move out of an ATSI office and into the DEWR office or the FACS office. They will not be kept together geographically in the same way, as will apply to the Indigenous coordination centres.

Senator O'BRIEN—Does a transfer to another agency in the regions mean the retention of existing employment terms and conditions, including remote housing allowances?

Mr Gibbons—Staff will transfer from the terms and conditions they enjoyed in ATSI and take on the conditions in the certified agreement of the receiving agency. They will not go backwards but there may be changes in conditions, depending on the nature of the agency's certified agreement. With that qualification, I think the answer is yes, they will take with them all of their accrued entitlements et cetera.

Senator O'BRIEN—The remote housing allowance is obviously an issue in this portfolio that it might not be in others; I am not sure. Do you know if that is picked up in others?

Mr Gibbons—It is certainly an issue that we are conscious of. In some locations it is an essential feature of an agreement. But we will work our way through that, I am sure.

Senator O'BRIEN—So they will move to the certified agreement that applies in the agency that they are moving to?

Mr Gibbons—Or to an AWA. But they enter at a point that is equivalent to their current salary in ATSI and thereafter are governed by the conditions of the certified agreement in that agency.

Senator O'BRIEN—Will the transfer be conditional on signing an AWA?

Mr Yates—No. The transfer of staff between agencies occurs under an instrument of the Public Service Commissioner. That guarantees the protection of the individual's salary and, indeed, if an officer moves to an agency where the salary is higher at their classification level then they take on that higher salary. Other conditions are regulated by the certified agreement

or, if the individual chooses to enter an AWA in that agency, obviously by that instrument. Beyond that, the secretary of a receiving agency can, through a determination, provide other conditions to those transferring staff where they determine that that is appropriate. So there is a way of picking up some elements of AT SIS provisions and carrying them across into the new agency—were the secretary to decide that that was appropriate—where they are not provided for in the certified agreement in that receiving agency. That is a mechanism for some flexibility that would not otherwise occur simply by virtue of guaranteeing the salary of the officer.

Senator O'BRIEN—So that is at the discretion of the secretary of the new agency?

Mr Yates—Yes, after consultation with the affected staff.

Senator O'BRIEN—If there were disputes about the package they are being translated to and whether they are being disadvantaged by it, how would they be resolved?

Mr Yates—If there is any issue about an individual salary not being preserved and they want to have a review of action, there is an option to take that up with the Public Service Commissioner, who has a particular role in overseeing these sorts of machinery of government changes. With regard to the provisions that might be made in a determination by the secretary, provided the secretary has met his or her obligations under the Public Service Act in making that determination, I do not believe there is any further review or appeal mechanism.

Senator O'BRIEN—What opportunity would staff have to provide input into the process for determining their function and, hence, their future agency?

Mr Yates—We touched on this a little earlier today. In building a picture of the translation of officers from their current location or position into new receiving agencies, we went down to the micro-level of examining exactly what their current activities and functions were. That was the key guiding point for their assignment to a receiving agency. For some people who are doing 100 per cent of a function that directly translates, it is not an issue; for those officers who may be performing grant management responsibilities for a number of different programs and those programs are going to different locations, then we have had to work through exactly what was the appropriate balance. The guiding principle there was ensuring that every receiving agency would have the requisite skilled people at different classification levels that would enable them to continue to manage and deliver the program at least to the level it has been provided by AT SIS.

Senator O'BRIEN—When people are transferred, what certainty is there that the receiving agencies will ensure appropriate training and development if their work tasks differ from their current duties? Is there something in the Public Service guidelines which guarantees that for them?

Mr Yates—In the short term they would be continuing with work quite familiar to them. Over time, we would hope that this does occur, that they will become members of that new agency and be covered by the training arrangements in those agencies. But in our Indigenous Coordination Centres we have already established a working group to focus on the issue of whole-of-government training, recognising that those centres will be functioning in a more cohesive way to develop approaches to the region and to individual communities that are far

better coordinated and strategic in how the various services are delivered and, indeed, what services are best delivered. We recognise there is some specific training investment that will be required quite aside from that which the individual departments might give to those officers in regard to their particular functional specialisations.

Senator O'BRIEN—Is there a special pool of funding which is set aside for the transitional arrangements between the ATSI/ATSIS model and the mainstream model?

Mr Gibbons—The short answer is no. The funds that are available to effect a transfer are mapped to the receiving agency. As I said earlier, I do not think available funds are an issue. The on-cost component with positions is generous to give some flexibility here and, to the extent that we can reduce costs after the transfer by doing things this year, we are certainly doing that. For example, we have brought forward the making of contract and grant offers this year, so that we will have that process complete before the transfer and so that organisations will have received their assurance of funding for next year where they are assessed as eligible. So the agencies that are receiving staff and functions will not have the immediate pressure of this annual funding round; they will be able to concentrate on getting people stabilised in the new environment and familiarised with the processes of the new department.

Senator O'BRIEN—How much do these generous on-cost provisions amount to?

Mr Gibbons—Normally, when government agrees to fund new policy and staff are needed, staff come with an on-cost that is calculated at around 35 per cent. The on-cost that we are able to transfer to receiving agencies is higher than that.

Senator O'BRIEN—How much is it?

Mr Gibbons—To give you the exact figure I would have to take that on notice.

Senator O'BRIEN—Is it hard to get?

Mr Gibbons—I am told about \$90 million is involved in the transfer.

Mr Yates—There will be certain efficiencies that can be achieved by the mainstream agencies that will be receiving those on-costs but are then able to provide various supports to their staff under their existing corporate structures. That should yield some potential savings over time at least. We believe this will be important in enabling them to make the additional investment in supporting the new arrangements where they do lead to some additional costs. So there is a balancing up in all of that.

Senator O'BRIEN—That is fairly theoretical, of course. But if staff go over the on-cost provision it may be absorbed into ordinary salary costs in some respects?

Mr Yates—Or in training. I am thinking of the training point that you were referring to earlier.

Mr Gibbons—But it cannot be absorbed into ordinary running costs for the mainstream agency. It has got to be quarantined and tracked to be reassigned to Indigenous services. So any saving that is made through economy of scale or whatever must be tracked or be reapplied to Indigenous servicing.

Senator O'BRIEN—How do we know that?

Mr Gibbons—The government has made it clear that it is a requirement. The head of Prime Minister and Cabinet has instructed all secretaries to put in place mechanisms to track the resource and the OIPC has been tasked to monitor that and report to the Secretaries Group on Indigenous Issues.

Senator O'BRIEN—When there is some decision on the ongoing departmental arrangements, does that mean there is an automatic decision about the amount of money that goes to each agency? When your mapping is finished they are all tied to particular groups of employees, and I am trying to understand the numbers and how the numbers game is going to work.

Mr Gibbons—There are two parts to it, putting it fairly simply. There is a set amount of money that transfers with each individual, and that is the cost of employing them, giving them a desk and a computer—so those on-costs. Then there are in some areas additional funds that are needed to support the particular activity of individuals. It might be that they are investigation officers, and there is a pool of funds to support their investigation activities. They might be in IT or they might be in some other area that has a peculiar requirement. The amount of money that is transferred is negotiated in the context of the trilaterals with individual agencies oversighted by PM&C and, at the end of the day, signed off by the department of finance.

Senator O'BRIEN—How long does that process take?

Mr Gibbons—For normal MOG changes it takes about three weeks before all of that is wrapped up. In this circumstance, because it is a rather unusual MOG change, it will be probably about three weeks from where we are now before it is all resolved. We have to resolve the staffing transfer. We are getting close to the beginning of the end of that. Then there are the other costs to sort out. I would hope that by the middle of June that is all behind us and that by then we are ready to implement the transfer.

Senator O'BRIEN—I am backtracking to questions that I asked earlier. Is it known what is going to happen to the Torres Strait Islander Advisory Board on 1 July and where that will sit? Has that been decided? It seems a bit different from the other aspects of the mainstreaming arrangement.

Senator Vanstone—That board will be abolished. The Torres Strait Regional Authority stays, but that board offered advice to ATSIC, which it will no longer need to do. I have written to board members this morning.

Mr Gibbons—Chair, could I provide clarification to an answer that I gave earlier?

CHAIR—Certainly.

Mr Gibbons—I undertook to check this question of how much money was put aside for the ATSIC review by the ATSIC board. I think I may have misled you when I said there was no decision by the ATSIC board. In fact, prior to the commencement of the review the board put aside \$1.5 million in total for the ATSIC review.

Senator O'BRIEN—When was that decision taken?

Mr Gibbons—It was before the review got under way. It was at the beginning of the 2002-03 financial year.

Senator O'BRIEN—I take it that it would be a decision taken at a meeting of the board?

Mr Gibbons—Yes.

Senator O'BRIEN—What happens to the minutes of the board meetings in current circumstances? Are they kept as the property of the board?

Mr Gibbons—They will go into the archives, and it is a question of where they are kept. I have not been involved in it so I am not sure what the ultimate arrangement is.

Mr Gooda—The board would make individual decisions on what they wanted to release as part of the records of their meetings, as I understand.

Senator O'BRIEN—In the absence of the board whose property are the minutes?

Mr Vaughan—Subject to confirmation, I think they would be treated like other Commonwealth records of former Commonwealth agencies that are disbanded. They are Commonwealth property, Commonwealth records, and go to Commonwealth archives.

Senator O'BRIEN—For accessibility purposes, what rules would apply?

Mr Vaughan—The same rules that would normally apply to government records in the archives: unless there is some particular cabinet type restriction, they are reasonably accessible.

Senator O'BRIEN—In February, Mr Gibbons, you told us that your contract as CEO of AT SIS and AT SIC expired in August. On what date did you resign as CEO of AT SIC?

Mr Gibbons—It was 15 March or thereabouts.

Senator O'BRIEN—The ides?

Mr Gibbons—I will provide that information to the committee.

CHAIR—You are full of propitious dates today, Senator O'Brien.

Senator O'BRIEN—There has to be something to it. Your resignation followed the board's withdrawal of your delegation.

Mr Gibbons—And the launch of a legal challenge, and that created the potential conflict.

Senator O'BRIEN—Are you aware of an allegation that pressure was brought to bear on some commissioners to change their vote in relation to the board's decision to withdraw your delegation, using provision of resources to their communities as leverage?

Mr Gibbons—I have heard the allegation.

Senator O'BRIEN—Is there any substance to this allegation?

Mr Gibbons—No, Senator.

Senator O'BRIEN—Was the decision to resign yours, or were you asked to do so by the minister or someone from the government?

Senator Vanstone—He certainly was not asked to resign by me.

Mr Gibbons—It was my decision on the basis that until the board decided to launch a legal challenge against the Commonwealth there was no conflict in performing both roles but

from that point on I could not see that I could discharge my duty in both directions without that conflict.

Senator O'BRIEN—Were your terms and conditions of employment affected by your resignation?

Mr Gibbons—No.

Senator O'BRIEN—Has your contract been otherwise altered since the February estimates hearing?

Mr Gibbons—No.

Senator O'BRIEN—I presume your contract is like others—it flows across to DIMIA on 1 July?

Mr Gibbons—My contract with ATSIC ceased the day I resigned.

Senator O'BRIEN—I was talking about ATSSIS.

Mr Gibbons—My ATSSIS arrangement comes to an end when ATSSIS is abolished on 1 July. I remain an ongoing public servant.

Senator O'BRIEN—What will happen to the ATSIC and ATSSIS assets on 1 July?

Mr Gibbons—There are several classes of assets. There is a group of assets that we have often referred to as 'program assets'. These include land and buildings, shares, the housing fund and the small regional land fund. These will transfer, via a mechanism that is set out in the bill, to either the Indigenous Land Council or Indigenous Business Australia depending on the nature of the asset. As a rule of thumb, land would go to the land council—the ILC.

Senator O'BRIEN—I do not want to debate the bill. That is not necessarily appropriate. Does the funding announcement affect the assets?

Mr Gibbons—These assets remain ATSIC assets until the bill is passed.

Senator O'BRIEN—What about ATSSIS?

Mr Gibbons—Any assets of ATSSIS are the Commonwealth's and they would transfer with the receiving agencies.

Senator O'BRIEN—Do they have program assets?

Mr Gibbons—They do not. The assets that are owned by ATSSIS include contracts with travel service providers, IT providers, equipment, furniture et cetera. We generally do not have buildings; we have leases et cetera. I thought you were referring largely to what happens to ATSIC assets.

Senator O'BRIEN—I probably was, but I used both ATSIC and ATSSIS in the question. I wanted to be clear on what your answer meant in the context of the question. Will the transfer of ATSIC assets to DIMIA constitute an acquisition subject to section 51(xxxi) of the Constitution?

Mr Vaughan—Perhaps I can help with this. The question of what happens to ATSIC assets is dealt with in the amendment bill in some specificity, at item 191. I probably do not need to go into that here but you will find it set out there.

Senator O'BRIEN—Is a register of the current ATSIC and ATSSIS assets maintained? I know you were talking about those with Senator Bartlett.

Mr Gibbons—Yes, there are several. For example, we were talking about the art collection recently. We have only recently had that revalued. There is a register of the art collection. I mentioned the cataloguing of the photographic collection. All our assets are registered in an assets register and the assets of ATSIC are similarly treated in that way.

Senator O'BRIEN—I suppose there is a register that sets out all the pieces of furniture that are currently considered to be assets, with an asset number and a process of auditing and checking that.

Mr Gibbons—Yes. Everything above a low value is registered. You might recall that last year when ATSSIS was formed there was an agreement between ATSIC and ATSSIS which included a schedule of ATSIC assets that were made available to ATSSIS for the purposes of administration. That is part of the assets register.

Senator O'BRIEN—I am not sure of the size of the register but is it possible for the committee to receive a copy? There are several registers that you were talking about.

Mr Gibbons—I think you would be overwhelmed by the size of the register, particularly because of the volume of low-value items on it. You might be interested in having the part of it that identifies the high-value components.

Senator O'BRIEN—Real property, for example.

Mr Gibbons—I have a page here that gives the real property—the land and the buildings—and I can add shares and other items to it.

Senator O'BRIEN—The artwork is very valuable too, isn't it?

Mr Gibbons—The most recent valuation of the artwork puts it at about \$1.48 million.

Senator O'BRIEN—Artwork is often very difficult to value.

Mr Gibbons—It is the second valuation that we have had in the last three years to bring it up to date. It is not just artwork; there are artefacts. In some cases it is difficult.

Senator O'BRIEN—Have any gifts, bequests or licences been made or granted to ATSIC on the basis that it is an Indigenous organisation?

Mr Gibbons—Yes. For example, I know of one large building that was made available to ATSIC. I think there was a caveat on it that it cannot be sold and it must remain in Indigenous hands. There are situations like that.

Senator O'BRIEN—Is it proposed to deal with such property differently?

Mr Gibbons—When you study the bill, you will see there are specific provisions, as Mr Vaughan identified, for dealing with some of this. For example, in the case of land or a building it will not come to the Commonwealth; it will go to an Indigenous organisation—the Indigenous Land Corporation, for example. Where there are conditions, that satisfies the conditions of the caveat.

Senator O'BRIEN—Can you tell me something about statutory rule 2004 No. 182, which I understand affects ATSIC's right to dispose of certain interests in land without ministerial approval.

Ms Kenway—Statutory rule 182 is an amendment to the Lands Acquisition Regulations. It removes an exemption which ATSIC used to have to a requirement that the minister for finance give consent before an agency disposes of property it owns. The removal of that exemption now means that ATSIC needs the consent of the minister for finance to dispose of property that it owns.

Senator O'BRIEN—Is that just real property or any property?

Ms Kenway—Lands acquisition—I believe it would be limited to real property.

Senator O'BRIEN—So any decision that the board purported to take to deal with real property—to dispose of it, for example, or to waive an interest in it—would be prevented by that regulation?

Ms Kenway—Yes, from the time that amendment was made, which was only very recently. I do not believe there have been any disposals since then.

Mr Gibbons—I will just add that there are a number of properties that are subject to decisions to divest which were taken some time ago. Divestment can sometimes take quite a while to organise, but that will continue.

Senator O'BRIEN—Perhaps you can tell us which properties are involved.

Mr Gibbons—I will take that on notice.

Senator O'BRIEN—Was there any consultation with ATSIC, the acting chair or ATSIC commissioners about the decision to withdraw the exemption?

Ms Kenway—Not to my knowledge.

Mr Gibbons—Not that I am aware of.

Senator O'BRIEN—Is anyone aware of any such consultation at the ATSIC-ATSI level?

Mr Gooda—I am not aware of it.

Senator O'BRIEN—Presumably, Mr Gibbons, that regulation probably applies to most of the properties which you have on that sheet in front of you and which you were talking about earlier.

Mr Gibbons—It would apply where the board had not already given its approval for divestment. As I said, I will take on notice and come back to you with a list of those that are in the process of divestment.

Senator O'BRIEN—If we look at the table on page 142 of the PBS, the paragraph under the table says:

The abolition of ATSIC will save \$79.1 million over four years.

I take it that that is every cent that was allocated to ATSIC over the four-year allocation from the previous PBS?

Mr Barrett—The \$79.1 million reflects the amount that will not be expended on the continuing operations of the commission. It does not include an allocation for 2004-05 in relation to the regional councils' costs. That \$9.6 million is reflected in outcome 4 of the PBS. It also includes \$24 million relating to decisions made in the budget process to offset against AT SIS and AT SIC moneys. That is to fund new budget measures.

Senator O'BRIEN—Can you run that past me again? I was trying to follow what you were saying against the PBS.

Mr Barrett—The \$79.1 million includes \$24 million which offsets against AT SIC's original budget pre these decisions, to fund budget measures, plus \$55.1 million which are the estimated costs that are not going to have to be met to fund the commission for the four-year period.

Senator O'BRIEN—What costs would that \$55.1 million have paid for?

Mr Barrett—It would have been all the costs associated with the board of commissioners and their support and it includes the costs of the regional councils and their support for the period 2005 through to 2008.

Senator O'BRIEN—What remains available to fund the regional councils? You talked about a number. What will that pay for?

Mr Barrett—It is on page 145 of the PBS under outcome 4. It is \$9.696 million.

Senator O'BRIEN—What is that intended to fund?

Mr Barrett—The cost of operations of the regional councils for the year 2004-05, such as four meetings per year as per the legislation and the salaries associated with the regional council chairs.

Senator O'BRIEN—Can you, upon notice, give me a breakdown of that figure, as to what it is going to pay for?

Mr Barrett—Yes.

Senator O'BRIEN—Unless you can tell me now.

Mr Barrett—I can tell you now, if you like.

Senator O'BRIEN—That is even better. Thank you.

Mr Barrett—These are the figures making up the \$9.6 million. We have the regional council chairs' salaries including any leave loadings, superannuation—the below the line costs—of \$3,824,000. We have \$3½ million for meeting costs, sitting fees, travel—the regional councillors receive some money to travel to the meetings. Then we have some sundry items: communication, \$137,000; advertising, \$73,000; and office requisitions, \$566,000. Then we have a component in there for FBT/GST. There will be some FBT associated with the regional council chairs' use of motor vehicles. We have a component there for the Australian Electoral Commission to run casual vacancy elections, and that is \$1.2 million. That totals up to the \$9.696 million.

Senator O'BRIEN—The FBT/GST and the AEC numbers are \$1.2 million?

Mr Barrett—No, it is \$395,000 for the FBT/GST.

Senator O'BRIEN—And the AEC for casual vacancies?

Mr Barrett—That is \$1.2 million.

Senator O'BRIEN—Is that for 12 months?

Mr Barrett—Yes.

Senator O'BRIEN—What is the usual experience with the cost of casual vacancies?

Mr Barrett—It is usually less than that amount, but we thought that, given the current circumstances, it would be useful to have a sufficient estimate in there in case of a need for more services from the AEC in 2004-05.

Mr Gibbons—It is not quarantined for that purpose, but that is the basis of the estimate.

Senator O'BRIEN—So it can be used for—

Mr Gibbons—Meetings.

Senator O'BRIEN—Could it be used for any of the—

Mr Gibbons—Any of the other items listed in that schedule.

Senator O'BRIEN—If it is not used for any of the regional council purposes is it available for other purposes?

Mr Gibbons—No.

Senator O'BRIEN—Indigenous organisations in receipt of funding from AT SIS submit regular reports to AT SIS. How will the reporting regime change on 1 July?

Mr Gibbons—They report in respect of a particular grant or contract pursuant to the terms and conditions of that grant or contract. Where that is transferred to a mainstream agency, they will have to report to that agency. In the context of keeping a whole-of-government approach to this, we are looking at maintaining some of the systems that are available in AT SIS for agencies to use so that there is a comprehensive record on each organisation, notwithstanding that it might be funded by five agencies. We will keep a consolidated record. But the responsibility for the follow-up will be with the agency that owns the grant or the contract.

Senator O'BRIEN—Has that been communicated to the funded bodies?

Mr Gibbons—The grant terms and conditions that go out next month will describe their obligation.

Senator O'BRIEN—Will all grants have been acquitted, finished, by—

Mr Gibbons—I misunderstood you; I thought you were talking about the future. You meant the acquittal of grants from this year. The receiving agency will take on that responsibility so, for example, if CDEP goes to Employment and Workplace Relations, the staff who transfer with that function will continue monitoring and acquitting the grants.

Senator O'BRIEN—So there has not been a process of writing to grant recipients saying: 'This process will change on 1 July. You will get a letter from the appropriate agency around that time which will advise you of your reporting requirements in the context of the change'?

Mr Gibbons—Not yet, Senator. The advice we have given to people is that there will be minimal impact of the change on agencies. We are not interested in, for example, moving from one contract with an agency to 10 or five contracts. We are looking at ways of consolidating Commonwealth administration behind head agreements and using common systems and methodologies.

CHAIR—We might take a brief break, not so much for us but for the officers at the table, who have been sitting there for some time.

Proceedings suspended from 4.00 p.m. to 4.16 p.m.

CHAIR—I call the committee to order.

Senator O'BRIEN—A notice has been placed on the ATSIIC web site advising that programs and services for Indigenous communities will continue without interruption despite the changes announced by the government on 15 April. Another notice on the web site says that the National Indigenous Women's Conference to be held in Brisbane from 7 to 9 June has been cancelled due to the changes announced by the government on 15 April. How many women were going to attend this conference?

Ms Tim—We were hoping to attract something like 300 women to the conference.

Senator O'BRIEN—How many had accepted, or was it not acceptance time?

Ms Tim—It was too early; we had not had any acceptances. We had had interest but there were no acceptances.

Senator O'BRIEN—Why was it necessary to cancel the conference?

Ms Tim—The CEO of ATSIIC made the decision that the conference would be cancelled. That may be something he would like to comment on when he comes back in.

Senator O'BRIEN—There is obviously a dramatic contrast between the statement that says there will be no disruption and the decision to cancel a conference.

Ms Tim—While the conference was cancelled, there has certainly been interest in holding a conference at some time in the future. Because we hoped there would be a way we could ensure that support continued for women at that level, we were pleased to hear in the budget that some \$300,000 each year over the next four years has been allocated towards holding a national conference. So we figured that, even though it was postponed this time because of the environment in which we are operating, at least they would continue over the next couple of years.

CHAIR—Senator O'Brien, did you want to direct that question to Mr Gooda?

Senator O'BRIEN—I am intending to ask him a related question, yes. Why was it necessary to cancel the National Indigenous Women's Conference to be held in Brisbane from 7 to 9 June?

Mr Gooda—I made a judgment, given the announcements of 15 April about the abolition of ATSIIC and from speaking to several commissioners who I found had turned their minds to other matters, of course. Given the advice I was given from ATSIIC that if we did not make a decision earlier rather than later we would incur significant costs—upwards of \$70,000 for the booking of the venue—I made the decision to cancel. I took that decision to the board at the

last meeting. The board reconfirmed that the meeting would be held on those dates. I subsequently discussed it with Commissioner Anderson and explained that the meeting has not been cancelled but deferred to later date. As my colleague Ms Tim has advised, we hope to hold the meeting early in the new financial year.

Senator O'BRIEN—We?

Mr Gooda—There is provision made in next year's budget for the meeting to be held.

Senator O'BRIEN—But we do not know who might do that, do we?

Mr Gooda—Not at this stage. The other option I have discussed with commissioners is for ATSIIC to engage an organisation to start organising the meeting and we fund it out of the ATSIIC money this year. I have had several attempts at meeting with commissioners to discuss how we could do that, and to date I have been unsuccessful. So at this stage I am still waiting for commissioners to come back to me on that.

Senator O'BRIEN—Which commissioners have you been trying to meet with?

Mr Gooda—Commissioner Anderson is one of them.

Senator O'BRIEN—Have you written to Commissioner Anderson seeking to meet with her, or faxed her or emailed her?

Mr Gooda—We have had several face-to-face discussions—

Senator O'BRIEN—I am sure you have.

Mr Gooda—and there must be other matters in her mind that are more pressing.

Senator O'BRIEN—Have any other Indigenous events, programs or services been cancelled, rescheduled or otherwise affected by the government's decision to abolish ATSIIC and mainstream programs?

Mr Gooda—Not that I am aware of.

Senator O'BRIEN—I am taking it that the collective answer is no, in the absence of anyone volunteering any other information. The no interruption notice on the ATSIIC web site says:

All business transactions and accounts between ATSIIC and local business operators to the 30 June 2004 will be honoured. Subsequently, new arrangements will be required with suppliers and the respective Australian government agency.

How many suppliers are affected?

Mr Gibbons—It is basically intended to mean that where there is an existing contract or service that will be honoured, but that in the future it will be other agencies that will be entering purchasing arrangements with various suppliers. It is meant to reassure people that have existing contracts to provide services that, where the service has been provided up to 30 June, it will be honoured, fully paid out, but that after that date it will be other agencies that will be involved in the process of acquiring support services et cetera.

Senator O'BRIEN—Is there any limitation on that assurance? The notice says:

All business transactions and accounts between ATSIIC and local business operators to the 30 June 2004 will be honoured.

Mr Gibbons—Yes, where we have ordered a product or service and received that service up until that date we will honour those obligations even if the bills come in a month or two later. But beyond that it will not be ATSSIS that is buying any services; it will be OIPC, Employment and Workplace Relations or Family and Community Services.

Senator O'BRIEN—What about the ATSSIC regional councils—how should we understand their position in the context of the ATSSIC-ATSSIS closure announcement on the web site?

Mr Gibbons—At the moment ATSSIS purchases services on behalf of ATSSIC and ATSSIS. ATSSIS will not exist after 1 July, another agency will, and it will be another agency that will be responsible for purchasing services from local suppliers. In reality what it means is that on the 30th there is a supplier for a particular service to ATSSIS and on Monday that might be OIPC. There will be very little disruption; business will go on.

Senator O'BRIEN—Presumably you are going to have to track this and advise whoever takes particular parts of the work what their ongoing obligation is if the contract with ATSSIS is to pass over. Or will they have to renegotiate the contract?

Mr Gibbons—In many cases the arrangements will pass over, and the staff who are managing them will as well, by and large.

Senator O'BRIEN—Presuming they stay. You must have a paper trail as well.

Mr Gibbons—In the network offices, which is where that notice was largely targeted, that is going to be the case.

Senator O'BRIEN—Can the committee receive a copy of a list of the suppliers affected and the value of contracts affected?

Mr Gibbons—We will take that on notice, Senator.

Senator O'BRIEN—I am interpreting your answers to mean that an ongoing contract with ATSSIS will undergo transmission to a contract with the inheriting agency, if I can put it that way.

Mr Gibbons—In most cases that is the situation.

Senator O'BRIEN—Can you tell me what exceptions there are to the 'most cases' you have just mentioned?

Mr Gibbons—There might be a contract for a service to ATSSIS that does not bind ATSSIS to purchase a particular quantum but it may not transmit because there is no requirement to buy that service in future. For example, we have some standing contracts to buy travel services. There is no particular quantum amount of travel service that we buy and it may be that in a particular case we judge that we do not need that service anymore. That decision could have been taken whether or not there was an administrative order change. The message on the web site was intended more for the local country suppliers, not the big corporates.

Senator O'BRIEN—What happens to agreements to which ATSSIC is a party once ATSSIC is defunded on 1 July?

Mr Gibbons—I think the general counsel is probably best placed to answer that question.

Ms Kenway—Agreements to which ATSIC is a party, on the passage of legislation abolishing ATSIC—

Senator O'BRIEN—I am not asking about the abolition; I am talking about the impact of the defunding of ATSIC on those agreements. We cannot make assumptions about what will happen. We know that the PBS says there is no money for ATSIC from 1 July. I am wondering what effect that will have on agreements to which ATSIC is a party, from that date.

Ms Kenway—I think the answer is that the status quo will continue. If ATSIC is a party to those agreements now, somebody must be paying if there are financial obligations under them. I am not sure. We would have to look at that.

Mr Gibbons—I would suggest that ATSIC is an organisation that commits on an annual basis not across financial years. It also has an agreement with ATSI to purchase on its behalf. So in the context of the question you have asked I do not think there is any serious implication.

Senator O'BRIEN—One issue might be—and it might not; you may disabuse me of this—that agreements like the Indigenous housing agreement of the Northern Territory might be affected. It is a Commonwealth-territory-ATSIC agreement.

Mr Gibbons—That was an agreement that did not commit a particular financial contribution. The Commonwealth provides the financial resource to the housing agreements with the states, and that will continue.

Senator O'BRIEN—And territories?

Mr Gibbons—To the territories and the states, yes.

Senator O'BRIEN—So that agreement would continue unaffected?

Mr Gibbons—Subject to the nature of the agreement, yes.

Senator MASON—On the same issue, what about ATSIC's legal liability after 1 July—does that also remain untouched?

Ms Kenway—Yes, for as long as ATSIC is in existence legally the status quo will remain.

Senator MASON—For grievances, legal liability and so forth?

Ms Kenway—Yes, until legislation is passed which abolishes ATSIC that must be right.

Senator O'BRIEN—I have some questions about the proposed tender for Aboriginal and Torres Strait Islander legal services. What role did the Attorney-General's Department play in the development of the current exposure draft tender document?

Mr Gibbons—At the outset it was not known that the government was going to take the mainstreaming decision that it has taken. Nonetheless, the Attorney-General's Department were consulted—

Senator O'BRIEN—What was the form of that consultation?

Mr Gibbons—Meetings between officers of ATSI and Attorney-General's.

Senator O'BRIEN—Meetings plural?

Mr Gibbons—Yes.

Senator O'BRIEN—Can the committee be advised when those meetings took place and who attended on behalf of AT SIS and Attorney-General's?

Mr Gibbons—I will take that on notice, Senator.

Senator O'BRIEN—Was a cost-benefit analysis undertaken to assess the relative merit of pursuing a tender process to achieve improved service outcomes?

Mr Gibbons—Not to my knowledge.

Senator O'BRIEN—What are the measurable improved outcomes the government believe could be achieved from the tendering process?

Mr Gibbons—Some of the improvements were also improvements sought by the board when it twice considered this matter and determined that it wanted to tender legal services as a rationalisation of the number of providers to reduce the overheads that consumed the resource and to make a more competitive and responsive Indigenous legal services sector.

Senator O'BRIEN—Weren't they rationalised the other way? Weren't they encouraged to diversify and to become more regional and state based?

Mr Gibbons—At various times AT SIC has pursued that goal, but in other contexts. In Western Australia they rationalise to one service provider so that in that state you have got a service provider that has a very low overhead and has the flexibility to move the budget around the state as demand occurs. If you look at another state where there are 11—or is it 15—legal service providers, you have got 11 times the overheads and you have divided the budget and locked it into particular locations notwithstanding variations in demand across the state. So there are good reasons for the approach that both the board in its wisdom earlier, and the government, are taking.

Senator O'BRIEN—Isn't it the case that the Australian National Audit Office review of the Aboriginal and Torres Strait Islander law and justice program recommended consultation with stakeholders prior to tendering?

Mr Gibbons—It did.

Senator O'BRIEN—So which existing providers did the government consult prior to embarking on the tender process?

Mr Gibbons—The consultation process goes back some time. I understand the board, before it took its decisions, consulted. When AT SIS was created and the ministerial directions were issued to get this process under way, we determined that the most appropriate way to consult was to put a draft of a tender requirement out for public examination, to conduct sessions around the country with the stakeholders and to invite stakeholders to submit views. That process has occurred. The results of the feedback have been analysed and presented to the government, and we are waiting for direction from the government on that before we take the next steps.

Senator O'BRIEN—When you say 'board', do you mean the AT SIC board of commissioners?

Mr Gibbons—Yes.

Senator O'BRIEN—When were the decisions taken by the ATSIC board of commissioners to initiate the tender process?

Mr Gibbons—There were two: one in April 2001, I think it was, and another in June 2003. Most recently, they took a decision to rescind that.

Senator O'BRIEN—When did the tender process commence?

Mr Gibbons—I think we published the draft in February.

Mr Boersig—On 4 March.

Senator O'BRIEN—In 2004?

Mr Gibbons—This year, yes.

Senator O'BRIEN—Was there any consultation with the Aboriginal and Torres Strait Islander Social Justice Commissioner about the tender?

Mr Gibbons—I certainly have not had any involvement but I seem to recall that in ATSIC the legal services office at the time had been involved. I will have to check that.

Mr Boersig—We have received a submission from them.

Senator O'BRIEN—A submission was received after 4 March, I take it.

Mr Boersig—Yes.

Senator O'BRIEN—In response to the tender?

Mr Boersig—The exposure draft.

Senator O'BRIEN—On Tuesday night the NSW Director of Public Prosecutions, Mr Nicholas Cowdery QC, said on the ABC's *7.30 Report*:

Recently we had a meeting here in Sydney of all the Australian directors of public prosecutions and this issue actually arose during the course of the meeting.

He is talking about the tender. He goes on to say:

None of them has been consulted and I know that none of the legal aid commissions have been consulted and I'm told that none of the governments, and I know that is certainly the case with the New South Wales government, none of the state or territory governments has been consulted on this proposal, so that rather raises the question: "Where has the Commonwealth obtained any of the information about this matter such as to propose such a wide-ranging change?"

Can anyone answer Mr Cowdery's question?

Mr Gibbons—I think some of that comment presumes that what the Commonwealth put out for exposure and discussion was the final tender. We took the view that we could call for submissions without exposing any ideas at all on how this should proceed or that we should put our ideas up front and invite comment. We did, and now some people have jumped to conclusions that what was put up was automatically going to proceed, whatever the outcome. I suggest they wait and see what the government decides to run with. It was a way of informing consultation, to put out an exposure draft.

Senator O'BRIEN—If it is the Commonwealth's idea, which it has put up front so as to receive responses, I think the question stands. If it is seriously put up as a proposal, where did

the Commonwealth obtain information to propose such a wide-ranging change? That is the question that is asked. If you are saying that it was not a serious proposal, I am not sure where we head to from there. If it was a serious proposal the question stands.

Mr Gibbons—I am trying to make the point that we could have said that the Commonwealth intends to tender for legal services and asked for the views of the community of stakeholders and left it at that. They would have had to anticipate what direction the Commonwealth might be contemplating. Instead, we put a lot of effort into putting ideas on paper to stimulate that discussion. We invited the views of stakeholders on that. We have received views. They have been analysed and presented to the government, and we are waiting for a position before going to the next phase. That is an appropriate way of informing public discussion and public input into this process.

Senator O'BRIEN—Has the consultation process provided the information upon which to base such a wide-ranging change, to use Mr Cowdery's terminology?

Mr Gibbons—A wide range of very useful information was presented. That has been analysed and the government now has it under consideration. When the government makes a decision we will move to the next step.

Senator O'BRIEN—Does the government propose to limit access to justice by giving a service provider the right to deny service to a client with a previous conviction?

Mr Gibbons—Mr Boersig might comment on that but I think the current guidelines allow that.

Mr Boersig—The current guidelines allow each legal service to direct the way it limits its service to the community. It is not unusual to target particular areas and the context of that particular provision is that the emphasis is being placed upon services to women and children.

Senator O'BRIEN—In the tender proposal?

Mr Boersig—Yes.

Mr Gibbons—In the exposure draft. I might add that in that draft it was felt appropriate that we pick up the concern among Indigenous women that the interests of women and children be reflected in the criteria. The government has since decided to double the number of the family violence legal services that are targeted at women. So, in a sense, it has found another way of giving priority to women. That is a factor that will be taken into account, I am sure, in the final design of the tender specifications.

Senator O'BRIEN—Is there any information to allow us to understand how what you described as the 'current right to refuse service' has been exercised by legal services around the country?

Mr Gibbons—My colleague might want to add to do this. There is a limited budget—there is \$50-something million appropriated for this purpose—and that is distributed at the moment to a number of legal services organisations. Once the grant has been made the money is locked where it is assigned, notwithstanding that demand might be elsewhere. So every day the legal services organisations are faced with balancing available resources with demand. The existing criteria are there as guidance to help them make that decision. The emphasis in the existing criteria is on providing services to people who face the risk of incarceration. We

did not want to remove that emphasis; it is a very important emphasis. We simply added to it the need to protect women and children in circumstances of risk.

Senator O'BRIEN—The custody matters are third in the list.

Mr Gibbons—No, they are an equal with that. But to suggest that we were downplaying the importance of servicing people who are facing incarceration is wrong and to suggest that it was introducing a new element I think is wrong. Mr Boersig might want to add to that.

Mr Boersig—Can I also indicate that these kinds of decisions are consistent with the way legal aid commissions operate and are funded and the way community legal centres are operated and funded. Most services have limited resources and have to direct their time and energy to particular areas.

Mr Gibbons—But I stress again that the reason we publish the criteria was not to say this is what we are going to do, come hell or high water. There has been pressure from Indigenous women to recognise their needs, particularly in areas where there is child abuse and family violence. So we put for discussion and feedback the idea that we might introduce a criterion that balanced their interests with the interests of others who are facing incarceration. We have had a lot of feedback on that, and that will be considered. Judgment should be made on the criterion that is published for the tender, not so much on the discussion document that was put out to invite contributions to that policy decision.

Senator O'BRIEN—To correct you, Mr Gibbons, page 62 of the exposure draft says at 3.3 that 'the priority categories in order of priority are:' and then it has (a), (b) and:

(c) cases where an applicant is at risk of being detained in custody.

Is that not an order of priority?

Mr Gibbons—I stand corrected.

Senator O'BRIEN—That is a matter that has been raised with me. You absolutely contradicted it in your evidence. It would be unfair of me to leave you saying that without drawing that to your attention.

Mr Boersig—In relation to the operations of any category, there would be ebb and flow depending on the way the service was organised and the needs of the particular community. A strict ordering of priorities would be very difficult in that sense.

Senator O'BRIEN—That no doubt has a lot of merit. It is a matter that has been raised with me by a number of legal services as to concerns about that being the third order of priority issue. Indeed there is reference in the document to the outcome of the Royal Commission into Aboriginal Deaths in Custody that indicates why it is such a sensitive matter.

Mr Gibbons—I accept that but we also have great pressure and representation from Indigenous women to reflect in the policies.

Senator O'BRIEN—If this was saying that the first priority are these matters, rather than 'in order of priority' as set out, I would be more understanding of it.

Mr Gibbons—My point is this was put out for people to respond to.

Senator O'BRIEN—It certainly encouraged response!

Mr Gibbons—That was good. The last thing that we wanted was a draft that went out that encouraged no response until it was put out as a final.

Senator O'BRIEN—So does that mean that there is no guidance in this document as to the preferences of the government?

Mr Gibbons—The government will make a decision now that it has had the analysis of the feedback.

Senator O'BRIEN—Who was responsible for authorising this to be issued as an exposure draft—the minister?—or is it simply an ATSSIS document or done at a high level?

Mr Gibbons—I believe the minister was consulted before it went out as an exposure draft, but it was not a commitment by the government to it exactly as it was written. I stress again, it is an exposure draft designed to invite comment.

Senator O'BRIEN—So, Minister, does this in any way express your view as to what the situation for a tender ought to be?

Senator Vanstone—It is exactly as Mr Gibbons has said. It is a document designed to retrieve comment about what a tender document ought to look like. It is nothing more than that. It was made very clear that that is what it was. I have been asked about this plenty of times and I have said, 'This is an exposure draft for comment, and we welcome comment.' It is nothing more complicated than that.

Senator O'BRIEN—Where the document proposes that the government give no preference to tenderers who are Indigenous controlled, employ Indigenous persons or operate on a not-for-profit basis, what is the basis for that proposal? Is there some expressed government policy or philosophy which underpins that?

Mr Gibbons—Greater contestability in service provision has been an element of the government's overall policy since 1996. It was, I suppose, explicit in the directions given to me as CEO of ATSSIS in July last year. We are basically saying that we want this to be an open contest. The criteria, though, require that anyone who wants to enter this field is capable of delivering the services in a culturally sensitive way. They have also got to be prepared to operate in the cost environment that exists at the moment. So, in that sense, the existing ATSSILs that have good governance and are well run have got poll position. They are able to demonstrate easily that they operate in a culturally sensitive way with their clients and they have a cost structure that puts them at a competitive advantage. I do not think there is any fear in this process for any ATSSIL that is well run and providing good service.

Senator O'BRIEN—Where the exposure draft suggests that advocacy and law reform functions would not be funded, especially when current providers play such a historic role in this regard, including the Aboriginal Legal Rights Movement in South Australia, is that on the basis of a choice made by government to be included in the exposure draft?

Mr Gibbons—As I recall at the time, and this goes back I think to the time when the board was considering tendering, that particular service requirement was to be kept separate. We were looking at pure service provision in this tender. In fact, I think the board had decided to quarantine some money for that other requirement. In approaching this exposure draft we did not want to complicate it by dealing with that other issue at this stage.

Senator O'BRIEN—In the current environment, who will provide Indigenous law, justice and law reform advocacy for Indigenous Australians? It seems to me that the Aboriginal legal services do a lot of it and there is not going to be, under the government's preferred model, any national Indigenous representative body.

Mr Gibbons—It is not for me to speculate on that, Senator. There was an intention to keep some money aside to grant to that activity for that purpose. How that is handled now is up to government and, if the matter goes ahead as announced by the Prime Minister, presumably the Attorney-General's Department.

Senator O'BRIEN—I understand that Aboriginal and Torres Strait Islander Legal Services in Brisbane provide a range of non-representational services through a dedicated social support and prevention unit. What does ATISIS know about this service?

Mr Boersig—Could I take that on notice?

Senator O'BRIEN—Certainly. Could you also advise me how it will be affected by the government's approach to any Aboriginal and Torres Strait Islander Legal Services tender. Is ATISIS aware that many Aboriginal and Torres Strait Islander Legal Services believe they will have to close down from August this year in order to pay out entitlements, even though they are funded until December?

Mr Gibbons—Yes, Senator. As soon as we get a decision from government on the nature of the tender and the timetable, we will be communicating with them. But it will certainly be before then, to ensure that that does not happen.

Senator O'BRIEN—So we can be assured that there will not be a circumstance where that happens?

Mr Gibbons—The government has made it very clear that the new arrangements are not meant to cause disruption to service. The new arrangements have caused a little delay in the timetable for the tender. We will not be allowing that to create a circumstance where they have to close down.

Senator O'BRIEN—So is there a commitment from government to ensure that any existing service will not be forced to shut down by 31 December and that, if they are, someone else will pick up their case load?

Mr Gibbons—In the design of the arrangements for the tender, we will take into account the need to continue service until the successful tenderers are in place and ready to take up their responsibilities. I stress that we are not about creating a circumstance where service falls over. We have the capacity to intervene to provide relief or to extend the current contracts or grants to ensure that that does not happen.

Senator O'BRIEN—Someone will have.

Mr Gibbons—When I say that, I am talking about the budget flexibility to do it, Senator.

Senator O'BRIEN—Mr Cowdery's comments on Tuesday night were to the effect that he can see no benefit at all in the tender process and he described the exposure draft as a severely flawed document. What is your response to that criticism from the New South Wales DPP?

Senator Vanstone—The estimates are for hearing from officials and the government on the government's programs, not for inviting comment on what an elected politician in another place has to say.

Senator O'BRIEN—He is not a politician; he is the DPP.

Senator Vanstone—All right—on what an official in another place has to say. He is entitled to his view. That is all we need to say about it.

Senator O'BRIEN—How many submissions has the government received in response to the exposure draft?

Mr Boersig—Forty-eight formal submissions.

Senator O'BRIEN—Is there a reason that they have not been published on the ATSSIS web site?

Mr Boersig—Before they were published we would need to talk to the authors. That is a matter we would need to consider.

Senator O'BRIEN—Was there any assurance when the submissions were sought that they would be kept in confidence?

Mr Boersig—No, and neither was it said that they would be made public. They are for the information of the internal processes at this stage.

Senator O'BRIEN—Did any of the parties who made submissions request that their submissions be kept in confidence?

Mr Boersig—I would have to take that on notice. There were quite a number of submissions.

Senator O'BRIEN—If you are going to take it on notice, could you tell us how many, if any, asked that their submissions be kept in confidence. What was the nature of the advice that was submitted with the exposure draft about lodging submissions? I do not appear to have it here, but you might be able to help.

Mr Boersig—The nature of the advice?

Senator O'BRIEN—You were seeking submissions. The exposure draft was sent out, presumably with correspondence.

Mr Boersig—The exposure draft was sent out to key stakeholders requesting their comment. There was a covering letter that went out and it was published on the web site.

Senator O'BRIEN—Thank you for that. I can find it if it is still on the web site.

Mr Boersig—It is.

Senator O'BRIEN—Have the submissions been made available to the joint public accounts committee, which I believe is looking at the tender process?

Mr Boersig—Not at this stage.

Senator O'BRIEN—Have they requested them?

Mr Boersig—No, they have not.

Senator O'BRIEN—Did you think you would need to check with those who have lodged the submissions to be free to make them available to this committee or that joint committee?

Mr Boersig—There are very high probity and protocol requirements with the exposure draft. Certainly that is the way I think you would need to go.

Senator O'BRIEN—Apart from that, is there any other problem with supplying them to this committee or any other committee?

Mr Gibbons—I think I would need to take advice on that.

Senator O'BRIEN—Is there a list of the organisations that have lodged submissions?

Mr Boersig—We have certainly compiled a list.

Senator O'BRIEN—Is that able to be made available to this committee?

Mr Boersig—I would need to take advice on that.

Senator O'BRIEN—Is there an established future timetable for the tender process?

Mr Gibbons—That is a matter awaiting decision by the government.

Senator O'BRIEN—So there is not one at this stage?

Mr Gibbons—When we began this process, which was before the decision was taken recently to mainstream services, it was the intention to put out the tender now and have that resolved before the end of the year. But there are a number of options before the government now and they have taken the decision that we will notify everyone involved.

Senator O'BRIEN—I asked earlier about the destination of CDEP. Irrespective of that, can the government offer any assurances about the impact of the proposed changes, particularly in respect of funding CDEP places?

Mr Gibbons—I have seen suggestions that the on-costs associated with places are going to go down, which is not correct. Ms Gillam can give you fuller details.

Ms Gillam—The economic and social participation group has responsibility for that program. We have become aware of these comments. There is no cut to the CDEP budget for 2004-05; in fact, there is an increase to the overall budget from \$514 million to \$550 million. The increases are in both components: in wages, of approximately \$15 million, and \$21 million in additional on-costs. The rates are rising for each of the on-costs, remote and non-remote. We have not had advice of the 2004-05 funding decisions from regions, but we would not anticipate any reductions in on-costs.

Senator O'BRIEN—Do we know the number of CDEP places to be funded?

Ms Gillam—There will be 37,000 for next year, which is a net increase of around 1,000. That is natural growth and the extra Working for Families initiative places that were funded under that four-year initiative.

Senator O'BRIEN—Is it possible to get a breakdown by state and territory of places and the number of CDEP participants?

Ms Gillam—Yes, it is. We can provide that to you.

Senator O'BRIEN—Did the Commonwealth consult with its COAG trial partners—the states and territories and the trial site communities—before announcing that the Office of Indigenous Policy Coordination would take over the functions of the Indigenous Communities Coordination Taskforce?

Mr Gibbons—The Commonwealth decision was that the secretaries who were the lead for the Commonwealth in each of these trial sites remain. It is only the administrative arrangements supporting the secretaries that have been affected by the change, so in a sense I do not think there was any requirement on the Commonwealth to consult before the announcement on that.

Senator O'BRIEN—So there was no consultation—for those reasons, I take it.

Mr Gibbons—As I understand it. Of course, since then we have been providing a full briefing to each of the state governments on the arrangements.

Senator O'BRIEN—Can you provide an update of COAG trial site progress by site, please?

Ms Hawgood—I can do that. Do you want me to take that on notice so that I can give you a comprehensive report updated from the last one I gave you?

Senator O'BRIEN—That would be good, thank you. Why has the government not so far terminated Mr Geoff Clark's appointment as the Chair of ATSIC?

Senator Vanstone—He has got a matter before the Federal Court which was expected to be resolved in late April, but I understand the matter was deferred to another date for the applicant to put forward some other arguments. I am just trying to get the date for you when it is coming forward.

Mr Vaughan—Mr Clark has challenged his suspension. The hearing was in the Federal Court four weeks ago and the court has reserved its judgment. Therefore, as I think the minister possibly indicated, we are awaiting the outcome of that court decision before any further action is appropriate.

Senator O'BRIEN—Before any further action is appropriate—what does that mean?

Mr Vaughan—The judge indicated in the preliminary hearings that he thought it would be inappropriate for the minister to finalise any decision about Mr Clark until he had heard Mr Clark's challenge to the suspension.

Senator Vanstone—A decision to terminate depends on a process being followed. The suspension is part of that process.

Senator O'BRIEN—The process leading to the termination being open to you, Minister, has been concluded through the parliament, as I understand it.

Senator Vanstone—Yes, that is right, it has, but part of that process is under challenge by the courts.

Senator O'BRIEN—And that is an impediment to acting further, I take it.

Senator Vanstone—There has been a debate about that view on a number of occasions—the degree to which the executive arm of government should not take action because there

might be a proceeding before the court—but I draw your attention to the transcript of the judge's remarks. It might give you an idea of his view.

Senator O'BRIEN—I would be happy to receive a copy of that, thank you. I do not have access to that transcript. Presumably the department does.

Senator Vanstone—I will get a copy of the remarks for you.

Senator O'BRIEN—What has the Clark matter cost the taxpayer so far? What legal and administrative costs have been incurred since the first show cause letter was issued to Clark in the middle of last year?

Mr Vaughan—It would be exceedingly difficult to calculate the cost in terms of staff time—administrative costs—because we simply do not diarise our activities in that way. I can take it on notice to provide you with the legal costs to the Commonwealth so far in relation to the original suspension challenge and in relation to the current challenge.

Senator O'BRIEN—There would be considerable administrative costs as well if they are attributed properly, wouldn't there?

Mr Vaughan—It depends, I suppose, on what you mean by considerable.

Senator O'BRIEN—The attribution of the salaries of the officers who have been involved in briefing and advising counsel, in bringing matters back to the minister, in preparing briefs of various sorts, and travel.

Mr Vaughan—Our staff have a variety of duties, of which the one to which you have just referred is one. It has been a significant issue and it has had to be dealt with very professionally.

Mr Gooda—In relation to the payments by ATSIC, the board made the decision to indemnify Mr Clark to a total of \$85,000.

Senator O'BRIEN—On the recommendation of ATSSIS, as I understand it.

Mr Gooda—The recommendation was that it was possible for the board to make that decision because the process of show cause arose out of his position as an officer of ATSIC under the CAC Act. While the advice said it was possible for the board to make that decision, it was pointed out that it was a policy decision of the board as to whether they wanted to make that decision or not.

Senator O'BRIEN—There is a story going around that that advice reached the board much more quickly than it would have had it had gone through the normal channels and been put on the board papers. What can you say about that?

Mr Gooda—I was not present at the meeting. I was not CEO when that happened.

Mr Yates—The matter, if I recall, was brought forward, at the request of the board, in the agenda—in the normal sequence of the agenda.

Senator O'BRIEN—Was there a resolution of the board to have that matter put on the agenda, or was it on the agenda when the board papers went out?

Mr Yates—It was already on the agenda and, as I recall, the matter was brought forward to ensure that it was dealt with by the board at that meeting and did not fall behind, if you like, in the sequence of the handling of board matters.

Senator O'BRIEN—You were at the meeting?

Mr Yates—That is correct. Just to clarify: the advice that went to the board on this issue was from ATSIC staff, not from ATSSIS.

Mr Gooda—Out of that \$85,000 indemnity we have paid \$84,958, so it is almost all used up and we have received another account recently for around \$4,000.

Senator O'BRIEN—You know what Mr Clark's costs are. What are the Commonwealth's costs?

Mr Vaughan—I do not have the costs here with me today. I am not sure that the costs of the last hearing four weeks ago have hit our books yet. What Mr Gooda is talking about is the provision of an allocation to Mr Clark rather than a reimbursement of his costs after the event, if what I understand is correct.

Mr Gooda—That is right.

Mr Vaughan—We have provided, in a sense, a grant to Mr Clark in anticipation of his costs. No?

Mr Gooda—No, it is an indemnity. The board indemnified costs of up to \$85,000.

Senator O'BRIEN—It is the payment of costs in arrears.

Mr Gooda—Yes.

Mr Vaughan—So you are in a similar situation to us: you will not know until the end of the action what the actual costs will be.

Senator O'BRIEN—No. We have no idea of what the Commonwealth costs are either.

Mr Farmer—We have undertaken to provide on notice such details as are available. We just do not have those details here. We have paid the costs, so we know them; we just do not have them here.

Senator O'BRIEN—I take it that Mr Clark is still receiving his full salary.

Mr Gooda—Yes, he is.

Senator O'BRIEN—How much is he being paid?

Mr Gooda—He has an annual salary of around \$240,000.

Senator O'BRIEN—Is he entitled to any travel costs?

Mr Gooda—He is not entitled to any travel costs.

Senator O'BRIEN—When was Mr Quartermaine appointed acting chair?

Mr Gooda—It was around July-August last year. He was actually elected deputy chair and once Mr Clark was suspended he assumed the acting chair position.

Senator O'BRIEN—Does he get paid a higher rate for being acting chair?

Mr Gooda—Yes, he does.

Senator O'BRIEN—Would he be getting paid the same as Mr Clark?

Mr Gooda—Yes, as per the rem tribunal determination.

Senator O'BRIEN—In February, Mr Gibbons, you detailed some hundreds of thousands of dollars expended in relation to audits and other action in respect of the Bidjara group of companies. It was reported to us that some action in respect of at least one of the companies was not concluded. Can we be provided with an update, including a tally of additional costs incurred in relation to the continuing investigation of these companies?

Mr Gibbons—I think you are referring to the Bidjara housing company, which has had a receiver-manager in place following its failure to comply with a request by the—

Senator O'BRIEN—There are several companies referred to in the *Hansard* of the estimates hearing of 17 February. You said that the former minister decided to ask for a forensic audit of the Bidjara companies?

Mr Gibbons—That is correct.

Senator O'BRIEN—There were five.

Mr Gibbons—Yes.

Senator O'BRIEN—Bidjara Aboriginal Housing and Land Company, Bidjara Media and Broadcasting Company, Bidjara CDEP Company, Bidjara and South West Queensland Legal Services: that is what you referred to in that answer.

Mr Gibbons—That is correct.

Senator O'BRIEN—Not the housing company.

Mr Gibbons—You asked about outstanding action.

Senator O'BRIEN—For housing and land companies.

Mr Gibbons—Yes. I think when I last reported I said that we had put in a receiver-manager. As a result of the forensic audit that the minister had commissioned, it was discovered that in the period of the examination—which was the three years from 2001-02 onwards—there was about \$1.9 million missing, unaccounted for, or prima facie evidence of use for private purposes. As a result of that, the Office of Evaluation and Audit had asked for an examination of all of the records of the company. We were denied access in respect of Bidjara housing and land company. As a result, we appointed a receiver-manager to examine the affairs of the company and report on its ability to repay its debt.

The receiver-manager has been frustrated by lack of cooperation. That has extended the duration of his placement in that organisation and blown out the costs above our original estimates. We did expect that this was no more than a two-or three-week exercise but it has gone on for many months. We are still no closer to understanding what happened to that \$1.9 million. Action in respect of the organisation is on hold pending a hearing in the Federal Court, scheduled for September, which has been brought by the company challenging the right of the Director of the Office of Evaluation and Audit to access the records pursuant to his statutory powers. In the meantime, we have just received the final report of the receiver-manager which concludes that he cannot take the matter any further. He has made certain recommendations about recovery of debt, which we are examining.

While all of this was happening, we have been through a process to allow the company a further opportunity to comment on the findings of the forensic audit. They have responded and their response has been or is being examined. On first examination, it did not advance our knowledge of what has happened. While this has gone on, further information has come from a number of sources—whistleblowers et cetera—including the provision of accounts that we did not know existed. So this matter seems to grow in scale and complexity. I do not expect though, pending a decision on how we might respond to the receiver-manager's report in respect of the debt the company owes, that other matters will necessarily await the hearing of the Federal Court in September.

Senator O'BRIEN—Were there any developments in discussions with the company about repayment of debt?

Mr Gibbons—The company offered a repayment proposal which we are examining in concert with the advice that we now have from the receiver manager.

Senator O'BRIEN—So there is some proposal for repayment of the debt involved in the reports that you have?

Mr Gibbons—Yes.

Senator O'BRIEN—With respect to the costs that you have incurred, you said that they have blown out?

Mr Gibbons—The cost of the receiver manager. I provided the costs of the audit last time, but with respect to the receiver manager's cost, costs to date are approaching \$300,000. To clarify the last point, there are two matters. There is a debt of over \$700,000 and there is the question of moneys that have not been accounted for. That is the \$1.9 million.

Senator O'BRIEN—So that is not a debt; it is a question mark?

Mr Gibbons—We need to understand what happened to the money. There are blanks in the information in the accounts that we have had access to. There is some information that suggests that it has been for purposes outside the grant and, indeed, some suggestion and some information that it was used for private purposes.

Senator O'BRIEN—Was that suggested by the auditor?

Mr Gibbons—It is a conclusion drawn from an examination of material that has come about through the forensic audits and from other sources.

Senator O'BRIEN—I am just asking whether it is the auditor's conclusion or a conclusion that has been drawn from other information.

Mr Gibbons—That is not the formal conclusion of the auditor. It is a provisional view that our investigations unit has after examining all the information, including the auditor's material.

Senator O'BRIEN—And all of this is coloured by a Federal Court hearing to take place in September.

Mr Gibbons—Yes. I am sure the hearing has a date set in September. Mr McMillan might be able to confirm that.

Mr McMillan—My learned colleague the general counsel informs me that the date is in late September, on about the 25th.

Senator O'BRIEN—I think my questions have been answered, unless you have something to add, Mr McMillan. Knowing your form, you will probably choose not to.

CHAIR—Discretion is the better part of valour, Senator O'Brien.

Mr McMillan—Senator, the chief executive officer has completely covered the field.

Senator O'BRIEN—A very sensible answer, Mr McMillan. The ATSIIC 2003 annual report refers to Operation Hoodoo. It appears that \$236,985 was contracted to accountancy firm Walter & Turnbull to undertake a forensic examination of documentation in relation to this project. According to the annual report, the selection method for this job worth nearly quarter of a million dollars was a sole tender and it said 'specialised skills not available in ATSIIC in the required time frame'. What is Operation Hoodoo?

Mr Gibbons—Mr McMillan can add to this, but it was the name given to the examination of the records of one of the Bidjara companies and another group of organisations known as IHCC.

Senator O'BRIEN—What does that stand for?

Mr McMillan—It stands for Indigenous Housing and Construction Company, as I recollect.

Senator O'BRIEN—And which Bidjara company?

Mr McMillan—Bidjara Aboriginal Housing and Land.

Senator O'BRIEN—Is this in addition to the information you provided at the last estimates?

Mr Gibbons—I think the component that deals with IHCC is totally separate from that information. The other information I think is included in that but I would have to double-check.

Senator O'BRIEN—Who authorised the establishment of Operation Hoodoo?

Mr Gibbons—I do not like these names but investigators love them.

Senator O'BRIEN—I was going to ask which Ian Fleming called it Operation Hoodoo!

Mr Gibbons—The former minister, as you are aware, commissioned the forensic audit. This work was associated with that in respect of Bidjara housing. There were also complaints and allegations made in respect of IHCC and the forensic examination was commissioned to follow up those complaints. I think that has now resulted in a brief to the Queensland state director.

Mr McMillan—No, that is not the case.

Mr Gibbons—I am thinking of something else.

Mr McMillan—There is a matter before the court in Queensland in relation to that company, but it did not arise out of this forensic audit. It was in relation to an investigation undertaken by the Queensland police.

Senator O'BRIEN—So do I take it that the minister authorised the contract with Walter and Turnbull?

Mr Gibbons—No, he did not choose the provider. We chose the provider.

Mr McMillan—My understanding—although this occurred before I was in the organisation and indeed it occurred at ATSIC—is that the company, Walter and Turnbull, now called Walter Turnbull, was on a panel which had already been identified in a previous process. So when it came time for a particular forensic audit to be undertaken, they were, in effect, taken off the panel. So the sole quotation sought in effect does not relate to the identification of the supplier but rather to the identification of what the supplier already chosen on the panel basis would be charging in relation to the particular task.

Senator O'BRIEN—How did one get on this panel?

Mr McMillan—My understanding is that it was a competitive tender process. As I say, I did not have anything to do with it; it was before my time.

Senator O'BRIEN—Perhaps you could give us an answer to that on notice?

Mr McMillan—Certainly we can take that on notice.

Senator O'BRIEN—Can you tell us how much has been spent on Operation Hoodoo?

Mr McMillan—Yes, \$343,084.49.

Senator O'BRIEN—How much went to Walter and Turnbull?

Mr McMillan—That is the amount for the forensic audit under that title.

Senator O'BRIEN—That is over more than one financial year I take it?

Mr McMillan—My recollection is that that covered a single financial year. I think the whole amount was in a single financial year but I can take that on notice and check for you.

Senator O'BRIEN—Thank you, I would appreciate that. Has Operation Hoodoo concluded?

Mr McMillan—The forensic audit has concluded but the outcome or the results of the forensic audit are part of what might be described as a mosaic of information which is relevant to other investigations which we are undertaking. If you think of that operation as comprising the undertaking of the forensic audit, that has concluded. But obviously issues were thrown up by the audit and we now have, as the chief executive officer said, further and other information which we need to match with what we already have. I hope that is helpful, Senator. Insofar as Operation Hoodoo is disclosed in the annual report, what I have given you is the cost of the same and an indication that that part of it is concluded. However, it is, in effect, on hold and it will be something to which we refer as we proceed with other matters.

Senator O'BRIEN—Did the ATSIC board authorise expenditure on Operation Hoodoo?

Mr McMillan—No, Senator.

Senator O'BRIEN—Have Walter Turnbull been engaged in providing other services for ATSIC and/or ATSI, or for the department for that matter, other than Operation Hoodoo?

Mr McMillan—Yes. They conducted a forensic audit in relation to the Queensland South Representative Body Aboriginal Corporation and one of their partners has been appointed by the minister as an auditor under the Native Title Act. That audit is presently being undertaken by that partner.

Senator O'BRIEN—Who are the principals of Walter Turnbull?

Mr McMillan—Can I take that on notice? I have to confess that I am not sure exactly who that would be.

Senator O'BRIEN—Has the *Australian* newspaper complained to ATSIIS or the minister about the provision of false information by any former or current ATSIIS employee concerning possible Federal Police charges against Mr Ray Robinson?

Mr Gibbons—Not that I am aware of.

Senator O'BRIEN—In recent weeks I have received a letter from an Indigenous woman in custody in the Dame Phyllis Frost Centre in Victoria praising the support and assistance provided to her and other inmates by an organisation called the Western Suburbs Indigenous Gathering Place Association but expressing a fear that the future of the centre under the government's proposed ATSIIS changes might see a withdrawal of the assistance. You may need to take this on notice but under what program would the gathering place have received ATSIIS or ATSIIS funding? How much has it received? What is the future for it after 1 July?

Mr Gibbons—I am not aware of ATSIIS funding that organisation but we will do a careful check of our records and come back on that. I just repeat what I have said earlier: to this point we are funded on an annual basis and we renew our funding offers at the beginning of each financial year based on an assessment of performance—

Senator O'BRIEN—But you have been sending out offers now—

Mr Gibbons—We are close to sending out offers. We are doing it a few weeks earlier than we normally would so that it does not occur right in the middle of the changeover. But we will come back on that, Senator.

Senator O'BRIEN—Can you give me any information on where the National Aboriginal Health Strategy will find a home under this new structure, or is that not decided?

Mr Gibbons—I would have to speculate that it would be the department of health.

Senator O'BRIEN—That may well be good speculation.

Mr Gibbons—I am sorry, I should have said that it is the Department of Family and Community Services. It is the infrastructure, housing and municipal services program that we run. Provisionally, the intent in the announcement put out by Minister Hardgrave was that it would go to Family and Community Services.

Senator Vanstone—I can assure you that if that is where it goes I will write to Senator Patterson and suggest that it be more appropriately named.

Senator O'BRIEN—What will you be suggesting, Minister?

Senator Vanstone—Something that does not imply that it belongs in the health department, that is all.

Senator O'BRIEN—What is the status of the legal challenge by the ATSIIC board of commissioners against the establishment of ATSIIS?

Mr Gooda—It is proceeding.

Senator O'BRIEN—Is there a date for a hearing?

Mr Gooda—We met with the instructing solicitors yesterday. They are seeking an expedited hearing of the case. If that is granted it would be in September at the earliest.

Senator O'BRIEN—How do we know that?

Mr Gooda—That is what the solicitors have advised. The application for an expedited hearing has not been made at this stage.

Senator O'BRIEN—What expenses has the Commonwealth incurred seeking legal advice and otherwise responding to the challenge?

Mr Vaughan—So far all we have received is the writ. There has been very little legal cost incurred to date in respect of it, but I can check and get back to you on the actual amount.

Senator O'BRIEN—Has any Commonwealth officer encouraged or assisted action designed to persuade ATSIIC commissioners to withdraw support for the legal challenge?

Mr Vaughan—Not that I am aware of.

Senator O'BRIEN—Is any officer aware of such encouragement or action?

Mr Gooda—I raised an issue with the committee that was delegated to run the legal challenge that I had advice that considered that the engagement of solicitors was not properly done—it was done by commissioners rather than staff. I have gone back to those commissioners to ask for advice on it. The board attempted to rectify that situation at its last meeting. I am now taking further advice on whether that is in fact the case. My advice to the commissioners at the time was that if it was not properly brought they had to go back and rectify the situation and do it properly. As I said, the board at the last meeting attempted to rectify that situation. I am taking advice about whether the decision that they have made rectifies the problem that I had with it.

Senator O'BRIEN—Where are you obtaining advice?

Mr Gooda—I am obtaining my advice from Williams Love. It is a legal firm here in Canberra.

Senator O'BRIEN—On Monday the News Limited newspapers reported that the government had made a decision about payments to ATSIIC commissioners upon their determination and the story quoted a figure of \$45,000 for commissioners with the exception off Mr Clarke. According to the story, Mr Clarke can expect to pick up \$93,885. Are these figures accurate?

Mr Vaughan—There is a standing Remuneration Tribunal determination concerning the compensation that is payable to statutory office holders if their term is foreshortened other than for reasons of incapacity or misbehaviour. It amounts to the equivalent of one month's remuneration for each three months of the term that is forgone. It is therefore possible to make an assumption that if the ATSIIC commissioners ceased as of 1 July, if the government's

legislation went through—and in the normal course of events they would have run for some 17 or 18 months thereafter, until late next year—they would be entitled to a payout in the order of the equivalent of five or six months of their normal remuneration. I would imagine that that is how the journalist has arrived at those figures. Probably that is how she arrived at Mr Clarke's figure, too. We have not done that calculation.

Senator O'BRIEN—Have those figures about the payouts to ATSIC commissioners and Mr Clarke been provided by the minister's office?

Senator Vanstone—Not to my knowledge, but if I find that the alternative is true I will let you know.

Senator O'BRIEN—We have discussed the funding for the ATSIC regional councils. Will there be a specific budget allocation for each regional council?

Mr Gibbons—Parts of that \$9.6 million that was drawn to your attention earlier will be distributed to councils, yes. But that has not been done yet.

Senator O'BRIEN—Have decisions been made about what will be funded and what will not be funded?

Mr Gibbons—The matters that can be funded by that appropriation were made clear earlier. In addition to that, DIMIA will provide a level of support consistent with the support that it has been providing to date. The staff that are currently performing the support role in the regional offices—there is an average of three per region—will transfer to DIMIA and will remain in that role for the next 12 months, as will a number of staff in national office. In addition, I have already made provision for the chair to have access to a car for business purposes, consistent with the arrangements that exist now.

Senator O'BRIEN—So there was no fringe benefit tax?

Mr Gibbons—Not in respect of the car, no.

Senator O'BRIEN—Which items will attract FBT?

Mr Gibbons—I do not know the answer to that. I would have to rely on our financial people. There will be other assistance that we will determine shortly. We are just waiting for a few issues—like the mapping exercise—and the budget to be clarified before turning our minds to that. Before the end of this financial year we will be giving some advice on that to regional chairs.

Senator O'BRIEN—Do we know what staff assistance the regional council chair will receive, or councillors for that matter?

Mr Gibbons—Yes. There are three staff in each region that will be employed by DIMIA but dedicated to supporting the council and the chair. Again, it is worth stressing that we are talking about the development of partnership agreements, and the officers who make up the ICC in the program areas will be working with the chairs in that process.

Senator O'BRIEN—Did any Commonwealth officer offer any assurances before or after 15 April that the operations of ATSIC regional councillors would not be affected by the government's proposed ATSIC changes until at least 1 July 2005?

Mr Gibbons—I do not believe any advice exactly like that was put to them. There have been several communications with regional chairs about the level of support. A number of points have been made: that there will be an appropriation in the budget to cover the ongoing costs of the establishment of the regional councils—that is the \$9.6 million—and that in the course of mapping resources and functions we will be protecting the resource that is available for direct assistance to regional chairs. But there is necessarily a changing role. The relationship between regional chairs and the ATSI regional officers will undergo a transformation in the context of the development of the ICCs, and there will be a slightly different relationship in rural and remote areas as opposed to urban areas. I personally have spoken to some of the spokespersons for the chairs group when they have raised concerns, most recently about the car, and have resolved that ahead of the time that we intended. But I have stressed that before the end of the financial year we will be resolving the level of support consistent with the resources available to us.

Senator O'BRIEN—Minister, did you give any assurances that the operation of ATSI regional councils would not be affected by the government's proposed ATSI changes until at least 1 July 2005?

Senator Vanstone—I can give you a copy of the material that was sent out to councils and you can judge for yourself.

Senator O'BRIEN—That correspondence comprises any assurance that you might have given them; is that what you are saying?

Senator Vanstone—I have had conversations with them. I believe they reflect the correspondence.

Senator O'BRIEN—I just wanted to be certain. I am very happy to receive a copy of that correspondence to clarify the matter. What are the changes to resourcing vehicles, phones and travel imposed by the government with respect to regional councils since 15 April?

Mr Gibbons—I am struggling to understand whether there have been any changes apart from the obvious: that the government proposed to introduce legislation to bring the councils to an end in July 2005. Apart from our discussions with them about support next year, about the budget arrangements and, in one or two cases, about the need to relocate their offices so they have unfettered access et cetera, I cannot think of anything at the moment.

Senator O'BRIEN—What is the situation with respect to regional council assets? I suppose that depends on the bill, does it?

Mr Vaughan—That does depend on the bill. I am not sure whether there are significant regional council assets—

Mr Gibbons—No, the assets of regional councils are ATSI assets. I gave you an account of what they are. I mentioned this morning—and I will draw attention to it again—the small regional land fund, which is a fund that individual regions have contributed to over the years. Some have zero. Some have significant amounts. When you review the legislation, you will see that that fund is preserved for the use of councils for the next 12 months. Senator, my colleagues have just drawn to my attention that your question related to mobile phones; I missed the mobile phones part of it.

CHAIR—It was a very good answer, though, Mr Gibbons. You could leave it on the record, or do you want to go further?

Mr Gibbons—There was some action taken not just in respect of regional chairs but also commissioners and senior staff in ATSI/ATSIS about the need to keep a log of their private calls and pay for their private calls. That is consistent with the Rem Tribunal determination.

Senator O'BRIEN—Have any regional council chairs resigned or advised the minister or ATSI of an intention to resign since 15 April?

Mr Gooda—I am not sure of the exact date but the regional council chair in the Northern Territory resigned, but he indicated he was resigning because he has obtained a job in the Northern Territory government. That is the only resignation of a regional council chair in recent times that I am aware of.

Senator O'BRIEN—On 1 April, Minister, I asked a question about the provision of Commonwealth infrastructure funding for the AP lands and whether the Commonwealth had withheld essential funds for water and power works. You did not answer at that time but you undertook to provide an answer. I have not had one yet.

Senator Vanstone—I am sorry, but I am sure Mr Gibbons can give you the answer immediately. It related to power provision, as I understand, and there was a question of a power audit that needed to be done and the local community refusing for that to be done. Mr Gibbons might have more detail than that.

Mr Gibbons—Yes, I think I recall saying last time that we had declined to hand over a large sum of money for power maintenance to the AP council because of our concerns about administration. Ahead of any audit of the work needed to be done, the council was refusing to cooperate. However, at a meeting with the Commonwealth lead agent for the AP lands, the secretary of health, myself, the chair of the AP council, local regional council chairs and a commissioner, we brokered an agreement whereby the audit would proceed. That work was done. There was then a decision to proceed with the work. There was some disputation with the council again over contracting that work. We have subsequently contracted one of our regular contractors for building and infrastructure works and the work is, I think, now well under way.

Senator O'BRIEN—Will it be completed this financial year?

Mr Gibbons—I think it is on schedule to be completed but I will double check that for you. That was the intention: to do it quickly. There is an officer here who will know, so we will chase him up.

Senator O'BRIEN—I see there is a continuation of funding for the Aboriginal Interpreter Service of the Northern Territory in the budget, but only for one year. How much of the allocation of \$3.9 million will go to the Aboriginal Interpreter Service?

Mr Vaughan—That is the Attorney-General's portfolio item, and I am unable to answer the part of your question about how much will go to that agency. I believe the money goes through the Northern Territory government, but I would even have to check that.

Senator O'BRIEN—Can someone advise the committee what funds the Commonwealth expends on Aboriginal interpreting services in the Kimberley region?

Mr Vaughan—I certainly do not have that information available, Senator, and I am not sure whether it would be ascertainable.

Senator O'BRIEN—Why is that?

Mr Vaughan—If you say 'the Kimberley region', it would depend; for example, Centrelink has some interpreting services in relation to Indigenous people in Indigenous call centres, but whether they keep data as to how much of that relates to Kimberley residents—

Senator O'BRIEN—There is none from this portfolio for the Kimberley?

Mr Vaughan—No, not unless there is something that ATSI funds.

Mr Yates—We will take that on notice and do a full check for you, Senator.

Mr Gibbons—Senator, I have some information on the work in the AP lands. There were three phases to the work. The first two phases have been completed and the third is under way, but it will not be completed until into the next financial year.

Senator O'BRIEN—What will that mean in terms of the contract payment?

Mr Gibbons—There are no consequences.

Senator O'BRIEN—If the answer in relation to the question you have just taken on notice about interpreter services is 'nil', can you tell us what the reason is for the absence of funding for interpreter services in an area where there are a great many Indigenous languages?

Mr Yates—The short answer is that I will get details, but historically we have never had a program for funding interpreter services. We have seen that as a responsibility of one of the mainstream departments or the states, but we will confirm that in our advice to you.

Senator O'BRIEN—What costs has the Commonwealth incurred contesting and otherwise dealing with a legal claim by Mr Mark McMurtry related to a contract dispute which originated, as I understand it, at or around the time of ATSI's formation?

Mr Gibbons—I would have to take that on notice. It is a long running, sad saga.

Senator O'BRIEN—Has the Commonwealth sought to settle these matters?

Mr Gibbons—This goes back a long time but I understand that there have been discussions. Throughout this matter the Commonwealth has been open to settlement but when \$33 million is being demanded, in circumstances where the Commonwealth does not believe it has any responsibility, there is a lot of ground to cover and it is a big margin.

Senator O'BRIEN—It is not likely to be settled any time soon; that is the message I am getting?

Mr Gibbons—The matter is listed for hearing in court in September. If it goes ahead, it will be a step towards resolving it. Once the court challenge is out of the way there may be other things we can do. We have reached a point where the court has scheduled the matter for hearing, but Mr McMurtry has not turned up before. I think this is about the seventh or eighth attempt to deal with it in court.

Senator O'BRIEN—In February \$88.3 million was held in the Aboriginal benefit account reserve. What is the reserve now?

Mr Stacey—At the end of April it stood at \$92 million.

Senator O'BRIEN—The minister announced approval for 13 projects worth a total of \$3.5 million on 19 April, which is about the same time. When was each of these projects assessed by the Aboriginals Benefit Account Advisory Committee?

Mr Stacey—Some of them were looked at in February 2003. Others were looked at at a later time. I cannot recall exactly when.

Senator O'BRIEN—Could you give us that information on notice?

Mr Stacey—I think most of them were dealt with in February 2003. Perhaps I should elaborate. Some of the projects resulted from a broad proposal, which had been considered in February 2003, but there had not been any specific projects identified—that came later.

Senator O'BRIEN—In the same year or a subsequent year.

Mr Stacey—This year, 2004.

Senator O'BRIEN—If you could supply us with those details I would appreciate it. On 10 May the Chair of the Indigenous Land Corporation, Ms McPherson, addressed the United Nations Permanent Forum on Indigenous Issues. Her speech, which included the claim that the gap between Indigenous and non-Indigenous is steadily narrowing, was greeted, Minister, by your laudatory media statement. Who selected Ms McPherson to attend the forum?

Senator Vanstone—I did.

Senator O'BRIEN—Was there a nomination process for the position?

Senator Vanstone—No. She did not go alone. She went with Tanya Major from Cape York.

Senator O'BRIEN—Presumably this was paid for out of the ATSI budget?

Mr Vaughan—Ms McPherson's costs were met from the Indigenous Land Corporation and Ms Major's costs were met from the Office of Aboriginal and Torres Strait Islander Affairs budget.

Senator Vanstone—In relation to that remark, I have seen some press coverage by a range of people, some of whom might have preferred that they were chosen to be sent. But if you look at, for example, the increase in the percentage of Indigenous kids now going to year 12 and the increase in the percentage of Indigenous kids now doing undergraduate or postgraduate courses, it is from a low base. I accept, but nonetheless there is improvement. One of the things that I am consistently reminded of in visiting communities and in discussions on these issues is that, yes, of course we need to focus on where we need to make improvement, but the benefit of acknowledging where there has been achievement is significantly rewarding to those in the Indigenous community who are looking for some hope. I think it is a very sensible thing to acknowledge when there has been improvement.

Senator O'BRIEN—Was the speech that Ms McPherson presented something that she needed approval to present?

Senator Vanstone—She did not seek approval from me.

Senator O'BRIEN—So it is her speech?

Senator Vanstone—All I am telling you is that she did not seek approval from me. I had nothing to do with what she said.

Senator O'BRIEN—Mr Vaughan, do you have something to add?

Mr Vaughan—It was delivered by Ms McPherson on behalf of the Australian government delegation at the meeting.

Senator O'BRIEN—Who wrote the speech?

Mr Vaughan—It was a collaborative effort. An initial draft was done by someone within our office and it was then worked upon by Ms McPherson, the Department of Foreign Affairs and Trade and the Office of the Status of Women.

Senator O'BRIEN—Was the final version the subject of an approval process?

Mr Vaughan—It was cleared through that interdepartmental process.

Senator O'BRIEN—I guess it is not surprising, Minister, that the Australian government strongly supported her speech: they cleared it.

Senator Vanstone—I am not sure what reports you are referring to as saying 'strongly support'. I support what she said.

Senator O'BRIEN—I am looking at a media release which attributes that to you. That is what I am looking at.

Senator Vanstone—I have already said to you that I did agree with those remarks. I am just pointing out that I did not clear them—that is all.

Senator O'BRIEN—That is right. I am just saying that if the government cleared the comments I am not surprised you approved them.

Senator Vanstone—It is open to anyone to try to claim, as I am sure many would wish, that there have been no improvements in Indigenous Affairs under this government. But a \$2.9-something billion spend, a 39 per cent real increase over what the previous government was spending—if you just want to look at cash—is a very significant increase. I do not look at it in cash terms, because you can spend more money and get no better outputs, but when you look at the combination of the cash and the outputs you see that the proposition that things could not improve unless Labor was in government is, frankly, laughable. I will tell you what a lot of Indigenous people have indelibly printed on their mind—to pass around from community to community; no doubt it is not every community—is that fabulous picture of Senator Richardson, finally finding an interest in policy, putting his hands under a freshwater tap and promising all would be delivered, which was roughly akin to the former Prime Minister's promise that no child would live in poverty. So let's not start on that, eh!

Senator O'BRIEN—I am only influenced by the Social Justice Commissioner's report as to what the status of the communities is, and I have not heard any real response from the government. I am waiting for it and I would be very happy to see it.

Senator Vanstone—I will give you the exact figures for what I referred to generally a few minutes ago. The proportion of Indigenous children who stay on at school through to year 12—and you may or may not agree with me but I think that is one of the basic building blocks of giving Indigenous Australians a better chance—

Senator O'BRIEN—It is important.

Senator Vanstone—has risen from 29.2 per cent in 1996 to 39.1 per cent in 2003. That is not a function of there being more Indigenous kids. The proportion has increased.

Senator CROSSIN—What is the proportion of non-Indigenous students who have stayed on, Minister?

Senator Vanstone—I do not know, but I suspect you will find that the proportion of non-Indigenous—

Senator CROSSIN—Perhaps you could look at the gap.

Senator Vanstone—I have no doubt that you will spend whatever time is required to see how you can possibly diminish an achievement of which both the government and the Indigenous people who have played a part in this are entitled to be proud.

Senator CROSSIN—Is the gap between Indigenous and non-Indigenous students diminishing? No.

Senator Vanstone—Senator, you don't need to attend estimates if you are sure you know all the answers.

Senator CROSSIN—Those figures were in fact produced in your government's national Indigenous education report card.

Senator Vanstone—Senator, I am in the middle of giving Senator O'Brien an answer, and if you do not want to listen to it, don't. And if Senator O'Brien would rather me send this to him later, because you cannot bear the prospect of listening to these achievements, I will send it to him later.

Senator O'BRIEN—I would rather you answered the question. I am happy to have a dialogue about it.

Senator Vanstone—I referred to the Indigenous students enrolled in bachelor-level degree or higher degree courses. That figure is 36 per cent more than were enrolled in 1996. There is a lot more material here, Senator, but I do not want to drive Senator Crossin crazy.

Senator CROSSIN—Please don't!

Senator Vanstone—I just refer you to the Budget 2004 Indigenous Affairs papers—

Senator CROSSIN—If you are going to talk about improvement in Indigenous figures, talk about the gap.

Senator Vanstone—and invite you to have a look at them and acknowledge the achievements that have been made. Welcome back, Senator Crossin. I do not know where you have been all the time that Senator O'Brien has been left here on his own.

Senator O'BRIEN—She has been doing regional stuff for me.

Senator CROSSIN—I have been doing Territories and Environment, and you just cannot be in two places at once unfortunately, Minister. I am sorry I missed you.

Senator Vanstone—You are a soldier. Someone will give you a medal one day.

Senator CROSSIN—I have got questions here to put on notice.

CHAIR—I am very grateful, Senator Crossin. We will take your questions on notice. I thank the officers from ATSSIS, ATSSIC and OATSSIA for their very lengthy assistance today to the committee. It has been very helpful.

[6.18 p.m.]

Indigenous Land Corporation

Senator O'BRIEN—The table on page 282 of the PBS shows estimated revenue from the land fund for 2004-05 of \$63.124 million. Underneath the table the PBS states that the ILC received an annual allocation from the land fund until 2003-04 but from 2004-05 will receive the realised real return from the land fund. On table 1.7 on page 284 of the PBS, \$63.124 million is identified as an allocation from the land fund in 2004-05. Which table is correct?

Ms Lindsay—The tables are both correct. The ILC received an allocation from the land fund until 2003-04. As a result of a special appropriation to the land fund, the ILC receives about 36 per cent of that. From 2004-05, the ILC will still receive an allocation from the land fund but in this case it will actually be the realised real return of the land fund. So both payments are coming from the land fund: one comes via a special appropriation and the other is the realised real return.

Senator O'BRIEN—Is that a continuation of matters as they have been or is that a change?

Ms Lindsay—It is a change but both payments are from the land fund. It is a change in the way that we are funded from the land fund.

Senator O'BRIEN—How was the funding arranged before?

Ms Lindsay—Via a special appropriation to the land fund. Our act required that part of that appropriation was then paid from the land fund to the ILC—\$45 million indexed for 10 years—and the final payment was in the current financial year. From 2004-05, the payment changes and we actually live off the real return of the land fund.

Senator O'BRIEN—The note on page 292 of the PBS says there will be a gap of 24 months between the ILC's receipt of funds. So the last payment was received in July 2003 and the next will not be until June 2005—is that how I should understand it?

Ms Lindsay—That is correct.

Senator O'BRIEN—How will the ILC utilise investments—I think that is what it says—to cover the gap?

Ms Lindsay—The ILC currently has about \$231 million in its investment portfolio. So it will draw down on that on an as needs basis to fund its program through that gap period.

Senator O'BRIEN—Which presumably will affect its return?

Ms Lindsay—No, it is from the ILC's investments, not the land fund investments.

Senator O'BRIEN—In October 2002 the board wrote to the Minister for Immigration and Multicultural and Indigenous Affairs and the Minister for Finance and Administration seeking clarification of a number of important matters related to the land fund, including the meaning of 'realised real return'. No reply, as I understand it, was received before the ILC appeared

before the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund in March.

Ms Lindsay—Senator, if I could correct that, the ILC board wrote to our minister. ATISIC at the time—it was prior to ATISIS—wrote to the minister for finance.

Senator O'BRIEN—I see; it was ATISIC, not ILC.

Ms Lindsay—The response from the minister for finance was received by ATISIS at the end of April. So ATISIS have that information.

Senator O'BRIEN—Are you aware of what the information is? That is the difficulty with agreeing to combine the programs—Mr Vaughan may know the answer but we have just sent ATISIS away.

Ms Lindsay—The advice to ATISIS from DOFA was that it should seek legal advice on the meaning of 'realised real return', which it then did. That advice was presented to the consultative forum on the land fund at its meeting at the end of April.

Senator O'BRIEN—Can that advice be made available to this committee?

Ms Lindsay—The Chief Finance Officer of ATISIS said that, if the committee requested that of him, he can provide that to you.

Senator O'BRIEN—I go now to table 3.1 on page 294 of the PBS. Why is the revenue from the land fund forecast to grow by over 50 per cent between 2004-05 and 2005-06, from \$63.1 million to \$98.3 million?

Ms Lindsay—That comes down to the legal interpretation of what is the realised real return of the land fund. That figure is determined by the administrator of the land fund, which is ATISIC, and ATISIS do that on its behalf.

Senator O'BRIEN—So that is the calculation made by ATISIS?

Ms Lindsay—That is correct.

Senator O'BRIEN—Is there a document that sets out how the calculation is made?

Ms Lindsay—Can I suggest that you request that from ATISIS.

Senator O'BRIEN—Is it possible to get us that document, Minister? It is an ATISIS document and we have changed the program to accommodate people, and now we are being referred to a document that is an ATISIS document.

Mr Vaughan—We will take it on notice.

Mr Galvin—It is explained in that legal opinion, so once you get that legal opinion then you can extrapolate it out from there.

Senator O'BRIEN—What sort of activity does 'other' represent in the revenue column? Why will it decline from \$22.5 million in the current year to \$14.3 million in 2004-05?

Ms Lindsay—The 'other' is made up of a number of items, mainly the market to market revaluation of our investments. Therefore, due to the 24-month gap and us having to draw on our investments over the 24 months, the return on those investments will decline.

Senator O'BRIEN—The interest?

Ms Lindsay—No, not the interest; the market to market revaluation.

Senator O'BRIEN—So part of that represents a decline in the value of the portfolio?

Mr Galvin—As we have to utilise those funds, we are drawing down from our investments; therefore those investments are being depleted in that gap year. When we value year by year and market to market, it will deplete during that period. It is an unavoidable consequence.

Senator O'BRIEN—There is a continuation of that trend—it falls again in 2005-06.

Ms Lindsay—That is correct, because we will receive the income on 30 June each year not 1 July each year, so we will effectively be topped up at the end of the reporting period.

Senator O'BRIEN—There is also a significant increase in the expense item related to suppliers in the coming years from \$25.2 million in 2003-04 to \$69 million in 2004-05 and then \$101.5 million in 2005-06.

Ms Lindsay—I refer the senator to page 292 of the portfolio budget statement. The total price of outputs, which is represented by those figures, indicates what is available to the ILC to spend. There are notes to the budgeted financial statements about halfway down the page.

Senator O'BRIEN—So the suppliers figure is actually funds available for the ILC to carry out its legislative function—is that what that means?

Ms Lindsay—That is correct.

Senator O'BRIEN—Is that what it referred to in the current financial year?

Ms Lindsay—The current financial year in this portfolio budget statement is an estimate of what will be expense to 30 June.

Senator O'BRIEN—The estimated actual of \$25,264 million it is an estimate, is it?

Ms Lindsay—It is an actual to a period of time in the estimate to 30 June.

Senator O'BRIEN—Is it reasonably accurate?

Ms Lindsay—Reasonably, yes.

Senator O'BRIEN—I still do not understand why it will grow, which is the basis of my question.

Ms Lindsay—To do our budgets we effectively determine in our expenses what is available to be spent. So that is what we could spend on our land acquisition, land management function and our other suppliers cost next year.

Senator O'BRIEN—So that will mean that in the coming financial year there will be about \$69 million to spend on land acquisition?

Ms Lindsay—About \$65 million of that covers the land acquisition, land management function. The other \$4 million is to cover administration costs.

Senator O'BRIEN—And the following year? What is the estimate that is available to expend on purchases out of \$101½ million?

Ms Lindsay—Again, we do not expect our administration expense cost to go up substantially so I would say that out of that \$101 million there would be \$97 million.

Senator O'BRIEN—Is it possible to get a breakdown of the expected available funds for expenditure for 2004 and the outyears? Perhaps you can give it to me now rather than on notice.

Ms Lindsay—I will take it on notice if that is all right.

Senator O'BRIEN—All right. You estimate a surplus of a thousand dollars in the coming financial year. Is anyone going to bet their bonus on that?

Ms Lindsay—Again, we do our budget on what is available to actually spend. We have an application based spend in our functions so therefore the \$65 million is what we would say is available to us to spend next year on those functions.

Senator O'BRIEN—I am trying to get an understanding of the surplus figure. In 2002-03 there is a forecast surplus of \$119,000. The 2003-04 PBS said it was not \$119,000, it was \$24 million. The 2003-04 forecasts a surplus of \$65,000. This year's PBS says it was \$44 million. Now you are estimating a surplus of a thousand. I am trying to understand what those figures really mean.

Ms Lindsay—We estimate that we will spend what our allocation is each year.

Senator O'BRIEN—Okay, so that is an underspend, is it?

Ms Lindsay—Yes.

Senator O'BRIEN—So in 2003-04 there was an underspend of \$44 million?

Ms Lindsay—Yes, that is correct. We have in our act the provisions to actually rollover funds not expended. There are two points of our act that point to the ability to invest moneys of the corporation.

Senator O'BRIEN—So those surplus figures do not really mean anything at all.

Mr Galvin—Only in the sense that we have our annual allocation through the land fund. It is available to spend on projects. It is unlike a departmental budget. It is from the land fund and therefore if it is not spent it then continues in our investments in house to be utilised in the future.

Senator O'BRIEN—I think what you said lines up with what I said. It does not really mean much; it is a number on a page. You have got the money one way or the other. You invest it or it is in surplus. These surpluses are retained by ILC.

Ms Lindsay—That is correct.

Senator O'BRIEN—How is the development of your Indigenous employment strategy progressing?

Mr Galvin—It is progressing well. It should be wrapped up by 30 June. The Indigenous advisory group has presented a strategy to us. We are just reviewing it. We are doing it in concert. With any luck it will be wrapped up by 30 June.

Senator O'BRIEN—Will that be put on your web site when it is complete?

Mr Galvin—Yes, it will be.

Senator O'BRIEN—The national Indigenous land strategy 2001-06 was revised in October 2002, as I understand it—is that right?

Mr Galvin—That is correct.

Senator O'BRIEN—Page 1 of the revised strategy states that it responds to the perception that the previous version did not adequately address the needs of urban Indigenous people. How are the needs of urban Indigenous people better addressed in the current strategy and, more importantly, what tangible impact has this new focus had on ILC's acquisition and divestment program?

Mr Galvin—One of the primary purposes for the development of those four program streams was to get away from the previous goal of traditional and cultural acquisitions. One of the great problems with that was that, if you were looking at traditional acquisitions through traditional owners and cultural acquisitions in urban areas, it was very hard to be able to identify both of those criteria in the urban areas. For instance up until, say, six months ago not one thing had been purchased in Brisbane. That would have been the case in numerous other places as well. Nothing had been purchased in Perth, for instance. Therefore the social acquisition criteria allowed people in the urban areas to develop applications based on social benefits. I am pleased to report that of the eight acquisitions that occurred in 2003, after we implemented that system, five were urban, one was semi-urban and two were rural. In 2004 two were urban. We have got under contract presently one urban in Alice Springs, and we have got two under negotiation in rural Western Australia. It really has allowed people in urban areas to benefit from the ILC's program, where before we were copping the criticism—justly so—that it was incredibly difficult if you lived in an urban area to get a benefit from the Indigenous Land Corporation.

Senator O'BRIEN—I am not just interested in investment; I am interested in divestment. What can you tell me about the divestment of urban properties?

Mr Galvin—Those properties at the moment are under the new regime, where we enter into a three-year lease agreement with a group who we have approved. That group has to demonstrate through a work plan that they are undertaking what they said they were going to undertake in their application process. Once they demonstrate that through their work plan of up to three years, we will then say, 'Yes, you have proven yourself, you have done what you said you were going to do, and we will divest a property to you.'

I think that was a decision by the board that got away from what was happening in the past—that we were purchasing properties and divesting to groups which, in the vast majority of cases, did not have the capability to actually run the properties. Because they were purchased under the cultural and traditional criteria, nobody had actually thought about what goes into running a property, whether it be in urban and rural areas. It was particularly in urban areas. The stocktake that we undertook, which culminated in 2002, proved that people were deriving a benefit from only 15 per cent of those purchased properties. In going through the process we are going through now, which is application based, you have to state what benefit you wish to receive from the land and, once we purchase the land for the group, demonstrate to the ILC that you are capable of benefiting from the acquisition, and then it will be granted to you.

Senator O'BRIEN—I understand the economic acquisition program was suspended until 31 March this year pending a review. Can you summarise the outcome of the review process and tell me whether the program has been renewed?

Mr Galvin—The board had decided that we had never had an economic program until that 2002 change. When we put out the program, we were getting a lot of applications ranging from, say, a minimum of \$3.5 million up to \$15 million per application, and some for a very small group of people—up to four people. Therefore, the board could see that the program itself could have created a lot of inequity by giving a large financial benefit to a small group of people. Therefore, it decided to review that program and put a moratorium on it. The board has considered it over the past months. We got in Mr Richard Longes, who volunteered his time as the Deputy Chairman of Lend Lease and who has a great interest in Aboriginal economic development, to give the board a hand—get somebody from outside. We sat down with him for a whole day in Sydney. At its last meeting in April the board decided to change the program to be more focused on economic proposals that are commercially viable. That is the first criterion. The second criterion is that they have to benefit a range of people, and those benefits should also be social and cultural.

In doing that, it is trying to get away from a family farm situation where you have only four people involved. It wants to see the benefits go across the Indigenous community. Those benefits include social and cultural jobs et cetera. So we want to broaden the scheme. In the next meeting, on 23 June, the board will be approving the program guidelines, and the day after that it will be put on our web site and then printed.

An example of what we would be looking for, which I think would be good to relate, is Murrayfield, the acquisition on Bruny Island in Tasmania. That is the type of acquisition we would be looking for to give that broad range of benefits to the Aboriginal community—school kids going there, land care, employment opportunities, a whole range of opportunities through an economic acquisition.

Senator O'BRIEN—I look forward to seeing the material that you have been talking about. The ATSI Act provides that the ILC has two purposes: to assist Aboriginal and Torres Strait Islander persons to acquire land and to assist those people to manage Indigenous held land. How many properties has the ILC bought and then sold—that is, sold without divestment—since its establishment?

Mr Galvin—We have bought approximately 160 properties. I can get you the exact details. We have sold one property, and that was Neenan Station in the Northern Territory. Neenan Station was bought under false pretences by an applicant. After an extensive round of consultations with the traditional owners about whether they wanted to go out and work on the property or whether they saw benefits in the property, it was decided to sell the property.

Senator O'BRIEN—How many of the properties that have been purchased have been divested?

Mr Galvin—Approximately 100 properties.

Senator O'BRIEN—Are there any properties currently awaiting sale or disposal?

Mr Galvin—Yes, we have one in South Australia. Mount Dare Station, which is a very small lease, was purchased to run as a tourism property. That was under a lease with South Australian parks and wildlife. It was purchased, but unfortunately the group that it was purchased for showed no interest in that property at all. There was further consultation with the group about whether they wanted to keep the property—it abuts a very big land holding that the group actually owns through the South Australian land rights act or something similar—and the group had no interest. That is presently being sold and going through a contractual process which is very complicated.

Senator O'BRIEN—Any others?

Mr Galvin—Yes, I was going through them. Another property is Wittenburra-Turn Turn, a property out near Cunnamulla in Queensland. That property was purchased in June 2000 and had about 12,000 sheep and 800 head of cattle on it. Again, unfortunately, the group showed little interest in actually moving out there and utilising that property. The property itself went through a horrendous drought from June 2000 to about November 2003. It got 25 millimetres of rain, and the sheep herd went down from 12,000 to 2,000 and the cattle herd went down from 750-odd to 67. The property itself was in a disastrous state.

Senator O'BRIEN—You mean it was dry or run down?

Mr Galvin—No, the property itself was not run down; it was dry. For instance, the next-door neighbour went from having 50,000 sheep to having 5,000 sheep. It was a horrendous drought out there. The mulga was dying et cetera. Again, we went through an extensive consultation process with the group, including two meetings out at Cunnamulla, to give them a chance to develop property management plans et cetera. There was no response over months from those meetings. The board decided that it would dispose of that property in February and then gave a final ultimatum to the group to come up with a sustainable plan. One of the problems with the group is that it is not one group, it is subsets of groups. We received two independent proposals from the group. Unfortunately they were not sustainable proposals. The board then took the decision to dispose of the property.

Senator O'BRIEN—What did it cost to purchase?

Mr Galvin—With stock, it was approximately \$1.8 million.

Senator O'BRIEN—Your annual report says the total value was \$2.246 million. Is there some reason for that difference?

Mr Galvin—I would have to look at that.

Senator O'BRIEN—It says land was \$1,842,112, plant equipment was \$49,997 and livestock was \$354,152.

Ms Lindsay—Sorry, what document are you looking at?

Senator O'BRIEN—The annual report of 1999-2000.

Mr Galvin—When I said \$1.8 million, that must have been for the land. The other figures are for the livestock and the equipment.

Senator O'BRIEN—That is right. That is what the annual report says. So there were eight freehold, two titles on Wittenburra and two properties on Turn Turn. Are they both freehold?

Mr Galvin—That is my understanding.

Senator O'BRIEN—Was any assessment made of the possibility of a valid native title claim over all or part of the properties at the time of purchase?

Mr Galvin—I would have to take that on notice. We always look for native title claims, but of course if it is freehold then the freehold extinguishes the native title, so it would be inconsequential.

Senator O'BRIEN—Would the purchase of the properties by the ILC have had any impact on the likely success of any native title claim?

Mr Galvin—No, not if it is freehold.

Senator O'BRIEN—But, if it was not, did you convert to freehold?

Mr Galvin—I would have to take that on notice. I would not have thought we would go out of our way to convert it to freehold.

Senator O'BRIEN—I have had some material drawn to my attention. On 13 July the ILC wrote to Mr Michael McNiven, representing the Budjiti people. The letter says:

As you are aware, the ILC agreed to purchase Wittenburra/Turn Turn with the intention of divesting legal title of the property to the traditional owners.

Mr Galvin—That would have been correct.

Senator O'BRIEN—So the properties were bought as a result of land needs proposals submitted by the Goolburri Land Council on behalf of the Budjiti people?

Mr Galvin—That is correct.

Senator O'BRIEN—You say those people had no interest in the property until early this year?

Mr Galvin—There was one proposal from Bidjara land and housing to lease the property. That was their proposal. They withdrew that proposal because of the severity of the drought. We also heard that a certain person in Cunnamulla would be willing to go out and live on the property. He was delivering equipment to the property one day and the manager asked, 'Were you going to come out and do X, Y and Z, Sir?' He said something I cannot repeat here. He said, 'No, I will not be doing that.'

Senator O'BRIEN—Or words to that effect.

Mr Galvin—Yes. One of the problems is that people who show a lot of interest in the property do not live anywhere near the property.

Senator O'BRIEN—I do not know how easy it is to live near the property—it is a pretty big property to start with, isn't it?

Mr Galvin—You can live at Cunnamulla instead of Canberra or Newcastle.

Senator O'BRIEN—How far from Cunnamulla is this property?

Mr Galvin—About an hour and a quarter. It is a good road; it is bitumen all the way. The property has electricity. It has easy access to Cunnamulla.

Senator O'BRIEN—What sort of proposal did the Budjiti people need to satisfy the ILC?

Mr Galvin—Firstly, that there was a group of people willing to go out and live there and run it and, secondly, that it was a sustainable proposal. We just did not have those.

Senator O'BRIEN—It would have been difficult in the drought.

Mr Galvin—Extremely difficult.

Senator O'BRIEN—On 3 March this year Mr Andrew Plate, the operations manager for Queensland, wrote to the Queensland south native title rep body confirming that that rep body had advised the ILC that the Budjiti people were the traditional owners of the property. I think the letter claimed that the ILC had not received any substantial proposal from a Budjiti person or group that would allow the ILC to consider the grant. What does 'a substantial proposal' mean? Does that mean any proposal?

Mr Galvin—No, substantial in the sense that it was realistic. There were two proposals received and unfortunately they were not realistic. They were not sustainable.

Senator O'BRIEN—In the drought?

Mr Galvin—Either in the drought or not in the drought. One was a proposal to lease the property to the current managers and then do things from there. The current manager was in no position to lease the property; they were not consulted on that proposal. The other proposal was to run goats and have aquaculture, tourism and education. They were not sustainable proposals, unfortunately.

Senator O'BRIEN—According to Mr Plate's letter, severe drought has made the property a marginal proposition as a rural enterprise and the ILC board had discussed the property at its 19 February meeting and found little prospect of operating the property on a sustainable basis. Is that a fair description of the property?

Mr Galvin—That is a fair comment, particularly if you look at that property as a stand-alone property.

Senator O'BRIEN—How am I to understand Ray White's description of the property—the real estate agents selling it on behalf of the ILC—which says it is 'a first class aggregation of well-balanced and improved country. Also very adaptable to running cattle with excellent fattening capability, particularly in the channels'.

Mr Galvin—Well, Ray White are selling that property.

Senator O'BRIEN—They are not trying to pull the wool over a buyer's eyes on behalf of ILC.

Senator Vanstone—Senator, you are being a bit unfair there. If that statement is made by the agent, it is not the officer's responsibility to answer for that.

Mr Galvin—No. But, in saying that, by itself, without any other landholding, it is a very marginal property. In fact, anybody who held it by itself would have gone broke.

Senator O'BRIEN—Why did you buy it?

Mr Galvin—For traditional and cultural purposes.

Senator O'BRIEN—So there was a request to buy it for traditional and cultural purposes?

Mr Galvin—That was under those guidelines in those days.

Senator O'BRIEN—So it is the change in the guidelines that has affected this entity?

Mr Galvin—It is a change in the guidelines and also the property was not sustainable. The group did not demonstrate to the ILC that they had the commitment, capability and capacity to run it as a sustainable enterprise. Also, the drought exacerbated its purely economic sustainability. Somebody might buy that property—and pray for rain and hope it pours down—who also has a number of other aggregations where they can move cattle to and run them there. If you looked at it in a whole pastoral operation, being able to move your cattle and sheep around, you could well make it a viable entity in a larger operation. Out there I think there have been two recent properties up for sale. One attracted no bid at auction, and that was a far superior property to ours. The one next door, which was in the same condition, was withdrawn from auction because nobody went out to have a look at it. It has been pretty horrendous out there.

Senator O'BRIEN—It is not a good time to try to sell it?

Mr Galvin—No, and if it does not sell we will maintain it in a holding position until the season changes. I should say that, while we have held the property, the Budjiti group has had free and unfettered access to the property. Nobody has been keeping people off the property.

Senator O'BRIEN—I take it there has been some interest in the land from the group?

Mr Galvin—I said they have, if they wish, free and unfettered access to the property. Not many people go out there—one or two.

Senator O'BRIEN—Was there an extension sought to the deadline of 31 March for submitting a proposal?

Mr Galvin—It is a bit hard to recall. There might have been. I do not think we would have extended it. I think the first meeting we had there was in September to get a proposal in. It would have been an act of grace by the board to say that, after having a period of six to eight months without getting in a proposal, we will give one last chance in a month to get in a proposal.

Senator O'BRIEN—Did you receive two proposals?

Mr Galvin—There were two separate groups.

Senator O'BRIEN—I have been given a copy of a 13-page property management plan dated 30 March. I presume you know which one I am talking about?

Mr Galvin—Have you got a name for it? It may be the Aboriginal Corporation for Culture and Heritage.

Senator O'BRIEN—It is the Budjiti nation property management plan.

Mr Galvin—We have got one that was submitted on 24 March and one on 30 March.

Senator O'BRIEN—The Budjiti nation property management plan is the 30 March one. What is wrong with that one?

Mr Galvin—As I stated firstly, the assumptions regarding the possible lease arrangement were considered flawed and out of date and did not demonstrate an ability to earn supporting property income. That was based on the fact that the group stated that the manager would be

leasing the property but the manager was in no way financially able to lease the property and in fact had not been consulted on the idea that he was going to lease the property. Secondly, it had promoted sustainability on the basis of provision by the group of volunteer labour. This was considered unrealistic in the light of the history of poor meeting attendances at Cunnamulla, no evidence of cooperative decision making by the group and limited interest the property since the acquisition. I might add that this application was sent in by somebody from Canberra.

What is happening at Cunnamulla, where the bulk of the people are, is that there is just very limited interest in this property, unfortunately. We are battling to get a roll-up at the meetings where we are talking about the future of the property. Government funding outlined in the report did not demonstrate actual or likely commitments to funding, employment or other program benefits. Repair and maintenance budgets were considered overly conservative. The development of the plan, while good, was essentially by the author, with little demonstration of input from the group, particularly the group in Cunnamulla. There was no record of the Budjiti nation Aboriginal corporation at the Registrar of Aboriginal Corporations; therefore, as if the rest of what I have stated was not enough, we would have had to try to identify the bona fides of that group.

Senator O'BRIEN—I read it as talking about a manager, not the manager who was there at the time.

Mr Galvin—It did.

Senator O'BRIEN—Because it talks about the person needing to have a connection with the Budjiti people—is that it?

Mr Galvin—My understanding from the discussions with the author is that it was the people who are presently managing the property, who have four generations of history in that area and are very capable managers.

Senator O'BRIEN—Did those people tell the ILC they had no interest in managing the property or were not able to?

Mr Galvin—We telephoned them. That was the first they had heard about it. They are not in a financial position to take on the management of that property. They themselves have been hit very hard by the drought on their own property and are in desperate straits.

Senator O'BRIEN—The property is for sale by tender?

Mr Galvin—That is correct.

Senator O'BRIEN—Which has closed.

Mr Galvin—No, it was extended to this Friday.

Senator O'BRIEN—When was it decided to extend it?

Mr Galvin—I decided to extend it when we had a problem with getting a contract ready.

Senator O'BRIEN—There is a property called Dowrene Farm in Western Australia. What are the plans for that?

Mr Galvin—Dowrene Farm is another example, in one sense, of the previous regime of not having an application based system and having the property management plan developed prior to submitting an application. Dowrene Farm was purchased on behalf of a group. The group then split in two—it was two sisters—and could not resolve their problems over a number of years of exhaustive attempts by various mediators. In fact, we tried various people through conflict resolution but it would not work, so the board decided not to divest it to either group. However, because it had a high cultural relevance, it has kept that property. If there is any other group within the region who can prove that they have the capability and commitment to run that property, they will be given a chance.

We have invited both sisters—because they now have two different Aboriginal corporations—to apply. One of the sisters has applied. The board approved the purchase of a property—it was an excellent application. Unfortunately, the vendor has withdrawn the property from the market. The board though has encouraged that group to reapply because of the excellent application they had put in, and I gather they are going to apply for another property. That should go before the board in its August meeting.

Senator O'BRIEN—In terms of Wittenburra-Turn Turn, it sounds like you are going to lose money on the property. Is that inevitable?

Mr Galvin—It is only inevitable when we get the tenders in and they are below the price. We will make a commercial decision when we see the tenders. The board will make that decision based on the availability of the facts—whether the season might be turning et cetera. I do not think it is inevitable; it could be highly likely if we decide to sell it.

Senator O'BRIEN—Section 192B of the ATSIC Act provides that a full-time chairperson of the ILC:

... must not engage in any paid employment outside the duties of his or her office without the written agreement of the Indigenous Land Corporation Board—

and full-time chairs of the corporation are entitled, according to the Remuneration Tribunal determination, to a base salary of \$142,660. Is Miss McPherson a full-time chairperson?

Mr Galvin—No, she is not.

Senator O'BRIEN—What proportion of her time is allocated to the corporation?

Mr Galvin—She works four days a week for the ILC.

Senator O'BRIEN—Section 191(5) of the ATSIC Act provides that the ATSIC chair is a member of the board. The web site says that Mr Geoff Clarke is a member of the ILC board pursuant to his position as ATSIC chair. Do I correctly presume that the minister has suspended or terminated his appointment to the ILC board?

Mr Galvin—No. He has been suspended as the ATSIC chair. That means that he cannot take up his duties as the ATSIC chair. One of his duties was to sit on our board, so he is not sitting on our board.

Senator O'BRIEN—So he hasn't attended any board meetings since his suspension?

Mr Galvin—No.

Senator O'BRIEN—What about the acting chair? Has he had any role with the board?

Mr Galvin—No. There was a bit of a legal debate over whether he could come on board or not on board automatically. It was decided by the minister to appoint him as an acting board member to make sure there were no corporate governance problems and no arguments over whether he could or could not attend. His appointment lasted until 24 March, but he never attended a meeting.

Senator O'BRIEN—On the 12 November last year the ILC issued a media release entitled 'ILC proudly supports "Respect Our Culture" program' ahead of a launch of the program by Ms Cathy Freeman. What is the nature of ILC support for the program in 2003-04 and for 2004-05?

Mr Galvin—\$150,000 per year.

Senator O'BRIEN—That has been paid and will be paid in those two amounts?

Mr Galvin—No, it is subject to performance. The money is released quarterly, I think, subject to contractual arrangements. They are reporting well and doing a good job. That is my understanding of it.

Senator O'BRIEN—Is it possible to get a more fulsome report on notice?

Mr Galvin—Absolutely. In shorthand, we are employing Indigenous people to go out to tourism enterprises on Indigenous held land to bring those enterprises up to speed to be badged under that Respect our Culture badge. That is from Aboriginal Tourism Australia so that people can identify them as genuine Indigenous tourism operations. They also have a set of guidelines on educating the groups about the delivery of tourism to people, what is expected and how to maintain that accreditation. I think that it has been well received. There have been a number of workshops all across Australia and it is going well.

Senator O'BRIEN—When did ILC receive advice of the government's decision to abolish ATSIC and mainstream Indigenous programs?

Mr Galvin—I think the minister wrote a letter to the chairperson maybe in the third week of April. I do not have that precisely in my mind but I can remember the letter coming.

Senator O'BRIEN—Mr Gibbons issued a notice to ATSI staff on 28 April advising that responsibility for the ILC would rest with DIMIA from 1 July. Was this notice also sent to ILC staff?

Mr Galvin—No. Mr Gibbons has nothing to do with the ILC staff.

Senator O'BRIEN—What are the consequences for the ILC arising from the government's plans, firstly, regarding the abolition of ATSIC and, secondly, in respect of the mainstreaming of functions? How is the transition to be managed?

Mr Galvin—If ATSIC as a board is abolished—do you want me to speculate on that?

Senator O'BRIEN—I do not think you need speculate on that.

Mr Galvin—If ATSIC is abolished then the two board members—one who was the chair and the other who was an ATSIC commissioner—will have to be filled through two other ordinary members who would be Indigenous.

Senator O'BRIEN—That is your understanding?

Mr Galvin—That is my understanding.

Senator O'BRIEN—Is that the only consequence?

Mr Galvin—There is a provision in the bill that went to parliament today—and I think it has been talked about by Mr Gibbons—that we would receive the regional land fund funds, which amount to about \$10 million, and that they would have to be spent within the regions that they were accumulated for. We are also being transferred around 23 ATSIC owned properties, which I think Mr Gibbons also mentioned, and they would come under the ILC's jurisdiction. Some of those properties go back to being purchased in 1976.

Senator O'BRIEN—Yes, we have heard something about that.

Senator SCULLION—I refer to the ATSIC properties that you will effectively inherit through this process. Is it your intention to maintain the process of the ILC by effectively acquitting those through divestment process?

Mr Galvin—Yes. We will be undertaking a stocktake of those properties, assessing those properties and, as for those ready for divestment, having a broad look at those properties. There are properties on which people are actually living. The divestment process might have been held up for a number of reasons, but they do seem to be properties that are, on the whole, being lived on by people. Some are actually communities. We will have to review them and see how we can process them through to divestment.

[7.22 p.m.]

Torres Strait Regional Authority

Senator O'BRIEN—Mr Fordham, I understand that appointments have been made to the TSRA board following island council elections and the conduct of elections for the wards of Port Kennedy and Horn and Prince of Wales. Is that right?

Mr Fordham—That is right.

Senator O'BRIEN—And the council elections were held on 27 March?

Mr Fordham—That is right.

Senator O'BRIEN—When was the election for the two wards?

Mr Fordham—Our election was on 3 April, the following Saturday, for the other two wards.

Senator O'BRIEN—What is the appointment process for the TSRA and the Torres Strait islands appointment to the ATSIC board?

Mr Fordham—Essentially, at our first board meeting there are, from within the board, elections for the chair, deputy chair and an ATSIC commissioner. We simply then notify the minister's office—I understand OATSIA have carriage of that—and it is about his functions, performance and anything relating to him and nothing to do with the TSRA.

Senator O'BRIEN—Can you add to that, Mr Vaughan?

Mr Vaughan—That is correct. We would be providing advice to the minister about the appointment. I suppose there are some public policy questions involved in the current situation as to whether you would appoint someone to the ATSIC board if it may not exist in a

month's time for what would be a three-year appointment, bearing in mind what we discussed earlier about the severance benefits from premature termination of public office holders.

Senator O'BRIEN—There is no doubt that section 142S of the ATSI Act provides the minister with the authority to make appointments to the TSRA based on the outcome of the island council elections, is there?

Mr Vaughan—No, that is not the question.

Senator O'BRIEN—That section refers to a notice setting out details of the composition of the TSRA?

Mr Vaughan—I think we are reverting to the TSRA board as opposed to the ATSI board.

Senator O'BRIEN—So that 142S of the ATSI Act refers to a notice setting out details of the composition of the TSRA?

Mr Fordham—That is right.

Senator O'BRIEN—Can the committee be provided with a copy of the relevant notice and be advised when it was published in the *Gazette*?

Mr Fordham—Certainly. It was published in the *Gazette* and I would have the date here somewhere. We can certainly provide you with a copy of the notice.

Senator O'BRIEN—When did the term of the current board begin?

Mr Fordham—Effectively the term of board is from 3 April. The first meeting was on 11 May. That is fixed, subsequent to the rules and that gazettal notice and so on.

Senator O'BRIEN—How was the appointment made? Is there an instrument of appointment that the minister needs to sign?

Mr Fordham—No, not for our board members.

Senator O'BRIEN—Section 131 of the ATSI Act provides for members of the TSRA to elect one of their number to represent the Torres Strait on the ATSI board. A notice appeared in the *Gazette* on 28 April setting 11 May as the polling day for the ATSI zone election. Do I presume correctly that the TSRA elected its zone commissioner on that day?

Mr Fordham—That is exactly right.

Senator O'BRIEN—Was the election conducted by the Australian Electoral Commission?

Mr Fordham—That is right.

Senator O'BRIEN—And the AEC conducted the election for the commissioner's position as well as for the chair and the deputy chair?

Mr Fordham—That is right.

Senator O'BRIEN—How was that done—was it by secret ballot?

Mr Fordham—It is. It is optional preferential voting.

Senator O'BRIEN—Was Mr Kris from St Paul's Council elected the TSRA chair and Mr Terry Whap from Mabuiag elected deputy chair?

Mr Fordham—That is right.

Senator O'BRIEN—I pass on my congratulations to Mr Kris, who is in the audience today. Hopefully you will convey my congratulations to Mr Whap as well. Is there an instrument the minister will sign to appoint Mr Nona to the ATSI board, Mr Vaughan?

Mr Vaughan—Yes, I understand that is the situation.

Senator O'BRIEN—But he has been properly elected?

Mr Vaughan—It would appear so, yes.

Senator O'BRIEN—This was in accordance with processes run by the Australian Electoral Commission?

Mr Vaughan—Correct.

Senator O'BRIEN—And the concern that you are expressing is that if you obey the law he will be entitled to some severance benefit if and when the parliament passes the legislation that the government introduced today?

Mr Vaughan—We are taking legal advice. There is a question there as to, if there is not a legal obligation to appoint him between now and 30 June, for example, whether an option therefore for the minister would be to wait until after 30 June before making the appointment.

Senator O'BRIEN—So there is some question mark as to the obligation on the minister—is that what you are saying?

Mr Vaughan—We are taking advice on that.

Senator O'BRIEN—In February we discussed a proposal for the TSRA bill, specifically the response to a proposal put to Mr Ruddock in July last year. I want to discuss the likely budgetary and policy impact on the TSRA arising from the government's decision to abolish ATSI. Firstly, has there been any progress on the matter of the TSRA reform since our last meeting?

Mr Fordham—I can answer that there has been no progress. The last commitment made by the minister was to meet with the new board. The board has only met once and that was effectively for elections, so the opportunity has not been available yet.

Senator O'BRIEN—Is there any meeting scheduled to coincide with the board's schedule?

Mr Fordham—There is another meeting scheduled for 10 and 11 June, which is our budget meeting. The next one after that will be sometime in August, and that is when we are hoping that the minister will attend.

Senator O'BRIEN—Minister, have you given any more thought to how the government might respond to the community's demand for TSRA reform, including some TSRA legislative backing?

Senator Vanstone—Not at this point.

Senator O'BRIEN—Does the government have a view on the question of greater autonomy for the Torres Strait?

Senator Vanstone—Not at this point.

Senator O'BRIEN—I want to ask some questions about the Gab Titui Cultural Centre and thank the TSRA for the invitation and opportunity to attend the opening on 16 April. I understand that both the Commonwealth and the Queensland governments contributed to the cost of getting the centre up and running. That is the case, isn't it, Mr Fordham?

Mr Fordham—That is right.

Senator O'BRIEN—What was the total cost of the project and can you give us a breakdown of the Commonwealth and Queensland government contributions?

Mr Fordham—Certainly. The total cost of the building was \$3 million, of which \$1 million was from the Federation Fund, which comprises Commonwealth-state moneys. The state then put in another \$175,000, the Commonwealth another \$175,000 directly and the TSRA, which are Commonwealth funds, of course, \$1.65 million.

Senator Vanstone—That \$175,000 I think was to purchase half of the land that the Queensland government said they owned. They were happy to give half but not the whole, so we bought the other half.

Senator O'BRIEN—So theirs was in kind versus your contribution in financial terms?

Mr Fordham—The cash amount was really \$1 million. I think you would need some sort of forensic audit to work out where that came from.

Senator Vanstone—Clarify if you think I have got that wrong.

Mr Fordham—No, Minister, I do not think you have got that wrong. We certainly had to buy the site off Queensland.

Senator Vanstone—And we contributed funding towards that?

Mr Fordham—Yes.

Senator O'BRIEN—Who insisted on the very large Australian government sign on the front of the site?

Mr Fordham—That Australian government sign is now part of our logo—it is cobranded. We are one of the few agencies allowed to co-brand. Our logo is both the coat of arms and the Torres Strait Regional Authority crest.

Senator O'BRIEN—So that sign will be appearing on any TSRA property or project?

Mr Fordham—That is right. In fact, you might have noticed that there were no signs on our own building. They were being changed, because we have only just received advice from the Prime Minister.

Senator O'BRIEN—What was the total cost of staging the celebrations associated with the opening of the centre?

Mr Fordham—It was about \$82,000. That included bringing people in from the outer islands. I think you missed Saturday's celebrations, when many of the people from the outer islands came in. Most islands were represented and, as you know, it is pretty expensive to bring them in. Of that \$82,000, about \$40,000 was in sponsorships and funding through the Queensland regional events funding.

Senator O'BRIEN—What recurrent costs are associated with the ongoing operation of the centre and how will those costs be funded?

Mr Fordham—The TSRA will be running the centre. Our projected budget—as you know we have only been open a short time—is \$524,000 per annum, of which \$374,000 will be revenue generated from sponsorships, admissions, sales in the shop and so on and \$150,000 will be contributed by the TSRA.

Senator O'BRIEN—What does it cost to enter?

Mr Fordham—It is \$6 per person, unless you take up a membership.

Senator O'BRIEN—Have any members of the Torres Strait Islander community expressed any concern about the imposition of an entry fee?

Mr Fordham—Yes, we have had one.

Senator O'BRIEN—One? Only one?

Mr Fordham—Yes. You no doubt read about him the *Torres News*.

Senator O'BRIEN—I have heard about it, yes. The budget papers show the Commonwealth has agreed to provide \$16.2 million over three years for stage 2 of the major infrastructure program. Page 359 of the PBS notes that the funding is subject to agreement by the Queensland government to provide matching funding. Has agreement been achieved?

Mr Fordham—Informally, yes. We have been advised informally but we have to wait until the Queensland budget is handed down, which I think is in early June. We are not expecting any problems.

Senator O'BRIEN—The table on page 359 of the PBS details proposed expenditure of \$16.2 million over three years on this program—2004-05, 2005-06 and 2006-07. The table on page 354 related to the Torres Strait major infrastructure program details expenditure over four years, not three, and it contains a different expenditure figure for 2006-07 and commits another \$5.4 million in 2007-08. Can you explain that to me, please? It is probably my misinterpretation but—

Mr Fordham—You are right: it is wrong. It would be nice if we did keep getting the \$5.4 million.

Senator O'BRIEN—It might not be wrong. Perhaps we should see, if it is better than the proposal on the other page!

Mr Fordham—Perhaps if you could assist me in taking it around to Treasury we will get the money.

Senator O'BRIEN—So there is nothing available in 2007-08?

Mr Fordham—No. It is a three-year program, as you are no doubt aware, and we would need to reformulate a bid to take it on from there.

Senator O'BRIEN—So the agency's summary measure on page 354 is inaccurate?

Mr Fordham—That is right.

Senator O'BRIEN—Have decisions already been made about the projects that will be funded in the final stage of this program?

Mr Fordham—No. At the moment we are going through and updating what we call our planning reports. An assessment will be done with a view to the amount of money that we have available and projects prioritised, and then that comes back to the TSRA board to make decisions as to where they want to spend the money.

Senator O'BRIEN—Last month—in fact the day after the celebration—I visited Saibai Island briefly. Can you tell me about the state of the seawall. What assessment has been made of its adequacy?

Mr Fordham—We are quite aware of the significant issues at both Saibai and Boigu with their seawalls and, indeed, actual inundation at different times of the year. Some of the work that is going on at the moment on Saibai is landfill to create additional serviced lots and some minor upgrades to their water supply. In addition to that, for both Saibai and Boigu we are currently investigating and designing a bund wall around the communities. There are some significant issues with bringing in fill. We are hoping to use our heavy equipment pool so that the community can do it themselves. At the moment there is funding of close to \$1 million set aside for that particular project on Saibai.

Senator O'BRIEN—Is that out of the major infrastructure program?

Mr Fordham—Out of the second stage. What we cannot do in the second stage will then be done in the third stage. The second stage predominantly at this stage is to provide land for eight lots, but part of that includes some rivetment along the front.

Senator O'BRIEN—Another issue raised was options for the disposal of refuse generated by the island community.

Mr Fordham—I am not sure whether the community raised with you that in fact part of NHT2 was the development of a waste strategy which covers all of the communities. The solution for the waste to be removed from Saibai is backloading via barge with a transfer facility. Currently we are hoping to be able to fund that under NHT2 through the natural resource management planning process. We are just putting together a bid in that direction. Overall, for the whole of Torres Strait it is about a \$10 million project.

Senator O'BRIEN—What will the Saibai option cost?

Mr Fordham—It means removing all the rubbish so that you take it all off the island and recycle as much as you can. Yam is currently undertaking a trial to see how it operates there. In addition to that, and as a result of the dengue problems, we have gone around and undertaken a bulk waste removal process to get rid of car bodies, old fridges and all that sort of stuff. I have a detailed list of all of that if you want me to table it. It has some dates and things like that on it. As I understand it at the moment, at Saibai some of those vehicles are to be buried, and council are in the process of identifying some suitable sites.

Senator O'BRIEN—That you can access in the dry.

Mr Fordham—That is right—and you have to bring in clay, of course, to cap it.

Senator O'BRIEN—I was told about particular demands placed on the medical service on Saibai as a result of the island's close proximity to PNG. Could you tell the committee how the Commonwealth has responded to these demands?

Mr Fordham—Obviously, service delivery for health is not my responsibility, but there is a health framework agreement, which is a bilateral between ourselves and Queensland, and Commonwealth Health and Ageing are partners in that. One of the main bodies of work at the moment is using Commonwealth PCAP funding to revise the Torres Strait health strategy. There are a number of proposals in the draft, including positioning of doctors in some of the outer islands. There is also a proposal to look at having PNG doctors based on our side of the border to try to cater for some of the influx. Those proposals and reports are simply in draft stages at the moment.

Senator O'BRIEN—In February we discussed the threat posed to the Torres Strait community by dengue fever. Was a whole-of-government response ever marshalled?

Mr Fordham—It was, I am happy to say. In fact, since the one death back then, sadly 277 cases in total of dengue fever have been reported in the Torres Strait. But since, I think, May there have not been any. So the whole-of-government approach certainly worked well, and our commitment to that was, as I said, the coordination of bulk waste removal as well as the coordination of the other agencies. I am happy to table the list of that work that was done.

Senator O'BRIEN—In February we were told that TSRA had funded the purchase of briquettes for water tanks to aid eradication of dengue. At that time, this was the sole Commonwealth contribution to dengue control in the Torres Strait. What cost to the Commonwealth was associated with the purchase and distribution of these briquettes?

Mr Fordham—I would have to take that one on notice.

Senator O'BRIEN—What was the total number of dengue cases detected in the Torres Strait?

Mr Fordham—There were 277 confirmed cases.

Senator O'BRIEN—Has there been a continuation of the outbreak or has it effectively ceased?

Mr Fordham—I am just trying to look for the date, but it is pretty well mid-April, I think, or around that time since any cases have been reported. So it has really dropped off as a result of the whole-of-government approach, which was about bulk waste removal, fogging, spraying, the briquettes, traps and so on.

Senator O'BRIEN—Table 2.1.1 on page 360 of the PBS shows that funding for TSRA's social, cultural and development output goes down by \$120,000 in 2004-05. Is there some explanation for that?

Mr Fordham—The only thing I could say is that federal assistance grants to our councils have risen dramatically and will continue to rise this year and in the next couple of years. TSRA has been providing some assistance to the councils, and we are basically redirecting some of our money into other programs rather than just giving them untied amounts of money to run the councils.

Senator O'BRIEN—So it is about running the councils—that is what this money is for? What was the cost of the program designed in this dengue sheet that you have given us?

Mr Fordham—I do not have that; I will have to take it on notice.

Senator O'BRIEN—I would appreciate that. When was the TSRA, both administration and elected arms, advised of the government's decision regarding the abolition of ATSIC as the main stream of Indigenous programs and the like?

Mr Fordham—We were advised in the letters that went out to just about every Indigenous organisation on 22 April. On 30 April there was another specific letter.

Senator O'BRIEN—Are there any consequences for the TSRA arising from the government's announced plan?

Mr Fordham—We do not believe there are. The letter that we received on 22 April says that the TSRA and other non-ATSIC bodies are to continue. We are happy to see that our budgets are there, and the advice that we have had verbally is certainly quite supportive of the TSRA. The government appears very supportive of our work.

Senator Vanstone—Let me confirm that on the record. I think the TSRA do a tremendous job and the government thinks they do a tremendous job. I am sure there are challenges there, but they meet them and work together on them. They are doing a tremendous job.

Senator O'BRIEN—I have no argument with that. I just think that there are a whole lot of other communities that do a tremendous job as well but have not been treated the same.

Senator Vanstone—You can make a list of them, if you like, and we can talk about it. But we talking here about the difference between the ATSIC operations dealing with mainland Indigenous Australians and the Torres Strait, and that is a comparison I do not think it is fair to make. The Torres Strait Regional Authority has done a great job.

Senator O'BRIEN—I am not disagreeing with the job that is being done in the Torres Strait. They are great people and they deserve much credit for the good they do. All I am saying is that there are other people who equally deserve credit and would say, 'We haven't been treated the same.'

Senator Vanstone—I think there are a number of communities all around Australia that are doing a tremendous job. I encourage you, if you can do anything—and I assure you that I will be doing what I can—to get the media in Australia generally, not promoting this government or the previous government or whatever, to run more positive stories about the good things that are happening in Indigenous Australia. We would support you all the way in doing that. There are a wealth of tremendous stories of individuals or communities as a whole that are either operating well or facing their challenges in a most innovative way. I would be very keen to see the media running those stories instead of consistently running the negative stories—and, with respect, some advocacy groups, sometimes I think with the best of intentions, focus on the negatives. Obviously they want attention given to them, but inadvertently they are thereby not giving any space for reward or praise that should be given to Indigenous communities on the mainland. That is just to make my view perfectly clear.

Senator O'BRIEN—I am glad that is on the record. I agree with many of the things that you have said. Mr Fordham, thank you very much for coming all the way down from the Torres Strait to cold old Canberra at this time of the year.

Senator Vanstone—And we congratulate you on the recent birth of your new child.

CHAIR—Thanks very much, Mr Fordham, and congratulations. We will move on to the Australian Institute of Aboriginal and Torres Strait Islander Studies.

[7.49 p.m.]

Australian Institute of Aboriginal and Torres Strait Islander Studies

Senator O'BRIEN—Has the board election process been completed? If so, what was the result?

Dr Taylor—Yes. Professor Larissa Behrendt, Professor Robert Tonkinson, Professor Mick Dodson and Mr Michael Williams were voted in.

Senator O'BRIEN—The 2003-04 portfolio budget statement forecast a break-even result for the institute in the current financial year. Table 3.1 on page 245 of the portfolio budget statement for this agency shows more revenue for 2003-04, but also more expenses. Can you explain how the forecast break-even result turned into a deficit of \$372,000?

Mr Boxall—When the additional estimates were published, we were aware there was likely to be an operating loss. We had an application in with the Minister for Finance and Administration for approval of that loss. It had not been approved at the time, so we were not allowed to publish it.

Senator O'BRIEN—The message I am getting from that is that you did not think there was going to be a break-even.

Mr Boxall—Yes, that is right. The loss relates to some money carried forward from the previous year which we had not actually spent. So we reported revenue in the previous year and we recorded expenditure this year.

Senator O'BRIEN—So you had revenue in 2002-03, but you were not allowed to carry that forward?

Mr Boxall—No. We had the revenue. We had dollars in the bank that we did not spend in 2002-03. We are actually spending it in the current financial year. It is basically an accounting adjustment.

Senator O'BRIEN—Table 2.1 on page 240 of the PBS shows that your average staffing level will drop from 92 in 2003-04 to 80 in 2004-05. Is the drop related to staffing changes connected with the digitisation project?

Mr Boxall—It is related to three projects that are funded this year. The digitisation project is one of them. There's also family history funding and a one-off facilitation and mediation project. These are all funded by ATSIIS. At the time the budget estimates were prepared, there was no decision on whether to fund any of those projects. So there is no funding for those and there is no staffing for them.

Dr Taylor—Only today we have had some good news about that digitisation project. There has been a press release from the minister's office saying that the digitisation project will be funded as a grant this financial year.

Senator O'BRIEN—Is that 2003-04 or 2004-05?

Dr Taylor—It is in 2004-05 and it is \$1.5 million.

Senator O'BRIEN—Is it a one-off grant? It is not an off-budget amount, so is it funded out of the department allocation, the OATSIA allocation?

Mr Vaughan—I think it is the ATSSIS allocation.

Senator Vanstone—Yes.

Senator O'BRIEN—In 2004-05?

Mr Vaughan—It is this year's money.

Senator O'BRIEN—There is obviously some confusion.

Dr Taylor—We do not know the details of that yet. We have only just received the press release today.

Senator Vanstone—It is this year.

Senator O'BRIEN—It is this year's money, but is it to be paid this year to use next year?

Senator Vanstone—They will use it as quickly as they can to get the job done.

Senator O'BRIEN—I guess my question is: does it matter if it is used overlapping the financial year?

Senator Vanstone—I did not know. You would probably have to go to some sort of third-level basement in the Finance department to find that out.

Senator O'BRIEN—I thought I could find out here.

Senator Vanstone—There is probably a regulation somewhere on something related to it. I think it is pretty kosher and I am very happy that they will be getting the money.

Senator O'BRIEN—So am I. I am just wondering if, when we tot up the figures later, it is going to appear in the wrong year or something like that. On 28 April the CEO of ATSSIS, Mr Gibbons, issued a staff notice purporting to provide advice on the government's allocation of ATSSIS and ATSSIC programs and various portfolio bodies, including the Australian Institute of Aboriginal and Torres Strait Islander Studies. According to Mr Gibbons, as at 28 April the government intended to transfer the institute to the Department of Communications, Information Technology and the Arts—throwing you in with the National Museum, I suppose. Can you outline for the committee the nature of discussions, if any, between the institute, DIMIA and the Department of Communications, Information Technology and the Arts that preceded Mr Gibbons's announcement?

Dr Taylor—There were no discussions that preceded that announcement.

Senator O'BRIEN—Have there been discussions subsequently?

Dr Taylor—We received a letter on 30 April from the Hon. Gary Hardgrave MP to Professor Dodson outlining that proposed portfolio move.

Senator O'BRIEN—When was the institute advised of the government's decision to abolish ATSIC and to mainstream Indigenous programs and how was it so advised?

Dr Taylor—On 30 April.

Senator O'BRIEN—In that letter from Mr Hardgrave?

Dr Taylor—Yes.

Senator O'BRIEN—What are the consequences, if any, for the institute arising from the government's plan, first, in respect of the department with the responsibility for the institute and, second, in respect of program funding?

Dr Taylor—We do not know the details of that yet. We have only just received that letter. We have not had any further correspondence.

Senator O'BRIEN—What are the key challenges for the year ahead for the institute?

Dr Taylor—The delivery of this digitisation program is critical for us. It is clear also that there are a number of grants that we would like to secure this year that we have made in relation to the family history projects run by the institute and the native title project run by the institute, as well as a consolidation of our normal research program.

Senator O'BRIEN—How much is this grant for digitisation that you have received?

Dr Taylor—It is \$1.5 million.

Senator O'BRIEN—Mr Vaughan, has that money come from the ATSIIS appropriation for 2003-04?

Mr Vaughan—I think, as we discussed earlier, it is an ATSIIS appropriation for this year.

Senator O'BRIEN—So presumably that was a surplus that has become available which has been allocated.

Mr Vaughan—Yes, some underspend somewhere.

Senator O'BRIEN—Can we get the details of where it is underspent from?

Mr Vaughan—Yes.

Senator O'BRIEN—Can you take that on notice?

Mr Vaughan—Yes.

Senator O'BRIEN—Thank you very much.

CHAIR—Thank you very much, Dr Taylor and Mr Boxall.

[7.59 p.m.]

Aboriginal Hostels Ltd

Senator O'BRIEN—Firstly, Mr Clarke, thank you for the opportunity to visit your board meeting and also the dialysis hostel in Broome last month. As I understand it, that hostel is a joint venture with the Western Australian government. Is that right?

Mr Clarke—That is right. It is a joint venture between the Western Australian government and the Commonwealth. The Western Australian government provided funds to purchase the

building and the Commonwealth, through AHL, provides funds to operate the renal dialysis and medical hostel in Broome.

Senator O'BRIEN—So that is the subject of some formal agreement? Who negotiated the agreement—was that Aboriginal Hostels?

Mr Clarke—Both parties did. It was negotiated by both of us to meet the needs of the community over at Broome. Their clients are our clients.

Senator O'BRIEN—When did Aboriginal Hostels receive advice of the government's decision to abolish ATSIC and mainstream Indigenous programs?

Mr Clarke—We received the formal advice on 30 April through Gary Hardgrave. We saw that on the news, and we have no problems with that because it did not much involve us at the time.

Senator O'BRIEN—Was the communication from Mr Gibbons from ATSI, of 28 April, advising that responsibility for Aboriginal Hostels Ltd would be transferred to the Department of Family and Community Services, sent to AHL staff?

Mr Clarke—It was not sent to us officially. We got the official information on 30 April. We received information that we were moving to the FaCS portfolio. We agree that FaCS is probably the most appropriate portfolio, because it has a close alignment with the sorts of functions that we operate.

Senator O'BRIEN—Had your organisation been involved in any discussions prior to the memo about the future of your organisation post 1 July?

Mr Clarke—No.

Senator O'BRIEN—How is Aboriginal Hostels Ltd involved in decision making about any transitional arrangements?

Mr Clarke—We have not had much involvement at all. I understand that we would probably still stand alone. We would be under a new portfolio and have a new minister. I understand that we would operate as we have done in the past.

Senator O'BRIEN—Who told you that?

Mr Clarke—No-one has told us that.

Senator O'BRIEN—So that is your assumption?

Mr Clarke—Yes, that is our assumption.

Senator O'BRIEN—What are the challenges, financial and otherwise, that are likely to confront AHL in the coming financial year?

Mr Clarke—The challenges to face are to meet increasing medical and renal dialysis needs, and doing that by working in more partnerships with state and other federal agencies.

CHAIR—Thank you very much for assisting the committee.

[8.04 p.m.]

Indigenous Business Australia

Senator O'BRIEN—When was IBA advised of the government's decision to abolish ATSIC and to mainstream Indigenous programs?

Mr Morony—The decision to abolish ATSIC occurred while I was in New Zealand. I received a phone call from my deputy saying, 'Guess what?' We were looking at Maori businesses in New Zealand. When I returned, I received a call from Mr Bernie Yates on the 27th. The next day he sent me a copy of the note that Mr Gibbons had circulated to staff. We received formal notification on 30 April.

Senator O'BRIEN—Was Mr Gibbons's notice to ATSI staff circulated to IBA staff?

Mr Myers—No, when we found out what was happening I called a staff meeting. As there are only 15 staff and we are all based in Canberra, it was fairly easy to bring everyone together to explain what was happening.

Senator O'BRIEN—I take it from what you are saying that IBA was not involved in any discussions prior to this memo about the future of your organisation post 1 July?

Mr Morony—That is correct.

Senator O'BRIEN—When was IBA asked to take over responsibility for assets accumulated under section 67 of the ATSIC Act?

Mr Myers—When we were advised of the changes that were likely to occur, it was indicated to us that the housing loans program and the business loans program might come across to us, but that advice was very much couched in terms of it being a possibility. Obviously there was a need for legislative change, there was a need to look at the processes that were involved, so it was more along the lines that it may happen. As we have all been advised, the bill was tabled today. If it is passed, it will give effect to that.

Senator O'BRIEN—Did the IBA seek legal advice on this or any other proposal concerning the transfer of ATSIC assets or functions?

Mr Myers—At one stage we were given the opportunity to look at the draft bill and we certainly sought legal advice on the wording in the draft bill, whether it would be able to be administered and whether there were any things we wished to raise at that stage. They were not points that went to the principles; it was more whether the wording was adequate to provide for the legal transfer of the assets et cetera. It was more points of law rather than points of principle.

Senator O'BRIEN—Are you able to make that advice available to the committee?

Mr Myers—The advice was in various forms: emails between our legal advisers and ourselves and then a formal advice from us across, so I would probably need to take advice as to whether it is in a form that is presentable and whether it is information that really should come forward, as it was legal advice to us in confidence.

Senator O'BRIEN—What did the legal advice cost?

Mr Myers—We have not received the bill for that yet.

Senator O'BRIEN—It might come by email.

Mr Myers—It may well do.

Senator O'BRIEN—What are the consequences for IBA arising from the announced plans of the government, firstly, in respect of departmental responsibility for your organisation and, secondly, in respect of the mainstreaming of your functions?

Mr Myers—There are probably three areas that impact on us. The first in the advice is that IBA will move to the DEWR portfolio, so we will now come under the responsible minister there. The second issue is that one of our board members is required under the act to be an ATSIIC commissioner, so obviously there is an implication there. We have a board of nine, and the act requires one of those to be an ATSIIC commissioner. The third area is, if the legislation is passed, the movement of those assets—the loan programs—across to us.

Senator O'BRIEN—How is IBA involved in decision making about transitional arrangements?

Mr Myers—We have been very fortunate. We have been invited to sit in on a range of standing committee meetings within ATSIIC, which they are calling with different agencies, and DEWR is also inviting us to sit in on committees where they are planning the implications of our transfer. For example, there is a multi-agency meeting of chief information officers to look at the IT issues that are associated with moving activity. There is also a multi-agency meeting of chief finance officers to look at budget issues going into the new year. The Department of Employment and Workplace Relations has established a number of committees to look at the implications and to work through those, and IBA has been invited to sit on those and participate in those. So the level of information flow has been very good for us.

Senator O'BRIEN—So all that work is ongoing?

Mr Myers—It certainly is.

Senator O'BRIEN—Are there challenges that you expect IBA to face in the coming financial year?

Mr Morony—For us it is quite a significant challenge that we are currently not on appropriation. We will of course, if the amendments go through, be on appropriation. We will have resources in different locations as well. So there are a number of significant challenges now that will face us as an organisation. But we have been on the record for some time as saying that we have paved the way commercially in Aboriginal affairs in a number of areas. We think we have been very successful and we think we can bring about some improvements in the way in which these commercial programs are delivered. The home ownership program is a very successful one, and we hope that we can—

Senator O'BRIEN—As it is?

Mr Morony—As it is it has been a very successful program, I believe, within ATSIIC and ATSIIC. We hope that our skills will bring about closer links to the other services that we provide. Business development is an area where we believe we can provide a lot of ongoing support to not only new lenders but also those that exist out there at the moment. A lot of our emphasis will be on underpinning economic development in Aboriginal communities.

Senator O'BRIEN—How does that change your current function?

Mr Morony—At the moment we focus on medium to large businesses. We will now be looking at smaller groups that are seeking loans. Our whole focus will be on how we can underpin people once we get them into business. So it will be more of a focus on small business rather than our strict focus at the moment on the larger end of the scale.

Senator O'BRIEN—If we proceed further down this path we will start touching on the bill, which is not appropriate in these proceedings.

Senator SCULLION—Mr Morony, this is my perennial question. When we last met I was still pursuing the very laudable process of the two \$5 million lots that were being put together for the investment fund for the fishing licences. Do the current changes—centralising service provision and the potential demise of ATSIC—have any impact on that process?

Mr Morony—One slight impact will be that we will now run the national Indigenous fishing trust. We are quite well advanced in setting that up, and we have entered into some discussion with state governments about their working with us. I mentioned earlier that I was recently in New Zealand. The purposes of that trip by the chairperson and me was to meet with the Maori groups that are actively involved in fishing and the seafood sector in New Zealand—and, quite surprisingly, some investments they have in Australia as well, which they like to keep a bit quiet. There is a lot of goodwill on their part to support us and to start entering into possible joint ventures as well. We learned a lot from the Maori groups about the industry. They gave us some interesting tips, not just in the one area that we have been concentrating on initially but also on broadening our operations in the long term.

Senator O'BRIEN—They have a different rights environment in the fishing industry in New Zealand, don't they?

Mr Morony—They certainly have. Their focus is commercial. We speak the same language in terms of commercial activity. They have certainly been able to build a fairly substantial asset base from what was granted to them by the New Zealand government.

Senator SCULLION—What has the return been like in terms of some the investments you have made through that fund at the moment? Have they been comparable with other commodities?

Mr Morony—We have money sitting there. We have not actually established the legal structure yet; that is currently being worked on. We are currently looking at a rate of return in one particular licence of around 10 per cent per annum. In the current marketplace that is rather exceptional.

CHAIR—Thank you, Mr Morony and Mr Myers, for assisting the committee.

[8.15 p.m.]

Office of the Registrar of Aboriginal Corporations

CHAIR—I welcome Ms Beacroft.

Senator O'BRIEN—What is the impact of the government's decision to abolish ATSIC and mainstream Indigenous programs?

Ms Beacroft—To a large extent there is no impact. I am an employee of AT SIS, and all of the people who work in my office are employees of AT SIS, but I am also a statutory office holder. So when I exercise decision making under the Aboriginal Councils and Associations Act I am independent of AT SIS. In a sense AT SIS has acted as a host agency, so the impact will be that our office will have another host agency.

One impact of the bill is that I will pick up the responsibility for issuing the model rules for regional council meetings for the remaining period that regional councils will be operating. That is quite similar to some of the other statutory duties I have in relation to model rules for corporations. So I am picking up a function which was previously done by AT SIS.

Senator O'BRIEN—The minister issued a media statement on 15 January which said that reform of the Aboriginal Councils and Associations Act of 1976 was necessary and that the government was ready to move on the outcome of a legislative review. What period was the review conducted over?

Ms Beacroft—The review team was appointed in February 2001. A steering committee was formed about the same time. There were significant consultations held over the period of the review and the final report was released in December 2002. So that is a period of about a year and a half.

Senator O'BRIEN—What did the review cost?

Ms Beacroft—I would have to take that on notice.

Senator O'BRIEN—The minister said that there is a clear need for legislative change. What are the consequences of failing to proceed?

Ms Beacroft—The Aboriginal Councils and Associations Act was passed in the seventies. It has, in many respects, stood the test of time in that it has served a very good purpose—that is, to allow remote communities and remote groups to access what can be a very complex procedure and gain access to many things in the public world which corporations can access. But it is an old act by today's standards. There are many aspects of it that need modernising, so the necessity of changing it is more about modernising it.

As I say, there are aspects of the act that are very important and, to the extent that there might be change with some of the aspects that do work, they would be minor changes. But one of the issues that our act is facing is that corporations law and best practice in corporate governance have moved internationally, and particularly in the last five years. Some of those movements are very relevant to every sector, including the Indigenous sector. So, to take an example, the duties that directors have in modern corporate law are extended beyond the people who actually sit on the board to what are called the officers of an organisation. Our act does not do that. That is how it was in the seventies. These days, if you look at the Corporations Act, finance officers, managers and people who are in decision making roles in corporations are held as accountable as directors. That is probably a fairly key example of how our act has been left behind in some respects, and we need to catch up.

Senator O'BRIEN—So you are currently in AT SIS. No doubt you received a staff notice on 28 April which suggested that responsibility for the Registrar of Aboriginal Corporations would be transferred to the Department of Finance and Administration.

Ms Beacroft—I think that document would have said DIMIA.

Senator O'BRIEN—DIMIA, sorry. My mistake.

Ms Beacroft—Sometimes we are confused with OEA, the Office of Evaluation and Audit. I think that might have been relating to them.

Senator O'BRIEN—What role will the Registrar of Aboriginal Corporations have in decision making about any transitional arrangements?

Ms Beacroft—My office has been involved. As an AT SIS employee, I sit on the corporate leadership group. Where administrative matters are discussed, I have been involved in the meetings that are relevant to our transition to DIMIA. There are some key committees that relate to systems and how they are going to have a seamless transition to DIMIA. I have involvement with the people who are sitting on those committees because that is a significant issue for us.

Senator O'BRIEN—How many staff are there in your unit?

Ms Beacroft—Approximately 35 personnel, including me.

Senator O'BRIEN—It is not formally decided, apparently, but it will possibly stay in DIMIA.

Ms Beacroft—That is right. It is not finalised, and the staff in my office are all aware of that. We are waiting for the final, approved announcement.

Senator O'BRIEN—What about numbers? Has there been any discussion about the numbers that are necessary in this group when it goes into DIMIA or wherever?

Ms Beacroft—Yes. We are not expecting to downsize, because we have gone through a process of expanding our functions and services to corporations, which is partly linked to the bill.

Senator O'BRIEN—Thank you very much for waiting so long.

CHAIR—Thank you very much, Ms Beacroft. Again, as Senator O'Brien said, thank you very much for your patience. That brings to a conclusion this consideration of budget estimates for the Legal and Constitutional Legislation Committee. I would like to thank all of the departments and agencies involved in the consideration of these estimates; the minister and Mr Farmer and your offices and agencies; the parliamentary recording staff; the attendants who look after us all day and night in this particular room; and, of course, the secretariat of the Legal and Constitutional Legislation Committee for making this run smoothly. I declare this meeting closed.

Committee adjourned at 8.24 p.m.