



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Additional Estimates)

MONDAY, 14 FEBRUARY 2005

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Monday, 14 February 2005

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

Senators in attendance: Senators Bolkus, Greig, Harradine, Kirk, Ludwig, Payne and Scullion

Committee met at 9.03 a.m.

ATTORNEY-GENERAL'S PORTFOLIO

In Attendance

Senator Ellison, Minister for Justice and Customs

Attorney-General's Department

Mr Robert Cornall, Secretary

Mr Miles Jordana, Deputy Secretary Criminal Justice and Security

Mr Ian Govey, Deputy Secretary Civil Justice and Legal Services

Mr Richard Oliver, General Manager, Corporate Services

Mr Graham Fry, General Manager, Information and Knowledge Services

Mr Trevor Kennedy, Chief Finance Officer

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

Output 1.1

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Ms Amanda Davies, Assistant Secretary Administrative Law and Civil Procedures Branch

Ms Sandra Power, Assistant Secretary Civil Jurisdiction and Federal Courts Branch

Output 1.2

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

Mr Karl Alderson, Assistant Secretary, Office of Legal Services Coordination

Mr Jim Faulkner, Assistant Secretary, Constitutional Policy Unit

Output 1.3

Ms Kathy Leigh, First Assistant Secretary, Family Law and Legal Assistance

Ms Sue Pidgeon, Assistant Secretary, Family Pathways

Mr Kym Duggan, Assistant Secretary, Family Law Branch

Dr James Popple, Acting First Assistant Secretary, Indigenous Justice and Legal Assistance Branch

Mr Paul Griffiths, Assistant Secretary, Legal Assistance Branch

Output 1.4

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

Mr Bill Campbell QC, General Counsel (International Law)

Output 1.5

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

Output 1.6

Ms Philippa Lynch, First Assistant Secretary, Information Law and Human Rights Division

Output 1.7

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

Ms Katherine Jones, Assistant Secretary, Native Title Unit

Mr Steven Marshall, Assistant Secretary, Native Title Unit

Output 1.8

Dr James Pople, Acting First Assistant Secretary, Indigenous Justice and Legal Assistance Division

Mr John Boersig, Assistant Secretary, Indigenous Law and Justice Branch

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

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division

Mr Anthony Seebach, Acting Assistant Secretary, Criminal Law Branch

Ms Robin Warner, Assistant Secretary, International Crime Branch

Dr Dianne Heriot, Assistant Secretary, Crime Prevention Branch

Ms Robyn Frost, Principal Legal Officer, International Crime Branch

Dr Diane Heriot, Assistant Secretary, Community Safety and Justice Branch

Mr Anthony Coles, Principal Legal Officer, International Crime Branch

Output 2.2

Mr Keith Holland, First Assistant Secretary, Information and Security Law Division

Ms Maggie Jackson, Special Adviser

Mr Mike Rothery, Acting Assistant Secretary, Critical Infrastructure Protection Branch

Mr Geoff McDonald, Assistant Secretary, Security Law and Justice Branch

Ms Catherine Smith, Principal Legal Officer, Security Law and Justice Branch

Output 2.3

Mr David Templeman, Director General, Emergency Management Australia

Output 2.4

Mr Paul de Graaff, Acting Executive Director

Ms Leonie Mack, Assistant Secretary, Security Programs Branch

Ms Belinda Moss, Assistant Secretary, Information Coordination Branch

Mr Mark Withnell, Acting Assistant Secretary, Policy and Services Branch

Output 2.5

Mr Paul de Graaff, Acting Executive Director

Administrative Appeals Tribunal

Mr Doug Humphreys, Registrar

Mr Chris Matthies, Manager, Legal Policy and Research

Mr Steve Wise, Finance Manager

Australian Crime Commission

Mr Alastair Milroy, Chief Executive Officer

Mr Andrew Phelan, Director Corporate Services

Australian Customs Service

Mr Lionel Woodward AO, Chief Executive Officer

Mr John Drury, Deputy Chief Executive Officer
Mr John Jeffery, Deputy Chief Executive Officer
Mr Murray Harrison, Chief Information Officer
Mr Jon Brocklehurst, Chief Financial Officer
Rear Admiral Russ Crane, Director-General, Coastwatch
Ms Marion Grant, National Director, Border Compliance and Enforcement
Mr Phil Burns, National Director, Cargo and Trade
Mr Peter Thomson, Acting National Director, Border Intelligence and Passengers
Mr Tim Chapman, National Manager, Passengers
Ms Sue Pitman, National Manager, Trade Measures

Australian Federal Police

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

Australian Institute of Criminology and Criminal Research Council

Dr Toni Makkai, Director

Australian Security Intelligence Organisation

Mr Dennis Richardson, Director-General

Australian Transaction Analysis Centre (AUSTRAC)

Mr Neil Jensen PSM, Director
Mr Alf Mazzitelli, Chief Finance Officer

Commonwealth Director of Public Prosecutions

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

CrimTrac

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

Human Rights and Equal Opportunity Commission

The Hon John von Doussa, President
Ms Pru Goward, Sex Discrimination Commissioner
Mr Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner
Dr Sev Ozdowski, Human Rights Commissioner
Ms Diana Temby, Executive Director
Ms Rocky Clifford, Director Complaint Handling
Ms Susan Roberts, Director Legal Services
Mr Stephen Duffield, Director Human Rights Unit

Office of Film and Literature Classification

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

CHAIR—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. The committee today will commence its examination of the Attorney-General's portfolio, proceeding according to the order on the circulated agenda. The committee will begin with general questions to the executive of the department. Today's hearing will be suspended for a lunchbreak from 1 to 2 p.m. and a dinner break from 6.30 to 7.30 p.m. I will endeavour to take those breaks as close to the scheduled times as possible. 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 8 April 2005 for receipt of answers to questions taken on notice and additional information. Would everyone who has a mobile phone please ensure that it is turned down or off while in the hearing room.

I welcome Senator the Hon. Chris Ellison, the Minister for Justice and Customs and the Minister representing the Attorney-General; Mr Robert Cornall, the Secretary of the Attorney-General's Department; and officers of the department and associated agencies. When you are called upon to answer a question for the first time, please state your full name and the capacity in which you appear. Please speak clearly and directly into the microphones to assist the parliamentary reporting staff with the recording of proceedings.

I do 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 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.

Further, resolution 1.16 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 also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate.

For the record I note that, as at the close of business last Friday, there were still 65 outstanding responses to questions taken on notice from the supplementary estimates round of December 2004 for which the due date was 31 January 2005. I understand there has been a significant amount of electronic activity over the weekend which does not necessarily assist the committee in terms of determining what is here at the opening of business at nine o'clock Monday morning, but we do appreciate that information coming in. Minister or Mr Cornall, do you wish to make any opening statement?

Senator Ellison—I have no opening statement, thank you, Madam Chair. However, I have looked at the business for this committee and I see that it is quite extensive. The Australian

Customs Service is further down the list and I was wondering if we could get some indication of when the Customs Service would not be required. For instance, if they were not required during working day, could they safely assume that they would be required post dinner break or after 5 p.m.?

CHAIR—It is our current understanding that we will reach the Australian Customs Service towards the end of the day and most likely after the dinner break. My suggestion is that representatives of the Australian Customs Service and the committee secretary touch base at about four or five o'clock this afternoon to see how the committee is travelling in that regard. They will certainly not be required at the beginning of these proceedings or until much later in the day.

Senator Ellison—Very well.

Mr Cornall—Since we last met, we have had a reorganisation of responsibilities within the department. At this stage, because that occurred late last year, we have not realigned all of our outputs and outcomes under the new structure. It may be that some officers are answering slightly different questions at these estimates than they would have answered at the last estimates. It might assist the committee if I was to table now a copy of the current structure for the members' information during the course of the day.

CHAIR—Thank you very much, Mr Cornall, that should keep us guessing and keep everyone on their toes, one way or the other. As I indicated, we will begin with general questions to the executive.

[10.17 a.m.]

Attorney-General's Department

Senator BOLKUS—I would like to do what we did last time and start with stories related to Hicks and Habib and see if we can get those out of the way this morning. I presume everyone has had contact with the media reports overnight. Has any Australian official sought or been given legal advice in relation to their responsibilities with regard to either Hicks or Habib?

Mr Cornall—No, not that I am aware.

Senator BOLKUS—I notice in the UK there is the likelihood of proceedings being brought against government officials there for the claim of misfeasance in respect of their responsibilities. Has that been canvassed within the Australian government?

Mr Cornall—We are aware of the assertions by Mr Habib or his solicitor that there may be claims against the Australian government, but at this stage the matter has not been taken any further than that. Perhaps at this stage I might indicate to you that I did write to Mr Hopper—on the basis that he was the solicitor who I assumed would have instructions from Mr Habib now that he has returned to Australia—on 3 February 2005. I said in that letter:

If your client wishes to make claims against the Australian Government, please provide details of those claims and any supporting evidence to me. To enable such claims to be assessed, could you also supply full details of all Mr Habib's activities, travel details, training, and personal friendships and associations which provide the background to his capture and detention. I note this is the sort of information which

is likely to be relevant to any claims made by Mr Habib against the Australian Government and would be required to be disclosed in court proceedings.

This Department will give any such material careful consideration.

Madam Chair, I will table a copy of that letter.

CHAIR—Thank you.

Senator BOLKUS—We have been through this issue before in respect of Mr Habib's legal support. Last time—I think in May last year—you acknowledged that it was important for him to have some legal support. It is also on the record that we have never sought support from US authorities, unlike Hicks. Has the government made a decision as to whether Mr Habib's lawyer will in any way be paid for some of his services? Will Mr Habib get any legal aid?

Mr Cornall—My recollection of the discussion we had at the last Senate estimates hearing was that I said that, if Mr Habib was charged, he would qualify for legal assistance for his defence before the military commission, but at that point he had not been made eligible for prosecution or charged.

Senator BOLKUS—So that means that, despite having to possibly incur legal expenses of an inordinate amount and to date not having even been charged on any offence, he will not be getting any legal assistance.

Mr Cornall—Mr Margulies acted for him in the United States, but we do not know the basis on which did so. Since his return, we have not had any request from Mr Hopper for legal assistance. So we have not given consideration to any such request.

Senator BOLKUS—When you wrote to Mr Hopper on 3 February, anticipating claims, I suppose you expected that Mr Habib would at some stage be making a claim?

Mr Cornall—It was more in response to what I thought were conflicting media statements and statements by Mr Hopper that there were potential claims. I thought that the sensible course of action was to invite Mr Hopper to put all of the relevant material before us for consideration. It followed a statement made by the Attorney-General on radio 2GB on 28 January 2005, when Mr Ruddock said:

... I don't know what happened to him while he was there, but when people make allegations if they've got evidence we treat it seriously.

Following that statement, I wrote to Mr Hopper.

Senator BOLKUS—So you anticipate a claim—or the possibility of one. Have you taken legal advice as to the extent of possible liability?

Mr Cornall—Yes, we have of course within the department considered what possible claims Mr Habib could bring against the government.

Senator BOLKUS—And the conclusion is that it is a possibility on the basis of what evidence he might be able to provide.

Mr Cornall—No, our conclusion on the information we know is that he does not have a claim against the Australian government.

Senator BOLKUS—Sure.

Mr Cornall—But I stress that we are relying largely on media reports and that, in relation to any material prior to Mr Habib's return to Australia, Mr Hopper had not spoken to Mr Habib directly. So it was obviously sensible to ask Mr Hopper to tell us whatever he wanted to tell us after he had been able to take instructions from Mr Habib.

Senator BOLKUS—There are probably two ways of making an assessment as to what may have happened to Mr Habib: one is to obviously digest what he has been saying and the other is to make your own inquiries. Have you made your own inquiries?

Mr Cornall—We have made a number of inquiries of the United States, as has been disclosed at these estimates hearings at previous meetings—the inquiries we have made of the United States and the assurances we have received indicate that he has all times been treated humanely.

Senator BOLKUS—We were told overnight that there were two previous inquiries or investigations into Mr Habib's claims. Who made those inquiries? Who conducted them?

Mr Cornall—They were made by United States authorities.

Senator BOLKUS—Do we know who in particular? What level of what office?

Mr Cornall—I cannot instantly recall the details of the first inquiry. The current claim is being investigated by the national Naval Criminal Investigative Service.

Senator BOLKUS—In February last year you told us that Mr Habib had an underlying medical condition and we made inquiries as to what medical reports were available and what assessments had been made. Have you been able to get access to those reports or assessments?

Mr Cornall—We have been told the outcomes of those assessments but, to my knowledge, we have not seen the assessments themselves.

Senator BOLKUS—Were those assessments into both his physical and his mental condition?

Mr Cornall—Yes, they were.

Senator BOLKUS—Have you been told of the outcome?

Mr Cornall—Yes, we have.

Senator BOLKUS—We asked you last year whether there was any evidence of his condition deteriorating whilst in detention. You said you would find out. Have you been able to ascertain an answer?

Mr Cornall—All of the inquiries we have made have indicated that Mr Habib has been in reasonable health.

Senator BOLKUS—The question relates to the deterioration whilst in detention.

Mr Cornall—Yes, and that is my answer. On every occasion we have asked we have been told that he is in reasonable health. So there has been no indication of deterioration.

Senator BOLKUS—You have not seen the medical reports. You do not really know whether his condition did deteriorate.

Mr Cornall—No, we have not seen the reports. I am telling you as much as I can from the information we have.

Senator BOLKUS—How can you tell us that you do not think there is a basis for a claim when you do not even know whether his condition has deteriorated?

Mr Cornall—I am saying that he was the subject of health checks from time to time. The health checks reported that he was in a reasonable condition. We have been assured that he has been treated humanely by the United States. We are also aware that when the International Committee of the Red Cross conducted its inspections of Guantanamo Bay it did not have any particular concerns about Mr Habib or Mr Hicks.

Senator BOLKUS—You have not seen that ICRC report?

Mr Cornall—No, we have not. Those reports are confidential to the country that is detaining the people who are being checked on by the ICRC.

Senator BOLKUS—I do not need to go through the whole process again, but last year I think we were told that we could ask for a copy of that report from the USA. Have we asked for a copy of that report?

Mr Cornall—Yes, we have and we have been told that it is confidential and cannot be released to Australia.

Senator BOLKUS—Mr Habib has made claims of torture in three environments. Let us start with his travel to Egypt. I know we have gone through some of these questions before but I do not know that we got clear answers. Were we advised that he was going to be taken to another jurisdiction?

Mr Cornall—No, we were not.

Senator BOLKUS—When did we first find out?

Mr Cornall—Sometime after he had been transferred.

Senator BOLKUS—How did we find out?

Mr Cornall—ASIO was the source of information that he had been transferred.

Senator BOLKUS—Did we manage to ascertain how he was transferred?

Mr Cornall—Not that I am aware, no.

Senator BOLKUS—Suggestions that he was taken by plane are new to you, are they? You had no knowledge of them before?

Mr Cornall—I have read them in media reports, but we do not know how he got to Egypt, if that is in fact where he was.

Senator BOLKUS—You still cannot confirm that he went to Egypt?

Mr Cornall—My briefing is that we have never received any confirmation from the Egyptian government that he was in their custody. That is as far as I can take that matter.

Senator BOLKUS—There was supposed to be a Mr Alistair Adams in Islamabad. He met him soon after his arrest. Who is Mr Adams?

Mr Cornall—I understand that Mr Adams is an officer of Department of Foreign Affairs and Trade.

Senator BOLKUS—Do we know when Mr Adams met Mr Habib?

Mr Cornall—I think questions relating to Mr Adams would be better directed to the Department of Foreign Affairs and Trade as he is an official of that department.

Senator BOLKUS—That is fair enough in direct respect to Mr Adams, but the information seems to be that Mr Habib was met by a number of people, including Mr Adams, in October 2001. When do you tell us that your department and your officers first found out that Mr Habib had been arrested?

Mr Cornall—In early October 2001, I believe.

Senator BOLKUS—And when did you then ascertain that he had been taken out of that jurisdiction?

Mr Cornall—We did not ascertain that he had been taken out of the jurisdiction. Sometime after he had been taken out we were advised of that by ASIO, and this information was contained in the answers to questions at the last estimates.

Senator BOLKUS—I am just trying to get a fix on the timing now in the light of last night's *60 Minutes*. Can you tell us when you were told by ASIO?

Mr Cornall—I do not have the precise date. I think those questions would be best directed to ASIO.

Senator BOLKUS—Okay. The allegations of torture: we have had allegations with respect to torture in Pakistan. When were you first made aware of those allegations?

Mr Cornall—My understanding is that when Mr Habib was seen in Pakistan by officers of the AFP and ASIO he made an assertion at that time that he had been mistreated but they did not witness any mistreatment.

Senator BOLKUS—Did they make any inquiries as to whether he had been mistreated?

Mr Cornall—Not that I am aware of.

Senator BOLKUS—Isn't it of concern to you that an Australian citizen makes claims so early in the piece to Australian officers but no-one inquires as to whether those claims are legitimate?

Mr Cornall—I think that the circumstances of that discussion should really be taken up with ASIO and the AFP.

Senator Ellison—They will be giving evidence tomorrow, Madam Chair.

CHAIR—Tomorrow morning, yes.

Senator BOLKUS—He says he was detained at a facility in Islamabad, where he was repeatedly tortured. When did the department first become aware of those allegations of torture in Islamabad?

Mr Cornall—I do not recall precisely, but my expectation is that it would have come to our information through an ASIO briefing.

Senator BOLKUS—What is the normal process here? You get an ASIO briefing, you get these allegations: how quickly do they go to the minister?

Mr Cornall—My understanding, but ASIO can confirm this, is that its briefings go to the minister direct.

Senator BOLKUS—So virtually the same day.

Mr Cornall—I cannot make that assumption. I think you should ask ASIO that question.

Senator BOLKUS—Those assessments go at the same time to senior A-G's officials?

Mr Cornall—Yes, they come to me.

Senator BOLKUS—So you probably got them at the same time as the minister got them.

Mr Cornall—I would assume so.

Senator BOLKUS—Seeing those allegations of torture, did you take any action to follow them up?

Mr Cornall—No, I didn't.

Senator BOLKUS—Did any minister instruct you to take any action to follow them up?

Mr Cornall—No, he didn't.

Senator BOLKUS—He goes to Egypt. Have you inquired of the Egyptian government as to whether Mr Habib was taken there?

Mr Cornall—My department has not made that inquiry. Really that is a matter for the Department of Foreign Affairs and Trade.

Senator BOLKUS—Yes and no, Mr Cornall. In the first instance they are in a position to ask but, at the same time, if you have an Australian citizen making claims of torture and it has come to you through security briefings, you have probably got a responsibility to find out what in fact did happen.

Mr Cornall—I would assume that the Department of Foreign Affairs and Trade had the same information.

Senator BOLKUS—They had the same information, but did you inquire as to whether he was taken to Egypt? Did you ask Foreign Affairs to find out for you?

Mr Cornall—As I have previously told this committee, we were informed by ASIO that he had likely been taken to Egypt sometime after that event had occurred.

Senator BOLKUS—Would they have advised the minister that it was likely that he had been taken to Egypt?

Mr Cornall—Yes, I would assume so.

Senator BOLKUS—When were you advised?

Mr Cornall—I cannot remember the precise date.

Senator BOLKUS—About October or November 2001? The following year?

Mr Cornall—No, it would have been sometime after the transfer from Pakistan had taken place, but not long after.

Senator BOLKUS—So it would have been the end of 2001?

Mr Cornall—Yes.

Senator BOLKUS—Over three years ago. Have you made further inquiries since then to ascertain whether he was taken to Egypt?

Mr Cornall—I understand a number of inquiries have been made by the Department of Foreign Affairs and Trade and that the Egyptian government has never confirmed that he was in its custody.

Senator BOLKUS—ASIO would have been in a position to make inquiries as well. Did you ask them to do that?

Mr Cornall—ASIO's activities are not something that we would normally discuss in public. I think any questions relating to ASIO should be directed to ASIO so that it can decide what is appropriate to put on the public record.

Senator BOLKUS—We have had allegations of repeated torture, we have had allegations, for instance in Islamabad, of him being pushed to the ground in handcuffs and people standing on his neck and so on. Those specific allegations: can you tell us when they were first brought to your attention?

Mr Cornall—No, I cannot recall when they were first brought to my attention.

Senator BOLKUS—How about a general time period?

Mr Cornall—I am sorry, I cannot remember when they were first brought to my attention.

Senator BOLKUS—Okay. Mr Margulies, who was mentioned earlier, was Mr Habib's lawyer in the US. He filed an affidavit in the District Court of Columbia on 24 November, three or four months ago. Those allegations were in that affidavit.

Mr Cornall—I have certainly read Mr Margulies's affidavit since it was released.

Senator BOLKUS—Did you take any action after that to ascertain the veracity of the allegations of torture in that affidavit?

Mr Cornall—No, I have not done that personally, save for writing to Mr Hopper and asking him to tell us what it is that he thinks we should know and consider.

Senator BOLKUS—So how then can you tell me, as you quite clearly did earlier in the session this morning, that you do not think the government is liable if you have not even made those most fundamental inquiries yourself?

Mr Cornall—You keep asking me as the Secretary of the Attorney-General's Department. Many of these matters fall into the category of international relations and they are appropriately dealt with by the Department of Foreign Affairs and Trade.

Senator BOLKUS—Yes, but you as the head of the Attorney-General's Department have to give government advice on their legal obligations. You have told us this morning that you do not think there are any in respect of this, but so far we have established that you do not know whether his condition deteriorated in detention, and you made no inquiries to find out whether he was tortured in Egypt or Islamabad. You would want to be better equipped to give advice in these circumstances, would you not?

Mr Cornall—No—

Senator Ellison—Chair, can I just say that the line of questioning is now leading to the point where Mr Cornall is going to be asked to delve into the advice that he would give government.

Senator BOLKUS—No, I am not doing that.

Senator Ellison—Yes, you are, because you are asking whether the secretary thinks the Commonwealth is liable. Quite frankly, I think it has been quite generous to even allow you to put that question, because there is no way that the liability of the Commonwealth is going to be canvassed, other than by government after consideration of a claim.

Senator BOLKUS—Sure.

Senator Ellison—You are asking the secretary to embark on almost a hypothetical exercise. We have not had a claim for compensation. There is one being talked about, but we have not had a claim. We are not in the business of giving some prognostication of the Commonwealth's liability in any set of circumstances.

CHAIR—Senator Bolkus, I will respond to the minister to indicate that I understand that. I think Mr Cornall was making it fairly clear to the committee where he believed he could and could not answer questions and what were more appropriately put to ASIO. Mr Cornall, did you wish to add to that?

Mr Cornall—I just wanted to add the general observation that any treatment of Mr Habib by the government of Pakistan would primarily be the responsibility of the government of Pakistan. Any treatment of Mr Habib by the government of the United States would principally be the responsibility of the United States. So that is the starting point for our considering what possible claims could be made by Mr Habib against Australia.

Senator BOLKUS—And any claim by Mr Habib against the government of Australia would relate to the conduct of officers of the government of Australia. I am not trying to establish, Minister, whether there is a claim at the end of the day that is sustainable; what I think the committee wants to know, and probably what every taxpayer wants to know, is: to what extent did we actually take our responsibility seriously in this matter, and have we left ourselves open by not acting adequately and in a timely manner to protect the government of Australia?

Mr Cornall—In relation to Pakistan, no Australian official witnessed any mistreatment of Mr Habib in Pakistan. We were not consulted about his transfer from Pakistan, and there was no Australian official present when he was transferred from Pakistan.

Senator BOLKUS—So he goes to Pakistan. We have made no inquiries as to how he was taken there, although it has been asserted that our allies were involved in that. We made no inquiries as to whether he was taken by the so-called Gulfstream V jet by US agents.

Mr Cornall—In Pakistan?

Senator BOLKUS—From Pakistan to Egypt.

Mr Cornall—No, not that I am aware.

Senator BOLKUS—There are allegations of mistreatment at the Bagram Air Base in Afghanistan, and then we go through those allegations that we heard last night. What is the government's response in terms of what action it will take to try to get to the bottom of those allegations?

Mr Cornall—As I said, I wrote to Mr Hopper on 3 February and invited him to put any material before the government that he felt the government should consider, and we will certainly consider it when he provides it to us. But that will have to be a very comprehensive statement of material because, unless they are prepared to give us all of the material, we cannot fully consider any assertions that Mr Hopper might make in relation to it. I did notice that, in relation to last night's *60 Minutes* interview, there were a number of significant questions which Mr Habib declined to answer, and they would certainly be questions that we would like to have answered in considering any claim he may make against the government.

Senator BOLKUS—I think it is fair to say that he does have some legal opportunities that he is pursuing and *60 Minutes* made it clear that he was not going to jeopardise those during the course of the interview last night, so it is not surprising that there would be questions that he would not answer.

Mr Cornall—If he is prepared to make an assertion against the government, I do not see why he is not prepared to make it public. But if he would prefer not to and to deal with it in some other way, we will be happy to consider it in that other fashion.

Senator BOLKUS—With respect to the sorts of torture he was talking about, such as the electric cattle prod, the physical and psychological torture, water-filled rooms—I suppose it is fair to say that there were different aspects of this water torture—and hooks on a wall, has the government inquired as to whether other people have made similar claims of torture at the hands of the Egyptians?

Mr Cornall—I did not understand him to make all those assertions last night in the *60 Minutes* program.

Senator BOLKUS—He made some of those assertions last night and others were made in the affidavit by Mr Margulies, so they have been on the record for a while.

Mr Cornall—So your question was: have we made inquiries as to whether other people have been treated in that way? No, not to my knowledge.

Senator BOLKUS—I suppose I am a bit frustrated, Mr Cornall, because you have had assertions and allegations on the record for a while but no-one has followed them up. We had fresh ones again last night. You say that the only action you are going to take is to write to Mr Hopper—and you wrote to Mr Hopper some two weeks ago. What other action will you take? What other lines of inquiry will you pursue to see, for instance, what the view of the Egyptian government is of the US government in respect of Guantanamo Bay?

Mr Cornall—As the Attorney said this morning, we will be sending the video of the *60 Minutes* program to the United States and asking them to include that in their investigation into abuse allegations concerning Mr Habib. As I have said before, we have made numerous inquiries of the Egyptian government concerning Mr Habib's treatment in Egypt, and it has never confirmed that he was held by them. In relation to the matters asserted in Mr Margulies'

affidavit in respect of Pakistan, those matters were never observed by Australian officials and, when they became known to us through Mr Margulies' affidavit, it was some three years after the event.

Senator BOLKUS—You say we have not established whether he was sent to Egypt. You might want to take this on notice: what inquiries have we made to ascertain whether he had been taken to Egypt?

Mr Cornall—That is really a matter for ASIO or the Department of Foreign Affairs and Trade, but I will take it on notice and we will answer it as best as we are able to.

Senator BOLKUS—I am trying to work out whether I have asked about all the instances or situations of torture. Were you surprised when Mr Habib was released?

Mr Cornall—We were told on 6 January that they had come to the view that they would not proceed with charges against him, and therefore we requested that he should be released. That has always been the government's position—that he should be charged or released, as quickly as possible.

Senator BOLKUS—Is it a fact that Mr John Altenberg, the appointing authority of the Office of Military Commissions, found that the evidence against Mr Habib was unconvincing and ruled the case would not go to a commission?

Mr Cornall—My understanding is that the appointing authority ruled that the case should not go to the commission; that is correct. I am not aware of the exact reasons for his decision.

Senator BOLKUS—Have you made inquiries to find out why he made that decision?

Mr Cornall—No. I assume it is a normal prosecutorial decision—at some point, the charges against the person are reviewed and, if the evidence is thought not to sustain the charges, the matter does not proceed. It is a perfectly proper way in which to proceed in a prosecution.

Senator BOLKUS—So the fact is that the office makes an assessment of whether the accused is more likely than not to be found guilty, rather than using 'beyond reasonable doubt'?

Mr Cornall—The standard of proof before the military commission is not 'beyond reasonable doubt'. The terms and conditions of the military commission process are set out at length in the military commission orders.

Senator BOLKUS—The fact is that the standard of proof is whether the accused is more likely than not, so it is a pretty lax burden of proof that we are applying here.

Mr Cornall—I cannot remember exactly how it is expressed in the military commission order; it is a while since I have read it.

Senator BOLKUS—I find that answer quite stunning. This particular Australian has been kept in detention for over three years. Allegations have been made about him still being a person of interest. A US commission, hand picked by the administration, finds on a very, very low burden of evidence that this person is not likely to have been guilty, and you tell me you do not know what the standard is and you have not made inquiries to find out what evidence there was and how it was tested.

Mr Cornall—Mr Holland advises me that my answer was not correct, that the standard of proof is ‘beyond reasonable doubt’.

Senator BOLKUS—Mr Holland, what has led to the change of advice?

Mr Holland—I just wanted to confirm whether or not the standard of proof in relation to the proving of charges was ‘beyond reasonable doubt’, and I have confirmed that. I think that, as the secretary has said, we do not know the basis on which the appointing authority decided the charges should not go ahead, so I am not in a position to say whether he decided that the evidence before him was not sufficient to support the charges or not.

Senator BOLKUS—The ultimate decision as to whether a person is guilty might be ‘beyond reasonable doubt’ but that threshold assessment by Mr Altenberg was one not on the basis of reasonable doubt.

Mr Cornall—The prosecutor has to decide whether the evidence that is available is likely to support the charges and result in a finding that the charges are proven.

Senator BOLKUS—So you have two different burdens of proof—one at the end of the day on the actual trial. But the threshold question as to whether there is enough evidence to pursue the bloke is, as you have just said, whether it is ‘likely to’.

Mr Cornall—I think that is the case in every criminal prosecution: the prosecution authority has to be satisfied that there is a case to be answered. Ultimately, the conviction in relation to those charges is beyond reasonable doubt.

Senator BOLKUS—What happened to the evidence? We were told consistently that this person was a major suspect. We were told that he had advance prior knowledge of September 11 and so on. What happened to that evidence?

Mr Cornall—I do not understand the question. All this evidence was considered presumably by the appointing authority along with material which resulted from the American investigations which we have not seen. The appointing authority came to a conclusion that charges should not proceed. It seemed to me that supports the proposition that this is a fair and reasonable process and that there are proper checks and balances in the process that has been set up.

Senator BOLKUS—I do not know about that; we will get to that a bit later on. I do not think you can draw that conclusion from this one particular case. The appointing authority does not wake up in the morning and say, ‘Snap, we’re not going to go ahead with this’; the appointing authority looks at all the available evidence.

Mr Cornall—That is correct.

Senator BOLKUS—It is quite apparent here that there was insufficient available evidence.

Mr Cornall—The appointing authority came to the conclusion that the charges should not proceed. We do not know precisely why the appointing authority came to that conclusion, but obviously at some point he decided that the matter did not justify prosecution.

Senator BOLKUS—We have a coalition; we have intelligence sharing. It is important that we share intelligence in order to protect the coalition and its interests. Are you telling me that

we have not found out what evidence stacked up and what evidence did not; what evidence our agencies can rely on in the future and what evidence they cannot?

Mr Cornall—We have not seen the United States case material that was considered by the appointing authority. Some of it we would be aware of, but not all of it.

Senator BOLKUS—So we are making statements about Mr Habib in the Australian political environment without knowing what the US administration finds as sustainable evidence and what they have discarded.

Mr Cornall—We are making statements about Mr Habib based, to a considerable extent, on interviews conducted with him by the AFP and ASIO and also on the basis of other information which has come to the attention of ASIO from other sources.

Senator BOLKUS—Can you give us an assurance that no evidence was rejected because it would have been inadmissible as it had been retrieved under torture situations?

Mr Cornall—No, I cannot give you that assurance because I do not know the basis on which the appointing authority made the decision. However, the rules of the military commission were that the evidence had to be of probative value. We have always acknowledged that evidence that was, if this was the case, adduced under torture would be of doubtful probative value. There is no surprise in that.

Senator BOLKUS—There is a possibility that there might have been evidence, but it was retrieved under torture situations and as such was not—

Mr Cornall—No, I have not said that at all. I have outlined the principles that would be involved in making a decision about whether to proceed with a prosecution.

Senator BOLKUS—They either had evidence which was not admissible or they had no evidence at all on fundamental points. They are the two options, aren't they?

Mr Cornall—No. It is a question of whether they had evidence that they felt was adequate to meet the burden of proof.

Senator BOLKUS—I would have thought that came under the option that they did not have admissible evidence.

Mr Cornall—No. It is a question of whether they have adequate evidence to establish the charges to meet the burden of proof.

Senator BOLKUS—The Australian government has not taken the time to find out what evidence they had and what evidence they might have had which was inadequate, as you say, to find the charges but may in the broader pattern of intelligence be of use to you.

Mr Cornall—What intelligence agencies say to each other is a matter for intelligence agencies. In terms of the prosecution before a military commission, that has always been a matter for the United States. The government's position is that it was a matter for the United States and they should get on with the process and bring it to a conclusion as soon as possible. If they were not able to do that then Mr Habib should be released, and that is what has happened.

Senator BOLKUS—So we are now in a situation where there was some evidence—we do not know what evidence, at the end of the day, stood up; we do not know what did not stand

up; we do not know what was under a cloud; but we are still making assessments here about Mr Habib, his background and his engagement. How can we do that without knowing whether or not what we know is sustainable?

Mr Cornall—I repeat that I do not know what interaction there is between intelligence agencies. I also know that ASIO is not relying solely on information that was held by the United States.

Senator BOLKUS—You get told what the minister gets told by ASIO?

Mr Cornall—No. We were talking before about information or status reports from ASIO—that is, written reports. ASIO has direct contact with the Attorney-General on any number of matters on a very regular basis, and I am not privy to those discussions.

Senator BOLKUS—Going back to possible claims, it would be important in refuting or fighting a claim to know what in fact did happen if you were on the military commission.

Mr Cornall—That would depend on what the claim was. To cut through this process of speculation, we have invited Mr Hopper to put whatever claims he wants to put before the government and we will give them proper consideration.

Senator BOLKUS—So, that basically means that there will not be any independent inquiry by the government; you are going to rely on Mr Hopper to provide you with information?

Mr Cornall—That seems to be the most obvious and the quickest way to get to the end of the problem.

Senator BOLKUS—If Mr Hopper comes to you and says, ‘This, this, this and this happened,’ you are not really going to be equipped to argue against him, are you?

Mr Cornall—We have also invited him to put whatever evidence or other supporting material he has to justify the claims, which is a perfectly normal legal process.

Senator LUDWIG—You sent Mr Stephen Hopper a letter. Did you also ask the department of foreign affairs or any other agency for any information that they might have on this matter that has been raised?

Mr Cornall—No. I sent the letter, but I have advised them that the letter has been sent and they have a copy of the letter.

Senator LUDWIG—So you do not know whether they have any liability in respect of this matter? You have not canvassed any other department? You say we should ask the department of foreign affairs about some of these matters; have you canvassed with them whether they have any potential liability?

Mr Cornall—We have been thinking broadly about the liability of the Australian government.

Senator LUDWIG—Yes, but have you written to relevant departments or agencies and sought advice from them as to whether they have any liability?

Mr Cornall—No, not at this stage. But if, for example, an assertion by Mr Hopper indicated a matter, say, involving the Department of Foreign Affairs and Trade, obviously we would take that up immediately with them.

Senator LUDWIG—Hasn't that assertion been made, in that an allegation was made on *60 Minutes* last night that someone from that department was present during an interview?

Mr Cornall—In Pakistan?

Senator LUDWIG—Yes.

Mr Cornall—My understanding is—and Keith Holland will correct me if I am wrong—that no person from the Department of Foreign Affairs and Trade saw Mr Habib in Pakistan. Officers from the AFP and ASIO did see him in Pakistan, but no Australian official witnessed any mistreatment. No Australian official agreed to his transfer to Egypt, if that is how it happened, and no Australian official was present when he was transferred from Pakistan.

Senator LUDWIG—The reason you know this is that you have you been briefed by the department of foreign affairs or another agency?

Mr Cornall—No. I had a meeting with them, in anticipation of today's hearing, to ensure that I had the most current information to provide the committee.

Senator BOLKUS—So Mr Habib gets interviewed by ASIO on 24 October, 26 October and 29 October. He then disappears. Your department did not make any inquiry as to where he was?

Mr Cornall—No. We are not an operational department. We do not have officers on the ground in Pakistan, Egypt or other places. The front line for these sorts of responsibilities rests with the Department of Foreign Affairs and Trade, ASIO or the AFP, depending on the circumstances.

Senator BOLKUS—That would be the case if it was just a one-off offender peddling drugs or whatever. But here you have two people—Hicks and Habib—whom governments claim have been highly connected with bin Laden and with others. There were three interviews in a week and no further contact. Do you expect us to believe that ASIO did not realise he had been flicked off somewhere?

Mr Cornall—I think you should ask ASIO.

CHAIR—It is a matter for ASIO. Mr Richardson will be appearing before the committee tomorrow morning, Senator Bolkus.

Senator BOLKUS—You would have been advised, at around the end of October, as you told us earlier, of Habib being in Islamabad. Did you ask where he was or where he was taken? This person of interest suddenly disappears. You do not advise government as to where he has gone?

Mr Cornall—He was in Pakistan in October.

Senator BOLKUS—At the end of October he disappears. Until then he has been a person of sufficient interest that he gets interviewed three times in a week. He is on the international radar screen. You, as head of A-G's, do not make inquiries to find out where he has disappeared?

Mr Cornall—No, it is a matter that was being conducted by ASIO and the AFP.

Senator BOLKUS—Ministers have to be advised that Hicks and Habib—

Mr Cornall—Advised by ASIO, that is correct.

Senator BOLKUS—And you were not told?

Mr Cornall—I was not told what?

Senator BOLKUS—You were not told that they had lost contact with him, if they had lost contact with him?

Mr Cornall—As I said at the last estimates, we were told some time after the end of October that he was no longer in Pakistan and that it was likely that he was in Egypt. That is in the *Hansard* of the last estimates.

Senator BOLKUS—You mentioned earlier that the Naval Criminal Investigative Service is conducting an investigation into aspects of the Habib claims. Can you tell us specifically what it is looking into?

Mr Cornall—It is looking into all claims that have been made against the United States government about the mistreatment of Mr Habib.

Senator BOLKUS—Can you tell us why it is a naval criminal investigative service?

Mr Cornall—No, I cannot. I just assume that that is the investigative service that was selected to do the investigation.

Senator BOLKUS—Can you tell us what sort of timeline it is working on?

Mr Cornall—No, I do not personally know the likely date for the outcome of the inquiry except that I know it is presently under way.

Senator BOLKUS—I will move on to David Hicks. How many people are now designated for prosecution and are in Guantanamo Bay?

Mr Cornall—I do not know the precise number offhand. We will seek the answer to that question and advise you later today.

Senator BOLKUS—How many have been released so far?

Mr Cornall—Same answer: we will check.

Senator BOLKUS—And to which countries?

Mr Cornall—Yes, Senator.

Senator BOLKUS—Is David Hicks the last Westerner in Guantanamo Bay?

Mr Cornall—We do not know that for sure.

Senator BOLKUS—Can you find out?

Mr Cornall—I am not sure that we will be able to find out because the United States has not readily disclosed the total number of detainees at Guantanamo Bay and where they are from, but we will endeavour to do so.

Senator BOLKUS—We are told that up to 208 detainees have been released. You may want to take this question on notice until this afternoon: how many have been sent back to their countries of citizenship or origin for trial?

Mr Cornall—We will see what we can do, Senator.

Senator BOLKUS—You do not have that information now, I presume?

Mr Cornall—No.

Senator BOLKUS—Have all the Brits been sent back to Britain?

Mr Cornall—Yes.

Senator BOLKUS—Are any of those likely to be prosecuted?

Mr Cornall—A number of them were detained on their return to the United Kingdom but as I understand it they have been released. I do not know what the United Kingdom's attitude to them may be.

Senator BOLKUS—Is it a fact that the British government has strongly and consistently opposed any of its citizens facing a military commission?

Mr Cornall—Yes, I think that is correct.

Senator BOLKUS—That is not a position we have taken?

Mr Cornall—No, it is not.

Senator BOLKUS—Can you tell us why the government has not taken that position?

Mr Cornall—Yes. The government's position has been that the military commission process was a fair and reasonable process after the representations made by the government as to the process were adopted by the United States. The British Attorney-General has taken a different view.

Senator BOLKUS—Who made the decision on the part of the Australian government?

Mr Cornall—It is my understanding that a lot of people were involved in that decision.

Senator BOLKUS—After advice from government?

Senator Ellison—Advice from government?

Senator BOLKUS—After advice from ministers?

Mr Cornall—I am not aware of all the processes which ministers went through to come to that position in relation to the military commissions.

Senator KIRK—Was any legal advice sought as to the legality of the military commissions as against international law standards?

Mr Cornall—As you know, we do not disclose legal advice, but the fact is that we were part of the process to improve the terms and conditions of the military commissions. Therefore, it can be deduced from that that we felt the military commissions in their final form were an acceptable form of procedure.

Senator BOLKUS—Has any comparison been done by the Australian government as to the rules and standards of evidence applicable in the commission process as opposed to the Australian rules and standards of evidence and process?

Mr Cornall—No, Senator. We looked at the military commission process in broad, general terms and we sought to have included in that process some general principles which we think are consistent with Australian processes and procedures. But when you ask a question in those terms, you are really asking for a comparison between the laws and procedures in every jurisdiction in Australia, and we have not done that.

Senator BOLKUS—No, but there is a Model Criminal Code in Australia. Have we tested it against that?

Mr Cornall—Yes, we have sought to make the process as fair and reasonable, in the light of normal principles, as we could.

Senator KIRK—Is it the case that the military commissions have no rules in relation to the prohibition against the use of evidence that has been obtained through physical or mental torture?

Mr Cornall—The rules of the military commission are that it can consider evidence which has probative value. We have always taken the view that, if it was the case that evidence had been obtained by torture, that would go very significantly to the probative value of that evidence. But that issue has not been tested yet because there has not been a military commission trial.

Senator KIRK—By way of clarification, it is the case that evidence obtained through torture can be admitted if it is seen to be of probative value?

Mr Cornall—No, I did not say that, Senator. I said you would have to look at each case on its merits, as with any evidence in any criminal trial where you determine the admissibility of particular forms of evidence. But the principles that would be adopted by the commission are that they would have to determine that the evidence had probative value.

Senator KIRK—I understand that, but I also understand that it is the case that there is no prohibition against the admission of evidence that is proven to have been obtained through physical or emotional torture.

Mr Cornall—That is not specifically dealt with in the military commission orders; that is correct. But I should say that there are not many matters in relation to evidence dealt with in the military commission orders. The principles are outlined in the definition of ‘probative value’.

Senator BOLKUS—You say we have sought to improve the processes.

Mr Cornall—Yes.

Senator BOLKUS—When did we last try that?

Mr Cornall—The minister and I went to America in July 2003 and the Attorney-General and I went to America in January-February last year. These were issues which were on our agenda at that time. But the principal area of improvement was when the minister went to Washington in July 2003.

Senator BOLKUS—The Law Council has adopted the report by Mr Lex Lasry QC. That report says that a fair trial for Mr David Hicks is virtually impossible because the military commission is not independent in any sense, and that the process has been created and is exclusively controlled by the executive of the US Government. Is that of no concern to the Australian government?

Mr Cornall—Senator, mentioning that reminds me that we also had an observer at the early procedures involving Mr Hicks's trial and that, as a result of the report from the officer at that hearing, we sought some improvements to the trial process.

Senator BOLKUS—Okay. That is a fundamental concern: not independent in any sense, not impartial, created and exclusively controlled by the executive of the US government.

Mr Cornall—Those are the views expressed by Mr Lasry.

Senator BOLKUS—A very eminent Australian lawyer—and adopted by the Law Council of Australia. Have we taken that point up with the US government?

Mr Cornall—No, Senator. That is the view expressed by the Law Council. We are aware of the view that they express. We had our own observers at the preliminary stages of Mr Hicks's trial, and they made their own report to the government.

Senator BOLKUS—Five of the six members of the commission are not legally qualified. As Mr Lasry and the Law Council say, they are required to resolve issues of both fact and law. It is a real concern that they are not legally qualified. Has that been raised with the US administration?

Mr Cornall—I am sorry, Senator. Would you mind repeating that last question?

Senator BOLKUS—This is one of the findings of Mr Lasry as adopted by the Law Council. Five of the six members of the commission are not legally qualified. They have got to make assessments of law and fact. It is not an adequate situation that we do not have legally qualified people making those determinations.

Mr McDonald—The original military commission had one legally qualified presiding officer and four non-legally qualified officers. Subsequent to the August hearing that Mr Lasry attended, the commission was reduced to three—that is, two non-legal and one legal.

Senator BOLKUS—Sure. But the fundamental point is that you have got non-legal people making determinations of fact, law, innocence or guilt. It is still a concern, isn't it? I do not think your answer actually satisfies the Law Council's concern. Is it a matter that we are pursuing with the US administration?

CHAIR—I might say, Senator Bolkus, that your observations as to whether that answer satisfies the Law Council's concerns are a matter for you, not necessarily for Mr McDonald.

Senator BOLKUS—I could go at length into their advice, Chair, but—

CHAIR—I am sure you could. We would be grateful if you would table that rather than go into it at length.

Senator BOLKUS—Okay. Let us go on to the next aspect of their concern:

The rules of evidence are all but absent and such rules as exist seem to me exist to facilitate the admission of evidence which will never be able to be tested by cross examination and should,

ordinarily, be devoid of any probative value ... the consequence is a likely unfairness that goes to the root of the fair trial issue.

Have we raised that concern with the US administration?

Mr McDonald—I might say in relation to that statement, from my own observations of the military commission, that it is not correct to say that there are absolutely no rules of evidence. One of the classic—

Senator BOLKUS—He is not saying that.

CHAIR—Perhaps Mr McDonald could finish, Senator Bolkus.

Senator BOLKUS—Mr McDonald has the capacity to answer the questions he wants to answer. The point I made was: the rules of evidence are all but absent. They are not saying they are totally absent but absent to a major extent.

CHAIR—Because you interrupted him, we do not know what capacity Mr McDonald has to answer your question or any other. If you could let him finish we will go on to further questions.

Mr McDonald—One concern at the first preliminary hearing—and it was a concern that we also had—was that there seemed to be no order made concerning discovery of evidence. At the subsequent hearing, the hearing in November, there was a very specific order made about that. Following the Lasry report, some of the deficiencies became evident, and the military commission was operating in a manner closer to what we would expect.

Senator BOLKUS—I presume A-G's has received the law council report.

Mr Cornall—Yes, we have. We have seen that, Senator.

Senator BOLKUS—What action was taken on receipt of it?

Mr Cornall—The report was considered and the Law Council view was noted.

Senator BOLKUS—Considered by whom?

Mr Cornall—It was considered by officers in the department.

Senator BOLKUS—Was advice given to you as to the sustainability of the arguments in the report?

Mr Cornall—No, Senator.

Senator BOLKUS—Did you ask for people to make that assessment?

Mr Cornall—It was taken into account. But the point is that Mr Lasry's advice is really directed to saying that the military commissions should not proceed and the government's position is that the military commissions should proceed. So there was a direct conflict between the government's policy position and the position being put by the Law Council.

Senator BOLKUS—That is a black-and-white attitude. Isn't it possible that within the recommendations of that report there is an important agenda that could be pursued by the Australian government with the US administration as regards the ongoing nature, processes and rules of those commissions?

Mr Cornall—We have done that.

Senator BOLKUS—But you have not done it since you received this report.

Mr Cornall—I am not sure what date we received that report, so I am not sure that that is correct.

Senator BOLKUS—It would have been September 2004. That is when they released it. You might have got it just before or just after. You have told us that you have not made any submissions to the US administration since then.

Mr Cornall—We had an officer present at the hearing in Guantanamo Bay. My understanding was that there was considerable discussion with Mr Lasry in Guantanamo Bay and that the sorts of views that the Law Council were likely to express would have been taken into account in that officer's report of those proceedings. As a result of that report, a number of matters were raised with the government and some improvements in the process were sought.

Senator BOLKUS—I could be excused for thinking that no senior officer in the department has actually read this report, couldn't I?

Mr Cornall—No, I do not think you could make that assumption at all.

Senator BOLKUS—Have you read it?

Mr Cornall—I believe I have, yes. You have to show me the report, but I am certainly conscious of the report being made by Mr Lasry.

Senator BOLKUS—Fundamental issues are that Mr Lasry is concerned that several of the current members of the commission may have a predisposition on relevant issues because they were operationally involved in Operation Enduring Freedom.

Mr Cornall—Some of those matters have been taken up by the defence, as I understand it, in the course of the hearing. There have been some consequences from those objections.

Senator BOLKUS—But not by us—not by the Attorney-General's Department and not by the government?

Mr Cornall—No, by the defence, which is the proper manner by which those things should be raised in a commission hearing, with the assistance of the Australian legal consultant, who is being provided with legal assistance from the Australian government.

Senator BOLKUS—In the US District Court for the District of Columbia, Justice Green, on behalf of about six justices, came down with a ruling a couple of weeks ago. Has anyone had a chance to read that ruling?

Mr Cornall—We are aware of the ruling, yes.

Senator BOLKUS—That ruling raises some concerns in respect of the process and whether it conforms with US constitutional requirements. Has anyone had a close look at what some of those concerns are?

Mr Cornall—Officers in the department are aware of the decision and have looked at the decision, as I understand it, or reports of the decision.

Senator BOLKUS—Have you sought advice from the US in relation to that decision?

Mr Cornall—That was one of several decisions which were handed down by different judges in different courts about the same time. There is some conflict between the decisions that are being handed down. As the Attorney has said, the conflict between the various decisions being handed down by the United States courts will have to be resolved within the United States judicial system. But the important point to note about Justice Green's decision was that that case related to the combatant status review tribunal, not the military commissions.

Senator BOLKUS—But Justice Green makes it clear that Supreme Court decisions require the recognition that detainees at Guantanamo Bay possess enforceable constitutional rights, which is something that the US administration has not acknowledged. Given the coalition we have for defence and democratic rights, isn't that a fundamental starting point that we could, for instance, take up with the US administration? Maybe we would not go as far as the British government, which has strongly opposed the commissions, but we could try to argue for constitutional freedoms to be protected within the currently operated system.

Mr Cornall—As the Attorney-General has said, the resolution of these matters is obviously now a matter for the American judicial system. Our concern is that they be resolved and that, whatever the outcome of the consideration of those conflicting decisions is, that resolution be reached as quickly as possible so we all know where we are going.

Senator BOLKUS—The only difference is we have an Australian citizen who has been hanging around in Guantanamo Bay for 3½ years, with no sign of an end to it. It is not just a matter for the US judicial system. We have an Australian citizen there who has been denied even the rights that are available under the US constitutional system. You have a US supreme court making a determination, you have a US district court making a determination. You are saying that does not give us an opportunity to pursue the constitutional rights, the due process rights, that should be available to any Australian citizen anywhere?

Mr Cornall—As I said, there are conflicting decisions in the United States. The status of the law in the United States is not presently at all clear. The position the government has taken is that Mr Hicks's case should be resolved as quickly as possible. The same position is taken as with Mr Habib. If the matter is not resolved by way of a prosecution and a finding that he has committed offences, he should be released and returned to Australia.

Senator BOLKUS—I am not levelling this at you, Mr Cornall, but it is a joke, isn't it? 'As quickly as possible' means three years in solitary confinement with no immediate end to the process. Is that good enough?

Mr Cornall—The government has said, and is on the record as saying, that it is taking far too long, that it is not good enough and that it should be brought to an end as soon as possible. I do not believe that he has been in solitary confinement for the three years.

Senator BOLKUS—When was he out of it?

Mr Cornall—He is presently in Camp Delta, so he is certainly not in solitary confinement at the present time. I understand he is in Camp Delta in an area with five other detainees.

Senator BOLKUS—We will not go into details of the size of the cell.

Senator KIRK—In relation to the US court system and the process that it is going through, as you have indicated there are some conflicting decisions in the system. As I understand it, there is an appeal process in place. Have you sought any advice at all from the United States as to their estimation of how long this process is going to continue until the matters are resolved.

Mr Cornall—I do not think anyone can answer that question. The Hicks trial is due to come back before the commission in March but there is an expectation that, with the confusion in relation to the court decisions, the matter may be delayed beyond March till late this year or possibly early next year. That it is as much as we can say about that.

Senator KIRK—Is it the government's understanding then that these legal matters, for want of a better description, will be resolved by the end of this year?

Mr Cornall—I am just repeating to you the advice we have received from the United States and I cannot take that matter any further. The other point I should note is that Mr Hicks is, of course, involved in some of those legal proceedings in the United States using United States lawyers.

Senator BOLKUS—On that court decision, has the Australian government raised those fundamental constitutional issues with the US government?

Mr Cornall—As far as I am aware this department has not. Whether or not they have been raised by officers in Washington, I do not know.

Senator BOLKUS—So this case came down just a few weeks ago.

Mr Cornall—Are you talking about Judge Green's decision?

Senator BOLKUS—That is right.

Mr Cornall—I repeat that this involved a combatant status review tribunal. It was not to do with the military commission.

Senator BOLKUS—Sure, but it raises fundamental principles in the conduct of cases in respect of both Habib, at the time, and Hicks. Have we raised those constitutional issues since this? Have we raised this case with the US administration?

Mr Cornall—As I said, I do not believe this department has but whether or not it has been raised by officers in Washington, I am not sure. But we have certainly expressed concern that the conflicting cases leave the military commission process in a state of some uncertainty and that the matter needs to be resolved as quickly as possible.

Senator LUDWIG—How did you express that concern?

Mr Cornall—That would have been expressed basically through officers in Washington.

Senator LUDWIG—So it is not a written letter?

Mr Cornall—Not from this department, Senator, no. But officers in Washington have regular contact with officials in the Pentagon and so forth in relation to this matter.

Senator LUDWIG—Have the US provided an answer in relation to their view of the range of court cases and the last one as well that go to the issue of due process? Is that advice

written or have they provided a view to the Australian government that you are aware of about it?

Mr Cornall—My understanding—and I have not seen anything written from the United States government about this—is that the adverse decisions, if you like, would be overturned on appeal.

Senator LUDWIG—And that is the US government's view of these things?

Mr Cornall—That is my understanding.

Senator BOLKUS—The judge makes a finding that the fundamental constitutional US rights apply in respect of Guantanamo Bay. Is that the view that the Australian government holds?

Mr Cornall—That gets into a very involved consideration of the reach of the United States constitutional rights, which has been considered by the United States Supreme Court and then considered by the subsidiary courts. Really it is not for us to express a view about what the United States law should be on these issues.

Senator BOLKUS—Even though there is an Australian citizen held in there?

Mr Cornall—We have expressed our concern about that. You are asking whether we are telling the United States what its law should be on these issues. The answer is no, we have not, and it would not be appropriate for us to do so.

Senator BOLKUS—We have gone to war to protect, defend and pursue democratic principles. Why wouldn't we say to the US that we believe that in respect of the Australian citizen their democratic principles should apply?

Mr Cornall—We have said that the principles that should apply are that Mr Hicks should receive a fair trial before the military commission process and that the military commission process should observe a number of fundamental principles, and those submissions have been accepted.

Senator BOLKUS—I am concerned that no-one seems to have taken serious recognition of this case, because on page 57 of it there is reference to Mr Habib. Part of it is blacked out. In respect of Mr Habib they go on to discuss torture, and there is a blacked out part. It says:

The CSRT—

which is one of the commissions over there—

found 'the allegations of torture serious enough to refer the matter on September 22, 2004 to the Criminal Investigation Task Force.

That is a finding on torture. It could have an impact on Mr Habib's case and on liability as well. Has anyone had a look at this case and made inquiries as to what the evidence is and what the criminal investigation task force is doing at the moment?

Mr Cornall—No, but we have asked for the United States to investigate all of the allegations of abuse made in respect of Mr Habib and Mr Hicks. The Naval Criminal Investigative Service is conducting that inquiry and I would expect that they would be well aware of that finding and well aware of the evidence that has been the basis of it.

Senator BOLKUS—On page 58 of that report the judge says:

Mr Habib is not the only detainee before this Court to have alleged making confessions to interrogators as a result of torture.

Is that something that would be of interest to us? Have we pursued it? Has anyone read this decision?

Mr Cornall—No, we would not pursue allegations by another detainee who is not an Australian.

Senator BOLKUS—But if Mr Habib is making claims of torture and we are dismissing them, don't we have a responsibility and an obligation to, for instance, find out who else is making these allegations?

Mr Cornall—We are not dismissing them; we are inviting Mr Hopper to put all those claims to us for careful consideration by government.

Senator BOLKUS—Wouldn't you be better protecting government and the taxpayer if you actually made inquiries as to who is making these allegations?

Mr Cornall—No, I do not think so. I think the appropriate place to start is with assertions made by Mr Hopper.

Senator BOLKUS—The judge refers, on page 58 again, to a document before the court from a person who is, she says:

... apparently affiliated with the FBI but whose identity has been redacted ...

That is probably a word that Kim Beazley understands, but I do not. The document goes on:

On a couple of occasions [sic] I entered the interview rooms to find a detainee chained hand and foot in a fetal position on the floor, with no chair, food, or water. Most times they had urinated or defecated [sic] on themselves, and had been left there for 18 - 24 hours or more.

Those are allegations of torture coming through people associated with the FBI. Wouldn't that be of concern to us? We are not taking an interest in this, are we?

Mr Cornall—We are. 'Redacted' means that the name has been deleted from the record. The FBI allegations are well known and I would expect them to be taken into account by the Naval Criminal Investigative Service in its inquiry. But I also note that none of those allegations were made by Mr Habib in the *60 Minutes* interview last night.

Senator BOLKUS—No, but it was a 15- or 20-minute interview and he was not going to talk about everything. The people who are obviously giving evidence here are not Mr Habib, they are other people. Which goes to one of my first points this morning: the presence, the relevance, the fact that there might be other people making the same assertions does lend weight to Mr Habib's assertions, doesn't it?

Mr Cornall—No, not necessarily. Each case would have to be considered on its individual merits.

Senator BOLKUS—Now in this case the respondent, being the US administration, conceded, as the judge says, 'that the Geneva convention apply to Taliban detainees and apply in these circumstances'. She says that 'article 5 of the convention entitles people in Guantanamo Bay to be treated as prisoners of war until such a time as their status has been

determined by a competent tribunal'. Do we still maintain that the Geneva convention does not apply as a matter of law; it only applies as a matter of invitation?

Mr Cornall—Mr Campbell will answer this question.

Mr Campbell—Before I answer that particular question, I note that there is of course another decision by a US district court judge in Khalid, which came to the opposite conclusion of Judge Green. Ultimately, I think those issues will have to be resolved by the Court of Appeals. The particular issue which you mentioned about the US view of the application of the Geneva conventions is also something that will ultimately have to be resolved by the US Court of Appeals.

Senator BOLKUS—I actually asked what the Australian government position was in respect of it.

Mr Campbell—Mr Hicks is in the custody of the US. It is the US that is taking a view about the application of the Geneva conventions. He is not in Australian custody.

Senator BOLKUS—This has been an ongoing issue. Have we made representations on the applicability of the Geneva conventions with respect to Mr Hicks or Mr Habib?

Mr Cornall—We have discussed this issue on a number of occasions before. The American position has been that it did not apply because they did not constitute soldiers, or whatever, in the normal context that is contemplated by the Geneva conventions. But they subsequently took the position that they would give the detainees the benefit of the convention, even though they did not accept that they were covered by it.

Senator BOLKUS—At the last hearing you told us that you would raise this matter with the Attorney, that you would talk to the Attorney to see whether representations would be made for the Geneva convention to apply.

Mr Cornall—I recall saying that I would discuss whether we should undertake an investigation in the United States with the Attorney. If I have said what you just quoted then I have overlooked doing so.

Senator BOLKUS—I asked, I think: when did DFAT ask for advice on the Geneva convention? You were going to come back to us on the applicability of the Geneva convention.

Mr Cornall—If that was the question on notice I imagine it has been answered because we settled all the questions on notice with the committee secretary.

Senator BOLKUS—I have not been able to find the answer to that. I wonder if you could just follow that up.

CHAIR—We will clarify that from this end as well if we can.

Senator BOLKUS—On page 15, relating to breaches of the Geneva convention, you said you would raise that with the Attorney. There is no indication as to whether it was raised with the Attorney to see whether the government could develop its view there. Post the Justice Green decision, isn't there an opportunity for us to go back to the US and, as I said, not to be as bolshie as the British government who oppose the military commissions but to ask for more democratic and civilised rules of conduct for this process?

Mr Cornall—It depends on which judgment you read. In the judgment in *Hamden v Rumsfeld*, the court stated that ‘in most respects the procedures established for the military commission at Guantanamo Bay [are] under the president’s order define a trial forum that looks appropriate and even reassuring’. So it depends a bit on which judgment you are looking at. That is why we believe those judgments need to be reconciled through the American process as quickly as possible.

Senator BOLKUS—I have another benchmark as well, Mr Cornall. That is the one you laid down to us on 16 February last year. You promised that Australian detainees would get as favourable a treatment as those from Britain.

Mr Cornall—That is correct. I did say that.

Senator BOLKUS—And those from Britain have been sent back to Britain?

Mr Cornall—Yes.

Senator BOLKUS—The British government insisted on none of its citizens facing a military commission. Our government does not do that. It is a fundamental point of difference, isn’t it?

Mr Cornall—Yes.

Senator BOLKUS—If we have an agreement with the US government, isn’t it something that we should be demanding—that our citizens not face a military commission?

Mr Cornall—What we were talking about was the military commission process and procedure. In July 2003 we negotiated, through the minister and me, improvements to that process. Because the English position was uncertain at that time, we put in a qualification that, if any improvements to the process were negotiated by the United Kingdom, for example, the Australian detainees could get the benefit of those improvements as well. So it went to the process, not the decision as to whether to prosecute them or not. The point has not been lost, as I understand it, on Mr Hicks’s defence, and has been raised in the course of his defence.

Senator BOLKUS—You said to us almost a year ago:

We have received assurances that they will be processed as quickly as possible.

It has now been 39 months in detention. Are we making representations for the Hicks matter to be expedited? It has been over three years.

Mr Cornall—Yes. The United States is very well aware that we regard the delay as unacceptable, and I think the Prime Minister is on the record as having said that not so very long ago.

Senator KIRK—In a sense, because of the legal proceedings that are on foot, it is out of the hands of the US government, is it not, as to how long this process is going to take to resolve?

Mr Cornall—Yes, but if the United States is a party to some of those proceedings then that at least gives us the opportunity, as a party to a proceeding, to expedite them as quickly as possible.

Senator KIRK—But because of court delays—particularly if it goes to the court of appeals and then to the Supreme Court—we could be looking at three to five years.

Mr Cornall—I would not put a time estimate on it, but certainly we are concerned about the possibility of further delays; you are right.

Senator KIRK—I am sure that David Hicks is as well. As Senator Bolkus has said, he has already been there for 3½ years. He could be looking at another three to five years. When does the government draw the line and say, ‘One of our citizens has been held too long in this place. Something must be done’?

Senator Ellison—If it is occasioned by the defence—and be it on their own heads—and other people take some action, then that is not the responsibility of the Australian government. You have had all these actions in the United States which are causing a delay in the process. That is not our area of concern. Raise it with those people who are taking the action and ask them if they want to delay the process by taking those actions, if that is what they desire. Maybe that is their motivation.

Senator BOLKUS—What?

Senator Ellison—You cannot visit upon the Australian government delays which are occasioned by legal process in the United States. If you are complaining about—

Senator BOLKUS—You have signed up for this process, Minister. You have given it the tick. The Brits have not.

Senator Ellison—I can tell you right now that the legal process of challenges in the United States has nothing to do with what Australia has said in relation to the military commission.

Senator BOLKUS—But you have endorsed the military commissions. The Brits are back probably because their government opposed the commissions.

Senator Ellison—But you are talking about actions taken in the United States which, as Mr Campbell has alluded to, are still matters which are challenging the very process in Guantanamo Bay and have not been seen—

Senator BOLKUS—You are condemning someone for pursuing constitutional and democratic rights for which we have gone to war. This is what this is about.

Senator Ellison—But you do not understand, do you? You have no comprehension whatsoever of the United States process.

Senator BOLKUS—You are accusing Hicks of dragging this on, and all he is doing this is pursuing his constitutional rights. It is outrageous! You should be minister for injustice!

Senator Ellison—While those aspects are being pursued in the United States, that will have an impact on the progress of Mr Hicks’s case. That is what Mr Cornall said. If you cannot appreciate that then I am sorry for you, but that is the fact. It has nothing to do with the Australian government.

CHAIR—Perhaps we could return to questions.

Senator BOLKUS—Maybe, Minister, if you took the same attitude as the British government and insisted on—

CHAIR—I did not think that was a question, Senator Bolkus.

Senator BOLKUS—I do have more questions. My question is: is it not a fact that had we taken the UK government position, insisted on a decent, defensible process with independent, impartial judges—independent of the administration—and all those recommendations adopted by the Law Council, you would probably have a much healthier and faster process, and Hicks might be still awaiting charges but he may not have been in solitary confinement for so long and in detention now.

Senator Ellison—We took a different view to the United Kingdom. We believed the military commission was the appropriate process and we got concessions from the United States in relation to the conduct of the matter. You cannot compare David Hicks with the British nationals who have been returned because Hicks was charged; they were not. Habib was not charged and he was returned.

Senator BOLKUS—They were all going to be charged. We were told in respect of all of them that they were all going to be charged.

Senator Ellison—You do not know that. We do not know whether there was going to be a charge laid against them or not. That is a matter which only the United States authorities know. You do not know that. You cannot say that and, if you did, you would be misleading this committee. You do not know.

Senator BOLKUS—Fundamental to that assessment of whether a charge would be laid is the adequacy and sustainability of the evidence, and you know that.

Senator Ellison—You are comparing apples with pears. Those people were not charged; Hicks was. Habib was not charged and he was returned to Australia. You can compare Habib with the United Kingdom nationals.

Senator BOLKUS—Can you give us an assurance that Hicks will not be charged on his return to Australia?

Senator Ellison—I can give no assurance either way. If it comes to light that Mr Hicks was guilty of a contravention of Australian law, Australian authorities will take the necessary action. I am not going to pre-empt one way or another what Australian authorities will do in relation to the prosecution of an individual where a breach of law might be realised.

Senator BOLKUS—We have been told consistently for two years now that there is no evidence that Hicks has committed an Australian offence—an offence in Australian law. You are telling us that you want two bob each way and you might charge him when he hits the ground here.

Senator Ellison—I am telling you that if evidence comes to light which reveals that Mr Hicks has breached the law, it will be incumbent on the Australian authorities to take appropriate action. To date, there is no evidence, as I understand it, that reveals that. I will tell you one thing: no prosecutor or police force would ever say to anybody: ‘We are going to give you immunity from prosecution,’ because the fact remains that you never know what might arise in the future. To give that sort of indemnity, if you like, would be totally irresponsible.

Senator BOLKUS—Minister, we have been told consistently that we have not seen all of the US evidence. Have we seen it since the last time we met?

Senator Ellison—No.

Senator BOLKUS—Have we asked for it since the last time we met?

Mr McDonald—The situation is that we have not seen the US prosecutor's case and, as far as we are aware, we are not even certain of exactly where the process is up to.

Senator BOLKUS—It does not stop us from making judgments about Mr Hicks and asserting he is guilty, does it?

Mr McDonald—I suspect that if we were—

Mr Cornall—We do not assume he is guilty, Senator.

CHAIR—I am assuming that is a rhetorical statement, Senator Bolkus.

Senator BOLKUS—Yes, that is right. Minister, why haven't we sought from the US administration the evidence they have against him?

Senator Ellison—The question of the brief of the prosecution is a matter for the United States authorities prosecuting this matter. Whether or not our intelligence agencies have been in touch with United States authorities, I cannot say and, if they have, we would not divulge that anyway.

Senator BOLKUS—In the absence of seeing that evidence, you really cannot give us an assurance, can you, that there is no evidence to suggest Mr Hicks is guilty of an offence under Australian law.

Senator Ellison—We are not saying he is guilty. I think Mr Cornall made that very clear. One of the basic principles of this process is that there is a presumption of innocence and that there is proof required beyond reasonable doubt, as I recall. That is the principle on which this commission is working and it also accords with Australian law.

Senator BOLKUS—There is advice from Devika Hovell dated 28 September. Has the department had a chance to look at that?

Mr Cornall—Sorry, what advice is that?

Senator BOLKUS—This is the advice from Devika Hovell, the director of international law at the Centre of Public Law. In essence, the advice is that there are possible charges—

CHAIR—Do you have a copy of that advice available for the officers, Senator Bolkus? It is hard for them to make an assessment if they do not have it in front of them.

Senator BOLKUS—I am asking them whether they have seen it, first of all.

Mr Campbell—I recall an advice from Devika Hovell that there were offences available under Australian law with which Mr Hicks could be charged, if that is the advice. There has also recently been speculation, I think, in a newspaper article in the *Sydney Morning Herald* that perhaps he could be charged under the War Crimes Act if the War Crimes Act was amended to apply to the circumstances of Mr Hicks.

Senator BOLKUS—Not just the War Crimes Act. If you have seen that advice, it refers to the Geneva Conventions Act, the Crimes Act—

Mr Campbell—It is not for me to speak for the DPP, but I think an assessment has been made in relation to those acts, including the Geneva Conventions Act, that there was not sufficient evidence available at that time to be able to prosecute under those acts.

Senator BOLKUS—Can you take it on notice to see whether anyone has made an assessment of the Hovell advice and come back to us with a considered view?

Mr Campbell—With respect, it is not for this department to make an assessment as to whether somebody should be prosecuted under those particular acts.

Senator BOLKUS—Sure, but we are told consistently by ministers with responsibility for this department that there are no Australian offences under which Mr Hicks could be prosecuted.

Mr Campbell—And that was based on the advice of the prosecuting authorities.

Senator BOLKUS—What I am asking you is about this advice released in late September 2004. Can we get a considered view as to whether that advice stacks up and, if not, why not?

Mr Cornall—We can certainly refer the advice to the DPP if the DPP has not seen it already, but the assessment of the legal outcome of that advice is really not a matter that ought to be disclosed, I think, to the committee.

Senator BOLKUS—So is it still the government's view that there are no offences for which Mr Hicks can be charged on the evidence currently available?

Mr Cornall—Yes, that is the government's view.

Senator BOLKUS—Have you had a look at this advice, Mr Cornall?

Mr Cornall—I think I have read a newspaper article about the advice. I do not recall whether or not I have read the advice because I cannot tell what you are looking at.

Senator BOLKUS—Have you asked anyone to advise you on it? It is a substantial document.

Mr Cornall—In that case I may not have read it. I understand all of these issues have been taken into account some time ago by the DPP and that the position they have reached is that there is no information presently available which could justify charges being brought against Mr Hicks in Australia.

Senator BOLKUS—Would you seek advice on this advice and come back to us and assure us that you are satisfied that there are no charges available?

Mr Cornall—I will see what I can do, Senator.

Senator BOLKUS—We have asked about the rules of commission hearings before. They have not been released to us. Can we get the actual agreement rather than a synopsis?

Mr Cornall—My recollection is that the rules of commission hearings are all on the web site—

Senator Ellison—They have been there for years.

Mr Cornall—and have been there for some time.

Senator BOLKUS—Okay. Are the eligibility for prosecution guidelines on the web site as well?

Mr Cornall—All of the rules about the military commissions are on the web site. As I say, I have not read them for some time and I would have to refresh my memory about what it says about that, but my recollection is that it is a question of a person being determined as eligible for prosecution and then the prosecution process follows from that. But I cannot quite recall the basis for that determination.

Senator BOLKUS—When was Hicks last visited?

Mr Cornall—Yes, I can tell you that if you just bear with me for a second. It was in January. He was visited on 17 January 2005.

Senator BOLKUS—By whom?

Mr Cornall—By the consul-general from Washington.

Senator BOLKUS—Is it still a welfare visit?

Mr Cornall—I imagine so. I am sorry; my notes do not disclose that but I would assume so.

Senator BOLKUS—I know we have gone to some of these questions before, but going through the *Hansard* I think there were one or two outstanding. A decision was made to seek consular visits in respect of Hicks and Habib in Guantanamo Bay—sorry, not consular visits—

Mr Cornall—Welfare visits.

Senator BOLKUS—welfare visits, but to seek consular access to Habib in Pakistan. Who made those decisions?

Mr Cornall—The Department of Foreign Affairs and Trade.

Senator BOLKUS—Without discussion with A-G's?

Mr Cornall—It is really a matter of how the Department of Foreign Affairs and Trade deal with their responsibilities for Australian citizens overseas, and they are the best department to explain the differences.

Mr Campbell—I just wanted to add something. Although they are characterised as welfare visits, as I understand it the latest one was made by a consular official in the US.

Senator BOLKUS—Are we getting access to Hicks's medical records?

Mr Cornall—We are aware of his general medical condition and the treatments that he has had. I do not think we have seen his actual medical records, no.

Senator BOLKUS—The document I was seeking earlier was the agreement between governments as to the prosecution of Hicks. I think there was a digested version made available, but can we get the actual agreement?

Mr Cornall—Can I take that question on notice?

Senator BOLKUS—Okay. With regard to Habib, I know we had a couple of discussions about burdens of proof. I took it that your last answer meant that, on the threshold question of

keeping him hanging, that assessment was made by the military commission on the burden of whether he was more likely than not to be guilty?

Mr Cornall—Sorry, could you repeat the question.

Senator BOLKUS—In respect of this decision by the military commission's Mr Altenburg, the applicable burden of proof there was not 'beyond reasonable doubt'; it was whether he was more likely than not to have committed an offence.

Mr Cornall—No, I do not think that is what I said. The burden of proof before the commission—I corrected my answer on that—was 'beyond reasonable doubt', but the decision was not made by the military commission but by the appointing authority. My understanding of the process is that it is similar to a normal prosecution process, where at some point the prosecutor has to determine whether or not there is a case to be answered that has the prospect of being proven beyond reasonable doubt. Prosecutors can make decisions about there being a case to answer—that is what the committal process is all about—but, whenever someone is found to be not guilty, obviously the evidence has not reached the required standard. So the prosecutor's role is to determine whether there is a case to be answered, and then the role of the court and the jury is to determine whether or not the person is guilty beyond reasonable doubt. In respect of one of your earlier observations, I would note that juries are of course non-legal people, and they make those decisions.

Senator BOLKUS—Sure. I wonder if you could take that on notice, because there is a bit of confusion in the media about the relevant burden. I have a couple of final questions. What was the overall cost of Mr Habib's repatriation?

Mr Cornall—The cost to the Australian government was of the order of \$230,000 to \$250,000.

Senator BOLKUS—Can you provide us with details?

Mr Cornall—Yes, we can.

Senator BOLKUS—Have you got them now?

Mr Cornall—Yes, if you just give me a second. The cost of the charter was \$US354,000, but the United States has agreed to bear half of that cost. In addition to that, we had to bear the cost of airfares for people who accompanied Mr Habib on the flight and that cost another \$14,051.49. We also paid for Mr Margulies' flight back to the United States from Australia and the cost of that flight was \$6,212.73.

Senator BOLKUS—That is \$197,000. Why didn't we fly him on a commercial flight?

Mr Cornall—It was just not practical in all of the circumstances. The arrangement we had with the United States was that we would bring him back to Australia, but he was not permitted to land in the United States or to go into United States airspace, as I understand it. Other countries that we were to bring him through could have had concerns about him too. We had to work out a way to get him home in accordance with those arrangements and this was found to be the most satisfactory way to do that.

Senator BOLKUS—Couldn't you have chartered a flight to Mexico?

Mr Cornall—We explored a whole range of options. We were very conscious of the cost. Ultimately, this was found to be the most effective way to do it.

Senator BOLKUS—Did the US administration demand a charter flight?

Mr Cornall—No.

Senator BOLKUS—What was their requirement? Was it that he not fly through US airspace?

Mr Cornall—Their requirement was that we found a way to bring him home to Australia.

Senator BOLKUS—No other caveats?

Mr Cornall—What do you mean? I have said that we were not to land in the United States.

Senator BOLKUS—You could have taken him anywhere else. You could have taken him by charter, by light aircraft or by boat to—

Mr Cornall—It is a long way from Cuba to Australia.

Senator BOLKUS—But it is not a long way from Cuba to Mexico, is it?

CHAIR—Senator Bolkus, I really think that if Mr Cornall was able to complete the answers to his questions, the whole procedure would go much more smoothly.

Senator BOLKUS—I think it has gone pretty smoothly as it is.

CHAIR—When Mr Cornall does get the chance.

Mr Cornall—What would we have done had we got to Mexico?

Senator BOLKUS—You then catch a plane to anywhere in South America or Central America and you can connect out of there with Air New Zealand into Auckland and Sydney.

CHAIR—We are very grateful for your travel advice, Senator Bolkus, but Mr Cornall is only able to answer on the information he has available to him and he has done that.

Senator BOLKUS—You could have asked David Jull for advice, surely!

Mr Cornall—We had to ensure that he came home to Australia. Had he landed in another country there may have been a possibility that he could have claimed asylum in the country and, therefore, we would not have met our obligation to the United States. Similarly, there may have been concerns by passengers on a commercial flight if we were to put him on a commercial flight. I think there could have been criticism of the government if we had done that. I think, ultimately, the fact is that we brought Mr Habib home as quickly and effectively as we could and I am surprised that we are criticised for that.

CHAIR—Are there any further questions in this area?

Mr Cornall—Just before we leave the senator's questions: the advice I have received since you asked the question about who was eligible and who was not is that 15 detainees were eligible for prosecution before a military commission as at mid-July 2004. We take off Mr Habib from that number and we take off the British detainees who have been returned and that leaves 12 people now listed as eligible for prosecution. In relation to how many detainees

have been sent home, the United States does not make this information public, and we do not have the answer to that question.

Senator BOLKUS—What is the number of people under charges?

Mr Cornall—I do not have that information before me. There are 12 who are eligible for prosecution.

Senator BOLKUS—I should have asked for that earlier. Could you get that for the committee.

Mr Cornall—We will see if we can get that information during the course of the day as well.

Senator BOLKUS—Thank you.

Senator KIRK—I want to return to the question of the application of the Geneva convention. I think I understood you to have said that the initial view of the United States was that it did not apply, but they have now taken the view that—even though they believe that the Geneva convention does not apply—they have undertaken to comply with the provisions of it nevertheless. Is that what you said?

Mr Cornall—That is my understanding. Mr Campbell may be able to answer that question more fully.

Mr Campbell—As I understand the sequence, in the first place the US came to the view that they did not apply either to members of al-Qaeda or the Taliban. Subsequent to that the view was taken that they did not apply to al-Qaeda but they did apply to the Taliban. But I think President Bush made a statement that, although the conventions apply to the Taliban, the Taliban were not prisoners of war under the convention. Finally, the view was taken that the standards in the convention would be applied as a matter of policy but there was at least one qualification to that which read, I think, ‘subject to military necessity’.

Senator KIRK—That means that the individuals held in Guantanamo Bay would as a matter of policy receive the protections of the Geneva convention?

Mr Campbell—That is my understanding.

Senator KIRK—Including Mr Hicks; including the Australian citizen, it would seem?

Mr Campbell—Yes, as a matter of policy.

Senator KIRK—What steps has the Australian government taken to ensure that the provisions of the Geneva convention are in fact being extended to Mr Hicks in particular?

Mr Cornall—I do not know that the Australian officials who have been to visit Mr Hicks had quite that approach in mind. They have visited Mr Hicks on a number of occasions, they have ascertained from him his welfare, they have ensured that he was being provided with medical treatment when he needed it, and when he has raised an issue with them that was concerning him they have raised it with the United States authorities. He has, for example, had quite a lot of reading material provided to him. He is, as I understand it, studying year 11 through an open access college to improve his education. We have received numerous assurances from the United States that he is being treated humanely. All of those indications are that he has been treated reasonably well in a difficult situation.

Senator KIRK—And in accordance with the Geneva conventions.

Mr Cornall—I have not run the ruler over the Geneva convention and touched base on every issue. There are things in the Geneva convention about rights to musical instruments and about being paid. There are a whole range of things in there that I am sure have not been completely complied with because they are not relevant to the situation. I think you would have to go through every item in the Geneva convention before you could answer that question. Mr Campbell will correct me if I am wrong, but there is a wide range of things in there which do not seem appropriate in 2005.

Senator KIRK—Is it the case that Australian military and intelligence officials had some contact with Mr Hicks whilst he was being detained on board a US naval vessel?

Mr Cornall—I understand that ASIO did.

Senator KIRK—When was that? That was before being sent to Guantanamo Bay, obviously.

Mr Cornall—Yes, it was.

Senator KIRK—What information do we have in relation to that? What date was it? Who was present? What information do you have?

Mr Cornall—I do not have those details. I think it would be simpler to ask ASIO when they come before the committee.

Senator KIRK—Senator Bolkus has canvassed quite extensively the position of the British in relation to the military commissions. Is it not the case that the United States itself believes that the military commissions are inappropriate for their own citizens? I understand that a US citizen—

Mr Cornall—John Walker Lindh?

Senator KIRK—No, it was another one. There was an agreement reached whereby he would not have to go before the commission provided he agreed to give up his US citizenship and his ability to travel, and he would be let off the hook, so to speak. I wonder what the Australian government's view in relation to that is. Obviously the US, when it comes to its own citizens, takes quite a different view as to what amounts to a proper justice system or adequate treatment.

Mr Cornall—I am not sure of the case that you are talking about. If you are able to provide the name of the person concerned, we will endeavour to respond to your question. As a general proposition, the United States constitution extends certain rights to United States citizens. There are issues about differences of treatment between United States citizens under the United States constitution and non-citizens, particularly if they are not on American soil. I cannot go into that in detail because I am not qualified to talk about American constitutional law, but I think that is where the differences derive from.

Senator KIRK—The individual was Yasser Hamdi.

Mr Cornall—My recollection is that he was held for some considerable period of time, without charge, in the brig in Virginia.

Senator KIRK—The allegations in relation to him were that he had fought with the Taliban against US forces. There is certainly no evidence to that effect in relation to David Hicks.

Mr Cornall—No, but my point is: I think he was held for some considerable time in the Norfolk brig in Virginia, in America, even though he was an American citizen, without charge. I would have to go back and re-read the judgment, which I read some time ago, to recall all the details. My understanding of what you just said is that there was some agreed outcome to his case.

Senator KIRK—Yes. I understand that he was held as an enemy combatant until October 2004.

Mr Cornall—Yes, but on United States soil, which was quite a significant point.

Senator KIRK—Yes—better treatment, I imagine. On the point of the military commissions, we have heard today that there remain 12 people who are eligible for a military commission but you are unable to tell us how many have been charged.

Mr Cornall—I can do that now. Four of those 12 have been charged, including Mr Hicks.

Senator KIRK—Of the other three, which countries are they from?

Mr Cornall—I do not think we know the answer to that, Senator.

Senator KIRK—I am just trying to ascertain the number, if any, of other countries which accept this military commission process. It is clear that the British considered that it did not meet international standards. It is clear that countries such as France, Denmark and Spain have all had their individuals returned to them. Are you aware of any other country which has endorsed the military commission process in the manner that the Australian government has?

Mr Cornall—I am not aware of that, but the issue of return of detainees has always been based in terms of what the United States has said publicly, on the basis that they would return detainees to their home country if they could be prosecuted in their home country or if they were no longer of any intelligence or security interest to the United States. So it is not surprising that people have been returned when those conditions have been met.

Senator LUDWIG—Going back to an earlier question asked by Senator Bolkus in relation to the DPP, I wanted to clarify whether the Attorney-General's office had referred matters to the DPP—and, if so, which matters—to examine in relation to Mr Hicks or Mr Habib, if they should return to Australia, and what possible charges might be considered or whether any inquiry has been made of the DPP by the Attorney-General as to whether the DPP is considering, or has considered or finalised any investigation or possible review of charges that may be laid against Mr Hicks or Mr Habib on their return to Australia?

Mr Cornall—Obviously the possibility of charges being brought against Mr Hicks has been examined by the DPP over a period of time—and by the AFP and the department—and that has, to some extent, been an ongoing process. I am not sure if that answers your question.

Senator LUDWIG—Has the Attorney-General or have you asked the DPP to consider any matters—in other words, made a direct request—or referred matters to the DPP?

Mr Cornall—The normal process is that evidence collected by agencies such as the AFP is referred directly to the DPP for consideration, and I understand that has happened in this case. So we do not normally interpose ourselves in that process.

Senator LUDWIG—No, I am just ruling that out. I will ask the Australian Federal Police and the other relevant bodies whether they have or have not. But given that they come after you in the sequence of these hearings, it is a question if they then say that you have.

Mr Cornall—As has been pointed out by Senator Kirk and Senator Bolkus, this matter has gone on for some time and there has obviously been a lot of involvement of departmental officials and officers from the DPP, the AFP and ASIO. In terms of saying categorically over three years that that has not happened, I can say that I do not recall it happening but we have certainly all interacted to ensure that proper advice has been given to government about this matter.

Senator BOLKUS—On the question of literary rights for Mr Habib, has that been put to bed by the foreign affairs minister yesterday saying, ‘I believe it wasn’t practical to pursue it’?

Mr Cornall—I saw those comments by Minister Downer. As I understand it, the Attorney has said that the matter is under consideration, and that is the last briefing I had from the minister.

Senator BOLKUS—Is it under consideration in a policy sense or under consideration in terms of what the legislation does at the moment?

Mr Cornall—It is under consideration in the sense of what the legislation is and what the possible avenues of applying it are in relation to any payment Mr Habib may have received for his story.

Senator BOLKUS—We got advice when the legislation was going through parliament that, if a person got off, it would be ‘unlikely in the extreme that this legislation would apply’. Is that not the considered view of A-Gs now?

Mr Cornall—Are you able to be clearer on that reference?

Senator BOLKUS—Yes. On Friday, 30 April 2004, page 2 of the legal and constitutional committee transcript said:

Mr McDonald—No. This legislation still relates back to the person being convicted.

Senator BOLKUS—No, it does not. It does not say ‘convicted’, does it ...

Mr McDonald—It is committing an offence. If the person got off, it would be unlikely in the extreme that this legislation would apply.

We went on to have a discussion about the legislation, and that was the answer we got. Is that still the view of A-Gs?

Mr McDonald—That question was in the context of whether it was likely that there was sufficient evidence, after a case had not been proceeded with by prosecution, at the criminal standard. Of course, I was very careful in that answer to not rule it out. There certainly is a capacity under that legislation.

Senator BOLKUS—Mr McDonald, you said very clearly:

No. This legislation still relates back to the person being convicted.

You then went on to say:

... it would be unlikely in the extreme ...

And the second answer was in the context of the first answer: it 'still relates back to the person being convicted'.

Mr McDonald—The talking points I have on this say that the literary proceeds regime operates on a civil forfeiture basis, meaning that the court has to be satisfied on the balance of probabilities that a person has committed a domestic or foreign indictable offence, whether or not the person has been charged or convicted of that offence.

Senator BOLKUS—That is not really consistent with the answer we got before, is it?

Senator Ellison—It may help, Madam Chair, to have a look at the *Hansard* so that Mr McDonald has the benefit of seeing the context in which the question arose. It was from April last year. It would be helpful if we could get a copy of that *Hansard*.

CHAIR—I do not have it in front of me. I think Senator Bolkus has it in front of him.

Senator BOLKUS—I might have the only copy.

Mr Cornall—Foreign Minister Downer has said that there are practical difficulties and the Attorney-General has said that the matter is under consideration. The issues that confront seeking an order for the proceeds of crime where there is not a conviction or clear evidence of a crime are obviously significant and all of those legal issues are under consideration.

Proceedings suspended from 11.05 a.m. to 11.16 a.m.

CHAIR—We will recommence proceedings with output 1.1, which comes under outcome 1, 'An equitable and accessible system of federal civil justice', and start with questions in that area from Senator Ludwig.

Senator LUDWIG—I want to check first whether the Family Court and Federal Magistrates Court, in terms of the output responsibility, fall into output 1.1.

CHAIR—Yes.

Senator LUDWIG—How much funding was transferred from the Family Court of Australia to the Federal Magistrates Court?

Ms Leigh—The funds I think you are referring to are \$4.3 million per year.

Senator LUDWIG—And that is for what?

Ms Leigh—That is the funding that was transferred from the Family Court to the FMC, starting when the FMC was first established. That is the current ongoing transfer.

Senator LUDWIG—Is that going to be reviewed at any stage or is it going to continue on at that rate?

Ms Leigh—That is in the bottom line, if you like, but there is of course the ongoing issue of looking at judicial resources across the federal courts. In cases where the government decides to replace a retiring judge with a magistrate, a transfer of resources happens to accommodate that as well.

Senator LUDWIG—Is a review going on in respect of that area?

Ms Leigh—In relation to the costing?

Senator LUDWIG—Yes, between the Family Court and the Magistrates Court service.

Ms Leigh—Yes, that is an ongoing issue.

Senator LUDWIG—Is it going to be resolved in the sense of a finalised report or is it simply one of those matters that is currently being reviewed?

Ms Leigh—At the moment it is continuing to be reviewed. In different cases decisions have been made relating to the circumstances of the particular case, but the issue is still being reviewed.

Senator LUDWIG—Are there any appointments for federal magistrates being planned for this year?

Ms Leigh—The government has not announced any further appointments.

Senator LUDWIG—What about retirements from the Family Court? Is the government aware of any this year?

Ms Leigh—Yes. The only forthcoming retirement is that of Justice Hannon of the Hobart registry.

Senator LUDWIG—When is that going to happen?

Mr Cornall—He retires in December officially but he will actually go on leave in May.

Senator LUDWIG—Is it intended to replace him with another Family Court judge?

Ms Leigh—The judge has only just lodged his notice of retirement with the Governor-General so that is a matter for the government to consider. Another judge of the Family Court will reach 70, the statutory retirement age, in September.

Senator LUDWIG—But you have not received any word in respect of that yet from the particular judge.

Ms Leigh—It would not necessarily be required. The retirement is automatic when a judge who is appointed until age 70 reaches 70.

Senator LUDWIG—I am not sure of the process. Do you write to them and inform them that they will be reaching the statutory age of retirement?

Ms Leigh—We understand that they are well aware of that and, unlike in cases where a judge retires before reaching the statutory age and they are required to write to the Governor-General resigning their commission, it is not necessary in this case because it is automatic. As a matter of courtesy there is communication between the court and the government about the upcoming retirement.

Senator LUDWIG—In respect of the *Federal civil justice system strategy paper*, has the government responded to that in any way as yet?

Ms Leigh—The government has been looking at the issues that were raised in that on a step by step basis as they arise in other contexts. The two main issues that are active at the moment relate to the family law reforms and the migration reforms.

Senator LUDWIG—How is that being responded to in those two areas?

Ms Leigh—The government made an announcement at the time of the last budget about reforms to the migration litigation, and they include some of the proposals in the strategy paper. Also, in relation to the family law reforms, there were some proposals made in relation to the Family Court and the Federal Magistrates Court operations which are also taken up in the discussion paper that the government issued in relation to the *Every picture tells a story* report from the parliamentary committee.

Senator LUDWIG—In response to the balance of those matters that were raised in the strategy paper, does the government have an expected date of when they may consider providing a response to that paper?

Ms Leigh—No. It is being looked at on a step by step basis.

Senator LUDWIG—Has the review of the Federal Magistrates Court been finalised?

Ms Leigh—Yes.

Senator LUDWIG—Is that report public?

Ms Leigh—The Attorney provided a copy of that report to this committee on 9 December 2003.

Senator LUDWIG—The recommendations that came from that: has the government responded to those?

Ms Leigh—Again, the government is looking at each of those recommendations. Some of those of course were directed to the courts. Some of them related to changes in jurisdiction. Some of the federal magistrates courts, which are being progressed, have actually commenced. Others are still under consideration. Each recommendation is being considered and actioned as appropriate. There is not going to be one government statement about the whole report.

Senator LUDWIG—So you are not going to provide one document where you address the recommendations. What about the legislative suggestions that were proposed in the recommendations? Are they being considered?

Ms Leigh—Yes, they are. Some of them are still under consideration. Others have been responded to in other contexts. For example, there was a recommendation that, once the government's current proposals for extending the Federal Magistrates Court's jurisdiction were implemented—and of course they are still being implemented—there would be a proposal for it to have concurrent jurisdiction with lower level state courts in trade practices matters. I note in relation to that that the government said in response to recommendations of the Senate Economics References Committee report that it agreed that there should be changes to the FMC's jurisdiction in relation to unconscionable conduct and industry codes under the Trade Practices Act. So that is an example of how each of these recommendations is being looked at, fitted into its appropriate context and progressed.

Senator LUDWIG—Do we know which ones have been brought forward as legislation to date, which ones are in with parliamentary counsel being drafted and which ones are not being proceeded with at this point in time?

Ms Leigh—I would not say that there are any that are not being proceeded with, but not all of them have reached the point where the government has made a public announcement.

Senator LUDWIG—I wonder if you could do a short synopsis, just for the committee, of where those recommendations are at so that we can understand those that the government has not responded to as yet, which may mean they are still subject to further consideration, and those that the government has responded to in some form and what that form constitutes.

Ms Leigh—Yes. Would you like me to do that now?

Senator LUDWIG—No, you can take that on notice. Thank you. Where is the proposition to confer jurisdiction on the Federal Magistrates Court in certain matters—the less complex insolvency matters—at?

Ms Leigh—That is currently the subject of consultation, as required in relation to a number of related amendments proposed. A draft bill, which was released for public comment on 22 December, includes that proposal.

Senator LUDWIG—Is that available on your web site?

Ms Leigh—It is on the Treasury web site.

Senator LUDWIG—There are currently 12 magistrates in the Federal Magistrates Service?

Ms Leigh—There are 31 plus the chief.

Senator LUDWIG—Sorry, I mean those appointed in 2004.

Ms Leigh—Yes.

Senator LUDWIG—So in total—

Ms Leigh—There are 31 plus the chief.

Senator LUDWIG—How many women are appointed?

Ms Leigh—There are eight females.

Senator LUDWIG—Do you keep statistics or figures in relation to—and I know they are on merit—whether magistrates are from non-English-speaking backgrounds?

Ms Leigh—I do not have that data readily to hand.

Senator LUDWIG—I was just asking whether you keep the statistics. If you do not have it, I am not asking you to obtain it. In respect of the Family Law Act 1975 in relation to expanding the jurisdiction of the Perth Court of Petty Sessions to match the jurisdiction of the Federal Magistrates Court, has that been completed?

Ms Leigh—I do not quite understand. Expanding the jurisdiction of the Family Court of WA?

Senator LUDWIG—Yes.

Ms Leigh—No, that is still under way.

Senator LUDWIG—What stage is that up to?

Ms Leigh—We have the amendments planned for a bill which the government hopes to introduce in the autumn sittings.

Senator LUDWIG—What is the purpose of the bill?

Ms Leigh—It is to make those amendments to the Commonwealth law about the jurisdiction of the WA Court of Petty Sessions, to bring it more into line with the approach taken at the Commonwealth level between the Family Court and the Federal Magistrates Court.

Senator LUDWIG—When are they likely to be brought forward?

Mr Govey—It is hoped that they will come forward in the current sitting, but I do not think we can give a complete assurance about that at this point.

Ms Leigh—It has also been pointed out to me that the total number of magistrates is 31 including the chief, not 31 plus the chief.

Senator LUDWIG—Where is the current difference, the gap, between the jurisdiction in Perth and the Federal Magistrates Court being taken up?

Ms Leigh—By the Family Court of Western Australia.

Senator LUDWIG—So it is the intention to move those matters from the Family Court to the Federal Magistrates Service?

Ms Leigh—No, in Western Australia the federal Family Court does not operate. There is a Family Court of Western Australia that operates. Similarly, the Federal Magistrates Court does not have any family law jurisdiction. But there is a WA Court of Petty Sessions, so the Family Court of WA and the WA Court of Petty Sessions together exercise family law jurisdiction under the Family Law Act in Western Australia.

Senator LUDWIG—Is it envisaged that in the future the FMS will be able to deal with family matters?

Ms Leigh—My comment was about changing the jurisdiction of the Court of Petty Sessions of WA so that it had jurisdiction more akin to that of the Federal Magistrates Court.

Senator LUDWIG—So it is not the intention to have the FMS working in WA dealing with family matters?

Ms Leigh—No, there is no proposal for that.

Senator LUDWIG—Is that by agreement with the state government?

Ms Leigh—That is right. The Family Law Act allows for such arrangements to be established by agreement, and they were established when the Family Court was first set up.

Senator LUDWIG—Why was that?

Ms Leigh—It was a political decision of the governments of the time.

Senator LUDWIG—So they prefer the petty sessions court to deal with family matters.

Ms Leigh—My comment was that the fact that the federal Family Court does not have jurisdiction in WA is an arrangement that is allowed under the Family Law Act.

Senator LUDWIG—That has been long standing.

Ms Leigh—Exactly. That is what I was referring to.

Senator LUDWIG—I see. Moving to a different area but still, I suspect, within output 1.1: alternative dispute resolution processes. As we know, a federal body, the National Alternative Dispute Resolution Advisory Council, has been established, but has the federal government undertaken any substantial review of this area since the establishment of the council?

Ms Leigh—The council itself was established to undertake work in promoting ADR.

Senator LUDWIG—Yes, but this is aside from the council. Has the Attorney-General's Department undertaken any review, other than by way of contribution to the council's work?

Ms Leigh—The issue of alternative dispute resolution arises in a number of different areas, and the government generally takes the opportunity to promote ADR when it is setting up new regimes.

Senator LUDWIG—Yes, I can appreciate that, but I mean in terms of a general review of whether legislation should be brought forward to support ADR or whether ADR processes should be included within family law, the magistrate service or the Federal Court. Has the Attorney-General's Department undertaken any review of that nature?

Ms Leigh—There is certainly a strong position that ADR plays a very useful role in the family law area.

Mr Govey—I think it is fair to say there has not been any general review but there have been a number of opportunities, including, for example, when the Federal Magistrates Court was established to look at the provisions which should apply and to take the opportunity to reinforce the importance of having strong ADR provisions.

Senator LUDWIG—What progress has been made on the discussion paper on accreditation for mediators? Or has that been left for the council to pursue?

Mr Govey—I think that falls within the family law branch, and I suspect either Mr Duggan or Ms Pidgeon would be better placed to answer that.

Senator LUDWIG—All right, I will come back to that. I was just wondering if they had referred any matter from that to the area that you are responsible for. Would developing any legislative framework progress it any further?

Mr Govey—I think it would be better to wait for further elaboration by my colleagues.

Senator LUDWIG—I will move on to a slightly different area. Is the National Judicial College within your area?

Ms Leigh—Yes.

Senator LUDWIG—Are you aware of what programs the National Judicial College has been delivering for new and experienced magistrates and judges?

Ms Leigh—Yes. There are a range of programs that the college has been providing. I will go through the key ones. First of all, it has been providing the Travelling Judicial Education Program, which provides, say, four modules in various locations around Australia. There was one held in Adelaide in August 2003, one in Hobart in March 2004, one in Adelaide in August

2004 and one in Perth in November 2004, and there is one planned for Adelaide in February this year. Further dates for this year are yet to be set.

There is the Phoenix Magistrates Program, which aims to bring together new magistrates with experienced magistrates so that they can benefit from each other's perspective. The first of those was held in Canberra in August 2003 and then on the Gold Coast in May 2004. That is intended to be an annual event in different cities. This year there is one scheduled for Perth.

There is also the National Judicial Orientation Program for new judges and magistrates. That was presented as a joint event by the college with the Judicial Commission of New South Wales and the Australian Institute of Judicial Administration, in Sydney in October last year. This year the college will assume responsibility for it, although the Judicial Commission of New South Wales and the AIJA will continue to be involved. There is one of those planned this year for both Melbourne and Sydney. So there will be two this year, as opposed to previously, when there has been one each year in Sydney.

There has been a judgment writing program, which was delivered jointly by the college and the Judicial College of Victoria, and that was held in Melbourne in August 2004. And there is a proposal for a judgment writing program in Adelaide this year. They are the key programs.

Senator LUDWIG—Are there external organisations which help with the development of or assistance for the particular events?

Ms Leigh—I would not say organisations as such. The college draws on the expertise of a wide range of people—members of the judiciary, primarily, and others who might have expertise in particular issues.

Senator LUDWIG—Is the cost of the various programs delivered within the budget provided to the National Judicial College?

Ms Leigh—The intention is that programs recover their costs, and the budget provided to the college is for the basic administration of the college.

Senator LUDWIG—Are there any guidelines as to how they can recover their costs?

Ms Leigh—The judges are charged to attend the courses.

Senator LUDWIG—Are there guidelines from A-G's to work out what is permissible and what is not permissible?

Ms Leigh—No, but that is the basis on which funding for the college was first established under the auspices of SCAG: that courses themselves would recover costs. The various proposals have always envisaged that as being by way of charging to attend the courses.

Mr Cornall—Not all states contribute to the administrative costs of the college, so for judges from non-participating states there is a slight loading onto the charges imposed on them, to reflect the fact that their government does not contribute. In respect of the support for the college, the college is actually based at the Australian National University and the ANU provides a number of support services in terms of HR administration, IT and so forth.

Senator LUDWIG—Two questions arise out of that: is the charge publicly available as to what the judges contribute to the course? Is the surcharge for the various states that do not

contribute to the national scheme acting as a disincentive for judges from those states to attend those courses, that you are aware of?

Mr Cornall—I would not think so. It is not a sufficiently large amount. With respect to the amounts that are charged per course, we could take that on notice and give you an idea of the costs. There is nothing secret about them; we just do not have that information here today.

Senator LUDWIG—And the surcharge; could you take that on notice as well?

Mr Cornall—Yes, we can.

Senator LUDWIG—Have social issues been identified and included in the courses?

Ms Leigh—Yes. For example, disability awareness was included in the Travelling Judicial Education Program that was held in Hobart in March last year. Diversity and cultural exchange and cultural awareness were included in the 2004 Phoenix program. Ethical issues are included in the National Judicial Orientation Program.

Senator LUDWIG—You indicated that they are designed to meet the costs; in other words, the charge is designed to meet the costs of the course. Are the judges subsidised, or are additional advertisements or other mechanisms to recover costs as part of these courses permissible?

Ms Leigh—That is the sole basis, as far as I am aware, for recovering costs—the fees charged.

Senator LUDWIG—Is it intended that there will be a review of the program at some point, to see how effective it is?

Ms Leigh—The initial decision to go ahead was based on, I believe, a three-year budget cycle. So necessarily governments will continue to examine whether that is to be ongoing.

Senator LUDWIG—There is no decision for either the judicial college or A-G's to seek a review of the efficiency or effectiveness of it at this point, that you are aware of? Is that the current position?

Ms Leigh—There has not been an express decision to undertake a review, no.

Mr Cornall—I think the current financing arrangement expires on 30 June 2006, so these issues are up for consideration during the course of this year.

Senator LUDWIG—Yes. I was trying to calculate when it started. I am sure I was here and I asked the question.

Mr Cornall—I think it was a four-year period of funding, but the first year was a broken year.

Senator LUDWIG—It would have been announced in May.

Mr Cornall—It took some time to get the organisation started.

Senator LUDWIG—Is the Accessible Public Transport Jurisdictional Committee within your area?

Ms Leigh—It is covered in 1.1 but I would need another officer to come to the table. It does not come under my responsibility.

Senator LUDWIG—Is there anyone here who deals with that?

Ms Leigh—Yes.

Senator LUDWIG—Thank you. Can we get an update on who is on the Accessible Public Transport Jurisdictional Committee? Has that changed?

Ms Lynch—I am not sure that I have the information in my brief. I am not sure that I have the names of people but I can try to get that for you.

Senator LUDWIG—You can take it on notice. Which departments are represented?

Ms Lynch—I will see whether my colleagues can dig that out for us before we finish today.

Senator LUDWIG—In relation to that, how many exemption decisions have been made as per the Disability Discrimination Amendment Regulations 2004? You can take that on notice.

Ms Lynch—I am told that we will need to take that on notice too. It is not in my brief; I apologise.

Senator LUDWIG—Are the grounds on which those decisions are made available? Is there a decision about how those regulations are decided and, if so, are reasons provided?

Ms Lynch—I am told that the committee itself is comprised of the Department of Transport and Regional Services, the Attorney-General's Department and state and territory transport agencies. I will need to take your broader question on notice.

Senator LUDWIG—While you are doing that, have the recommendations on the draft premises standard been finalised?

Ms Lynch—Work is continuing on disability standards for access to premises. Is that what you are referring to?

Senator LUDWIG—Yes. How long has that been going on?

Ms Lynch—According to my brief, the government asked the Australian Building Codes Board through its Building Access Policy Committee to develop the draft disability standards in 2001.

Senator LUDWIG—And they are not finalised yet?

Ms Lynch—No, Senator. Work is continuing. I understand there was a meeting in early February.

Senator LUDWIG—Is there an expected date of completion?

Ms Lynch—I am told that the next meeting of the Building Access Policy Committee will be held on 3 and 4 March this year.

Senator LUDWIG—It seems to have been going on for quite some time. Is there a difficulty in developing a draft premises standard?

Ms Lynch—It raises a number of complex issues which require careful consultation and consideration by the various stakeholders involved. I do not think it is an easy task.

Senator LUDWIG—I was not suggesting that it was an easy task. I was just curious as to when and if it would finish, or if there were any significant impediments that you were aware of that are standing in the way of the committee finalising its work.

Ms Leigh—I understand that draft standards were released for public comment in January 2004 and that there was then public consultation in capital cities in February. The Building Access Policy Committee is now considering further changes to those standards in light of 270 public submissions that were received after those consultations.

Senator LUDWIG—That is helpful, thank you. That is all I had in relation to the disability discrimination area from the department. Has the text of the proposed convention on the international arrangements in relation to recognition and enforcement of foreign judgments been finalised?

Ms Leigh—A diplomatic conference in June will finalise the text.

Senator LUDWIG—Whereabouts is it up to? Is it at final draft stage?

Ms Leigh—The fact that we are about to go to a diplomatic conference indicates that it is reasonably final, otherwise the Hague conference would not try to take it on to a diplomatic conference.

Senator LUDWIG—Who calls that?

Ms Leigh—It is called by the Hague conference, which is the international body.

Senator LUDWIG—Will the Australian government be attending?

Ms Leigh—Yes.

Senator LUDWIG—Have the Australian government determined a position that is public yet in relation to it?

Ms Leigh—We are undertaking consultations with other agencies and indeed some external stakeholders at the moment. We are organising those consultations at the moment. There is a whole range of different issues.

Senator LUDWIG—Will you finalise your position before June, or are you required to?

Ms Leigh—Yes.

Senator LUDWIG—You are required to finalise it before June?

Ms Leigh—We will want to attend that conference with a clear position on every issue.

Senator LUDWIG—We will follow that up after that. It might be an easier way of dealing with it. Is the Trans Tasman Therapeutic Products Agency within your area?

Ms Leigh—The agency is not. That is in another portfolio.

Senator LUDWIG—Are you on the working group?

Ms Leigh—We have been assisting with that.

Senator LUDWIG—What sort of assistance have you been providing?

Ms Leigh—I might need to take that on notice. There were some administrative law issues that we were assisting with.

Senator LUDWIG—That was the area that I was particularly interested in. As I understood it, there were some of those matters, but have there been any papers or reviews released through the A-G's in respect of that issue?

Ms Leigh—Health has the primary running on it. We have been working with them in relation to the administrative law issues.

Mr Cornall—I should also say that we are providing advice on the treaty. If you want to pursue that aspect, Ms Leon will be able to answer questions.

Senator LUDWIG—Whereabouts is the treaty up to?

Ms Leon—As Ms Leigh said, the primary carriage of the matter is with the department of health, but this department has been involved in providing advice on issues as they arise. The international law issues that arise are largely about whether the proposed treaty arrangements will be consistent with domestic law or what processes will be necessary to bring the treaty into force. Some of those matters are still under consideration by government.

Senator LUDWIG—Is there an expected completion date for that?

Ms Leon—Some of those matters are under very active consideration by government at the moment. I do not believe a date has been announced for that.

Senator LUDWIG—Have there been any papers released in relation to it as yet?

Ms Leon—Not released by this department. There may well have been papers released by the department of health.

Senator LUDWIG—Is it only in relation to those administrative law areas that the A-G's has been consulted or are there other areas that you can inform the committee about?

Ms Leon—The Office of International Law is involved on any matters of international law that arise—for example, when Health wants advice about the particular operation of any of the treaty provisions, we can provide advice on that and, as well, on the aspect of domestic entry into force procedures.

Senator LUDWIG—I might go back to the Department of Health and Ageing. That might be the easier way of dealing with it. Thank you. I have finished on output 1.1.

CHAIR—Thank you. Are we moving to output 1.2, Senator Ludwig?

Senator LUDWIG—Yes, unless there is anyone else who wanted to ask questions on 1.1.

CHAIR—If there are no further questions on output 1.1, we will move on to output 1.2, Support for the Attorney-General as First Law Officer, advice on constitutional policy, and promotion of Australian legal services internationally.

[12.21 p.m.]

Senator LUDWIG—In answer to question on notice 41, the A-G's Department noted that the responsibility for ensuring that agencies take reasonable steps to ensure legal service providers maintain an adequate level of security for in-confidence and sensitive material is on the agencies themselves. What support does the Attorney-General's Department provide for those relevant agencies within its portfolio to ensure that they do provide the legal service providers engaged by agencies under their aegis with appropriate security training and

compliance, particularly the Commonwealth Protective Security Manual? Do you provide training in respect of that area?

Mr Anderson—My division does not provide that sort of training. We will certainly provide assistance to agencies by explaining what we think they might want to consider by way of security arrangements with respect to legal documentation and legal service providers. For the training et cetera, they would go to other parts of the department.

Senator LUDWIG—Does your area deal with the national legal profession and advancing the general legislation in that area?

Mr Anderson—Yes, we do.

Senator LUDWIG—Where is that up to?

Mr Anderson—A number of jurisdictions have introduced legislation to implement the model bill and a number of other jurisdictions are still to introduce legislation, but we understand that that is coming. In the meantime, there is a national legal professional working party and we are represented on that working party. It meets quite regularly, particularly at the moment, with a view to ensuring that jurisdictions are continuing to speedily implement the agreed position and to do so in a consistent manner.

Senator LUDWIG—Is there an expected date of completion for that? Are the states holding that up? Which states are they? What are the impediments, if you can call them that?

Mr Anderson—I think it really just relates to the legislative timetables and when the different parliaments are sitting. We could perhaps get back to you with more details on that, if we took it on notice.

Senator LUDWIG—The information that you might want to take on notice is: the expected date of completion; which states are yet to provide relevant support legislation; whether or not it is due this year; and, if you have a date for that, when do the states have to meet the obligations that are required so that a national legal profession can be implemented?

Mr Anderson—I am in a position to just list the states that have yet to enact legislation.

Senator LUDWIG—Are you aware of whether or not it is in the pipeline within those respective states?

Mr Anderson—They have told us that they anticipate it being this year. We are hopeful that by December 2005 all jurisdictions will have implemented the legislation, but of course we cannot guarantee that. Queensland, Victoria and New South Wales have already introduced legislation. The Northern Territory, Western Australia, South Australia, Tasmania and the ACT have said that they anticipate enacting the model bill during the course of this calendar year.

Senator LUDWIG—Has there been an analysis of the benefits that will flow from the model bill? What do you expect to obtain? Has A-G's done that analysis? On its face, it will do A, B and C, but I was wondering if there had been analysis by A-G's as to what benefits practitioners and consumers might get out of it?

Mr Anderson—We have not done an analysis in terms of a detailed study of the bill, but obviously it is intended to deliver a number of benefits to consumers as well as to the

profession. As to how those are delivered, we will need to be studying the period after the implementation of the uniform bill. For example, some of the benefits would appear to be obvious on their face. Consumers will have access to any legal practitioner in Australia who is able to practise in any jurisdiction. So it should help competition, and that will hopefully be good for the prices of legal services. It will help Australia to argue for greater access to international jurisdictions by being able to point out the fact that we have a uniform system here for the practice of law, which includes uniform provisions for practice by foreign lawyers within Australia. Therefore it advances our argument for reciprocal treatment in other jurisdictions overseas. But it will only be more obvious over time as these are weighed up.

Senator LUDWIG—Is the issue of national defamation laws in your area?

Mr Anderson—It is, but I will ask another officer to address defamation.

Senator LUDWIG—Mr Faulkner, at what stage of the development of the national defamation laws are we at the moment?

Mr Faulkner—Early last year the department released a discussion paper for a national defamation law that could be enacted on the basis of the Commonwealth's constitutional power. Comments were received on that paper, which was publicly released on the department's web site. A revised paper, taking into account those comments and consultation with members of the profession around Australia and media representatives and so on, was released in July last year on the department's web site. Comments were once again invited. The states subsequently came forward with a proposal of their own which would essentially see a model law enacted in each jurisdiction. We are currently at the stage where that proposal is being considered not only by us but also by everyone with an interest in the area. I suppose the question for the moment is just where that will go over the next few months.

Senator LUDWIG—So at present we are in the middle of considering the states' proposal—is that right?

Mr Govey—The other thing worth noting is that the states have said that they will proceed to implement the legislation on a uniform basis.

Senator LUDWIG—So are we a little bit further away from putting it to SCAG—or is it already there?

Mr Govey—It has been regularly considered by SCAG—I think at every SCAG meeting. There is another SCAG meeting coming up in March where I think I can confidently predict it will be the subject of further discussion.

Senator LUDWIG—Is it the intention to release the next round as a proposal on the web site? How do you envisage it moving from here?

Mr Govey—I think the next stage is likely to be to see whether or not the states proceed with the implementation of their bill in a timely fashion. Our understanding is that the states have agreed in principle. Of course, this is subject in a number of cases to it being considered by the cabinets of the states, but they are hoping to move towards implementation by 1 January next year.

Senator LUDWIG—That is in relation to passage of state defamation law based on the model proposed by the states. Does the Commonwealth have a view about that?

Mr Govey—The Attorney-General has indicated that he had different views on a number of the substantive issues, but I think I am right in saying that the government has not made any formal response to the state bill at this stage.

Senator LUDWIG—Perhaps that is a better way of putting it. So there has been no formal response in relation to the proposal by the states.

Mr Faulkner—Subject perhaps to one qualification. The Attorney issued a press release on 5 November last year which does set out one or two areas where he thinks some issues were raised by the state proposal and he does identify a number of differences between the state proposal and the Commonwealth proposal. Perhaps I could direct you to that.

Senator LUDWIG—No, I had read that. The difficulty was that there seems now to be a case where—forgive me for summarising it this way—there is a different view between the federal Attorney-General and the states, and where to next is the question from that. Is it the intention that the Attorney-General continue with his model in the face of the states continuing with their model? You have identified differences, so in that case how do the differences become resolved, or do they not become resolved? Does the Attorney-General stop proceeding and leave it to the states? Really the question is to elicit what further work you have done to progress it.

Mr Govey—I think we just have to wait and see how that develops. As I said, the discussions at the next Standing Committee of Attorneys-General meeting may well be instructive on that score.

Senator LUDWIG—What date is that?

Mr Govey—It is the week of about 20 March, from recollection.

Senator LUDWIG—We will come back to it after that. Are the legal services directions within your area? I take it it is a different officer. In relation to the legal service directions, have there been any further papers developed or issued in respect of that?

Mr Anderson—No, there have not. The review of the directions has been proceeding. We have been considering the submissions we had received and we are getting close to putting some recommendations to the Attorney.

Senator LUDWIG—Do you have an expected date of completion for that?

Mr Anderson—It would depend obviously upon the Attorney's view of the recommendations we make.

Senator LUDWIG—In terms of your more general work, then, is there a list of agencies which have been investigated for breach of the directions, if that is the way of putting it, or for contravention thereof or for not adhering to them?

Mr Anderson—There are four matters where we have found breaches of the directions so far this financial year. I could list those agencies involved.

Senator LUDWIG—Yes, please.

Mr Anderson—The Australian Greenhouse Office was involved in one breach involving the tied work provisions. The Australian Prudential Regulatory Authority was involved in a breach in respect of the counsel fee provisions. The Australian Competition and Consumer

Commission was involved in two breaches in respect of the counsel fee provisions. Those are the four matters this year where we have found breaches.

Senator LUDWIG—Of those reported last year, have they all been finalised?

Mr Anderson—They have. We found that there were eight breaches last year. Would you like me to read them out?

Senator LUDWIG—No, only to the extent that they have been finalised. In what way were they finalised?

Mr Anderson—Those eight were the matters where we found breaches out of the 16 or so that had been reported to us. In each of those cases we have had discussions with the agencies where remedial action was required and the remedial action has been carried out. In some instances it might be a breach and be a relatively small breach that is easily remedied. In other cases it might require more work to remedy it.

Senator LUDWIG—What happens with the ones that in this financial year engage counsel above the rate that is required? Is it a case of you informing them not to do it again?

Mr Anderson—We often find out about those ones quite quickly through a number of channels. We inform the agency that they do not have lawful authority to pay the higher rate with respect to the legal services directions and the FMA Act and FMA regulations. It is then a question for the agency and their legal service providers to go back to the counsel in question, inform them that the rate that they might have been engaged on was incorrect and then have discussions about what happens then. On occasion counsel have refunded amounts that have been paid to them or have agreed not to be paid. On other occasions, if it was the legal service provider's fault rather than the agency's, the legal service provider might be the one that has to make up any difference. But it is not actually Commonwealth money that is being expended.

Senator LUDWIG—Could you take that on notice and provide that level of detail in relation to the ACC and prudential cases. Particularly, if you can, include what the excess rate was.

Mr Anderson—So that I am sure of what I am taking on notice—is it a bit more detail in terms of what the remedial action was and the rates?

Senator LUDWIG—Yes.

Mr Anderson—Certainly.

Senator LUDWIG—That is all I need, thank you. Has the department completed the review of the standard rate for individual counsel?

Mr Anderson—No, we have not completed that. We have reviewed the overall system of setting counsel fees, and we are still working through the individual rates.

Senator LUDWIG—Is that first review public or available or can that be made available to the committee?

Mr Anderson—It has not been publicly announced as yet. It is going to be dealt with as a package when the individual reviews have been finalised, because some of the overall

recommendations form a framework within which the individual rates have to be considered. It makes more sense to announce it all at the same time.

Senator LUDWIG—Is that going to the minister for consideration for release or will it be made available through your section?

Mr Anderson—Individual rates will not be—

Senator LUDWIG—No, the final one—the complete one.

Mr Anderson—Yes, the final position with respect to the framework for setting council fees will be announced through my division of the department.

Senator LUDWIG—When is that expected to be done by?

Mr Anderson—Once again, it will depend upon any views that the Attorney has on the particular recommendations, but I would expect it should be relatively shortly. I should just clarify: when we announce the decisions in terms of the framework, it will not actually be a report as such that gets published. What will be announced will be the new policy framework for the setting of counsel's fees.

Senator LUDWIG—I see.

Mr Govey—A submission will go to the Attorney-General in the ordinary way. It is not as though it has been done as a separate report like, for example, the federal magistrate's review that we referred to earlier.

Senator LUDWIG—So there will just be a new edition of the guidelines, or your legal service directions?

Mr Govey—That is right. There will probably be some additional explanatory material as well.

Senator LUDWIG—Then that will be available on the web as usual.

Mr Anderson—That is right.

Senator LUDWIG—Will you highlight or note the differences between the old and the new for those people who are trying to read it anew?

Mr Anderson—We will try and make it as clear as possible. Obviously we want people to understand it as readily as possible. We will also be publishing some information in one of our Office of Legal Services Coordination bulletins and there will be articles in Bar Association magazines if we can get the agreement of the Bar Association for us to put them in there.

Senator LUDWIG—That would be helpful, thank you. Is the Nauru immigration case within this section?

Mr Anderson—I will ask the same officer to come to the table.

Senator LUDWIG—Sorry about that—it is not always clear which officer might be responsible. Thank you, Mr Faulkner. In respect of the High Court case, on the Nauru immigration matter, did the Commonwealth decide or make a decision not to appear?

Mr Faulkner—I take it that you are talking about the matter of *Ruhani v Director of Police for Nauru*.

Senator LUDWIG—Yes. Are there any others?

Mr Faulkner—I really could not say. That is the only one that I really know anything about.

Senator LUDWIG—It is the only one I know. I thought I would ask the question, just in case.

Mr Faulkner—Not that I am aware of. I am sorry; I have forgotten your question now.

Senator LUDWIG—It gets like that. Did the Commonwealth make a decision not to appear?

Mr Faulkner—This was a matter which raised a constitutional issue. It is therefore a matter in relation to which the Attorney-General has a discretion under the Judiciary Act, as do all attorneys-general around Australia, about whether to intervene, and so a decision in that sense was taken in relation to the intervention question—that is right.

Senator LUDWIG—Who made that decision? Is it the Attorney-General that makes the decision not to appear?

Mr Faulkner—It is the Attorney's decision under 78A of the Judiciary Act.

Senator LUDWIG—How is that conveyed to your section? You see these matters and you then, I take it, wonder whether or not you should appear.

Mr Faulkner—Section 78B of the Judiciary Act provision requires that, where in any court a constitutional issue arises, that issue be brought to the attention, by the parties, of all attorneys—state, Commonwealth and territory. So notice of the matter is brought to the Commonwealth Attorney-General's attention in that fashion. The matter is then considered by the department, the Australian Government Solicitor and the Solicitor-General to decide what the merits of the thing really are. Advice—recommendations, conversation, discussion—is had about it and the Attorney ultimately makes his decision on the basis of that input. There may be situations where a case, although it does raise a constitutional issue, raises all kinds of other policy considerations which are of interest to the Commonwealth and so therefore, in addition to input from the Attorney-General's Department, the AGS and the Solicitor-General, there may be input from other policy agencies—Commonwealth agencies—that have an interest in the matter.

Senator LUDWIG—What would happen in that respect? Would you convene a roundtable or a meeting to decide on whether the Attorney-General will intervene in a particular matter under 78B?

Mr Faulkner—It does not take any particular form. Many of these cases are very routine in the sense that there is quite clearly not a constitutional issue that would warrant the Commonwealth's intervention. In fact the vast majority of cases are clearly not ones where the Commonwealth would intervene, and the Attorney-General does not intervene. But, where the matter is more complex—the constitutional issues are perhaps more significant; the policy issues are more significant—the discussion between the affected agencies can take any

number of different forms. It may be that we all get together in a room and talk. It may be that the Australian Government Solicitor simply contacts the relevant policy agency and lets people here in the department know what their view is. It really does not take any particular form.

Senator LUDWIG—In respect of 78B, how many cases do you not intervene in in a year—or in the last year?

Mr Faulkner—It varies from year to year, but it is not unusual in recent years for us to be talking about perhaps 300 cases in a year where notices are issued, and interventions being of the order of 20, 30 or 40 matters.

Mr Cornall—Senator, on that point: in some cases the notice is issued in a lower court or in a special leave application and it is not appropriate for the Commonwealth to seek to intervene at that stage. In relation to a number of the other matters, the question that arises under the Constitution is whether or not a state law is inconsistent with the Commonwealth law. The Commonwealth law will prevail if that is, in fact, the case. There are a range of these cases where there is really no significant Commonwealth interest to be protected—either at all or at that stage.

Senator LUDWIG—Thank you; I am aware of that. In respect of the Ruhani matter, was there a basis upon which the Commonwealth decided not to intervene? In other words, is there an explanation available and can you provide it?

Mr Faulkner—Clearly the Attorney had his reasons for making his decision, and he made that decision having considered the advice put to him. I do not think I could say much more about that.

Senator LUDWIG—So you are only advised that you are not to intervene in a matter. If it comes to your attention and there is a notice filed, then it might go to the Attorney-General and the Attorney-General then advises your section that it is not the intention of the Attorney-General to involve itself in that case. If it were a positive one, you would be required to marshal the resources and pursue it, I take it?

Mr Faulkner—In any situation where there was an argument for Commonwealth intervention, a recommendation would be put to the Attorney. The various views of the relevant agencies would be put to the Attorney, as they were in this case.

Senator LUDWIG—So there was a recommendation to intervene, or not to intervene, in relation to the Ruhani matter from your section to the Attorney-General.

Mr Faulkner—I would have some concern saying too much more about the advice given to the Attorney in relation to the particular matter, I think. I think that would be something you would have to pursue with the Attorney.

Senator LUDWIG—Minister, I wonder if you could shed some light on this as to whether or not the Attorney-General was given advice as to whether he should or should not intervene in the Ruhani matter, on what ground that was put to him and on what ground he decided not to intervene in the Ruhani matter.

Senator Ellison—On the advice, I will refer it to the Attorney. I understand that the decision was made having regard to the Commonwealth's limited interest in the case and the

scope for the parties to put the relevant arguments before the court. I think that it is best that I refer it to the Attorney and see what he can give you. I will take it on notice.

Senator LUDWIG—Thank you, Minister. In relation to the Ruhani matter, did the Commonwealth appear in any of the actions?

Mr Faulkner—In this particular matter?

Senator LUDWIG—Yes.

Mr Faulkner—No. The Commonwealth was not a party.

Senator LUDWIG—In respect of the funding of the Nauru action, did the Commonwealth fund that through your section?

Mr Faulkner—No, it did not fund it through my section—that is, the Attorney-General's Department. However, I think it is fair to say that my understanding is that Australia has entered into an MOU with Nauru to cover, among other things, the reasonable costs associated with Nauru hosting the offshore processing centre.

Senator LUDWIG—Is that with the Attorney-General's Department or with the department of immigration?

Mr Faulkner—The latter department. I think you would need to pursue with them questions about what payments are made under that and the basis on which those payments are made.

Senator LUDWIG—So, in relation to the Attorney-General's Department, there is no MOU, or assistance in kind, or other financial payments that have been made to the Nauruan government in relation to defending matters that arise in relation to detention centres in Nauru?

Mr Faulkner—No.

Senator LUDWIG—Does the department of immigration seek advice from you in relation to those issues, particularly for, say, the Ruhani matter—whether or not they should seek the Attorney-General to defend the action? Or have they?

Mr Govey—Immigration, along with other agencies that have an interest in this, are always consulted when a 78B notice comes in and affects them but if you are talking about beyond that, I do not think we are consulted as a matter of course in relation to the ordinary handling of those matters. They have their own legal section.

Senator LUDWIG—I was trying to limit it to the Ruhani matter because I can understand it could arise in other jurisdictions and in other ways and they might then always seek advice from the Attorney-General's—so, in respect of the Ruhani matter only.

Mr Govey—Yes, they were certainly consulted in relation to that.

Senator LUDWIG—No. Did the department of immigration seek advice from the Attorney-General about whether they should seek the Attorney-General to intervene in the matter?

Mr Faulkner—With respect, I think that is probably not quite the way the process works.

Senator LUDWIG—It might be putting the cart before the course, I know.

Mr Faulkner—Yes.

Senator LUDWIG—The difficulty is that these things happen pretty quickly. There will be a 78B notice. Given the immigration department have an interest in the immigration detention centre from Australia's perspective, they would be aware of it. No doubt I will be able to pursue that with them. They might or might not then think that the Attorney-General's should have a position in relation to that. This is supposition, of course, but they might then ask the Attorney-General's what their view is and the question is: have they?

Mr Govey—What they did was have discussions with us at the departmental level on their view, which was reflected in the submission that went to the Attorney-General.

Senator LUDWIG—Is the litigation involving the *Voyager* within—

Mr Faulkner—I am terribly sorry, no.

Senator LUDWIG—Thank you, Mr Faulkner. In relation to the *Voyager* incident of 1964, what litigation is still outstanding that you are aware of?

Mr Anderson—There was a settlement scheme announced some years ago with respect to crew who had been on HMAS *Voyager*, which was the ship, of course, which was sunk. In respect of crew on the HMAS *Melbourne*, which was the ship that was not sunk, a number of claims were filed with the court between about 1995 and 2003. Some of those claims have been finalised before the court with judgments both in favour of and against the Commonwealth government. I think the majority of those claims are still outstanding. More recently, I think last year, there were a small number of additional claims filed on behalf of people who are apparently dependants of crew on either the *Voyager* or the *Melbourne*. Those claims have not proceeded very far at all.

Senator LUDWIG—What was the nature of those last ones?

Mr Anderson—They are people who are dependants of crew. I should just check this. I believe they are all dependants of crew who deceased on the *Voyager* but I will just check that. Yes, that is correct. They are dependants of 8 crewmen who were deceased on the *Voyager*.

Senator LUDWIG—In respect of all the remaining litigation involving the *Voyager* other than those—this is for direct crew—

Mr Anderson—Other than those, it is the crew of the *Melbourne*.

Senator LUDWIG—How many?

Mr Anderson—A number of the crew of the *Melbourne*—not, by any means, all of the crew of the *Melbourne*. The majority of the crew of the *Melbourne* have never taken any action.

Senator LUDWIG—How many actions have been brought to date? Can you separate that out from crew members in respect of the *Melbourne* or dependants in respect of the *Melbourne*?

Mr Anderson—There are 157 current known damages claims by former HMAS *Melbourne* crew before the courts, of which 124 are proceeding through the litigation process. Thirty-three have been almost entirely resolved; they await final disposal on cost issues.

About 80 claims have been settled, finalised, discontinued or dismissed regarding crew of the *Melbourne*.

Senator LUDWIG—How many have been finalised in the sense of being a settlement? I am happy for you to take that on notice.

Mr Anderson—The information I have is that around 80 have either been settled or finalised. We could come back to you with the precise number of those that have been settled.

Senator LUDWIG—I was trying to get a better breakdown to understand from the *Melbourne* cases—and you have given some of those figures—which ones have been finalised, which ones have been settled and which ones have been discontinued. How many of those remain outstanding, and have you been given notice that there are others that are yet to be filed? Flowing from that, is there any consideration being given to establishing a similar scheme to that which was provided for those on the *Voyager*?

Mr Anderson—We can certainly take on notice and provide a breakdown of those 80 claims to indicate which have been settled and which have been finalised in other ways. We cannot indicate what claims might be out there that have not been filed.

Senator LUDWIG—No, only if they have given you some indication. A solicitor might have written to you and indicated that their intention was to file, and it has not been done as yet. I am not asking you to garner the legal profession for those matters that they have not brought to your attention.

Mr Anderson—I can note, and it is relevant to the second part of your question, that there are about 750 crew of the *Melbourne* who have taken no action at all. That is relevant to the government's decision so far that it is not appropriate to institute a settlement scheme for crew of the *Melbourne* because the vast majority of the crew have made no complaints and have not actually sought compensation from the Commonwealth. It needs to be borne in mind, as I said initially when you first raised the *Voyager* and the *Melbourne*, that the *Voyager* and the *Melbourne* were in very different circumstances. The crew of the *Voyager* had a particularly terrible experience. Their vessel was sunk; 83-odd members of the crew died in the accident. The *Melbourne* crew were in quite a different position. While it was no doubt a very harrowing experience for them, the vessel was not sunk. People did not suffer the sorts of injuries that were suffered by some of the *Voyager* crew, so it is quite a different scenario faced by the *Melbourne* crew.

It is also worth noting that *Melbourne* claims, as I indicated, only started being brought in 1995, and the government does face considerable difficulties in testing some of these claims because of the effluxion of time. It can be difficult to establish whether some of those people were in fact on the vessel at the time or whether they were on leave. Records are not necessarily entire for those sorts of issues. Then there is the question: where was someone on the *Melbourne*? What ways do we have to test what their experience was at the time and their behaviour subsequently in the period leading up to them commencing an action in 1995 or subsequently? Once again, the government is in a different position with respect to the *Melbourne* crew in order to properly test the claims. Where the government has been able to establish that a claim was validly made and it can readily establish the quantum of damage

suffered by a crewman then those sorts of claims have been settled, but that is why there has not been any general settlement scheme for crew of the *Melbourne*.

Senator LUDWIG—When you answer the question on notice, can you provide what the average cost to the Commonwealth of the settlement in respect of the *Melbourne* is, what the cost per action has been to date and then the total cost of the actions by the Commonwealth in terms of their legal spend?

Mr Anderson—While we are very involved in the *Melbourne* and *Voyager* claims from the point of view of legal policy and settling a large number of cases against the Commonwealth, Defence actually does take the day-to-day instructing role in the cases.

Senator LUDWIG—I see.

Mr Anderson—Some of those questions might be better directed to them.

Senator LUDWIG—Perhaps for those that you cannot answer, the committee secretariat could then pass them on to the Department of Defence for them to take on notice. So if you answer the parts that you can answer and return them to the committee then the committee can undertake to refer the other parts to the Department of Defence.

Mr Anderson—Certainly.

Senator LUDWIG—In relation to costs—perhaps party-party costs in relation to the *Melbourne* crew members—is there a policy that the Attorney-General's have or should that question be asked of the Department of Defence as to whether they have a policy in relation to party-party costs—whether they accept them or reject them and how they deal with them?

Mr Anderson—It would be a matter for Defence, in terms of how they are approaching individual cases. As a general rule, though, the Commonwealth does seek costs in matters in which it is involved. That is something that does come under the legal services directions. It is appropriate that the Commonwealth recover its costs where it has been successful in a case, unless there are any exceptional circumstances, and that is something that gets considered on a case-by-case basis. We can ask Defence about the case-by-case basis with respect to the *Melbourne* claims.

Senator LUDWIG—We can check whether they are following the legal services directions in that respect. I might put a few more questions on notice, but other than that I am finished in respect of output 1.2.

CHAIR—Thanks, Mr Anderson. Senator Ludwig, do you want to move on to 1.3 now?

Senator LUDWIG—Yes, I was just checking that no-one else had questions on 1.2.

[12.36 p.m.]

CHAIR—We will now deal with output 1.3, Legal services and policy advice on family law and legal assistance and the administration of government programs providing legal assistance and family law related services. We will ask the appropriate officers to come to the table.

Senator LUDWIG—The new family relationships centre—is that something that you can tell us about?

Ms Leigh—Yes.

Senator LUDWIG—What stage are we up to with those?

Ms Leigh—The government has released a discussion paper and we are still analysing the responses that we have had to that paper.

Senator LUDWIG—When is the discussion round, if I could put it that way, likely to be finalised?

Ms Leigh—It is a matter for government as to when they make an announcement on the outcome of that discussion paper, but obviously there are budgetary issues so it will be linked at least in part to the budget.

Senator LUDWIG—The discussion paper said there would be 65 family relationships centres across Australia. Has that changed, or is it still envisaged that there will be 65?

Ms Leigh—Anything that is in the discussion paper is part of the proposal that the government put forward. As I said, we are now analysing the responses we have had to the discussion paper, and the government has not made any announcement about final details. I know that the Attorney did put out a press release recently where he referred to that number.

Senator LUDWIG—Yes.

Ms Leigh—I cannot take it any further than that.

Senator LUDWIG—Minister, when will we know from the Attorney-General what is envisaged? We are getting press reports from the Attorney-General that there will be 65 centres, but the department is telling us that this is still in discussion mode. The questions I have relate to, of course, the costing, whether there will be 65, where they will be located and when they will first be up and running.

Senator Ellison—I understand that it is being considered in the budgetary process. As usual in these situations, we cannot comment on the budgetary process. I appreciate what Senator Ludwig said, but really we cannot talk about what is in the budgetary process.

Senator LUDWIG—Can you say whether a budget submission has been made?

Senator Ellison—Nice try! But no. That is all I can say, and it is a time-honoured situation that we face at estimates in the run-up to the budget.

Senator LUDWIG—I guess I will ask at the budget hearings then.

CHAIR—I guess you will.

Senator Ellison—You may!

CHAIR—We will remind you, will we?

Senator LUDWIG—I am sure I will not forget!

Senator Ellison—You will not need it.

Senator LUDWIG—Most of my questions go to that area, Ms Leigh, but can you tell me anything about where you are at in terms of the finalisation of the review?

Ms Leigh—As I said, the discussion paper was put out on 10 November last year and the period for making submissions has closed. We are now analysing the information that we

received from those submissions. In addition to written submissions, face-to-face consultations were conducted. So we are analysing the information gained from those consultations and the written submissions.

Senator LUDWIG—Are those submissions available?

Ms Leigh—A number of them would be available. When we went out seeking submissions we asked people whether they would be willing to have their submissions made available. Some said yes, but some said no, because it covered personal circumstances.

Senator LUDWIG—Can you provide those that can be made public to the committee?

Ms Leigh—As I understand it, yes.

Mr Govey—It is worth noting that there were over 400 submissions, so there will be quite a volume of material to go through.

Senator LUDWIG—Perhaps you can provide a synopsis first and then we can decide—not a detailed synopsis, but who the information is from and how large the document is so that we can make a decision rather than put you to the test of photocopying that voluminous material. I am trying to reduce your workload at that point. Then we can decide if there are any that the committee might particularly have an interest in and request those from there. So if we adopt a two-stage process, that would be acceptable. The law reform that comes from that is not part of the budgetary process—where is that at?

Ms Leigh—That would require legislative amendment in a number of cases, but again the whole package needs to be looked at as a whole.

Senator LUDWIG—Is any of that being drafted or has any of it been sent to parliamentary counsel for drafting?

Ms Leigh—Yes, work is progressing on that.

Senator LUDWIG—Can you tell me anything about that—what parts have gone?

Ms Leigh—No—given that it is a single package and that the government has not made any announcement. The work is progressing incrementally as we analyse the views we have received.

Senator LUDWIG—And the same would apply to the location of any of the centres—that would be a matter for the government to decide?

Ms Leigh—Yes.

Senator LUDWIG—Is that being considered as part of the review or is that separate—in other words, the area of need or based on need, or based on a whole range of considerations?

Mr Govey—That will be the second stage of the process, but we would not anticipate any announcements coming out of the initial package.

Ms Leigh—Senator, I just do not think we can commit to when the government will make an announcement on that, but—

Senator LUDWIG—No, I have come to that conclusion as well, a bit belatedly.

Ms Leigh—I would not rule it out either.

Senator LUDWIG—Does the family law hotline still come under you or does it come under someone else?

Ms Leigh—That is mine.

Senator LUDWIG—I thought someone else used to tell me all about that.

Ms Leigh—That is right—it is now mine!

Senator LUDWIG—Your predecessor was keeping details of the number of phone calls made on a monthly statistical basis and then on a yearly statistical basis. Do you have an update? I suspect that that has just been put to you now.

Ms Leigh—It has. We are able to table an update of the statistics.

Senator LUDWIG—Thank you; that would be good.

CHAIR—We will collect a copy from you—in theory, at least.

Senator LUDWIG—Have the staffing levels changed in relation to the hotline, or are they exactly the same?

Ms Pidgeon—The staffing for the call centres is adjusted all the time, month by month or day by day, depending on the volume of calls coming in. It is a very flexible arrangement that we have with the call centres. You will see from the updated statistics that it goes up and down slightly each month. But it is not a dramatic difference.

Senator LUDWIG—Does the advice change? I think I have asked you occasionally about the nature of the advice being provided on the hotline, Ms Pidgeon. Has that been changing over time? Has there been any analysis of what has been going on and what the main issues are?

Ms Pidgeon—I am not aware that it has changed in any significant way.

Senator LUDWIG—I think there was an increase during 2003-04. I have not seen those figures yet, but has that increase continued?

Ms Pidgeon—Yes, there has been a further increase into 2005.

Senator LUDWIG—In relation to the increase, has there been a request for additional funding to support that?

Ms Pidgeon—It has not been necessary. We have been able to keep within our funding envelope. When I say 2005, the figures that you have are in fact up to December 2004, but that increase has continued into the financial year 2004-05.

Senator LUDWIG—Is the average hold time for family law within the statistics that you have provided?

Ms Pidgeon—The specifics are the same as those provided to you before; they are just updated.

Senator LUDWIG—And the Regional Law Hotline?

Ms Pidgeon—That is also included.

Senator LUDWIG—So, in respect of the Regional Law Hotline, you have included the same statistics as those I have been asking about?

Ms Pidgeon—Yes.

Senator LUDWIG—Has any additional or extra funding been sought for that?

Ms Pidgeon—No, there has not been any.

Senator LUDWIG—Is there an end date for either the family law or the regional law hotlines?

Ms Pidgeon—No. As you know, we have changed the arrangements in the last year or so to make them more efficient. That was a result of earlier consideration of how we should proceed into the future. We are now satisfied that the way that it is operating now is an effective mechanism, so we are not expecting it to come to an end.

Senator LUDWIG—What changes were made?

Ms Pidgeon—The legal advice component of the Regional Law Hotline became the responsibility of the legal aid commissions in each state, instead of being a mixture of legal aid commissions and community legal services.

Senator LUDWIG—How is that arrangement now undertaken? Are they referred off to the legal aid offices?

Ms Pidgeon—No. When legal advice is required, the call centres have a specific line through which they then directly transfer the call to the legal aid commission. It does not go into the normal legal aid commission telephone queue. The person using the hotline can then get the legal advice that they are seeking.

Senator LUDWIG—Is there a cost impost that is being taken up by legal aid?

Ms Pidgeon—No, they are being provided with funding to do this. Some of them were already involved but this now involves all of them—except the ACT, because the ACT does not come within the Regional Law Hotline scheme because it is essentially metropolitan. The legal aid commissions are provided with some funding. For that, they provide this service.

Senator LUDWIG—How much funding are they provided with?

Ms Pidgeon—Initially it is about \$50,000 a year, but that will depend on how much the call volumes increase. We are negotiating ongoing arrangements in terms of the costs as we expect the volume to increase over time.

Senator LUDWIG—When was that negotiated? Is there a separate agreement which provides for that \$50,000 payment?

Ms Pidgeon—Yes, there are separate MOUs between the department and the legal aid commissions, which have been negotiated over the last 1½ years.

Senator LUDWIG—I am happy for you to take it on notice. I am curious as to when they were entered into.

Ms Pidgeon—They were entered into over the last year from just before the middle of the year. I think there was one still to be signed as at the end of last year.

Senator LUDWIG—Are they all the same MOU or are they different?

Ms Pidgeon—Essentially. I think there are very, very minor differences between each of the MOUs.

Senator LUDWIG—Could the Queensland or New South Wales MOUs be provided?

Ms Pidgeon—I am sure they would be able to be provided.

Senator LUDWIG—And in relation to the call period, which is about six minutes, how much advice is given in that? Is it a referral or is it advice that is provided?

Ms Pidgeon—I am not sure what you mean by ‘six minutes’?

Senator LUDWIG—That is the average duration of telephone calls answered by call centres.

Ms Pidgeon—They are the call centres. They provide a mixture of information and referral information. That is not legal advice.

Senator LUDWIG—No, the legal advice is transferred on, so it should not take too long.

Ms Pidgeon—That is right. It is information and referral—information about family law issues and information about other services that can help.

Senator LUDWIG—So how much advice can be given in six minutes?

Ms Pidgeon—It is not advice at all; it is only information. That is the point: the six minutes does not relate to advice; it only relates to information. It depends on what a person is asking about. And some of the calls, of course, are much longer than that. That is the average.

Senator LUDWIG—What sort of advice are we talking about, though? That they should ring Centrelink or something?

Ms Pidgeon—No, it is information about a range of family law issues. The fact sheets that the call centre operators use are provided by the department. They also use information that is specifically on Family Law Online—in fact, the fact sheets are on that service. They can also use information on other key internet sites such as that of the Family Court. So it depends entirely on what somebody is asking.

Senator LUDWIG—Can those fact sheets be made available to the committee?

Ms Pidgeon—Yes, there is no problem with that. I should clarify that the fact sheets are essentially about family law information. If they need other information, that is when they are also referred to the regional hotline legal advice providers.

Senator LUDWIG—Other than that, do they refer them to places like Centrelink?

Ms Pidgeon—They can certainly provide them with information on how to contact Centrelink and other services that they need.

Senator LUDWIG—Is international family law within your responsibility, Ms Leigh?

Ms Leigh—It is.

Senator LUDWIG—Does your section undertake monitoring for compliance for other countries in relation to adoption programs or procedures?

Ms Leigh—There would be a number of ways that that would be carried out in relation to countries that are party to the Hague convention. Of course, the Hague conference plays a role

in educating countries about their obligations under the convention. In relation to countries where we have arrangements where they are not a member of the Hague conference, but also indeed in relation to Hague conference countries, each of the states takes responsibility for a particular program and would have the hands-on information about that particular program.

Senator LUDWIG—Where is the Hague convention on the international recovery of child support up to?

Mr Duggan—Are you referring to the new convention?

Senator LUDWIG—Yes.

Mr Duggan—That is still under negotiation. There is another meeting coming up very shortly, but the treaty is still being negotiated. That is primarily the responsibility of the Child Support Agency or FaCS. You may wish to take those questions up more with them.

Senator LUDWIG—I will do that. I was just curious as to whether it was coming up for completion, whether there was a final meeting of the parties to look at implementing it and when it is likely to be available for signing.

Mr Duggan—I do not have those dates with me. We can probably provide those to you.

Senator LUDWIG—If you wouldn't mind. Has any work been done on whether or not Australia intends to sign and if there are any requirements or changes to our legislation should we need to ratify?

Mr Duggan—As I have indicated to you, the primary responsibility for those matters rests with the Child Support Agency and FaCS. The questions are better dealt with by them.

Senator LUDWIG—I can do that. Thank you. The Native Title Assistance Scheme?

Ms Leigh—No.

Senator LUDWIG—The data and workflow grants system?

Ms Leigh—No.

Senator LUDWIG—I will find someone who owns that eventually!

Dr Popple—You have questions about financial assistance under the Native Title Act?

Senator LUDWIG—How much in total has been provided under the 1,100 grants of financial assistance under the Native Title Assistance Scheme?

Dr Popple—How much in total since the inception of the scheme?

Senator LUDWIG—It depends on what you have got. If you have got it for the last financial year—

Dr Popple—I can tell you what has happened in this current year, unfinished. Would that be useful?

Senator LUDWIG—Yes. And perhaps you could take on notice the full year before that.

Dr Popple—Certainly. In this current year so far, as at 14 January, a total of \$2,018,935.10 was by way of direct credit and a further \$3,084,541.95 by way of authorisation from trust draw-down, which makes a total of \$5.1 million.

Senator LUDWIG—I am happy for you to take on notice the range of grants between the large and the small, and whether the criteria for eligibility for a particular grant remain the same or change depending on the circumstances.

Dr Popple—So that I am clear, you are seeking the range of grants, the largest amount committed and the smallest amount.

Senator LUDWIG—Yes, and maybe a median if you have one.

Dr Popple—I will take that on notice, Senator. In relation to eligibility, the eligibility for the scheme is set out in the guidelines issued by the Attorney under the Native Title Act. Those have not changed since 1998.

Senator LUDWIG—Is there an explanatory document which provides for how they should be interpreted by the public servants—in other words, whether they meet the guidelines or to assist in determining whether they meet the eligibility guidelines provided for in the legislation.

Mr Griffiths—The guidelines are a fairly lengthy document in narrative form. They probably run for 12 to 16 pages, I suspect. They are on the departmental web site. They contain a considerable amount of information. They are not merely in the form of a set of bullet points, for example; there is a fair amount of explanatory material contained within the guidelines themselves.

Senator LUDWIG—There is no other document or internal document?

Mr Griffiths—There are some other documents that have been provided from time to time. I am thinking of a document which is known as the assessment of costs document. That document really goes more to how we apply and interpret the Federal Court scale or vary the Federal Court scale rather than to the interpretation of the guidelines themselves.

Senator LUDWIG—I will not ask you for that. That is all the questions I had in the area of 1.3.

CHAIR—And that makes your timing impeccable, Senator Ludwig. We will adjourn for lunch and resume at 2 p.m. I seek your advice, Senator Ludwig: will we be resuming in 1.4?

Senator LUDWIG—Yes, thank you.

Proceedings suspended from 12.59 p.m. to 2.01 p.m.

CHAIR—We are continuing with output 1.4 in outcome 1, which is legal services and policy advice on international law.

Senator LUDWIG—I might deal with this more generally as well. Do you do the legal spend of the particular outputs by output area or do you do it by total—for argument's sake, those where you require outsourced legal advice from both AGS or elsewhere—for instance, in 1.4? Do you break it down in that way or do you break it down as a total of what the A-Gs do?

Mr Cornall—In the portfolio budget statements it would be by the output, but we would have subsidiary figures within our own internal budget.

Senator LUDWIG—Could I have an update on the latest figures you have of total outsourced legal spend, broken down between the AGS and, more generally, those lawyers on panels. Do you then separate them out into barristers? I suppose you would, as they are individual traders.

Mr Cornall—We can do that.

Senator LUDWIG—That would be helpful.

Mr Cornall—Can we take that on notice?

Senator LUDWIG—Yes, please. Are international courts within output 1.4?

Mr Cornall—The International Criminal Court; is that what you are talking about?

Senator LUDWIG—It is more broadly based. There was an outcome of a joint amicus curae brief with the UK and Switzerland involving the US Alien Tort Claims Act. I would like to know whether that has been completed.

Ms Leon—That comes under this output, Senator Ludwig.

Senator LUDWIG—And has that been completed?

Ms Leon—I do not have the date with me here, but the amicus curae brief went in quite some time ago. I think it would have been perhaps close to a year ago.

Senator LUDWIG—What stage is that now at?

Ms Leon—The case?

Senator LUDWIG—Yes. The US Alien Tort Claims Act.

Ms Leon—I would have to take that on notice. That would be somewhere in the US court lists.

Senator LUDWIG—And what was the purpose of doing an amicus curae brief?

Ms Leon—Generally, or in relation to that case?

Senator LUDWIG—In relation to that case?

Ms Leon—The case concerned the operation of the Alien Tort Claims Act in the United States. Australia, together with the other states that put in that joint brief, had wished to express views about the extraterritorial operation of laws. So the purpose was to express a view to the court about interpreting that statute in a way that would cause it to operate extraterritorially—that is, so that it would regulate the activities of people who are not US citizens and not on US soil. So it is a general brief concerning extraterritorial operation of laws.

Senator LUDWIG—Thank you. I will not pursue that any further. I have finished with output 1.4.

CHAIR—Thank you. I understand that Senator Greig has some ICC questions. Is that your area? Can I have some guidance on that, please?

Mr Cornall—That is in the criminal justice area—output 2.1.

CHAIR—Thank you.

Mr Govey—While we are waiting for the next witnesses, there were some questions asked this morning about the exemptions under the disability standards for accessible public transport. I can hand up a piece of paper that contains details of those exemptions.

CHAIR—Thank you. An officer will collect that from you.

[2.06 p.m.]

CHAIR—We will now go to output 1.5, Drafting of legislative and other instruments, publication of legal materials and provision of related legal services.

Senator LUDWIG—That includes SCALEplus and ComLaw, I take it?

Mr Cornall—Yes, it does.

Senator LUDWIG—The Legislative Instruments Act is now in operation. Is the coordination between the various departments now your responsibility, Mr Graham?

Mr Graham—It is.

Senator LUDWIG—What do you do now that the Legislative Instruments Act has come into effect to ensure that there is effective coordination between the departments when they introduce legislation to comply with that?

Mr Graham—The requirement is that any legislative instrument be registered on the register. All the departments have officers with whom we are in contact. An electronic system has been set up for the lodgment of the instruments so that we can receive them, process them, put them on the register and publish them.

Senator LUDWIG—Do you have a time line as to how long it will take to finalise putting them on the register and then having them available for searching?

Mr Graham—Once the instrument has been made it is the responsibility of the agency to get it to us for registration. That takes routinely perhaps a day or so but it can be speeded up if there is a need for quick registration. That is really a matter for the agency concerned because the instrument has no effect until it is registered and if it needs to be registered by a particular time we can normally arrange that. Once it is on the register, at present it takes a couple of hours before the system has done all the indexing and it is easily discoverable by somebody using the system. That can be speeded up if the moment of registration is critical—if we need to make sure that somebody looking for it can find it at once.

Senator LUDWIG—Is the ComLaw site your responsibility?

Mr Graham—It is.

Senator LUDWIG—How and when was the decision made to set up ComLaw as distinct from SCALEplus?

Mr Graham—The final decision was made shortly after the passage of the Legislative Instruments Act. The SCALEplus system is based on technology and software which is now obsolete and when we were given the responsibility of providing a system for the federal register we wanted to incorporate the material on SCALEplus, which includes acts, so that the links between the acts and instruments that they authorise can be made clear to people. What was required was a new system. The SCALEplus system could not have been adapted.

Senator LUDWIG—Your section now maintains ComLaw. How much has been budgeted per annum for the set-up, establishment and subsequent maintenance? I am happy for you to take that on notice.

Mr Graham—It is in two parts. There is the IT system and I think my colleague Mr Fry is best placed to answer questions on that. The actual operation of the register is a separate set of costs. We are happy to take that question on notice.

Senator LUDWIG—In respect of the IT, perhaps Mr Fry could take on notice the set-up costs, the IT costs and the total costs that have been involved in establishing the ComLaw site.

Mr Fry—The budget for the development of the system was \$2.575 million and we expect over three years something like \$400,000 in ongoing expenses. Part of that original cost includes leases that, of course, while accounted for and upfront in my estimates are in fact spread over a three-year period.

Senator LUDWIG—What type of lease are they?

Mr Fry—Operating from memory, I would have to check that.

Senator LUDWIG—I am happy for you to take that on notice. In regard to the migration from SCALEplus to ComLaw, is it the case that you are migrating all of the links from SCALEplus to ComLaw so that someone could then have the same search or are you only taking that part which relates to the legislative instruments database?

Mr Graham—Eventually the whole of it will be there. All of the current material has now been moved to ComLaw so that the database relating to acts is integrated with the database relating to the legislative instruments. Some of the historical material has not yet been migrated; that is planned to happen over the next few months.

Senator LUDWIG—Is it the intention then to close down SCALEplus or remove it from the webpage?

Mr Graham—We will remove SCALEplus once its functions are completely taken over by ComLaw.

Senator LUDWIG—When is that likely?

Mr Graham—Around the middle of the year. There is not a firm date yet.

Mr Fry—We will judge that a lot by the amount of use that is moved over to the new system. If it was not being used any more then we would tend to do it earlier than if we found that people were slow to move.

Senator LUDWIG—So I should stop using SCALEplus. Is there anything that cannot be moved that you are aware of?

Mr Graham—No.

Senator LUDWIG—Is there any intention to put all the currently available hard copies of legislative instruments on the web?

Mr Graham—All of the material that is currently being made available in hard copy is also available on the web, if that answers your question.

Senator LUDWIG—So there won't be legislative instruments that are not available on the web—to put it in the reverse.

Mr Graham—All legislative instruments have to be available on the web because if they are not, they are ineffective under the act. Those instruments that we are currently publishing, which are the regulations and a number of other instruments, we will continue to print in the same way. Everything will be available electronically.

Senator LUDWIG—That is going to present a challenge for some departments, I think. Is the assistance to the governments of Papua New Guinea and Nauru in drafting bills provided from your office?

Mr Graham—Yes.

Senator LUDWIG—What type of operation does that include? Is it that you give drafting instructions and you draft bills? Perhaps you could provide an overview of the service.

Mr Graham—The service that we provide is very much ad hoc depending on what is required in particular circumstances. Most of the Papua New Guinea work was done purely on instruction in Australia. In the case of Nauru we were working with the Office of International Law, and officers from the Office of International Law visited Nauru.

Senator LUDWIG—Is there is a contract in place for that, or is it a fee for service?

Mr Graham—I would have to go back. For some of the work that we have been doing we simply absorb the cost. Other work that we have been doing for other countries is on a fee for service basis for the office—normally where AusAID is providing the funding.

Senator LUDWIG—I am happy for you to take on notice the current work you are doing in relation to what is fee for service and what is absorbed into your budget and the scale or nature of it. Is AusInfo within output 1.5?

Mr Graham—No, Senator.

Senator LUDWIG—Which output is that now in? That is the bookstore.

Mr Graham—This is the function of publishing legislation?

Senator LUDWIG—Yes.

Mr Graham—I beg your pardon, Senator. Yes, that is now with us. AusInfo is not involved.

Senator LUDWIG—No, it is closed; but the function had to go somewhere, I suspect.

Mr Graham—That part of the function, which was publishing of legislation, has come to us.

Senator LUDWIG—And the bookshop—

Mr Graham—The bookshop has been closed. A contract has been put in place for the printing and distribution of the legislation, and part of the contract is to provide over-the-counter outlets in each state.

Senator LUDWIG—Is that only legislation?

Mr Graham—That covers legislation and the *Gazette*.

Senator LUDWIG—What about annual reports or things like that?

Mr Graham—No, it does not cover that.

Senator LUDWIG—So that is done separately by the departments. Is the only government printing that was done prior to that the *Gazette* and the acts?

Mr Graham—And the statutory rules series.

Senator LUDWIG—What was that whole contract worth? Was that let?

Mr Graham—I beg your pardon. I have just been reminded that the marriage celebrants documents are also distributed as part of the same system.

Senator LUDWIG—Was the total contract let to one person to do the printing and distribution?

Mr Graham—It was let as a single contract because the functions were very closely integrated.

Senator LUDWIG—Who was the successful tenderer?

Mr Graham—CanPrint Communications.

Senator LUDWIG—What was the price of that?

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

Senator LUDWIG—All right. I am happy for you to take on notice anything like that that you are not sure of. Which outlets will it be distributed through? Is there a booksellers or resellers that are intended to be used as part of the contract terms?

Mr Graham—The situations are complicated. I would prefer to take that one on notice, if you do not mind.

Senator LUDWIG—All right. And how are the public to understand that the acts are available at certain locations?

Mr Graham—It is publicised on the SCALEplus and ComLaw web sites and in the printed *Gazette*.

Senator LUDWIG—And it is available at one of the resellers?

Mr Graham—Yes.

Senator LUDWIG—It is not available anywhere else?

Mr Graham—There are some other resellers, I understand, but they normally only resell small quantities and not the whole range. There is also a subscription service, which is how the bulk of it is probably distributed.

Senator LUDWIG—That might be helpful, too, if you just break that down and show the main distribution process that is used. If the bulk is by subscription then we are really only talking about the tail end of some that are resold through certain outlets.

Mr Graham—That is right.

Senator LUDWIG—That is helpful, thank you. I have finished on 1.5.

CHAIR—Is there anything else on 1.5? If not, thank you very much, Mr Graham. We will move to output 1.6, Legal services and policy advice on information law.

[2.20 p.m.]

Senator LUDWIG—Does the digital agenda review come within this area?

Ms Lynch—Yes, it does.

Senator LUDWIG—So your section has been answering most of those questions on notice in this area?

Ms Lynch—The copyright law branch would have, yes.

Senator LUDWIG—I guess this has intervened in the overall process, but the Australia-US Free Trade Agreement, as you are aware, took up a range of copyright issues which are now being reflected in legislation that has been agreed to and is now, if not operational, not far away from being operational. As a consequence, regarding the digital reform agenda, the issues made in terms of the recommendations out of that process do not marry up well with the Australia-US Free Trade Agreement—that is, recommendations that flowed out of the digital reform agenda have not been subsequently picked up by the Australia-US Free Trade Agreement and then reflected in legislation. It has not gone that way; they have been two independent processes, as far as I can gather from the documents. Some of the digital reform agenda recommendations seem to be incompatible with the Australia-US Free Trade Agreement. Is there a document which reflects those which are incompatible and which are no longer going to be pursued and those which are incorporated or will form part of the Australia-US Free Trade Agreement, in terms of the legislative outcomes—as well as those that will simply not be pursued by the government?

Ms Lynch—There are some recommendations of the digital review which were superseded by the legislation for the free trade agreement, and there are some where the department is still doing more work and they are still being considered. Were you asking for a table of what was where?

Senator LUDWIG—There was never a final position put by government in respect of the review; it is not always available and it is not always done. But in many instances where you have done something like a digital reform agenda which then includes recommendations, it is usually the case that a position of government will be adopted—that is, accepted, rejected or progressed. As to how you tell the public or the committee that, as you have heard today, is sometimes open. In this instance there was an intervening event, the Australia-US Free Trade Agreement, which also seemed, from my casual reading of it, to go down a different track regarding some of the issues that were made into recommendations. I can go through the recommendations one by one, but I do not know whether we really want to do that.

Ms Lynch—Work is still continuing on aspects of the digital agenda review, so I do not know whether you were suggesting we had now closed off the remaining work. Work is still continuing on the aspects that were not taken up in, or the issues that were not superseded by, the free trade agreement. If you want more detail, I may need to defer to my colleague Ms Daniels, who may be better across the detail of what remains in the digital agenda review than I am.

Ms Daniels—To assist the senator, it might be worth going back a step. The department engaged the consultants Phillips Fox to do some aspects of the digital agenda review. Their report was released in April last year, and then subsequently we had the US free trade agreement negotiations and conclusion. Some of the recommendations in the Phillips Fox report are superseded—for example, in relation to the scheme for internet service providers and how temporary reproductions are treated—but the Phillips Fox report overall has been treated by the government as part of a wider review of the digital agenda provisions. The plan is that we will be completing the digital agenda review during the course of this year.

Senator LUDWIG—What parts remain outstanding? Are there further contracts to be let or dealt with?

Ms Daniels—There are no further contracts to be let, but there are, for example, issues like how the statutory licences in the Copyright Act operate in the digital agenda environment. They were really nothing to do with the US free trade agreement but are still something that we need to assess as to whether the amendments of three years ago have worked in the way they should. That is one big area that is left, for example.

Senator LUDWIG—I think most of the questions that were put on notice relate more generally to probity issues and conflict of interest issues. In the tender process for the digital agenda review were any firms rejected on the basis of conflict of interest concerns?

Ms Daniels—I would have to take that on notice.

Senator LUDWIG—Can you tell me particularly whether or not they represented music industry or copyright owners' interests. When the tender for the digital agenda review was awarded to Phillips Fox Lawyers, did the department establish whether Phillips Fox acted for LEF Interactive or Sharman License Holding Ltd and Sharman Networks Ltd?

Ms Daniels—I believe it did.

Senator LUDWIG—And they owned—if that is the word for it—or operated the Kazaa file sharing program. Are you aware of that?

Ms Daniels—We were aware, yes.

Senator LUDWIG—Was that taken into consideration by the department as one of those issues that could potentially be a conflict of interest?

Ms Daniels—Yes, and the department went through the normal processes to determine that there would not be a conflict of interest issue.

Senator LUDWIG—What steps were they—to ensure that what I guess in law firms now they call Chinese walls were erected around the issue by Phillips Fox?

Ms Daniels—I could take that on notice as to the actual details.

Senator LUDWIG—Did that also include whether personnel working within Phillips Fox were acting for significant stakeholders, such as LEF Interactive or Sharman licensing? Would that have been a consideration?

Ms Daniels—It would have been a consideration, yes.

Senator LUDWIG—Would it have ruled them out? What order of consideration would it have been? Would it have been sufficient to rule Phillips Fox out?

Ms Daniels—To fully answer your questions, I would probably be better off going off and reviewing the steps that we went through at the time.

Senator LUDWIG—Was the department aware that Matthew Hall, the partners of Phillips Fox in the firm's contract for the digital agenda review, were acting for Sharman Networks Ltd in obtaining a trademark for Kazaa at the time of the review?

Ms Daniels—I do not recall any issue in relation to trademarks.

Senator LUDWIG—So you are not aware of the documents lodged by Mr Hall from IP Australia on behalf of Sharman Networks?

Ms Daniels—I am not, no.

Senator LUDWIG—Do you know whether or not that would be a significant or a contributing issue for a conflict of interest, or would you like to take that on notice?

Ms Daniels—I will take that on notice.

Senator LUDWIG—Has the department received any specific advice from Phillips Fox that it provided either assistance or no assistance to Sharman Networks in relation to its submission to the digital agenda review?

Ms Daniels—I do not recall any advice.

Senator LUDWIG—Perhaps you could check on that as well.

Ms Daniels—I will.

Senator LUDWIG—Has the department received any complaints from other industry firms—sometimes they are single entities as well or perhaps interested parties—about Phillips Fox having a conflict of interest?

Ms Daniels—I do not recall any, but I will check.

Senator LUDWIG—If there were, perhaps you could outline what action was taken in respect of those—if there was any action taken.

Ms Daniels—Yes.

Senator LUDWIG—What type of conflict of interest model would you follow? In terms of what I am trying to ascertain—and clearly you do not have the document, so I am happy to provide it—it appears that Mr Hall was acting for Kazaa to obtain trademarks for them at the same time that the digital agenda review was being conducted where he was the principal officer or contact for that. What sort of probity procedure do you go through to ensure whether that is okay or not okay? Is the model that you use in determining conflicts of interest based on personnel, type of work or location in offices, or is it more broadly based than that?

Ms Daniels—I would imagine it was the same sort of probity as that established for any new contract the department were letting. We would have gone through the normal steps in considering whether there were any potential conflict of interest issues.

Senator LUDWIG—If you could take that on notice, I will provide to the committee a copy of those documents obtained under FOI. Perhaps you could comment on whether or not you were aware of those at the time and subsequently, if you were, what action you now intend to take in relation to this?

Ms Daniels—Okay.

Senator LUDWIG—Is any legislation being drafted currently as a consequence of the digital reform review conducted by Phillips Fox?

Ms Daniels—Not at this stage. We are going through the process of deciding what amendments are left to review following the US free trade agreement amendments which came into force on 1 January. We are going through that process now, so there is no legislation presently in the pipeline.

Senator LUDWIG—I think that is where I started in the beginning, in trying to ascertain exactly what may have been left. When do you envisage that process finishing?

Ms Daniels—We are hoping to finish most of the digital agenda review over the course of the year. Some aspects of it have impacts on other projects that we are undertaking, but the bulk of it we hope to have completed by the end of this year.

Senator LUDWIG—Will that also include where there is a conflict with the US free trade agreement?

Ms Daniels—I think the easiest way to answer that—

Senator LUDWIG—The word ‘conflict’ is probably not the best one to use—I mean where it is inconsistent or no longer required. Perhaps that is a better way to express it.

Ms Daniels—Where it is no longer required then obviously there will be no action for us in the area, but we will just need to double-check that everything has been covered off in that.

Senator LUDWIG—Did the outcome of and the recommendations from the digital review agenda form part of the US free trade agreement negotiations in relation to copyright or were they separate from that, in the sense that they were generated elsewhere?

Ms Daniels—They were separate from it.

Senator LUDWIG—Was any consideration given to inviting the digital reform agenda people—such as those who did the review, Phillips Fox—to look at the US free trade agreement copyright issues?

Ms Daniels—No, there was no consideration of that. We had the Phillips Fox report, so we knew what their recommendations were.

Senator LUDWIG—What was the total cost of the Phillips Fox review?

Ms Daniels—I think it was around \$297,000, but I can provide the actual figure to you.

Senator LUDWIG—Thank you. We will know towards the end of this year then what recommendations will be acted upon by the government in respect of that review?

Ms Daniels—That is the plan, yes.

Senator LUDWIG—Are there many recommendations left—in the sense that this is still alive? That is another way of putting it.

Ms Daniels—It is certainly still alive. There are many areas of the Copyright Act that the US Free Trade Agreement did not touch. I gave one example earlier of the statutory licences in the area of what libraries, archives and educational institutions can use by way of copyright material. That is still quite a big area.

Senator LUDWIG—Is the Indigenous communal moral rights bill within your area?

Ms Daniels—Yes.

Senator LUDWIG—I always check in case I have thrown too early and got it wrong. We know what the purpose of that bill is. How far away from completion is it at this point in time? Has it gone through an extended consultative process? Or it intended to be done in draft form and then go through an extended consultative process—or an exposure draft?

Ms Daniels—The bill has been drafted. Early last year it was sent out to the key stakeholders on an in-confidence basis to get their views. We gave an extension of time, where sought, for some artist groups and Indigenous groups to provide comments. We are now assessing those comments. The bill is listed for possible introduction in the present sittings. That may occur, depending on whether the government agrees to do any further amendments.

Senator LUDWIG—Is there an intention to do an exposure draft?

Ms Daniels—Not at this stage, because it has been through one consultation process already. It will be up to the Attorney-General.

Senator LUDWIG—We will leave it at that.

[2.37 p.m.]

CHAIR—There being no further questions on 1.6, we will move to 1.7, Native title.

Senator LUDWIG—Where are the recommendations of the second review of funding in the native title system up to at this point in time?

Mr Anderson—The recommendations from the 2004 review of funding have gone to government as part of the budget process.

Senator LUDWIG—We always get that at this time of year, don't we? What can you tell me about that, Minister?

Senator Ellison—It is that time of the year and the lead-up to the budget, and I really cannot comment because it is a matter for the budgetary process. I really cannot say much more than that.

Senator LUDWIG—Thank you. That is on record. We will see what you do come budget time. Going back a bit, what process did you adopt with the stakeholders for consultations to get it to this point?

Mr Anderson—The Native Title Coordination Committee that prepared the 2004 review of funding involved a number of different agencies who have significant roles in the native title system: this department, with respect to both the Native Title Act and respondent

funding; the Office of Indigenous Policy Coordination at DIMIA; Prime Minister and Cabinet; the Federal Court; and the Native Title Tribunal. Finance also sits on it as an observer. Between those bodies we cover all the different aspects of the Commonwealth responsibilities in the native title system. However, there was no process of consultation outside that because it is something that goes into the budgetary process. We had some work done by KPMG, assisting the committee, but they did not conduct any further external stakeholder consultation.

Senator LUDWIG—Is it only the funding issue that has been referred on or are there are other issues associated with the funding?

Mr Anderson—The committee itself has a role of advising government broadly on the operation of the native title system and you cannot divorce funding from the way in which the system itself is working. So the committee considered a number of aspects of the operation of the native title system, how it could perhaps be made more effective in some ways, and that was the framework within which the funding recommendations were made.

Senator LUDWIG—So the recommendations have gone to government as part of the forthcoming budget.

Mr Anderson—That is correct.

Senator LUDWIG—In respect of the current policy for the extinguishment of native title, is there any legislative proposal to change the current way the act works?

Mr Anderson—There is no legislative proposal at the moment. I should add for the sake of completeness that the former Attorney-General had issued a general invitation to parties in the native title system to notify the department if they had any proposals for amendments which might be classed as being technical amendments to enhance the operation of the system rather than fundamental amendments. The department has collected a range of possible amendments that could be considered and from time to time we do look at these and there is a process of giving advice to government on what could be done, but there is no formal legislative proposal at the moment.

Senator LUDWIG—How many copies of the guide to native title were published?

Mr Anderson—We believe about 5,000 copies were published. In addition, it was made available on our web site. I should correct that: around 5,000 were published but it is not actually on our web site.

Senator LUDWIG—How big is the document?

Mr Anderson—It is relatively small. I could have a copy provided to the committee. I have got a copy here.

Senator LUDWIG—That would be helpful. Perhaps you could always give consideration to putting it up as a PDF on your web site if it is not very large. I do not have any further questions on 1.7, chair.

CHAIR—That deals with 1.7.

[2.42 p.m.]

Senator LUDWIG—I do not have any on 1.8. It is a new one. If I had them, I would be making them up now.

CHAIR—We will not need to pursue specific questions in 1.8.

Senator LUDWIG—If there are any, I will put them on notice.

CHAIR—As Senator Ludwig has indicated, any questions in those areas will go on notice. As discussed with the minister and the secretary earlier, the committee will now, instead of proceeding straight into outcome 2, go to the interstate agencies which are present here today. As I understand it, they are the AAT, HREOC, AUSTRAC and OFLC.

Senator Ellison—In that order?

CHAIR—I have not resolved in my own mind in relation to order, Minister, but we will start with the AAT.

[2.44 p.m.]

Administrative Appeals Tribunal

CHAIR—Welcome, Mr Humphreys and the officers of the AAT. We will start with questions from Senator Ludwig.

Senator LUDWIG—Referring to the appointments, have all the AAT positions been filled or are there still vacancies?

Mr Humphreys—Vacancies will come up this year. They have been advertised and there will be interviews over the next two months to fill those vacancies that fall due in the first half of the year.

Senator LUDWIG—How many is that?

Mr Humphreys—Positions have been advertised for a deputy president, senior member and member in Western Australia; for a deputy president and senior member in Victoria; and for a senior member in South Australia.

Senator LUDWIG—How many of the appointments have been made in the last 12 months?

Mr Humphreys—There were approximately 34 appointments made last year. A large number of appointments fell due and they were done in two tranches. There was one before 30 June and a number after that. I can take that on notice and provide you with indications as to precisely who was appointed last year.

Senator LUDWIG—And whether they were full time or part time?

Mr Humphreys—Yes, I can do that.

Senator LUDWIG—Thank you. In addition to that, what number were women or persons from a non-English-speaking background? Do you keep statistics of other types of identifiers that might be helpful?

Mr Humphreys—Yes, I do, and I can give you some statistics from 30 June to 31 January, if that would be of any assistance.

Senator LUDWIG—It would be, thank you.

Mr Humphreys—These figures include judges of the Federal Court and the Family Court. The total membership in January 2005 was 73 members. In June 2004 it was 72 members. There were 56 males in both situations. There were 17 females in January 2005 and 16 in June 2004. There was a 6.3 per cent increase in the overall membership of females within the AAT; most particularly, female full-time membership increased by 33 per cent—it went from six to eight out of a total of 19 within the AAT. Total part-time membership increased by 1.9 per cent. Male part-time membership increased by 4.7 per cent and female part-time membership decreased by 10 per cent. In terms of the important appointments—the full-time appointments—female membership went from six to eight during that period from June 2004 to January 2005. I have some figures that go back to 1998, which might give you a much longer comparison in terms of the numbers and the splits.

Senator LUDWIG—Thank you. Perhaps you could put those on notice and provide them to the committee. That would be helpful.

Mr Humphreys—I can provide them fairly quickly.

Senator LUDWIG—In respect of the changes to the administration of the AAT proposed by the Attorney-General, was the AAT involved in the consultative process?

Mr Humphreys—I think I answered that some time ago. The President was consulted.

Senator LUDWIG—I am familiar with the conversation we had back then. As you are aware, that bill was prorogued in the last parliament and has been reintroduced. We are now in the process of having a look at it again. Since that time, has any further consultation been undertaken?

Mr Humphreys—We attended the office of the Attorney-General's Department during some of the drafting process in terms of instructions with parliamentary counsel. There has not been any further consultation since then.

Senator LUDWIG—In respect of freedom of information requests, how many has the AAT determined—or is that in your annual report?

Mr Matthies—Yes, the information for the 2003-04 financial year is in the annual report.

Senator LUDWIG—Those figures are up to—you might have to help me try to recollect—June—

Mr Matthies—30 June 2004.

Senator LUDWIG—Is the trend continuing? How many have there been since then?

Mr Matthies—I would need to take that question on notice.

Senator LUDWIG—And the same in terms of the breakdown of that—how many have been ruled favourable for the applicant and how many have been rejected?

Mr Matthies—Yes.

Senator LUDWIG—Of those, do you keep track of whether they have been appealed?

Mr Matthies—We can obtain that information.

Senator LUDWIG—Only if it does not put you to too much trouble. It is a question of whether you keep track of that or not and whether the appeals were successful—in other words, looking at the issue of how many times the applicants have been successful at the end point. Although they might have been successful at the AAT, it does not necessarily mean that they were not appealed and not successful at some later stage.

Mr Matthies—You mean FOI requests that are made to the tribunal in the first instance under the FOI Act rather than applications for review of FOI decisions.

Senator LUDWIG—Yes. I note in your finalisation of applications the targets that have been set. In which areas have you not reached those targets?

Mr Humphreys—When you talk about the targets, you are talking about the time line for meeting them.

Senator LUDWIG—Yes.

Mr Humphreys—I can hand up some information that might be of use to the Senate. These are workload information sheets. It covers some workload information on lodgements, finalisations and current matters. What I can say is that—it is not there but it will fit in—we have, as at the 12 months ending 31 December, achieved a 63 per cent finalisation in compensation matters. That is up one percent. There is a 75 per cent target. In social security we have a 90 per cent target. We achieved a 91 per cent finalisation rate. That is an increase of one per cent on the previous year. For the taxation division, including the small claims taxation division, there is a 75 per cent target. We achieved a 28 per cent increase, which was up 15 per cent on the previous year. I should indicate that we are finalising a very large number of very old taxation matters that relate back to 2000-01, when we had nearly 7,000 what I will call ‘tax scheme matters’ lodged with the tribunal.

Senator LUDWIG—That is the mass marketed tax schemes.

Mr Humphreys—Yes.

Senator LUDWIG—I was wondering when that was finally going to tail out.

Mr Humphreys—We are still working very hard to try and overcome those. If you have a look at the finalisation figures that I gave you in that first graph, it indicates we finalised some 2,000 of those last year. In fact, we finalised over 2,000 more matters than we had come in. In terms of Veterans’ Affairs, we have an 80 per cent target rate for within 12 months. We achieved a 54 per cent finalisation rate. That was down two per cent on the financial year 2003-04. We are undertaking a number of measures at the moment to try and see if we can increase our finalisation rate. They include an adjournment policy that we have formulated and which has been the subject of consultation. That is trying to ensure that matters are not adjourned within the tribunal without good reason. We are having a compliance drive in relation to compliance by parties with directions of the tribunal. That is having an impact. In addition, if there are particular solicitors or departments that are isolated as failing to comply on a number of occasions with directions by the tribunal as to the lodgment of documents or with other directions, they may be asked to appear before the president and he will speak with them about what is expected by the tribunal. We have found that there has been some considerable assistance. So we are working on a number of fronts. We have compliance

directions and a drive to decrease the number of adjournments that we are facing. That will take a long time. In saying that, it will take 12 months or more before we really start to see some impact in that.

Senator LUDWIG—Thank you very much. Does the issue of duty lawyers come within your area?

Mr Humphreys—In what regard—the duty lawyer scheme that has been set up within the AAT?

Senator LUDWIG—Yes.

Mr Humphreys—Yes, that does come within my area.

Senator LUDWIG—Has there been an evaluation of the service?

Mr Humphreys—Not yet. We are really only 12 months into it, and we do not even have it out on a national basis. We have commenced an evaluation in Melbourne and we are commencing an evaluation in Sydney, where it has been up and running for approximately 12 months. The feedback that we have to date is firstly that we are referring a number of people to the system. I should add that it has only been set up by cooperation with the relevant legal aid commissions. Where it is found that a person does not have legal representation—particularly, we find, in the social security area—they are referred to a duty lawyer who is on the premises. They may be referred prior to a first conference through our outreach service or they may be referred when they turn up at the first conference.

Approximately 25 per cent of the matters in New South Wales in the social security area where they see a duty lawyer are resulting in successful legal aid applications being taken and there is subsequent grant of legal aid. That is having some considerable assistance with the tribunal. Where aid is not granted, people are still receiving the benefit of advice. That may result in them either confining the scope of their appeal or indeed, in some cases, after the benefit of independent legal advice, they may even withdraw it. One of the most pleasing aspects of the pilot has been a report from legal aid that indicates that people who were not previously aware that legal aid was available in the AAT in, say, social security matters are being picked up, and particularly people from regional and remote areas. We are picking up people who did not get legal aid before. So it has been a bit of a win-win. The tribunal is getting increased representation for people who were otherwise being unrepresented, they are getting representation themselves and it is making the system work much better.

Senator LUDWIG—And the cost to date to run it?

Mr Humphreys—There is no cost to the AAT at all other than the referral to the legal aid commission. The cost is being met from within legal aid commission funds—I understand that it is from within their existing funding—simply by looking at the area and applying the guidelines as they currently exist appropriately.

Senator LUDWIG—And the review is expected later on this year?

Mr Humphreys—Yes. It will take some time. As I said, the anecdotal advice is pretty positive.

Senator LUDWIG—You touched on the outreach program as well. Is that similarly run within your area?

Mr Humphreys—Yes.

Senator LUDWIG—Is that the telephone hotline? Is that part of your service as well?

Mr Humphreys—Yes and no. What we call outreach is a situation where we have a dedicated officer in registries and where a person is unrepresented they will be contacted by that officer of the AAT. That person will go through with them what is expected, they will explain the process to them and, where appropriate and where they can, they will even refer them to legal aid or other appropriate bodies so the person can get assistance. We try to get in early and arrange representation or give information or provide assistance as best we can, bearing in mind that we cannot become too involved in the running of the matter because we are the umpire rather than a party, if I can use that term.

Senator LUDWIG—Who runs the telephone hotline?

Mr Humphreys—It is not run by us at all.

Senator LUDWIG—Has the practice manual for tribunal members been finalised?

Mr Humphreys—No, it has not. We are currently finalising the funding for that. We have been promised \$35,000 by the Australian Institute of Judicial Administration and we are currently looking to see if we can arrange that balance through other sources.

Senator LUDWIG—Minister, I take it the budget is coming up. You might want to give consideration to that.

CHAIR—Thank you very much, Mr Humphreys.

[3.01 p.m.]

Ms Leon—If it would be convenient to the committee, I now have the information that Senator Ludwig asked for in relation to the amicus curae brief that we placed in the US Alien Torts Claim Act case.

Senator LUDWIG—Thank you.

Ms Leon—I had to seek a little bit more information. The brief went in early last year. The decision was handed down in June last year. The case concerned the extraterritorial operation of the legislation, which has been interpreted as enabling non-US residents to lodge civil claims against non-US nationals and have those heard and enforced by the US courts. This particular case concerned claims by a Mexican doctor who claimed that he had been tortured and otherwise mistreated by Mexican nationals in Mexico, and the case was brought in the US Supreme Court.

The amicus curae brief from Australia, the UK and Switzerland did not deal with the merits of the particular case but only dealt with the views of those governments that it was inappropriate to have the courts of one nation exercising jurisdiction over actions of people who were neither their nationals nor committed in the country. The decision of the court, which came down on 29 June last year, was that the Alien Tort Claims Act does not provide an independent cause of action for people to bring claims in the US courts under that legislation; it only provides jurisdiction where there is a cause of action elsewhere to found

that civil action. There needs to be both a breach of customary international law and a cause of action that is recognised by common law before that statute will have any operation.

[3.04 p.m.]

Australian Transaction Analysis Centre

CHAIR—Welcome, Mr Jensen, and officers of AUSTRAC.

Senator LUDWIG—Is the anti-money laundering e-learning application available on the web?

Mr Jensen—It is not available on the web publicly at this point, but we are hoping that it is not very far off. We have had it reviewed by a range of organisations in Australia, our law enforcement partners and some international organisations. We have had to make some voice-over amendments, which take a little bit of time. We are hoping that very shortly that will be released publicly.

Senator LUDWIG—What are the learning outcomes for that?

Mr Jensen—There are a range of modules—about 19 different modules—covering a range of activities, including money-laundering generally, provisions within the Financial Transaction Reports Act, and terrorist financing. They are at a reasonably high level at this point in time in terms of the ability of people to learn from them. We also have the ability in the future to develop them and take them further with a bit more detail in them.

Senator LUDWIG—Will the actual learning modules be available on the web, and will they be restricted or will they be available to anyone?

Mr Jensen—They will be publicly available on the web.

Senator LUDWIG—And that is the full 19 modules?

Mr Jensen—Yes, they will be there, and you will be able to have a go at them yourself.

Senator LUDWIG—At the moment there is an error message, so you might want to put ‘under construction’ or something on it to stop me trying to enter it to try to work out what you are doing in that area. When is it likely to be finalised—or will there be a launch?

Mr Jensen—There will be a launch, and we are working on that at the moment.

Senator LUDWIG—So you will put out a press release or something?

Mr Jensen—Yes, we will make it public.

Senator LUDWIG—Regarding the AML e-learning application, did it go through a test and evaluation process?

Mr Jensen—Yes, internally it has gone through that process, and externally we have had it reviewed by a range of organisations, both in Australia and externally, as I mentioned before.

Senator LUDWIG—What was the cost of developing it?

Mr Jensen—It was relatively small to this point in time. I do not have the actual figures, but I think it would be fair to say that it was under about \$50,000 for the product.

Senator LUDWIG—And it was developed in-house or externally?

Mr Jensen—It was developed from materials that we have but with an external organisation.

Senator LUDWIG—What organisation was that?

Mr Jensen—It was a private company. I do not want to give you the wrong name.

Senator LUDWIG—I am happy for you to take that on notice. Also, could you tell me whether it was an external consultancy arrangement or a contract that was let, and was the process that was gone through a tender or an internal contract. With respect to compliance inspections, are there penalties for failure of a compliance inspection? If you do a compliance inspection, what happens after that?

Mr Jensen—There are penalties in the legislation for false or misleading information, for not meeting the reporting requirements, and for a range of other related issues. With our compliance inspections until this point in time, we have always seen it of greatest benefit to have the information available and to work with the organisations—the cash dealer organisations—to get their systems in place. That has been very effective in terms of making sure we get the information in—which is obviously the most important part of it. So we have not specifically taken any actions in respect of failure to meet the requirements; we work with them to make sure that they do meet the requirements. There have been a couple of matters related to law enforcement and investigations where some companies have had charges laid against them.

Senator LUDWIG—Is that different from a failure of a compliance inspection?

Mr Jensen—Yes. That would be criminal related activity.

Senator LUDWIG—In terms of the compliance inspections, there have been no penalties sought to be imposed on any of the cash dealers to date?

Mr Jensen—No.

Senator LUDWIG—How many have failed the compliance inspections that you are aware of?

Mr Jensen—I guess it is difficult to give a number to a failure as such. Generally there are some things that need to be rectified. That might be fairly small; or, if it relates to customer identification, it could be over a number of customers. But as I say, we would look to get those matters rectified, and we set down a time frame for them to be rectified in consultation with the cash dealer and then ensure that they are rectified.

Senator LUDWIG—In terms of compliance inspection, do you differentiate between those which would lead to a potential or a probable breach which would then attract a penalty and those which are minor and which would not? Even minor ones may, and then you make an in-house decision that some are minor and some are major.

Mr Jensen—I think our decision is not so much around minor or major, though obviously there are minor and more complex matters that need to be rectified. We have not made a decision at this stage to take an action. We have always seen that we were able to sufficiently rectify the issue within a relatively short period of time and that was the result we went for rather than taking a penalty type road and going through the court process et cetera.

Senator LUDWIG—How many compliance inspections have occurred in the last 12 months?

Mr Jensen—I can give you that on notice.

Senator LUDWIG—Thank you. Do you then itemise it by area or cash dealer? Is it a random sample that you then take for compliance inspections?

Mr Jensen—There are a range of ways that we will look at it. There will be specific cash dealers that we have an interest in. For example, we work very closely with the major banks—they provide us with 80 per cent of our data, so it is important that we make sure we are getting the data in—ranging across the cash dealers to, for example, remittance dealers, which are very small and there are quite a number of them. We had seen the remittance dealers as a high priority because of the potential to be used in the facilitation of money laundering, so we put quite a bit of effort into getting reports from them. The results of that are quite outstanding. Two years ago I think we got about 200,000 reports from remittance dealers and we look like heading towards 900,000 by the end of this financial year. So the consultation, working with them to get the information and to make sure that they know about it, has been quite profitable.

Senator LUDWIG—Is the regulatory risk analysis system up and running yet?

Mr Jensen—We are still finalising that. It still needs a little bit more work, and hopefully that will be finalised this financial year.

Senator LUDWIG—How long has that been going on for?

Mr Jensen—It has been probably about 18 months that we have been looking at it, I would suggest. It has been a matter of priorities in terms of progressing that. We are at a point now where we are moving ahead quite strongly with that.

Senator LUDWIG—Is there an implementation date?

Mr Jensen—I do not have that. I can give you that on notice.

Senator LUDWIG—Have there been any impediments as to why it has not been finalised by now?

Mr Jensen—Priorities in other areas; that is all.

Senator LUDWIG—That is not a priority or not a high priority?

Mr Jensen—It is a priority, but other matters come in that have to take a higher priority.

Senator LUDWIG—On the access to financial transaction records, the number of Australian Taxation Office branches with online access to FTR information more than doubled from June 2000 to June 2003. Is it the number of tax office branches that has doubled or the number of inquiries that have been made? Is there any way of de-packing that as to the greater interest in this area?

Mr Jensen—The figures are in the annual report in terms of the number of tax offices which have accessed. I suggest a large increase in the numbers that have online access from the tax office relates to the process of GST and the compliance role there, which has increased. A number of other areas have also found value in our data, and that is the tax

havens area as well, so there has been an increase in the number of people looking at specific project type activities.

Senator LUDWIG—I suspect you keep a log of the time and which tax office logs on and the duration and nature of the inquiry.

Mr Jensen—We have full audit logs, yes.

Senator LUDWIG—I am not sure of the phrase you would use, but do you do a check to see that it is proper access that has been undertaken of your system?

Mr Jensen—In each agency we have a liaison officer and we provide them with monthly statistical information about their people who have accessed the database. They look at that statistical information and work out where it is being accessed. Then they go and ask questions of their people about what they are doing and how they are using the database. There are two reasons for that. One is to ensure that it is being used appropriately and the other is to identify good users whom we can teach a little bit more and so get greater value out of it. That can be passed back through the organisation. There is a checking and a training purpose.

Senator LUDWIG—Do they get charged for that access?

Mr Jensen—No, they do not get charged for that access.

Senator LUDWIG—Does anyone get charged for access?

Mr Jensen—No-one gets charged for access.

Senator LUDWIG—Was there some consideration of that at some earlier point? Was there a fee for service? I am sure you looked at that at one time.

Mr Jensen—Yes, we looked at that in the previous financial year.

Senator LUDWIG—Have you abandoned that?

Mr Jensen—That has been abandoned.

Senator LUDWIG—When did you abandon that?

Mr Jensen—That decision was made prior to the budget of last year.

Senator LUDWIG—How much of the \$36 million allocated to AUSTRAC over four years, in last year's budget, has been expended on upgrades to the TRAQ system?

Mr Jensen—We could provide you with that information. We do not have it at hand. There has been a range of things right across the organisation in terms of technology, staffing, resources, travel, training, et cetera.

Senator LUDWIG—I am happy for you to take that on notice. What about the development of the new customised algorithms that are designed to detect emerging patterns of suspicious financial activity? That functionality does not exist at the moment. What parts of that do exist?

Mr Jensen—It does exist now and part of the funding has gone to analysts who can use the tools. The purchase of the licences for a small range of tools that we are using—and we are

using them now—was piloted in the previous financial year, and we are now implementing the process. It is being used very well at the moment.

Senator LUDWIG—Is that part finalised?

Mr Jensen—It will be an ongoing process. We are still looking at a couple of products that we need to put in. One of those is a geospatial product which will enable us to do a lot more work with the data we have.

Senator LUDWIG—Effectively, it is finding ways of trawling through your current databases and finding new and exciting ways to search.

Mr Jensen—More efficiently and effectively. We have a database of nearly 70 million transactions—up to about 60,000 coming in a day. We need good, high-level technology to assist the analysts to find the bad guys in the data.

Senator LUDWIG—Are increases in suspected activities in various areas of fraud something you have been noting for a while? It seems that there has been an increase in areas of cheque fraud, money laundering and other fraud. Has there been an increase in that activity or an increase in your ability to detect it?

Mr Jensen—There is an increase in our ability to detect it, which is a very important aspect of any of the statistical information. But we do not go out necessarily just to look for those types of categories. The technologies we use are able, through our target monitoring system, to bring forth a range of what appears to be criminal activity, and in a lot of cases it is. It may well be that we find quite a deal of cheque fraud because of the parameters we are putting into the system and maybe we find a range of drug related activity. It depends on the parameters that we are putting in. They are fairly general at this stage.

Senator LUDWIG—There seems to be an increase in unlawful activity that is now being detected, as well as an increase in unlawful activity in this area. Are you currently developing new tools or techniques to capture the data? Which is driving which? You said that you do not necessarily look for the material but you are detecting an increase in suspected activities in various areas of fraud. In addition to that, are you employing new techniques which are also demonstrating an increase?

Mr Jensen—We are getting more information, and that is through the technologies we develop. We are able to get that information electronically, so we are able to assist the cash dealers who provide it to us. So we are getting more in and we are getting it more quickly as well. On the other side of things, the information we are getting now is no different to what we have been getting over the past 12 years since the international funds transfer instructions came in—it has been 15 years since we started. We are more readily able to analyse it in different ways. We were finding that we could analyse it with our monitoring tools, but we were getting too much output from that. That is not to say that a large part of it was not criminal activity, but we were getting too much to be able to pass it on to law enforcement. We needed to find the higher priority matters—the more serious matters within it. That is what this process of data mining is about—to try and find the more significant matters in there. On the other side of things, that allows law enforcement, and the increasing numbers who online access, to make their own inquiries on the matters that they are already looking at. We are focusing more on the matters that no-one has been aware of until this point in time.

Senator LUDWIG—Were those data-mining techniques developed in-house or were they externally developed?

Mr Jensen—The initial target-monitoring tool, which I guess probably represents our first go at data mining in any sense, was developed internally. It was developed about seven years ago and there were no other products around at that time we could use. Now there are a range of products in the marketplace. Many of them have been developed as risk management tools for banks and other people. We are able to utilise some of those tools. We still have to adapt them to our systems, as anyone would who buys things off the shelf, but we have been able to do that more readily and we can now put an off-the-shelf product into our system.

Senator LUDWIG—Have you implemented a couple of off-the-shelf products in the last 12 months?

Mr Jensen—Yes, there have been a number of them. One of them was a product called Clementine. Another one we used in the very early days and have come back to is the NetMap product. There is a further one called Superstar. As I said, we are also looking at a geospatial product at the moment.

Senator LUDWIG—Do you tender for that or do you simply buy these from software developers?

Mr Jensen—We use the endorsed supplier arrangements.

Senator LUDWIG—You might have to explain them to me.

Mr Mazzitelli—We refer to the endorsed supplier arrangements that the Department of Finance and Administration maintain for IT services and products. Those service providers are on that endorsed supplier arrangements listing.

Senator LUDWIG—That might be all I really need in the area, I think. In terms of the anti money-laundering regime and the June 2003-04 financial action task force standards, what parts of Australia are still not up to those standards—or are not compliant?

Mr Jensen—We were generally compliant with the 40 recommendations up until the review and the revised provisions. In revising them there are now additional reporting entities and also additional entities that are required to do customer due diligence. Briefly, in terms of the provisions that have been put in place—and I should defer to the Attorney-General's Department; they have responsibility for this—the additional customer due diligence requirements go beyond the account signatory identification provisions that we have had up to this point. So there are a range of things that will need to be put in place.

Senator LUDWIG—For instance?

Mr Jensen—Potentially some additional cash dealers and some provisions in customer due diligence in looking beyond the initial account opening side of things to the ongoing conduct of customers.

Senator LUDWIG—Is there a time line to get those done by?

Mr Jensen—That is with the Attorney-General's Department.

Senator LUDWIG—Where are you up to in relation to that?

Mr Cornall—Can we take that up in the criminal justice area?

Senator LUDWIG—I will try to remember it. Would someone like to remind me at that point? We might have to then play it by ear. What about the implications if it is not up and running and you meet the 40 but you do not meet the additional ones—do you meet all of the first 40?

Mr Jensen—We did meet the 40, but those 40 have been amended so now there are components—

Senator LUDWIG—that have been amended. That is fine. So there is a shortage of a couple to meet. If you do not meet them, that will have a bearing on the exchange of financial information with foreign countries, as I understand it. Is that right?

Mr Jensen—At this stage we are not fully compliant with the global standards. If we do not meet the global standards, then potentially—and I just say potentially because we are well advanced in terms of those countries that are meeting the previous 40 recommendations—the international community would have a look and determine whether we were adequately meeting them or not adequately meeting them and then they would consider what would result from that and whether there would be some form of countermeasures or something.

Senator LUDWIG—In terms of the amended 40, if I may refer to them in that shorthand way, have you undertaken a review to establish what needs to be done to meet them, or is that a matter for A-G's to progress?

Mr Jensen—That is a matter for A-G's and we have contributed a number of detailed reports and we have worked very closely or are working very closely with them on that.

Senator LUDWIG—And the date for the final time that it has to be implemented by to meet the global compliance?

Mr Jensen—I do not believe there is a specific date to meet it, but I would defer to the department on that.

Senator LUDWIG—You are saying effectively that I might have to follow that up with A-G's. I will do that in output 2. In relation to access to financial transaction records: since June 2004 has AUSTRAC established any further instruments for the exchange of financial intelligence with any other countries?

Mr Jensen—I believe it is another three countries.

Senator LUDWIG—I am happy for you to take that on notice and perhaps provide the names of the countries.

Mr Jensen—It might be better to provide that answer on notice.

Senator LUDWIG—My questions go particularly to instruments around the Middle East. Is AUSTRAC currently negotiating instruments for Israel, Lebanon or South Africa?

Mr Jensen—If I could just go back to your initial point: since May 2004—that is, since the last estimates—we have signed 10: with Argentina, Bulgaria, Colombia, Cook Islands, Estonia, Ireland, Romania, Slovakia, Spain and Thailand. We entered into an agreement with South Africa in June 2003, I think it was. I didn't catch what the other two countries you mentioned were.

Senator LUDWIG—Israel and Lebanon.

Mr Jensen—We have entered into agreements with both for quite some time and it would have been since around that same time.

Senator LUDWIG—What about the remainder of the Middle East?

Mr Jensen—The Middle East is just in the process of establishing itself in this area. I am just trying to think whether we have got negotiations going at the moment. We will continue to work with them. You will see from the countries that we have here that we have picked up a few of the South American countries and a few of the eastern European countries, and that is a process we were going through in terms of priorities. Certainly the Middle East is starting to move fairly quickly. I believe that it is a matter of, in many cases, them approaching us because they see the value of the extensive data that we have, and we try to keep up with them. There are a couple of others that we are working on at the moment in the south-east Asian and Asian regions that we need to pursue as well, and we are doing that at the moment.

Senator LUDWIG—In terms of intelligence exchanges, what is a spontaneous exchange as distinct from a request?

Mr Jensen—A request is generally from the other party, where they are investigating a matter and they ask us if we have any intelligence. For example, if our counterpart in the United States, FinCEN, was conducting some inquiries and saw a relationship with Australia, they would come to us and we would provide them with relevant information from our end. A spontaneous exchange is where our monitoring systems are throwing up items that show that there is a relationship with the USA, for example. We would talk to the law enforcement agencies here in the first instance and see whether the information was of importance to them. If it was, they would conduct the inquiry and then discuss it with their overseas counterparts or, if they did not have an interest in it here, we could spontaneously provide it to the United States.

Senator LUDWIG—So you would do that even without a request.

Mr Jensen—Even without a request, yes.

CHAIR—I thank Mr Jensen and AUSTRAC very much.

[3.31 p.m.]

Mr Cornall—While the officers are changing over, I wonder if I can add something to an answer that I gave this morning to a question from Senator Ludwig.

CHAIR—Certainly.

Mr Cornall—Senator Ludwig asked me whether the Attorney-General or the department had asked the DPP to consider any matters or made a direct request and referred matters to the DPP. I gave a general response to that. Officers have reminded me of a specific example that I need to put on record. When it was confirmed that Mr Habib was returning to Australia, the Attorney-General asked the department to ask the DPP to confirm that Mr Habib could not be prosecuted. The DPP examined the AFP brief of evidence and advised that Mr Habib could not be prosecuted for offences under the Crimes (Foreign Incursions and Recruitment) Act.

Senator LUDWIG—Was there any question about the Proceeds of Crime Act as well?

Mr Cornall—I will check that.

[3.32 p.m.]

Office of Film and Literature Classification

CHAIR—Welcome Mr Clark, Mr Hunt and Mr Robinson. I understand we will start with questions from Senator Harradine.

Senator HARRADINE—I am wondering about the answers that have been given to me over a period of time in respect of the contents of X material. In the *Daily Telegraph* of 18 January this year the Classification Review Board rated a film featuring real sex scenes as R rather than X. This overturned the decision of the OFLC. Given statements made by the OFLC to the committee over the years, what grounds were used to rate that film X when clearly it came within the guidelines of R?

Mr Clark—In answer to your question, the board, in making an X decision, was of the view that the amount of actual sex in the film did not permit it into the R classification but that, because there was no violence or other content that would cause it not to fit into the X classification, the board placed in that classification category. The review board made a different decision in interpreting the same guidelines, but I am unable to tell you precisely their thinking in relation to that. As you know, the Classification Review Board makes a new decision and it is entirely their decision to make.

Senator HARRADINE—I thought you may be able to provide the information to the committee as to why the review board made such a decision in contradistinction to yours.

Mr Clark—I am unable to comment on review board decisions. As I understand it, the reasons for the decision by the review board are not yet complete but when they are complete they can be made available to you.

Senator HARRADINE—However, your guidelines are fixed, are they not? They have not changed.

Mr Clark—No, the guidelines have not changed and the review board use the same guidelines.

Senator HARRADINE—In a previous estimates committee I questioned the OFLC on earlier film classification decisions and was assured that, for R rated films:

Sexual activity may be realistically simulated; the general rule is “simulation, yes—the real thing, no.”

When making classification decisions about nudity in a sexual context, which includes genital to genital contact, the Classification Board applies and has always applied the general rule.

That was a statement made by your officers. You are now telling me that you cannot comment on the review board’s decision.

Mr Clark—As chairman of the classification board it would be entirely inappropriate for me to comment on a decision made by the Classification Review Board, which is an independent statutory board. I can comment on the application of the guidelines by the classification board, of which I am a member, and my answer to you at that time still stands true in relation to the guidelines for sexual activity at the R classification and the application of a general rule.

Senator HARRADINE—So, in fact, it is just a technical question as to whether there is real sex involved or not.

Mr Clark—It is not a technical question. The board, in a number of decisions over 10 years, has applied the general rule and permitted small amounts of actual sex depending on the context and the merit of the film, but the general rule is applied.

Senator HARRADINE—You say ‘the context’ of the film.

Mr Clark—Yes.

Senator HARRADINE—So you take that into consideration. Do you take the pornographic intent into consideration? I can envisage films that may have no pornographic content or intent at all but which would have nudity, for example. According to what you have just said, you have indicated that you do have regard to the nature of the content.

Mr Clark—The context of the story of the film and the way that is told is different to the intent. If the intent is purely pornographic I am sure that the board will apply the guidelines very rigidly. But if the film has merit—and it is a judgment that the board makes under section 11 of the act—it may be permissible in applying the general rule. But, in applying the general rule, the board would certainly not be permitting films which have a sexually explicit intent which would sit most appropriately in the X classification.

Senator HARRADINE—What is a sexually explicit intent?

Mr Clark—That is the purpose of the film. That is all it is about and that is what X rated films are.

Senator HARRADINE—I just cannot cope with those words together—sexually explicit intent. You are talking about pornographic intent, presumably, are you?

Mr Clark—The guidelines do not actually use the word ‘pornographic’ and nor does the code. Sexually explicit intent, if you like, of making a film like that would place it into X. It would not fit into the R classification. An R classification has permitted, under the general rule, from time to time a small amount of actual sexual activity, but it is in the context of a film which is mostly not about that; it is about narrating a story.

Senator HARRADINE—So you could have a pornographic theme in part of the film which relates to the explicit area and that would normally be classified as X?

Mr Clark—Under the guidelines, films that are classified X contain sexually explicit material, and that is mostly what they contain.

Senator HARRADINE—Why don’t you assess the films on their pornographic intent and content or otherwise?

Mr Clark—We assess X-rated films on their explicit sexual content. The word ‘pornographic’ is not in any of the guidelines.

Senator HARRADINE—That is what you did on this particular occasion. You classified this particular film, *9 Songs*, as X.

Mr Clark—We did because of the amount of sexual activity in the film. The board recognised that it had a more serious intent than other X-rated films because it had musical performances, but the board's view was that the film sat within the X classification.

Senator HARRADINE—Again, you are talking about the question of explicit intent. Does that mean pornographic intent?

Mr Clark—I do not believe that the film had pornographic intent, because we do not seek to measure that. We believe that the amount of actual sex in *9 Songs* exceeded the guideline for R, but it does not necessarily have to be RC because it could be accommodated at the X classification.

Senator HARRADINE—Would you agree that the definition of porn is material, the content and intent of which is designed to arouse the sexual desires of its target audience?

Mr Clark—No I do not. Pornographic can mean many things. It depends on how the word is applied, if I go to the dictionary for its meaning. I think that is the reason why the 'pornographic' does not appear in the code or in the guidelines.

Senator HARRADINE—So you would deny that that definition was appropriate?

Mr Clark—It is one of many. It does accommodate that, but there are many interpretations of the meaning of 'pornographic'.

Senator HARRADINE—Like what? Could you explain?

Mr Clark—I am trying to think of a good example. I think sometimes matters of crime could be applied as being pornographic as well in their intent. I would really need to get the dictionary, but that is my last reading of the meaning of the word.

Senator HARRADINE—Can the public expect that material which contains small amounts of pornographic and explicit sex will be classified as X—is that right?

Mr Clark—No. It is a possibility, but that is not the case because many of these films that have been given an R classification which do contain some explicit sex also contain violence or other activities which would prohibit them from being in the X classification.

Senator HARRADINE—I understand that. That is a given. We have been through this time and time again.

Mr Clark—Yes we have, Senator.

Senator HARRADINE—I do not have to be told that.

Mr Clark—But that still applies.

Senator HARRADINE—Yes, but I am talking about how explicit material—and I specifically use your words and added my word to make it explicit and pornographic material—would thereby be classified by your board as X.

Mr Clark—Provided it meets the guidelines for X, yes, it could be.

Senator HARRADINE—I am trying to get to what the new guidelines are for X.

Mr Clark—The note to the guidelines for X says:

This classification category applies only to films. This classification is a special and legally restricted category which contains only sexually explicit material. That is material which contains real depictions of actual sexual intercourse and other sexual activity between consenting adults.

Senator HARRADINE—Thank you.

Senator GREIG—What is the OFLC doing with the widespread, illegal sale of unclassified adult films, particularly in New South Wales and Victoria? I am advised that an OFLC community liaison officer, Mr Ron Robertson, has confirmed that X-rated films are being sold through service stations, convenience stores, delicatessens and newsagents. A press release in December of last year from Victorian opposition small business spokesperson, Mr Bruce Atkinson MLC, said, ‘Until march of this year’—that is, last year: 2004—‘unclassified adult films were sold in a Coles Express outlet in Fitzroy where I bought my petrol’. Does the OFLC believe it is supplying both the New South Wales and the Victorian state governments with enough information about the extensive black market operations that exist there in order for those state jurisdictions to make effective laws to control it?

Mr Clark—The community liaison officers liaise with nominated officers in each state and territory. They report on their activities and they plan their activities in conjunction with the appropriate officials in each state and territory. So there is a close working relationship there. They do report to them three times a year in relation to their activities. So that is provided on an ongoing and regular basis.

Senator GREIG—Are you satisfied, though, that that system is working? As I understand it, state governments are not enforcing the federal classification act, even though they have complementary enforcement legislation. It is estimated that some seven million adult films are sold illegally in Australia each year, yet I am advised also that the OFLC in its annual report classified only 640 X-rated films. Can you attempt to convince me that the system is effective? It seems to me that there is a disconnect here with the state application of federal law. The result is that we are seeing a significant illegal market of unclassified materials through family outlets.

Mr Clark—What you say has a lot of validity. We classify the material that is submitted and we report. Ultimately, it is a decision for the states and territories how they will enforce the law. We provide that information and we hope for improvement in enforcement activity.

Senator GREIG—Hope for improvement? Is that—

Mr Clark—We are working to get better coordination with the state authorities. That is an activity that is currently under way so the designated nominee will have a better ability to move through those jurisdictions.

Senator GREIG—Does the Commonwealth have any coercive powers in that regard?

Mr Clark—The Commonwealth is primarily a statutory decision maker. The CLS is a joint funded operation of the OFLC and the states and territories. But ultimately enforcement is a matter for the states and territories.

Senator GREIG—Thank you.

CHAIR—As there are no further questions, I would like to thank you Mr Clark, Mr Hunt and Mr Robinson.

[3.50 p.m.]

Human Rights and Equal Opportunity Commission

CHAIR—Mr President, welcome. I welcome your fellow commissioners—a stellar line-up, in fact. And I think, Mr Calma, this is your first visit to the committee, so we welcome you and hope you find the experience of estimates as enjoyable as we all do!

Senator LUDWIG—Likewise, I am sure! What stage is the Striking the Balance: Women, Men, Work and Family project currently up to?

Ms Goward—We have just completed our preliminary consultations with what we call key stakeholders. That includes employer groups, unions and community groups, in particular women's advocacy groups and men's rights advocacy groups. We have also begun on a number of pilot community consultations to test out some of the parameters of our interests and to see where the community is most interested to enable us to refine our consultation technique for the major round, which will be later this year. So the project has been announced. The consultations with our stakeholders have been completed. The pilot study consultations, if you like, with the community are halfway through. They are at Bankstown and at Penrith. We expect to have the first discussion paper available in mid-April, which I also hope will bring together all that is known about these issues, relying on both Australian evidence—in particular, statistical information—and international comparisons where appropriate. We expect to have the final report some time next year depending on how exhaustive and exhausting that consultation process is and how many recommendations and submissions there are and what they throw up.

Senator LUDWIG—That just about covered all the questions I had in respect of that issue. You may have been aware of media reports about alleged racist slurs emanating from Newcastle. I was wondering whether HREOC had been contacted about that or whether anyone had made a complaint to HREOC about that?

Mr von Doussa—As far as I am aware there are no complaints, but Commissioner Calma has issued a press release on the topic, deploring what is happening. If a complaint comes in, obviously it will be investigated. We have an interest in it because it is a follow-up from the *Isma* project—it is the same sort of problem. It is tragic to see it arising with a completely different ethnic group, but we have not received a complaint yet.

Senator LUDWIG—Other than the press release that was issued, which I noted—and I appreciate the work that HREOC is doing—has there been or is there intended to be any follow-up work in that area? I know that it follows on the back of the *Isma—listen* report, and I have some questions about that later, but more particularly in relation to the matter raised in Newcastle, is there any work planned by HREOC in that area as a consequence?

Mr Calma—It is a watching brief at the moment. As we mentioned, we put out the press release. Staff are actually monitoring what is happening up there. If things start to increase up there, there is a plan to do a visit and indulge in some public education.

Senator LUDWIG—On a similar matter, I am not sure if you are aware there is an alleged One Nation newspaper article that has been circulated too. Did HREOC receive any complaints about that?

Mr Calma—Not to my knowledge.

Mr von Doussa—We were certainly contacted about it. We were contacted by a third party about it. We anticipated a complaint and we heard we were going to get one, but it has not actually turned up yet.

Senator LUDWIG—All right. We might leave that for a watching brief as well then.

Mr von Doussa—Thank you.

Senator LUDWIG—Is it the intention to set up a complaint-handling process or will that fall within the general work of HREOC?

Mr von Doussa—It falls within the general work. The complaints-handling unit is dealing with discrimination complaints generally and the Age Discrimination Act just puts another category of discrimination into the picture. The complaints-handling unit is receiving and processing the complaints that are coming to light under that particular act.

Senator LUDWIG—That was my next question—whether you can identify how many complaints have come in since the act started operation and what their general process is.

Mr von Doussa—The process is the same. When a complaint comes in it is investigated and an attempt is made to conciliate it. If it cannot be conciliated it is terminated and it can take its course through to the courts. We have had 49 complaints up to 8 February—34 of them are in the employment area, 14 relate to goods and services provisions and one relates to education. Of those, the majority of them are people complaining about not receiving what they expected because they were too old. We have finished 16 of those complaints so far. Eight were conciliated results, four were closed because the complainant was pursuing similar rights through equal opportunity commissions in the states, two were terminated as lacking in substance and two were withdrawn. As far as we are aware, none have gone to the courts yet.

Senator LUDWIG—Turning to the *Isma—listen* report, is there any follow-up work being undertaken in terms of the ongoing effectiveness of the strategies identified in chapter 5 particularly?

Mr Calma—There is a fair amount of public education taking place through speeches that my staff and I make to interest groups to keep that awareness going. The Australian Broadcasting Association has in fact picked up on one of the recommendations and has provided public advice about their complaints-handling processes and the way that people can lodge concerns with them. That is a very good initiative.

Senator LUDWIG—That was the nature of the types of follow-up work that has been done to date. Is anything further envisaged?

Mr Calma—There will be, but it is only just over six months since the *Isma* report was launched. We have distributed the first lot of videos, and 5,000 copies of the report. We have had a second print run of 5,000. That has gone out. This is in response to demands from the public so there is an increased awareness around. We are including information in our public education kits to go to schools as well.

Senator LUDWIG—Have you provided one to the committee?

Mr Calma—Of the report or CD?

Senator LUDWIG—No, the pamphlets, the brochures.

Mr Calma—No. We have not got a particular brochure on Isma.

Senator LUDWIG—Other than the report. The report is available on your web site.

Mr Calma—Yes, you can download it. There are media snips that radio stations can download and reproduce if need be.

Senator LUDWIG—I had not had a look at that. Thanks.

CHAIR—I thought the CD format, which you provided to all of us in conjunction with the report, was in fact a very useful way for us to get an understanding of the inquiry and the report. I wanted to acknowledge that and thank you.

Mr Calma—I think it has also been very valuable to the Arab community because it has been reproduced as a CD in Arabic.

CHAIR—I must admit I did only listen to the English version. Well, I listened to the Arabic version, but I am inadequate in that area.

Senator LUDWIG—It would be the only area, I suspect, in language. Is HREOC involved in DIMIA's Harmony Day project at all? In a broader sense I suspect you would be but in a more specific sense does the immigration department contact you and ask for your advice and input in relation to Harmony Day?

Mr von Doussa—The answer is generally no. Obviously we are, as you say, involved in a broader sense. We get the literature they put out and we try to recognise it in our own press releases and activities, but it is not something we are closely liaising with DIMIA about. I think Commissioner Ozdowski wants to add to that.

Dr Ozdowski—I have been invited to a number of events associated with Harmony projects. I was invited to be a speaker. I will continue doing that. But, as the president said, there is no systemic coordination of activities between us and DIMIA.

Senator LUDWIG—I imagined you would have been and still would continue to do that. Are the complaints that you receive detailed in your annual report?

Mr von Doussa—Yes, they are.

Senator LUDWIG—Are they broken down by type of institution? Unfortunately I do not have your annual report with me.

Mr von Doussa—They are broken down into fine detail, actually. They are broken down into the acts, the nature of complaints that we are getting and the areas of public life in which they are coming. I think that is really what your question is about.

Senator LUDWIG—Yes. So the ones on age discrimination will not appear until the next annual report?

Mr von Doussa—Correct.

Senator LUDWIG—Could you provide those as well.

Mr von Doussa—Yes, certainly.

Senator LUDWIG—Thank you. I would like the same level of detail, if you would not mind.

Mr von Doussa—In the report or now?

Senator LUDWIG—Take it on notice and provide it. Otherwise I will have to wait until next year.

Mr von Doussa—Certainly; we can do that.

Senator LUDWIG—I do not have any further questions in this area.

Senator GREIG—I am not sure whether this is the appropriate bracket, but I would like ask about the national framework—the action plan on human rights that I think was submitted to the UNHRC.

Mr von Doussa—Yes.

Senator GREIG—It came to my attention that sexual orientation or sexuality was not a part of that but that it had been in previous submissions to the appropriate body with which it is lodged overseas. I wanted to ask about what processes led to that. I am wondering if HREOC had a part in advocating for or against the inclusion or exclusion of sexuality as a term of reference, as it were.

Mr von Doussa—The draft of the national action plan was given to us, as it was to many other organisations and agencies. We made extensive representations about it. Those that related to the functions of HREOC were by and large picked up and incorporated, but some of the other suggestions were not picked up. The topic that you raise is one that, over the years, has attracted our attention and we have made submissions about it. The HREOC stand in relation to those issues is well known. You are right—it does not find reflection in the final product.

Senator GREIG—Was it the case in this instance that HREOC was advocating for the inclusion of and reference to sexuality or sexual orientation as part of the submission?

Mr von Doussa—There are difficulties about commenting on that. I do not have the detail at my fingertips; I confess that. I think we did, but the submissions that we made to the government on that were confidential.

Senator GREIG—Okay. I am not quite sure where I can go with that.

CHAIR—There are no further questions for HREOC. Thank you very much.

Mr Cornall—I just wanted to follow up on Senator Ludwig's question on advice about proceeds orders. The advice of the DPP was sought on two occasions, and the DPP did provide advice when requested.

Senator LUDWIG—I do not suppose you can say what the nature of that advice was.

CHAIR—Not likely!

Senator LUDWIG—What about you, Minister—do you want to have a stab at that?

Senator Ellison—No. Madam Chair, we have dealt with these four bodies because people had travelled from Sydney. I wonder if we could go back to outcome 2 to deal with the

officials that are relevant to outcome 2. I think the members of the committee had thought of going to the DPP—

CHAIR—Completing the next five agencies, yes.

Senator Ellison—That would be the DPP, the Australian Crime Commission, the Australian Institute of Criminology, CrimTrac and one other.

CHAIR—The CRC, but that is Dr Makkai, and she is also here in the Australian Institute of Criminology capacity anyway. So it is really four.

Senator Ellison—I do not want the committee to pre-empt what it is doing, but do you have any idea how long it would take? I was thinking of the officials from the department.

CHAIR—I would say about an hour perhaps in total. Then we would leave an hour and a half before the dinner break for the rest of outcome 2.

Senator Ellison—That makes a big difference. Thank you very much.

Senator LUDWIG—There is not a lot—more perhaps in CrimTrac but not a lot in some of the others.

[4.06 p.m.]

Commonwealth Director of Public Prosecutions

CHAIR—We will go straight to the DPP. I think the committee should offer its congratulations, Mr Bugg, on your recent honour.

Mr Bugg—Thank you, Madam Chair.

Senator LUDWIG—We did note your comments, and in my experience you do go above and beyond the normal call of a public servant, if I say so myself.

Mr Bugg—Thank you.

Senator LUDWIG—I hope currying favour has a result in the answers. I suspect not. The 2003-04 report provides a DPP brief to counsel from the private bar. Is that a usual practice?

Mr Bugg—The detail in the annual report or the fact that we do brief?

Senator LUDWIG—The brief.

Mr Bugg—That has certainly been the practice since the office commenced in 1984.

Senator LUDWIG—Has that always been in the annual report? It must be one of the little gems I have missed.

Mr Bugg—Yes, it has. It is something we keep under review. We currently have a policy to try and increase our in-house advocacy. We have in-house advocacy training and a program which has been developed over the last three years, and obviously we try to retain in-house counsel as well, but we recognise that there is a need to use the specialist skills of the independent bar. It would be impossible for us to retain certainly senior counsel of the level that we need for some of our more significant prosecutions and advisings, and also obviously over the breadth of activity which the office undertakes we could not retain that degree of specialisation across the scope of work we do. So we do depend on the independent bar.

Senator LUDWIG—Are there criteria that you use to determine whether you will in fact brief counsel in particular areas, or is that a judgment call by you?

Mr Bugg—It is a judgment call at a local level initially. It may very well be something that comes through to me, depending on the circumstances of the matter. But 99 times out of 100 it is a judgment call at a local level. Certainly with specialist areas such as the prosecutions with HIH there was a fair amount of conferencing between my office and the local office as to who would be retained and who would do the work in that area.

Senator LUDWIG—There seems to have been a dramatic increase in the number of GST cases. Is there a reason for that?

Mr Bugg—In terms of the dramatic increase?

Senator LUDWIG—Yes.

Mr Bugg—I suppose with any new legislation it takes a little while for the enforcement process to work its way through. I know that the policy of the tax office in the first year was to encourage compliance by education rather than enforcement. There were well-documented statements about that from the commissioner and therefore, from our point of view, we had not expected to see much work in that first year. Obviously it has developed as the investigative task and the enforcement task of the tax office have increased. It is not something that is down to us, as I think I have said to you previously. We are a prosecuting office. We depend on the product that is produced to us from the regulatory or investigative agencies.

Senator LUDWIG—I was looking at it in terms of the workload. Does that create a significant additional workload or is it accommodated by an outside brief?

Mr Bugg—It has created an additional workload, but that is a matter that is under regular review in discussions between the commissioner and me. The original budget process for the GST prosecutions came from direct funding from the tax office, because the original budget process did not include a prosecution component from my office. The funding for that is regularly reviewed between the commissioner and me. As the workload has increased obviously our need has increased, and we keep that under review.

Senator LUDWIG—Have you sought additional resources in the coming budgetary process to assist in that?

Mr Bugg—The review period is towards the end of the financial year, so in about three months time I suspect that process will be well under way.

Senator LUDWIG—On a separate matter, what can you tell me about the three prosecutions for sexual servitude, if I can identify them in that way? I think there was one in Melbourne and two in Sydney. Have they been completed? That includes the appeal case and whether time has elapsed. I do not want to ask you to comment on anything that is still potentially a live matter.

Mr Bugg—There are matters before the court and there is a difficulty in relation to another matter in terms of the nature of the court order that was made. I really cannot go into it in any more detail than that.

Senator LUDWIG—No. Thank you.

Mr Bugg—Obviously in due course I can speak about it.

Senator LUDWIG—I will come back to it in due course, when it is final. More broadly, in respect of the terrorism offences, has the DPP completed its prosecution of the terrorist offences mentioned, I think, on page 10 of its report? Are they final?

Mr Bugg—No, they are still before the courts. There is one matter that has been completed and that has gone through the appeal court, although I am uncertain as to whether or not it will go further. It has been dealt with in the Court of Criminal Appeal in Western Australia.

Senator LUDWIG—So the appeal period has not expired?

Mr Bugg—As to whether it will be taken further—that is, to the High Court—I am uncertain. Certainly as far as the Roche matter is concerned, that is completed in terms of any jury consideration of it for the moment. All other matters are currently before the courts.

Senator LUDWIG—Is it giving too much information to indicate whether there is one incident or multiple incidences?

Mr Bugg—There are a number of defendants and different matters.

Senator LUDWIG—Are they the only ones currently in train? Can you indicate whether there are others that are in train, other than those mentioned on page 10 of your report?

Mr Bugg—‘In train’ is a bit difficult.

Senator LUDWIG—I am trying to find a word that is more neutral—commenced?

Mr Bugg—Obviously our expectation is that all matters before the court will continue to be dealt with. We have had ongoing discussions with the appropriate agencies responsible for the investigation of these matters. All I can say is that those discussions involve an indication to my office as to whether or not matters are under investigation and are likely to be the subject of a brief to the office. ‘In train’, for us, starts at those discussions for us to have some anticipation of what might or might not be coming through. That is why I am hesitant in answering your question. Even to that extent I can just say that our discussions are ongoing and we have matters before the court which are ongoing.

Senator LUDWIG—That is acceptable. Following the Dexter case, has the DPP initiated any prosecutions for state offences for which there is no related charge under Commonwealth law?

Mr Bugg—The answer to that is yes and no. Dexter started out as a combination of charges because it was an investigation by ASIC. But in the end it was considered by my office that the most appropriate charges were charges under the Queensland Criminal Code. The challenge, which was not granted special leave before the High Court, was on the basis that my office did not have the constitutional or statutory authority to conduct prosecutions in that way—that is, prosecutions which are strictly state based. We are confident that we do have that authority and the rejection of the special leave application by the High Court is supportive of that position. We now have two appeal court decisions which support that position, the first one being Fukusato, in the Queensland Court of Criminal Appeal from the

year before, and Dexter in the Queensland Court of Criminal Appeal last year. Both those cases went on to the High Court; neither of them got special leave.

Coming to your question, sometimes an investigation, because it has a federal component to it—that is, it is an investigation by ASIC—may very well show, when it gets to the briefing stage, that the most appropriate charges are state offences or a combination of state and federal offences. We will sometimes have prosecutions in the area of drugs that involve both state and federal offences. In the case of some corporations matters, they can have state and federal offences. When the matter proceeds further down the prosecutorial process—after committal proceedings, for instance—there may be a review of the case and a decision made that the most appropriate charges are state charges. We have recently completed a matter in New South Wales which was not corporations but involved state only charges. So it comes up from time to time. There are understandings between all of the state and territory directors of public prosecutions as to referral of matters either back to the state or dispositioned by the Commonwealth, or vice versa, where there is a mixture. So it is a regular occurrence throughout a year where matters will be looked at to determine whether they should be prosecuted jointly—that is, state and federal charges—or individually.

Senator LUDWIG—Just turning to a more sensitive one: the Windsor allegations, for want of a better term. As I understand it from the newspaper reports, the DPP decided not to prosecute. Are you able to say, or at least assist the committee to see, how you came to that determination?

Mr Bugg—Do you mean the reasons or the process?

Senator LUDWIG—Both, I guess, as far as you are able.

Mr Bugg—Okay. I will tell you procedurally what happened. In terms of the reasons, I am a little hesitant because there are some aspects of it I would rather leave for the moment.

Senator LUDWIG—I accept that. It is really only a case of what you are able to say on the record.

Mr Bugg—The police brief on the matter was referred to my office at six o'clock on 7 October, which was the Thursday evening before the federal election. The process for considering prosecutions is dealt with on a regional basis by my office because, under section 80 of the Constitution, prosecutions have to be commenced in the location of the alleged offending. In this case, the brief that was referred then went to the New South Wales or Sydney office for consideration.

In-house counsel considered the matter and provided advice for me on 22 October. That advice was considered not only by me but also by two other senior lawyers in my Canberra office. The conclusion we came to was that there ought not to be a prosecution but, in light of the nature of the allegations, it was deemed prudent to obtain independent senior counsel's advice. Again, that arrangement was made through the relevant local office, the Sydney office. Appropriate counsel was retained and briefed and the advice was obtained from that counsel on 19 November. That is when the announcement was made by my office that there would be no prosecutions and the form of press statement that was made was given.

I set that out because there was some expression of concern, as I understand it, about the time taken to produce that outcome. Obviously, it was a matter where it was deemed appropriate for an independent view to be obtained outside that of the office. That was the process that was followed and the relevant dates for your purposes. If I can put the consideration that was given to the matter just in terms of specific issues of principle, the allegation was made that an individual had a conversation with Mr Windsor in the presence of two other people. There were slight variations in the accounts of Mr Windsor and the other two individuals as to the words used or spoken by the other person. Putting that to one side, the issue was whether or not this person had authority in relation to the allegation that was made that that person was either doing or doing on behalf of another. The legal issues that were involved in that are not straightforward and took some consideration. I am not prepared to go into any more detail than that.

Senator LUDWIG—Thank you. Turning to the no-bill applications, there were public interest reasons cited that two no-bill applications were granted where sufficiency of evidence was not the cause of the discontinuation.

Mr Bugg—Are you referring to something in the annual report?

Senator LUDWIG—Yes.

Mr Bugg—Could you tell me which page?

Senator LUDWIG—As I indicated earlier, I did not bring it with me. I can put that on notice. It is not a major issue; it just caught my eye when I was reading it. I will move on to the issue of the criminal confiscation account. As I understand it, there is \$99.75 million worth of property that was under restraint as at 30 June but that total amount may not in fact be restrained.

Mr Bugg—That is right.

Senator LUDWIG—How much is likely to be restrained? Is there a final figure? I suppose it is difficult to say what is likely because you cannot tell at this point.

Mr Bugg—Yes. The terminology that is used is restraint for the freezing of the asset, shall we say. Recoveries represent those amounts which, of the restrained property, are ultimately determined by the court as being forfeited or recoverable either on a conviction or on a finding under the civil regime that the appropriate standard of proof has been obtained and achieved. So what is under restraint may never in its full amount finish up at the bottom end of the ledger under ‘recoveries’, purely and simply because it may be disputed. There may be other claims to ownership of the property and interest in the property. The restraint is, in a sense, an insurance basis of securing and freezing the asset until those issues can be determined.

Senator LUDWIG—So the figure we know to date is the \$99.75 million which is subject to restraint for freezing the asset. What has actually been forfeited?

Mr Bugg—You do not have the annual report.

Senator LUDWIG—If you tell me the page number, I can look it up.

Mr Bugg—In the annual report, the table showed that there were 107 restraining orders, with a total value of \$87,864,000-odd. Then, if you move down page 45, you will see that the total recovered during the year was \$3.43 million. That is under the most recent legislation, the 2002 act, which is the civil forfeiture regime. Then, under the conviction based process—that is, the 1987 act—there is \$6.42 million recovered. That is nearly \$10 million.

Senator LUDWIG—I asked earlier today about Hicks and particularly Habib. There had been a request by the Attorney-General about advice about potential prosecutions in Australia of either of those two individuals. I think that was the advice that was sought from the Attorney-General, although I am happy to be corrected. The Attorney-General's office indicated that they had sought advice from you. How much can you say about what was contained in that advice that there is no basis for a prosecution of either Mr Hicks or Mr Habib—or are you constrained?

Mr Bugg—No, I am happy to say that we gave advice and that the indications of that advice have been correctly represented in statements made by the Attorney-General—namely that, on the material that had been gathered against first Mr Hicks and then Mr Habib, no prosecution could be brought in this country.

Senator LUDWIG—You were requested about literary proceeds as well, and you provided advice. On what date was that advice provided to the Attorney-General's Department?

Mr Bugg—To be precise, I would need to check. The first time we provided advice was on 20 January, but, under the literary proceeds provisions under the Proceeds of Crime Act 2002, which I mentioned a moment ago, there was advice subsequent to that. That was last week. I would not disclose the actual content of the advice. The advice was provided to the department, but it was obviously understood that the recipient of the advice would be the Attorney-General in due course.

Senator LUDWIG—You cannot say whether they were the same?

Mr Bugg—Put simply, obviously when you are dealing with a situation such as that there have to be a number of issues considered and a number of factors taken into account. That range of factors and issues will change as time progresses. It was not, shall we say, a review of an advice with no change of fact.

Senator LUDWIG—We might leave it there and move on.

Mr Bugg—You would understand that obviously one needs to consider a whole range of issues, and that will change and vary as time goes by.

[4.31 p.m.]

Australian Crime Commission

CHAIR—I welcome officers from the ACC. We will start with questions from Senator Ludwig.

Senator LUDWIG—Regarding the databases that ACC currently operates, if I am right there are ALEIN, ACID, ViCLAS and AIPR. Is there a name for that last one?

Mr Milroy—It is the Australian Identity Protection Register.

Senator LUDWIG—Are those discrete databases, in the sense that they operate as discrete databases? Or are they part of a package within one database?

Mr Phelan—Generally yes, but the ALEIN is a communications network which is used by other law enforcement agencies to access ACID. So in a sense ALEIN is part of one great big system, including ACID, but the other systems are discrete.

Senator LUDWIG—Are they cross-referenced to the CrimTrac database or are they separate?

Mr Phelan—They are separate, but when an inquiry is made through, say, ACID it is cross-indexed or can be searched across into CrimTrac.

Senator LUDWIG—You might want to take me through that process, if you do not mind, when you talk about an inquiry being made through ACID. Take the hypothetical case of someone making an inquiry—and perhaps you could identify a general type for me to use at this point in time. If you have one on the tip of your tongue we could use that as an example, just to track the flow of how this might occur.

Mr Phelan—I might need to take that on notice, but generally if someone needs to make an inquiry there is a capability through the system to search across and get results back through ALEIN.

Senator LUDWIG—Is there an example? What if they were searching for a person, for example? Is that the type of—

Mr Phelan—Yes.

Senator LUDWIG—And that would come from an inquiry in ACID. Who would have access to make inquiries in ACID? Is it just ACC?

Mr Phelan—No, there are quite a few people who have access to ACID out in our partner law enforcement agencies.

Senator LUDWIG—So the state police—

Mr Phelan—Yes. If you look at page 31 of the annual report you will see that ACID is in fact used as the primary intelligence database by a couple of state police forces as well as the ACC. So obviously there is significant user access to ACID from those forces. Generally, as I think it says there, by the end of June 2004 there were 8,271 users of ACID across Australia.

Senator LUDWIG—Is that bodies or persons using ACID?

Mr Phelan—People.

Senator LUDWIG—Is the department of immigration a user of ACID?

Mr Milroy—We would probably need to take that on notice as to providing a list of the actual 32 agencies that use the database.

Senator LUDWIG—Could that be provided by tomorrow?

Mr Milroy—Yes.

Senator LUDWIG—Are the department of immigration regular users of ACID or ad hoc users? Have they used it in the last 12 months and, if so, how many times? You can take that question on notice for a little bit longer, unless the answer is readily available.

Mr Milroy—Thank you.

Senator LUDWIG—As I understand it—and this is why I was trying to follow the track of these things—if one of your users makes an inquiry in ACID, that then has the ability to search the CrimTrac databases as well as your own databases. How do they signify that?

Mr Phelan—There is a link that would go through to CrimTrac. ACID will contain what is called entity information—relationships between people and places, people and times, people and phone numbers et cetera. It is intelligence. CrimTrac provides information, generally speaking, around identification. A lot of the searches that go into CrimTrac will come via the Australian Crime Commission's database and come back in. What I just cannot recall is the precise mechanism as to how that occurs.

Senator LUDWIG—So it will not be that you put in a name in and see what happens; it might be that you put in an incident or an associated event and see what comes up, and then it will search CrimTrac as a consequence?

Mr Phelan—I think you have got to positively ask for CrimTrac to be searched.

Senator LUDWIG—Is there a box to be ticked on the screen?

Mr Phelan—Something like that. I just cannot recall.

Senator LUDWIG—Perhaps you could clarify that for me. It seems there are a lot of databases out there. Have you had any discussions with CrimTrac about—I do not know the technical terms in all this—trying to rationalise the databases or make sure that they all can at least interact with one another effectively? Or is that already being done?

Mr Milroy—There is actually an information working group that has been established under the ACC board, of which Mr Phelan is the chairperson, which has a number of those agencies, including CrimTrac, to look at a better way to manage information in the law enforcement arena and provide a suitable response back to the board in due course. It is considered, because of the various systems that are in place and compatibility issues and infrastructure, that that is a fairly long-term project. If you want further details, Mr Phelan can provide you with the specifics of what that working group is looking at.

Senator LUDWIG—That would be helpful. The other issue that crosses my mind is how those databases might be cross-referenced with other databases that I come across in Customs and Immigration—SmartGate eVisa systems and the like. How do they fit into the overall intelligence gathering? Can a person put a request in at ACID and eventually also have a look at those databases as well? I suspect that is not available just at the moment—and you may not want it to be available either—but I take it that someone is looking at that particular issue.

Mr Phelan—The information sharing working group is looking at ways in which any physical, technical, legal and other issues can be addressed in ensuring that there is maximum coordination and maximum availability of criminal intelligence to those who need to access it. Obviously a lot of the criminal intelligence databases—and it is not just at the federal level; it is at the state level in particular—have a lot of legal and other restrictions around them as to

what can be shared with other agencies or what can be shared with other governments. So the working group is methodically working through all of those provisions to ensure that ACID, which is the Australian Criminal Intelligence Database, is the one-stop shop, as it were, for criminal intelligence for Australia.

Senator LUDWIG—In the interests of saving time, I indicate that I have put a range of questions on notice in relation to those, particularly to do with how they function and work. We will go through from there and see what information you can provide. What emerging areas did the *Picture of criminality* report identify in the area of criminal threats?

Mr Milroy—The *Picture of criminality* report was commissioned by the board. The board is waiting this year for the next update on that, which will be tabled at the board meeting in September. In relation to the specific threats, we would have to take that on notice if you require a submission as to what has been identified. It is a very complex intelligence collection analysis that has been carried out with all the jurisdictions in Australia. It might be more prudent if we provide that on notice.

Senator LUDWIG—I am interested in the large areas and if there is trend type data as part of that. I suspect if that is provided annually you will see where large areas have either increased or lessened. To what extent have the substance of examinations changed, particularly in internet based crime—whether that is a large area that has increased or whether it is still a large area but it has decreased as a consequence? I am also interested in whether it takes over from—it is a poor term—real life crime, in the sense that it is not committed in cyberspace, and whether that informs what mechanisms you will address in the ensuing year, how that drives your response and what mechanisms you might decide to put in place to ensure those things are combated. Is that helpful in understanding the information I was seeking from you on notice?

Mr Milroy—Yes. This information is communicated through the board, and we will also be presenting the findings to the intergovernmental committee this year of the *Picture of criminality* project, which is an ongoing process.

Senator LUDWIG—The timeliness and frequency of those reports: are they only going to be available once they are put to the board in September?

Mr Milroy—No. Because of the ongoing monitoring capability that we have through the AFP, other overseas agencies and open source, we are continually monitoring. Whenever something shows an indication of trending upwards we immediately refer that out of session to the board and to the relevant agencies that need to be made aware of it, so we have the capability to deal with the emerging threats as they come to our attention.

Senator LUDWIG—Turning to a different area, what alerts were produced specifically for industry groups in 2003-04, and which industry groups were they produced for? Are they discrete alerts as such?

Mr Milroy—We could take that on notice. You are referring to something in the annual report.

Senator LUDWIG—Yes.

Mr Milroy—It might be more appropriate if we take it on notice. Other than the fraud alerts, there may be others that we need to bring to your attention. They are referred to on page 35, where some of the alerts have been produced. There are about 15 or 20 listed on page 35.

Senator LUDWIG—I was looking at particular industry groups and whether they were issued to the general public or media, and what their general outcome was—or where they were directed to is a better way of putting it. The *Illicit drug data report 2003-04*—is that available?

Mr Milroy—Yes, that is normally launched by the minister for justice and it is quite readily available. It goes to not only law enforcement agencies but other interested groups as well as overseas. The next update of that will be launched in the next few months, which will indicate any change in trends.

Senator LUDWIG—In the area of card skimming, has there been an increase in the number of complaints that the ACC has received?

Mr Milroy—In relation to the database that we maintain—the identity protection register—and card skimming, it is important to note that we are not the lead agency in Australia in relation to that, although we have a determination. To answer that appropriately we need to take that on notice.

Senator LUDWIG—Information on any subsequent prosecutions that have been commenced or finalised as a result of that would be helpful. I think there was a raid back in March as well. I am happy for you to take that on notice.

Mr Milroy—Yes.

Senator LUDWIG—Other than what the annual report says, can you detail prosecutions resulting—depending on how you keep this data—for each of the intelligence operations which resulted: charges laid or how successful the operations were, so far as you are able to provide a snapshot?

Mr Milroy—Yes, that is an important part we are looking at at the moment in relation to the significance of the results in the special intelligence operations, particularly where a lot of the work is carried out by our partners. We are looking at how we can properly reflect those results without taking the credit away from the agencies involved.

Senator LUDWIG—Was the media campaign around the vehicle rebirthing a general campaign or was it targeted to specific areas?

Mr Milroy—In the campaign we wrote to 107 stakeholders in the vehicle industry and in government and non-government bodies, seeking information. We received 35 submissions. In addition to that we advertised on the radio in a particular ethnic area looking for information. We received 33 calls in response to the advertising. The way we approach these intelligence operations is that we take a wide-ranging ‘look outside the square’ view of law enforcement to look at those who have information that can assist us in value adding to our knowledge so that we will be in a position to make decisions from a law enforcement position and also be able to assist industry in terms of crime prevention and looking at law reform and legislative reform if it is necessary. That particular matter is currently coming up for review

by the board at its meeting in May in relation to the outcomes of that special intelligence operation as well as the reports we received from the various stakeholders.

Senator LUDWIG—Were any particular ethnic groups targeted as a consequence of that campaign?

Mr Milroy—I will have to take that on notice in relation to any information that we received that was disseminated to other agencies and what results they may or may not have obtained.

Senator LUDWIG—In terms of trafficking of chemical precursors and pharmaceutical products—I think pseudoephedrine was seized by the South Australian police in a quantity of something like 25 kilos—it seems that there is a view that there are legislative difficulties in trying to target chemical precursors and pharmaceutical products that may be used in the manufacture of illicit substances. Has your agency done any work in trying to determine if there are legislative deficiencies or shortages?

Mr Milroy—In that particular special intelligence operation again we worked very closely with industry and the health departments. We are currently in discussions with the Attorney-General's Department in relation to the findings of the special intelligence operations to date to look at the opportunities that may be presented for law reform and legislation in relation to the precursors and other types of equipment used in these operations that could probably be removed from the market.

Senator LUDWIG—Whereabouts is that up to? Is there a report available as to identifying what you say you may require in terms of legislation or additional special intelligence operations?

Mr Milroy—We are making a presentation to the board, initially in March. That particular determination is due for a full board review on 31 December 2005, but as a result of the findings from the intelligence operation the board has a number of matters to consider, which will also pick up on the issues you raised about opportunities for law reform. The board will make a decision based on our submission in March, which will also involve us continuing to work with the Attorney-General's Department in relation to the findings. After the board's consideration of our submission I may be in a position to respond to your questions.

Senator LUDWIG—That would be helpful at that point. Has the national clandestine laboratory database been established?

Mr Milroy—That is part of this ongoing process.

Senator LUDWIG—I will leave those questions until a later stage. The other issue was whether the database would be cross-referenced with CrimTrac and integrated with others. We will deal with that next time. Those are all the questions I have in relation to the ACC.

CHAIR—Thank you very much, Mr Milroy and Mr Phelan.

[4.52 p.m.]

**Australian Institute of Criminology
Criminology Research Council**

CHAIR—For the purposes of the record, I understand that Senator Ludwig's questions pertain to the Australian Institute of Criminology and not to the Criminology Research Council.

Senator LUDWIG—Has the study of the feasibility of linkages across criminal justice agencies been finalised, or is there an interim report available?

Dr Makkai—We are in the middle of that project. It is being done for the ACT government and they have had an interim report at this stage.

Senator LUDWIG—That is not available publicly?

Dr Makkai—It is not available through us.

Senator LUDWIG—Thank you, I got that lead. There was a question on notice, No. 352, in which the AIC noted that the tender process was not advertised and that organisations were invited to tender. Why was the tender not advertised?

Dr Makkai—It was at short notice. That was the main reason. We decided to run a conference and we wanted to run it within the next six months so we thought it best to do a select tender.

Senator LUDWIG—Which organisations were invited to tender?

Dr Makkai—Three organisations were invited to tender for that.

Senator LUDWIG—Are you able to say who they were?

Dr Makkai—I do not have that information with me. I will take it on notice.

Senator LUDWIG—What criteria were used to select the successful tenderer, and how much was the tender? I am happy for you to take that on notice.

Dr Makkai—Basically, the criteria were their capacity to run these kinds of surveys, whether they came within the cost range of our ability to afford them and their history of working generally in conferences.

Senator LUDWIG—What did PricewaterhouseCoopers get for their contribution to identity theft kits, if anything?

Dr Makkai—We did a research project with them a couple of years ago. They provided in-kind support in terms of research people who went around with our senior analysts to interrogate the data. Then we produced a joint report with them on serious fraud.

Senator LUDWIG—Was that as a consequence of the earlier work? What I am trying to ascertain is the contribution to the research that PricewaterhouseCoopers did. Was that an approach by PricewaterhouseCoopers or was it the other way around: an approach by the AIC to PricewaterhouseCoopers?

Dr Makkai—Could I take it on notice?

Senator LUDWIG—Yes. How much was the total funding for this project—that is, the identity theft kits?

Dr Makkai—We did not produce the identity theft kits.

Senator LUDWIG—What was your contribution to the development of the kits?

Dr Makkai—We did a piece of research with PricewaterhouseCoopers which was looking at serious fraud in Australia. Out of that we produced a report and then some of that information would have been picked up by the Attorney-General's Department.

Senator LUDWIG—I might put those questions on notice; there are a couple of other questions I wanted to ask in that area. I think you established a drink-spiking hotline as part of your research.

Dr Makkai—Yes.

Senator LUDWIG—The total cost of that was \$21,773.50. By my bad arithmetic, that is about \$100 a call.

Dr Makkai—Yes.

Senator LUDWIG—It operated between November and December. Has it been operational at any time since that time or was it only designed to elicit research data for your report?

Dr Makkai—It was only designed to elicit the research data for the report.

Senator LUDWIG—In terms of the hotline, was consideration given, if there were any identified complainants who might be victims, to then contact police as a consequence of the approach to the hotline first?

Dr Makkai—Part of the process and the training was to have a list of counsellors that we could recommend if they requested that sort of assistance. The interviewers are not counsellors so naturally they would forward the person on to the appropriate agency.

Senator LUDWIG—Does that \$21,000-odd include AIC staff costs? Was it the total cost, in terms of how that hotline operated, including the referral and any follow-up?

Dr Makkai—Can I ask which question on notice it is?

Senator LUDWIG—I do not have the number. I have a reasonable recollection of it. We asked about the cost of the hotline. I am happy for you to take it on notice. I was just trying to get an understanding in terms of whether it was a total cost for the hotline and if it included AIC staff or did not include AIC staff—

Dr Makkai—No, it did not include AIC staff.

Senator LUDWIG—and what input they had and if they worked on the hotline or whether it was completely subcontracted out in that sense.

Dr Makkai—No, it was mixed. We took the calls during the day. We had a research assistant and a research analyst who monitored the phone in case two calls came in at the same time. After hours we had the external monitoring of the phone line.

Senator LUDWIG—So how many hours was it open for per day?

Dr Makkai—I am sorry; I have misled you, Senator. If you look at the answer to question No. 337, the total cost for the subcontracted part of the hotline was \$5,600, so that does include the AIC staff.

Senator LUDWIG—That is what I was trying to determine, whether that did or did not. So the only part of the subcontracted cost was the \$5,600, and that was the time spent outside of office hours manning the hotline and providing staff.

Dr Makkai—That is correct.

Senator LUDWIG—On the international violence against women survey, it just seems to miss that 16 to 18 age group. The international violence against women survey seems to be for women aged 18 and over. Was any consideration given to whether the 16 to 18 group should be included in the survey? I will explain it in the sense that it would appear to me that violence against women could easily start earlier than 16 but could be more pronounced from 16 to 18 rather than from 18 onwards. It will also take into account domestic relations as well.

Dr Makkai—The project was part of an international project and the international committee had determined that 18 to 69 would be the age range, so all the countries are doing the same age range. We did not specifically seek to interview people under 18 but we did seek information from those women about experiences of childhood violence, whether they themselves had experienced violence before the age of 18.

Senator LUDWIG—There was a study that covered those under 16, wasn't there? I am trying to establish the situation regarding those aged 16 to 18. The way I read it—perhaps you can explain it to me; I might be missing something—is that when you talk about the younger age group you are talking about under 16, but there is the 16 to 18 group, which would then take in years 11 and 12 or forms 5 and 6 in Queensland. Those attending schoolies week and going to university orientation were more likely to be 17 when they started university and moved out of home and those things. When I read it, it seemed to me there was a gap in that. Am I right about that?

Dr Makkai—Yes, you are right.

Senator LUDWIG—I would have thought that would have been an area where there would be a high risk of violence against women and it would be particularly useful to gather data on such a high-risk group. It seems that they have studied the under-16s, which would take in domestic and home violence and the consequences of that, and then 18 and over—

Dr Makkai—Except that when we asked the 18-year-olds we asked about experience of violence in the last 12 months, so it actually goes back to 17 years. And we asked about experience of violence in the last five years and then we asked about whether they had experienced any violence pre 16 years. So we get different types of data depending on the question.

Senator LUDWIG—But there was nothing direct between 16 and 18.

Dr Makkai—No direct study.

Senator LUDWIG—When will the results of that be available?

Dr Makkai—The results are available, and I have a copy of the report if you would like to have a copy.

Senator LUDWIG—Yes, thank you. It would help if you made that available to the committee. I do not have any other questions.

CHAIR—Thank you very much, Dr Makkai. That concludes questions for your area. We will go straight to CrimTrac.

[5.05 p.m.]

CrimTrac

Senator LUDWIG—In respect of Crimtrac's operation, it would probably be helpful if you could give us a rundown on the key deliverables and at what stage each of those are at— if they are operational and deployed, and, if deployed, in which states. As far as I am aware— at least as far as the annual report and the audit report are concerned—they are the National Automated Fingerprint Identification System, the National Criminal Investigation DNA Database, the Australian National Child Offender Register, ANCOR, and the redeveloped Crimtrac Police Reference System, CPRS. If there is another one I have missed, by all means include it.

Mr Mobbs—I can allude to all of those. The National Automated Fingerprint Identification System, NAFIS, is operational and has been since April 2001. It is available 24/7 to police in many parts of Australia. It is probably the most effective tool that we have deployed on their behalf to date. It is in constant use. Anecdotal evidence, which is most of the evidence I receive back from police, indicates that it is highly successful and certainly a great improvement over its progenitor. One of the major reasons it is so effective is that we are supporting police procurement of what are called livescan devices. Livescan devices support the electronic recording of fingerprints in police stations and wherever they are installed and an almost instant match against a central fingerprint and palm print database. Police are continuing to procure those items.

The National Criminal Investigation DNA Database, NCIDD, has been ready for use since about April 2001. It is in use for intrajurisdictional—in other words, internal jurisdictional— matching by Queensland, Western Australia, the AFP and the ACT. It is not operational, as it was intended to be, interjurisdictionally because of difficulties that have been referred to in previous estimates sessions and in CrimTrac literature. Principally, legal difficulties have arisen in the jurisdictional legislation that supports their participation in NCIDD.

The Australian National Child Offender Register, ANCOR, database was launched on 1 September last year. We believe that fulfils one of the original deliverables, which was talked about as a national child sex offender system and has become known as ANCOR. It deals with adult offenders against children with regard to offences of a sexual nature predominantly. It is operational. It is being used by Queensland and Victoria. I was told a couple of days ago that Western Australia have just placed their first registrable person on it. They are very pleased with its operation. I believe it may also be used by the Australian Federal Police. They are the first three of the deliverables that you will see described in the intergovernmental agreement that set us up.

We have since named the fourth CPRS, the CrimTrac Police Reference System. It is the means of providing rapid access to operational policing information. That is how it is described in the IGA. We inherited from our predecessor the National Exchange of Police Information, NEPI—several systems which police colloquially knew as the police reference system. When I joined CrimTrac in January 2001, that fourth capability was being talked about as PANDA, which stood for police access to national data assets. The name itself caused some unease, because police were not inclined to regard any information assets being managed by CrimTrac as national data assets per se, so there was a fair bit of scope for and talk about a better name. We thought that, since they were used to PRS, the addition of ‘CrimTrac’ on the front would create an acronym which came off the tongue reasonably well and which would indicate what it was all about. So it is CPRS.

CPRS is redeveloping the mainframe based stovepipe databases that existed hitherto. They are the National Names Index, the National Vehicles of Interest database, the National Firearms Licensing and Registration System and the electronic white pages database. All of those were available to police as disparate and separate systems. What we have embarked upon is, in recognition of the word ‘rapid’ in that deliverable, a method of making those data available to police in a way that is rapid and almost online and instantaneous. That is the thrust of the CPRS program.

In terms of progress, I mentioned that NAFIS, NCIDD and ANCOR have been built and are either available or in use. CPRS is being built. We have a major trial of the first tranche of capability coming up, starting on 10 March and lasting for 90 days. We are using information that has been provided by New South Wales and Victoria police—a richer set of integrated information to prove the concept and to learn from how that richer information stream benefits New South Wales and Victoria in particular. More generally, the other police will be able to look in on the trial and see how the data are presented, how they can be accessed and how the additional links can be used to inform them and convince any doubting Thomases that remain that this is the way to go, rather than sticking with mainframe stovepipe systems.

Other databases or tools that have been developed along the way have been ad hoc requirements that we have coped with with some additional funding. I mention the National Handgun Buyback Support System. That was a system we deployed in support of the National Handgun Buyback, naturally. That was also very effective in assisting the states and territories in dealing with evaluating and recording the firearms and firearm parts that were handed in under the amnesty and the subsequent buyback.

We have already made the transition from the electronic white pages database to a new one. The reason for speed on that was that Sensis, the Telstra subsidiary which used to provide the EWP, decided to withdraw that service as a mainframe service. We had to act and find a replacement. We have put in an application for a data source called the TDS, the telephone directory service. That has been on line for police for several months now. I think that probably brings us up to date on the status.

Senator LUDWIG—In the annual report, it mentions a missing persons database.

Mr Mobbs—Does it?

Senator LUDWIG—Yes. I think it is on page 24.

Mr Mobbs—I have to say it is certainly not spelt out in any of the deliverables.

Senator LUDWIG—It is either page 20 or page 24. At the top of the page it says ‘Missing persons’. I can come back to it.

Mr Mobbs—I would have to say that is news.

Senator LUDWIG—I will look at that in a second. You are upgrading the CPRS. Will it differ from the current system?

Mr Mobbs—From the PRS that we inherited?

Senator LUDWIG—Yes.

Mr Mobbs—Yes, it will differ markedly.

Senator LUDWIG—In what way will it differ?

Mr Mobbs—It will be integrated. When an officer logs on, they will be able to see most of the data they need on the one screen, so they can source data on vehicles, firearms, persons of interest and so on on the one screen. If they cannot do it on the one screen, they can, by clicking a couple of buttons, go to a secondary screen which might be another state or territory view of a person of interest. It will be very fast. As I said, a lot of that information-seeking is done on the mainframe system. It is not remarkably fast and you have to write down the information you get on a person of interest, exit that part of the system, go into the vehicles area if that is your area of interest, glean some information there and then perhaps go to firearms. So you have what I would say is an inefficient method or a method that could be improved upon at the moment. It will be fast, it will be comprehensive, it will be integrated and it will be online.

Senator LUDWIG—When is that likely to be up and running?

Mr Mobbs—That will depend to a large degree on the success or otherwise of the trial we are about to undertake. It will depend on whether, as a result of the trial, we decide there are improvements or enhancements required to the central database, the infrastructure and then perhaps to the data itself. At this stage, it is difficult for me to give you a precise date.

Senator LUDWIG—On page 24 under the national names index, NNI, it says:

The NNI comprises multi-jurisdictional data on criminal histories, missing persons, warrants, domestic violence orders ...

Mr Mobbs—That is quite right.

Senator LUDWIG—All of those matters are on the national names index?

Mr Mobbs—Yes.

Senator LUDWIG—It is the technology that escapes me. Is that on a current database that CrimTrac have now? Can people then request searches on missing persons and is that by each state, or do they have to specify by each state if they want to search? In other words, how do your clients use that in a missing person search?

Mr Mobbs—In the national names index, persons are associated with a number of role codes. Those role codes include whether they have an adverse firearms licence history, whether they are an unidentified body—and that seems to me to be a bit strange, but that is

what it says—whether they are the subject of a criminal history, whether they are a charged person, whether they have an expired restraining order on them, whether they are a firearms dealer, a firearms licence holder, whether they are a missing person or whether they have a current restraining order on them. You can see that they are attributes of a person of interest. If you knew the name of the person that you believe is missing or has been reported missing, you could search on the person's name and see if the role code of MISG, meaning missing person, was attached to the record.

The reason why I tend not to call it a missing persons database is that I could not go in there, as someone interested in finding missing persons generally, and say, 'Show me all of the missing persons declared missing between time A and time B of this description.' It is not set up that way. You really have to have the name or the criminal case number, the CNI number, to be able to search on a person and know if they are in there or not. For that reason, I do not regard it as a missing persons database per se. However, people with the appropriate information and interest could use it de facto for that purpose in the interim. If we were tasked tomorrow to build a missing persons database, I do not think we would do it this way,

Senator LUDWIG—No, but that is how I understood it.

Mr Mobbs—That is why it was new to me, because I regard it as an attribute of a person rather than a separate database.

Senator LUDWIG—I have not found it in any of your earlier annual reports.

Mr Mobbs—No. We really have not discussed a missing persons database in CrimTrac since we have been there.

Senator LUDWIG—When CrimTrac first started, was it going to include missing persons databases?

Mr Mobbs—No. They are not mentioned specifically.

Senator Ellison—Correct me if I am wrong, but I think it is fair to say that it is an attribute of the CPRS—missing persons. I think that is what Senator Ludwig is driving at. The trial that we have from March to July with Victoria and New South Wales will be the CPRS trial. Part of that will include a missing persons aspect. We have talked about this missing persons database—

Senator LUDWIG—That is what I am trying to get to the heart of. If I recollect properly, Senator Vanstone announced it in 1999 as part of CrimTrac, or that it was going to be part of CrimTrac.

Senator Ellison—Missing persons?

Senator LUDWIG—Yes. Now I am being told, as I understand it, that it is not part of CrimTrac and never was. But I do not think that accords with what Senator Vanstone originally launched in 1999—a missing persons database. Can someone tell me what she launched in 1999? Where is the missing database? Is there a missing persons database?

Mr Mobbs—Not that we run. I am guided by the intergovernmental agreement—that is, if you like, our task list. In the report that you referred to, on page 105, there are four deliverables listed against recital D halfway down the page. The last one—'provision of rapid

access to national operational policing data’—is the one we are talking about. I do not think you will find the words ‘missing persons’ anywhere in the IGA. It certainly has not been part of my operational guidance since I have been leading the agency. There has been no extra emphasis on missing persons at all.

Senator LUDWIG—I am happy to be corrected. What did Senator Vanstone launch in 1999, Minister? She was then the Minister for Justice and Customs.

Senator Ellison—I do not have the press release.

Senator LUDWIG—No, I did not bring it with me either. I was hoping that we would not get to this.

Senator Ellison—I will take that on notice and dig up that press release for you from when the launch was made.

Senator LUDWIG—The question, if you could follow it up, is: who is currently dealing with a missing persons database, or did that disappear off the agenda? CrimTrac now rule themselves out of the missing persons database. What agency would I next ask?

Senator Ellison—As I understand it, missing persons is part of the CPRS.

Senator LUDWIG—That is not what Mr Mobbs seemed to suggest.

Senator Ellison—The situation is—as Mr Mobbs has said—that in those entries you have reference to an aspect of a person such as criminal history, adverse firearms history and MISG, which is missing persons. If a person has that tag, then they are a missing person. How I envisage the CPRS working is that that could be used to deal with a number of issues. You could deal with persons of interest, which is the primary role of the CPRS as I understand it—that is, someone that the police have an interest in talking to—and that you could have, in relation to such a database, photos, distinguishing marks, medical history, name, aliases and much more detail than what is there at the moment. Mr Mobbs can correct me if I am wrong. That could be used for missing persons in addition to other aspects of persons of interest.

Leaving people aside, as well as that it could go on to vehicles and firearms—as Mr Mobbs has mentioned—so that in one section it is persons, in another it is vehicles and in another it is firearms, and that is all part and parcel of the CPRS scheme. That is what we have talked about when we have talked about this trial in relation to the CPRS—that it can deal with those aspects, although I do not know whether we are trialling vehicles and firearms with it. I do not think we are—not in the improved version. But with persons of interest we are.

Senator LUDWIG—There is no ability for CrimTrac to search for missing persons on the basis of height, weight, characteristics or identifying marks?

Mr Mobbs—That is correct.

Senator LUDWIG—And there are none on the drawing board?

Mr Mobbs—No, not at present.

Senator LUDWIG—And the only database you have which identifies missing persons, if it is part of a named search of the named index, will come up with an indication that they are a missing person.

Mr Mobbs—Yes.

Senator LUDWIG—Is that couched only in terms of them being a person of interest who is subsequently missing—in other words, a person of interest in terms of a criminal matter that would appear on the NNI.

Mr Mobbs—They are a person of interest because they have come to the attention of police for one reason or another. One of them could be that they have been declared missing by one of the police services.

Senator LUDWIG—I see.

Senator Ellison—I think I mentioned persons of interest being primarily people they want to talk to. I might have given you the wrong impression. ‘Persons of interest’ covers the whole ambit of people, be they missing, people with a criminal record or otherwise.

Senator LUDWIG—The trial that is envisaged is a criminal histories trial but it is not a missing persons database trial?

Mr Mobbs—That is right. But if there is sufficient interest and, for instance, members of the missing persons units—either nationally or state-territory based—could not provide me with some terms of reference that they might like to see satisfied during the trial, we could put some additional terms of reference on the trial, such as ‘evaluate the usefulness of this tool to the national missing persons unit’. It could be evaluated for that reason, but I know instinctively that it has not been built optimally for someone who is dealing every day with missing persons and perhaps wants to bring more than just POI data into the equation.

Senator LUDWIG—Yes. You are not going to find a missing person necessarily just by searching their name in a named index. You might have someone who says, ‘I am Fred Bloggs,’ and you are trying to identify who they are.

Mr Mobbs—Aliases are a problem for police everywhere when they are searching.

Senator LUDWIG—The only way you can identify them on a missing persons database is if you have got a photo, weight, height and some other identification or physical description—or a fingerprint as well, I guess.

Mr Mobbs—Or even the date when they are believed to have gone missing. You could narrow a search down fairly rapidly if you had, and could search, more keys.

Senator LUDWIG—Minister, the press release of 1999 from Senator Vanstone said:

CrimTrac will also give police much better access to important information on the criminal history of offenders such as court notices including Domestic or Apprehended Violence Orders, Warrants and Bail Conditions; firearms licences; vehicles of interest; charged persons; and missing persons, including details of their disappearance.

Mr Mobbs—That is what it will achieve.

Senator Ellison—That is what CPRS could accomplish.

Senator LUDWIG—But that was in 1999. I take it that it has not achieved those outcomes since 1999.

Mr Mobbs—No, because it is not yet operational.

Senator LUDWIG—So it was announced in 1999 by Senator Vanstone and it is being trialled now—is that right?

Mr Mobbs—That is correct.

Senator LUDWIG—Will it include details of their disappearance?

Mr Mobbs—Yes, because when you get to the missing person record and you delve down several levels, if there is a date posted by the police service which notifies the missing person, there is often the date in there—‘date missing’, I think it is called.

Senator LUDWIG—But that is not the primary use of the current trialling database.

Mr Mobbs—No, it is not.

Senator LUDWIG—I am sorry about the circuitous way of getting there, but it makes it a little bit clearer in my mind. Is there still a need for a missing persons database?

Mr Mobbs—I think you would have to ask the police how well served they are by, for instance, the NNI, and perhaps the others with interests in missing persons specifically, to tell you that. I do not have any feel for it, Senator.

Senator LUDWIG—Minister, are you aware of whether there is a need—has it been raised in the Police Ministers Council?—for a missing persons database? Currently, as I understand it, there are state based missing persons units, and they have their own mechanisms for maintaining this data. Do you see this as an issue that should be developed and further progressed?

Senator Ellison—I have said publicly that the Commonwealth would like to see, by the end of the year, a national missing persons database. I have not heard any police minister gainsay that. The development of the CPRS has the support of the states and territories. Indeed, Victoria and New South Wales are participating in the trial. Missing persons is just one aspect of what CPRS can deal with. As I understand it, once you have the system in place you can, if there is agreement, expand it. With the agreement of all parties concerned you could have your missing persons database in place via the CPRS with no problem at all. You could include all the different aspects you wanted to, such as details of disappearance and aliases. But the CPRS is, as I understand it, the basis. It is the vehicle for all these other things. That is what is being implemented.

Mr Mobbs—It is a system for policing data to be used by police. I think there would be interest groups beyond police that might want access to—either in a read or write capacity—a national missing persons database, if that is what it is called. A lot of community interest groups might want to use it. Then you have to expand its use beyond the police, which is its current target.

Senator LUDWIG—Effectively, with the CPRS you can add extra fields at some point? You can be given a task and expand it out to include the fields that I have been talking about?

Mr Mobbs—Yes, you could expand it. You could also have a view of it that only missing persons units might use.

Senator LUDWIG—Yes. But that is currently not within your charter?

Mr Mobbs—No.

Senator LUDWIG—There would be a requirement to change your intergovernmental agreement for that to occur—is that right?

Mr Mobbs—I think there is a part in there which talks about ‘other emerging requirements’—

Senator LUDWIG—A catch-all, I suspect.

Mr Mobbs—It is certainly the catch-all that was used, for instance, in the National Handgun Buyback support system and so on. I think that with the agreement of the Police Ministers Council—and I do not speak for the minister here—that might be achieved.

Senator LUDWIG—I am just trying to work out the process.

Senator Ellison—I have already said that I am putting it on the agenda for 1 June this year meeting of the Police Ministers Council. I certainly do not have any advice that if we are all in agreement it cannot proceed. My understanding has been quite to the contrary—that if we do agree, it can proceed.

Senator LUDWIG—I am just trying to get the sequential steps. From here you have called for—in my words—a missing persons database to be set up within the CPRS. That would need the concurrence of the Australian Police Ministers Council. If that was obtained you could come back and, if there is an ability to add it to the CrimTrac operation, then either the intergovernmental agreement will cover it or the process will be amended accordingly to be included in it. Then CrimTrac will be given a direction or an indication that that is the sort of thing you want developed?

Mr Mobbs—We take our strategic guidance from the Police Ministers Council. They would probably say, ‘Would you please come back with a concept demonstrator and a business case?’ That is the preferred method.

Senator LUDWIG—That is what I was trying to understand.

Mr Mobbs—We would take that back and seek approval. The board would have a fair bit of activity in the meantime. Once we take it back and it gains approval from, firstly, the board and then the APMC, it is gloves on and away we go, funding notwithstanding.

Senator LUDWIG—A missing persons unit database began being set up under the Keating government, which lost government in 1996. I take it that that was not a matter that your government decided to pursue until now?

Senator Ellison—I will have to take that on notice. I was not aware of it.

Senator LUDWIG—There was, I can reliably inform you. In relation to the CPRS and the search capabilities of the National Names Index: does it only search on names? What other variables does it search on?

Mr Mobbs—There is a code in there called the CNI, which will be inserted if a person has been fingerprinted due to some activity that the police have an interest in. So you can search on CNI or you can search on name. What comes back is a few or several hundred candidates as a result of your search. You can further refine your search if, for instance, you know the date of birth accurately. But you cannot go in on date of birth and ask, ‘Show me everybody

with this date of birth.’ You need to search on the name. That is why it is called a names index.

Senator LUDWIG—So you principally do it on a name but you can then add the date of birth to refine the search. Is that a better way of putting it?

Mr Mobbs—Yes, you do initial search criteria.

Senator LUDWIG—With the CNI, can you search on just fingerprint or do you need a name as well?

Mr Mobbs—The presence of a CNI indicates that there is a criminal record held somewhere so you can get there very quickly because that is a precise, unique number Australia wide.

Senator LUDWIG—You have lost me again.

Mr Mobbs—It is like having a serial number as opposed to a name. There are many names but only one serial number. So if you have the CNI you can very quickly get to the person that you are really interested in because you have already got that number somehow, presumably from police investigation.

Senator LUDWIG—If the police did not have a CNI and had fingerprints only, if they are at a crime scene and discover fingerprints, do they use CrimTrac for that?

Mr Mobbs—They could search on the NAFIS—for instance, if they knew a person had a fingerprint record—and pull up the record, if it is what they needed.

Senator LUDWIG—That is the fingerprint database?

Mr Mobbs—The NAFIS.

Senator LUDWIG—And that will search just on fingerprints?

Mr Mobbs—That is all it holds.

Senator LUDWIG—You do not need anything else.

Mr Mobbs—If you have the CNI number, that is the unique number that refers to that record of a person in the NAFIS. There might be a cross-reference in the NNI to that same number, so if you are in the NNI but you have the CNI number, you know who you are really inquiring about and you can get there very quickly and find all the demographic information about the person whose fingerprint record resides on the NAFIS.

Senator LUDWIG—So, if you end up with the fingerprint, you can search the NFI. If it is on the record then they must have a CNI. Then that will take you back to the name and you can determine what the name is as a consequence of the CNI.

Mr Mobbs—I think that is correct. You have almost lost me on the turn there but I think that is correct.

Senator LUDWIG—But, in any event, the point is that it is a sophisticated search and if you have fingerprints only you can come up with a name if they are on the record books somewhere.

Mr Mobbs—When you say it is sophisticated, it might have been sophisticated in the early nineties but it is hardly sophisticated by today's sequential query language.

Senator LUDWIG—That is probably where my technology stopped. It is more of a relational database then. If it is mid-nineties it is about my vintage.

Mr Mobbs—It worked well in its day but we have just gone a long way from there.

Senator LUDWIG—In relation to the ANAO report into the implementation of CrimTrac, what progress has CrimTrac made in meeting the Auditor-General's recommendations? These are my words: it seemed to indicate fairly strong criticism of CrimTrac's progress or lack of progress in certain projects, particularly about monitoring of your projects as well.

Mr Mobbs—Yes, I think there were 11 recommendations arising from the ANAO performance audit of CrimTrac. I think it is recorded in the report as well that the agency—that is, me on the agency's behalf—agreed with the recommendations that they made. It was therefore incumbent on me to do something about them where they indicated that things could have been done better. I went through all of them in detail with my executive and other members of the agency. We went to the CrimTrac board meeting of, I think, September last year. Yes, we think it was September last year. Bear in mind that the ANAO's report became available between two board meetings. We have put forward an action plan which spells out what the problem is, what the action required is, whose responsibility it is, and timetables and dependencies that it is subject to. We laid that out in detail for the board last September. They agree with our assessment of what we need to do to pick up on things like better project management, as you mentioned, and we are working to that as we speak.

Senator LUDWIG—So when will the DNA database be finally operational?

Mr Mobbs—Is the question to do with when the DNA database will be operating across the nation?

Senator LUDWIG—The whole system, yes.

Mr Mobbs—I think I have been saying for the last two years to everybody that has asked this question: 'By the end of the year.'

Senator LUDWIG—That is what I thought.

Mr Mobbs—Yes. So I hesitate to say it again because the final resolution on this has depended on the states and territories bringing forward and implementing or changing their own legislation in order to be able to participate in the national DNA database. Bear in mind that they have their own state or territory DNA database already. The process to achieve some degree of conformity as to how the database will operate is pretty much spelt out in the amended Crimes Act forensic procedures, which have been in force for a couple of years. I believe there was a model code produced under the auspices of the model code officers committee. I think there is some commonality between that and membership of SCAG, if I am not mistaken.

The states and territories, in bringing forward their own legislation, have seen fit to make changes to what was contained in the model code and that has produced since then in most cases an inability to just pass the legislation and plug into the DNA database. I am bound by the provisions in the Crimes Act. My oversight of the operation of the national database is

contained in the Crimes Act. There are items such as matching tables which were agreed upon as a convenient and unambiguous method of deciding what matches would be permitted on the database. Along the way there have been some changes to those matching tables as they appear in state and territory legislation. Furthermore, it was decided that there should be a memorandum of understanding between each jurisdiction and CrimTrac so that we all knew where our obligations were, if you like, from a service point of view. It was further decided that ministerial arrangements would govern the way in which DNA data were compared and matched not just between a jurisdiction and the Commonwealth—that is, CrimTrac—but between themselves. Unfortunately that has been an extended process which is not yet complete. I could give you an update as of today as to roughly where those arrangements are, if you wish.

Senator LUDWIG—If it is brief, that would be helpful.

Mr Mobbs—I think the first statistic that would be of interest is that there are currently 144,546 DNA profiles on the system and that it is available to each of the nominated jurisdictional laboratories 24 hours a day, seven days a week. Intra-jurisdictional matching is available and being used by the ACT police and the AFP, New South Wales, Queensland and Western Australia. Victoria is preparing to upload its data to the database and should be operational in May. We are still discussing the implementation with Tasmania, South Australia and the Northern Territory. We have most recently received extensive legal advice on the matter of the remaining legal obstacles and we have paid quite a sum of money for AGS interpretation of that advice. That was received only last week. It is voluminous and will require some thought.

In terms of where to next, I cannot forecast when all these remaining obstacles will be removed, nor can I say when the national DNA database will be fully operational as it was intended.

Senator LUDWIG—Minister, can you add anything to that? It is an important database that seems to be languishing.

Senator Ellison—I am afraid the Commonwealth has been pushing the states and territories on this for some time. We had a long battle with the Northern Territory, as one example. The legal difficulties in relation to legislation are the issues here. It has been discussed at various police ministers councils. It is up to the states and territories to get their act together so that they can use this national scheme. We cannot legislate for them. They have got their own registers or records. What we want to see is that used nationally. There have to be in place uniform methods of collection because if you had different systems you could not deal with a national DNA database. What we are finding with everything we deal with in relation to law enforcement at a national level is that the states and territories each have their own systems and ways of doing things. We need a standard gauge so that when they do want to use that national database they can go through a single entry point.

Missing persons we have been discussing at length—that is just one example. There are missing persons units in every state and territory. They have very different ways of running things. If they want to get a national database, things have got to change. If they want a national DNA database, they have to conform with the model law. The Commonwealth has

made that very clear. We have raised it on many occasions. We have had extensive debates and arguments about it. Some states readily come on board; others do not. It depends on how strong their will is to get a national system.

Senator LUDWIG—It depends, I suspect, in relation to the missing persons database, how strong the Commonwealth is. There was the original proposal back in 1995 for a national missing persons unit where there was \$1 million in seed funding from the Commonwealth to start it. It was designed to be a central database for all outstanding missing persons, and it seemed, from what Senator Vanstone then went on to say, that it would be a matter that would be further developed in 1999—but not that unit. It seems that the Howard government abolished the national missing persons unit in 1996 when it came to government—correct me if I am wrong. If that is the case then I think there was a point where the Commonwealth should have taken responsibility. The progression of it is a matter that has been quite lengthy since Senator Vanstone indicated—I think probably in error—that there was going to be a missing persons database as part of CrimTrac, because that is certainly not there. Perhaps the minister might want to take on notice why the Howard government abolished it in 1996.

Senator Ellison—You certainly cannot do everything at once; we have seen that. Quite frankly, CrimTrac was there for law enforcement. We have seen it do work on disaster victim identification in Bali and in Thailand with the tsunami disaster, so we have been making these demands of CrimTrac. You have to remember, as we have seen with the Australian Federal Police and other agencies, where you get these matters of urgency that great demands are placed on them. They did a fantastic job in relation to Bali and the tsunami disaster.

The first thing we wanted to have in place was the national automated fingerprint system. That is much more important than any missing persons database. If you do not have a national automated fingerprint system, your basic policing may as well pack up. I saw in Victoria where they had a live scan in their police station that they were able to check fingerprints at a robbery at a petrol station. In a matter of hours they were able to make a match. Under the old system that was not possible. With criminals being so mobile these days, the NAFIS was our prime goal, if you like. I think that had to be put in place.

The next goal was a DNA database and also a child sex offender register. There was a great deal of work done on the child sex offender register. You could write a book about that on its own. We had a huge difference between the standing committee of attorneys-general and the police ministers of this country. They all came from the same political complexion; they could not agree with each other, in fact so much so I had a meeting between the Attorney-General in Queensland and the police minister in New South Wales to try and sort that one out. We launched the National Child Sex Offender Register in September last year, but that was just one program or goal we were trying to achieve—never mind missing persons, never mind vehicles, never mind firearms, never mind fingerprints and palm prints, and never mind DNA databases. So I think you have to look at it in context in fairness to CrimTrac and what we have been trying to achieve—and a lot has been achieved. We intend that to progress and the next cab off the rank, as I see it, is missing persons.

Senator LUDWIG—Minister, you indicated earlier though that all the states have missing persons databases. The then federal government in 1995 had started the process of having a

national database, but that was, as I understand it, abolished by the Howard government when it came to power in 1996.

Senator Ellison—I will take it on notice and have a look at that. I am not aware of it.

Senator LUDWIG—See what happened. It seems that it was truncated at that point. Given the time, unless you have anything further to add, we should move on to another topic.

Senator Ellison—I must say that our priority was NAFIS, because that was a crucial factor in apprehending criminals. I think the community would demand that our priority be with the apprehension of offenders first and then move on to other aspects afterwards.

Senator LUDWIG—I think I said states each have a database. They each have a unit and I assume they have databases associated with them. In respect of CrimTrac, which departments can access the fingerprint database? Can the department of immigration access that database or is it only police services who can?

Mr Mobbs—I do not think DIMIA has direct access to it. Again, it is servicing police in 39 locations across Australia. It is also used by the non-police entities such as casino and gaming units that have been set up to check on the probity of people about to work in or working in casinos or gaming establishments. I do not think DIMIA has access to it—I am pretty sure they do not, in fact. Again, it is a police tool.

Senator LUDWIG—Would they be able to access it through a policing service if they were looking for someone? Cornelia Rau comes to mind. If they were looking for her in a sense of name, fingerprints or personal identifiers, would they put that request through the police and then could that be searched on your database?

Mr Mobbs—I can only talk in hypotheticals here. If one way or another DIMIA had a set of fingerprints for a person they believed to be missing, I believe that as an operational convenience they could possibly take those fingerprints—and I imagine they would be on the standard fingerprint form or a form—to the AFP in the case of DIMIA, say, or to another police service if it was perhaps a local office of DIMIA and ask that those prints be searched against the NAFIS to see if anything was known about the person from whom they came. Again, I stress that I am talking hypothetically. That is technically what could happen. I do not know what the institutional arrangements are.

Senator LUDWIG—No. When I get an opportunity I will ask the AFP or DIMIA those questions. If they looked, though, would they find Cornelia Rau on the database?

Mr Mobbs—Which database?

Senator LUDWIG—On the fingerprint database or the missing persons database—that part of the names index; it seems to be not a missing persons database.

Mr Mobbs—I am informed that the name Cornelia Rau does appear on the national names index.

Senator LUDWIG—And how long has that been on there?

Mr Mobbs—I do not know.

Senator LUDWIG—Could you confirm how long it has been on it?

Mr Mobbs—I have some difficulty. I do not know when any record in relation to a person of that name was placed on the NNI, because we receive updates to the NNI. In the case of, say, New South Wales or Queensland, a weekly update is provided. When the new batch of records is implemented it overwrites the previous record. So let us say someone called Cornelia Rau was placed on the database in April 2004 and some other information was added to the record—in other words, she might have been of further interest to police—the date that I would see if I directed my officers to go into the NNI, and I do not do it unless a police commissioner asks me to, would be the date of the last record update. It would take a lot of inquiry and searching. The police could probably give you that information anyway to determine when a person first went on the NNI. That is not held as a record. There is no list of first record, second record and current record.

Senator LUDWIG—I see. I guess I can ask the next obvious question. Are they cross-referenced? You have a number of databases. There are four in development, as I understand it, plus the CPRS. She appears on the National Names Index. You do not know when it was put on. But is it cross-referenced to any of the other databases? That is what I was trying to work out. If you have the CNI number and a fingerprint can you work out whether someone like Cornelia Rau was on that?

Mr Mobbs—If we knew a person called Cornelia Rau had been fingerprinted by police in connection with an investigation, her fingerprints should be on the NAFIS, if police have submitted them to the NAFIS.

Senator LUDWIG—Can you say whether she was on it?

Mr Mobbs—On the NAFIS? No, I cannot. I have not had cause to ask that question.

Senator LUDWIG—If she was on it, would you know when she was put on and for what reason?

Mr Mobbs—Yes, because in the case of NAFIS, there may be multiple fingerprint records for a person. They just keep getting added until such time as the police service decides that it should purge them for whatever reason. So it is a slightly different set-up. Because it is a more modern system the capacity of the audit trail to see when any particular fingerprint record went on is greatly enhanced, as opposed to the NNI.

Senator LUDWIG—I see. Your earlier system overwrites, so it does not keep—

Mr Mobbs—It updates the record and leaves the last date of update there.

Senator LUDWIG—I see that it overwrites that, so you would not know who wrote the earlier one. Surely there must be an audit trail where you can backtrack, because if someone gets it wrong then you are updating—

Mr Mobbs—If someone gets it wrong that is really not our concern, I have to say, with respect. It is policing information. They are quite precious about the policing information they are prepared to broker on a national system. We do not change a single digit. If we did, every police commissioner in the country would be on my neck.

Senator LUDWIG—But do you put the material on or do they?

Mr Mobbs—We do. We implement the updates. It is a CD, tape or whatever.

Senator LUDWIG—That is what I am saying. If there is a data entry or a glitch, it might be an incorrect process that has gone through. It might be wrong, unfortunately. What happens then? How do you reaudit it to check?

Mr Mobbs—We do not. It is not our role. We accept the data that is given to us for brokering—right or wrong, inaccurate or out of date. That is the way it is. It is the GIGO principle.

Senator LUDWIG—Do you have a record of who comes to you then and provides you with that update?

Mr Mobbs—I could tell you on which dates we received updates, when they were implemented and when the system was updated.

Senator LUDWIG—You will keep historical data of each CD that is sent to you with the updated information on it.

Mr Mobbs—Yes.

Senator LUDWIG—So if you wanted to you could track back that way.

Mr Mobbs—It would be a very laborious process.

Senator LUDWIG—I am not suggesting you do that but I am saying it is available.

Mr Mobbs—Yes, but it would be quicker to go back to the host police service that you think might have updated the record and ask them when they sent us the last update and what was on it. We do not sit there and watch it go through; we just load it.

CHAIR—Mr Mobbs, thank you very much for assisting the committee.

[6.00 p.m.]

CHAIR—We move now to outcome 2, output 2.1.

Senator LUDWIG—Is the UN Convention against Corruption in this area?

Ms Blackburn—Yes.

Senator LUDWIG—What measures does the UNCAC put in place to fight corruption? What are you expected to do?

Ms Blackburn—Is your question about the detail of the UN convention?

Senator LUDWIG—Yes. Is action required for us to meet that convention?

Ms Blackburn—Our assessment at this stage is that Australia is compliant with the convention. We have in fact tabled the convention for the ratification process.

Senator LUDWIG—Is a national interest analysis being done?

Ms Blackburn—I would expect so. The treaty has been tabled and we are expecting a hearing before JSCOT in March.

Senator LUDWIG—That is what I had missed. I did a search, and I could not find it with JSCOT. So they have not done it yet.

Ms Blackburn—No. We are expecting to appear before JSCOT on 7 March to go through the detail of that treaty as part of the process towards ratification.

Senator LUDWIG—As far as you are aware, there is no legislative requirement to be implemented federally to meet the need to ratify?

Ms Blackburn—No. Our assessment is that the legislation that Australia has in place makes us compliant with the terms and requirements of the convention. These are matters we expect to explore in further detail at the JSCOT hearing.

Senator LUDWIG—Do you have a list of the signatories to the UN convention?

Ms Blackburn—I do not have it with me. We can certainly supply it.

Senator LUDWIG—Is it open for ratification at this point or is it simply open for signing?

Ms Blackburn—It was opened for signature in December 2003. Normally they are open for signature for a year. We are proceeding through the ratification process at this stage. In fact, Australia has signed the convention. The process we are now engaged in is the ratification.

Senator LUDWIG—I have always understood that you are able to sign and then you wait for the treaty tabling, the national interest analysis and the treaty committee. Then you see whether any legislation is required to meet the terms of the convention before ratification. It is not always followed that way, but that is the usual process as I understand it.

Ms Blackburn—That is a normal process, yes, and that is what was followed in this case. Australia signed the convention, and we are now proceeding through ratification.

Senator LUDWIG—What was the substance of the Asian Development Bank-OECD Anticorruption Initiative action plan?

Ms Blackburn—The action plan itself is a detailed document. I do not have a copy with me, but I am sure we can provide that to the committee.

Senator LUDWIG—Thank you.

Ms Blackburn—Countries participating in it are required to indicate what action they are taking and to put forward specific proposals to take action. The project that Australia is carrying forward as part of that activity is the awareness strategy that we are currently implementing on foreign bribery.

Senator LUDWIG—Are air security officers within output 2.1?

Ms Blackburn—Some parts of it are.

Senator LUDWIG—What countries has the Attorney-General's Department assisted in negotiating or securing funds for the expansion of the ASO program, other than Singapore and the United States?

Ms Blackburn—The Attorney-General's Department is currently working with the department of transport and the AFP on the negotiation of further air security officer agreements.

Senator LUDWIG—How many countries are there? Is there only Singapore and the United States?

Senator Ellison—They are the only ones we have agreements with. We are in discussions with a number of other countries.

Senator LUDWIG—Are you able to say which countries they are?

Senator Ellison—Maybe we should take that on notice. I will just check what we have said publicly. The only sensitivity is that some of the other countries might not want us to reveal those discussions.

Senator LUDWIG—That is fine. Of those that you are negotiating with—not including this group—has anyone declined at this point?

Ms Blackburn—Has any country declined to participate?

Senator LUDWIG—That you have then approached.

Ms Blackburn—Not that I am aware of.

Senator LUDWIG—Has any country ceased negotiations? Has any country cut off negotiations after they have commenced?

Ms Blackburn—Can I take that on notice, please?

Senator LUDWIG—Yes. If you can, please provide the name of country as well.

Senator Ellison—We have AFP tomorrow. Some of these answers might be ready for you when they appear.

Senator LUDWIG—I am happy for you to include this in what you take on notice: if there are any countries that have either ceased or broken off negotiations, have any of those countries indicated any reason? In respect of Singapore and the United States, has the Attorney-General's Department provided any assistance to the government to expand the ASO program?

Ms Blackburn—I am sorry; I do not understand the question.

Senator LUDWIG—Has there been any in-kind or financial assistance?

Ms Blackburn—The assistance the Attorney-General's Department has provided to date has been in the form of policy officers, who have worked as part of the negotiating teams negotiating the terms and conditions of those arrangements.

Senator LUDWIG—I might have to direct that to the department of transport. In-kind assistance might be providing a seat on a plane. A whole range of in-kind assistance to expand the ASO program comes to mind.

Mr Cornall—I think the answer is that we have provided policy advice and assistance and that has been the limit of our role.

Senator LUDWIG—My aside was that I might have to go elsewhere, effectively.

Senator Ellison—I think the AFP could assist you there. I will not put them in it, but I reckon they should be able to cover these more operational matters.

Senator LUDWIG—I will ask them anyway.

Senator Ellison—Blame me.

Senator LUDWIG—I will give them an opportunity to get out of the noose, I guess. What flights between which countries are the ASOs on at present? Are you able to say?

Mr Cornall—That is an operational matter, which the AFP will be able to respond to.

Senator LUDWIG—In terms of the \$5.4 million over five years for the national strategy to prevent the diversion of precursor chemicals into illicit drugs manufacture, the Attorney-General's annual report 2003-04 at page 82 states:

Expenditure under the National Strategy to Prevent the Diversion of Precursor Chemicals was lower than expected. This was because of the need to work with stakeholders to develop concepts for activities that would deliver the outcomes sought from the strategy.

I read that out loud to you because when I read it I did not know what it meant.

Ms Blackburn—Would you like me to explain?

Senator LUDWIG—Yes, please.

Ms Blackburn—Essentially, the first two years of the strategy have been about investigating the current work which is being done in this area and building coalitions with the variety of players that are in the field. When we started to work on the development of this strategy, two things were evident. There are a wide range of existing committees and organisations which, at the state level, are working on the question of precursor chemicals. When we looked at the national level, however, the issue that seemed to require addressing was national coordination of those issues. Through the process of establishing the National Working Group on the Prevention of the Diversion of Precursor Chemicals, which was established by the minister in September 2002, we have sought to bring together all of the people who are presently engaged in various parts of this work to ensure that we have strategies which are all essentially leading to the same end.

In terms of looking at the diversity of the interests engaged, you are looking at a range of Commonwealth government agencies across both law enforcement and health; at the jurisdictional level you are looking at police, forensics and health engagement; at the industry level, you are looking at the chemicals industry, industrial chemicals, pharmaceutical chemicals—manufacturers, producers, retailers and wholesalers. So in the first two years it has been a matter of pulling all those groups together to look at what is the most advantageous work that could be done to achieve some of the national outcomes we are looking for.

Under the strategy to date, we are looking at a range of projects which will ultimately expend all of that money. We have done a scoping and feasibility study on the options for the national clandestine laboratory database. We have done a report on enhancements to the National Industrial Chemicals Monitoring Scheme. We have provided for enhanced border detection training for Customs officers, and clandestine laboratory investigation training for forensic chemists. We have also supported the National Chemical Diversion Congress and an outlaw motorcycle gang conference. We are preparing a report on existing gaps in strategic intelligence required to reduce the diversion of chemicals, both within Australia and at the border. We are currently working with industry and jurisdictions to develop a suite of awareness-raising proposals to alert the general public to the dangers associated with illicit drug manufacture. We are putting in place a project management framework to ensure this all happens, and we have also supported several meetings of the working group itself. We have actually made some quite significant progress over that time, both in relationship building and in identifying the work that it would be most valuable to do.

Senator LUDWIG—That will continue over the next four years?

Ms Blackburn—Yes. Most of that work that I have identified is quite complex work. It is not work that can be done quickly. It is complex work, and complex work that requires the involvement of a lot of stakeholders.

Senator LUDWIG—What is the cost of the program—or do you call it a strategy?

Ms Blackburn—It was funded as a national strategy to prevent the diversion of precursor chemicals into illicit drug manufacture. It was funded under the National Illicit Drug Strategy. That funding totals \$5.4 million, out from 2003-04 to 2007-08.

Senator LUDWIG—What is the administration cost of the strategy? Can that be isolated?

Ms Blackburn—It can. I do not have it with me. Essentially, the administrative component is to fund one officer of my division to undertake the coordination of that work. It is also presently funding the development of the project management framework. There is support for the working group meetings—things like room hire, catering et cetera for the meetings of the working group.

Senator LUDWIG—I am happy for you to take that on notice and provide a figure.

Ms Blackburn—I can you give you a figure for that.

Senator LUDWIG—Is there an advertising budget?

Ms Blackburn—No.

Senator LUDWIG—Has any advertising been done or is any intended to be undertaken in relation to the strategy?

Ms Blackburn—Of the strategy itself, no. Obviously, it is referenced in a variety of contexts when we are talking about the projects. The only communications activity that we are looking at at the moment is under the banner of the awareness-raising proposals. At the moment we have asked both jurisdictions and industry to put forward suggestions for how we might best do that.

In that context, I should mention that there are a range of awareness-raising activities already going on at jurisdictional level—for example, with pharmacists and with real estate agents. What we are looking at there are ideas on how to extend those awareness-raising projects, but we do not speak of them as a national advertising strategy. The amount of funding that is available is not expected to be able to support a major national advertising campaign.

Senator LUDWIG—So there is not one contemplated as part of that?

Ms Blackburn—No.

Senator LUDWIG—Is the National Handgun Buyback program within your area?

Ms Blackburn—Yes, it is.

Senator LUDWIG—How many requests were received by the department for firearm importation in the 2003-04 reporting period?

Ms Blackburn—I will have to take that one on notice.

Senator LUDWIG—I might also need the number which were refused in the 2003-04 reporting period.

Ms Blackburn—I thought we recently provided an answer to a question on notice on that matter.

Senator LUDWIG—Yes. It was question No. 77. It only asked how many requests for firearm importation were refused and then on what grounds they were refused, and the answer was that no requests for firearm importation were refused in 2003-04. I have just added 'the reporting period' in case I have missed an element.

Ms Blackburn—So we have answered the question that no requests for firearms importation were refused. You are now asking—

Senator LUDWIG—The first question was: how many were received? The second one was: how many were refused in the reporting period? I have added 'the reporting period' just to see if I can be a bit more precise. Going on from that, if it remains none, because I do not need to know the reasons if there are none: how many requests were received by the department for firearm importation in the 2002-03 reporting period? That is going back 12 months earlier. And how many requests for firearm importation were similarly refused in the 2002-03 reporting period, if any? If there were any, I would like to know what the grounds were, if that information is available.

Ms Blackburn—We will take those on notice and provide that information.

Senator LUDWIG—Expenses administered on behalf of the government for the National Handgun Buyback program are itemised on page 148 of the 2003-04 Attorney-General's Department annual report. There is an increase from \$224,000 in 2003 to \$84,407,000 in 2004. It seems to be a massive increase in expenditure between 2003 and 2004 on the Handgun Buyback program, as I read the figures. Is there an explanation for that?

Ms Blackburn—I think it would be better if I took that on notice.

Senator LUDWIG—Have you got the annual report so we can identify that we are at least on the right tram? Am I right that itemised on page 148 there seems to be a massive increase in expenditure?

Mr Kennedy—The Handgun Buyback program started in the 2003 financial year. There was just a small amount of expenditure in the prior year in setting the program up. Expenditure in 2004-05, with the program due to conclude, will drop down to approximately \$12 million.

Senator LUDWIG—What was the massive increase then?

Mr Kennedy—That was all the payments to the jurisdictions under the program.

Senator LUDWIG—Could you provide a breakdown? When you say jurisdictions, do you mean that the states and territories then accessed it? The guns were handed in, the states reimbursed the money that was required and then they indented—for want of a better word—the Commonwealth. That is now reflected in that jump there.

Mr Kennedy—That is correct.

Ms Blackburn—We can provide a state-by-state breakdown of the amounts which have been reimbursed to each of the states.

Senator LUDWIG—Do the states indicate the period that related to? Is there an expectation that more will be required, that there will be another bill next year?

Ms Blackburn—The buyback has in fact ended in all jurisdictions. The start dates were slightly different for each jurisdiction, and the end dates were slightly different. But the period of the buyback has finished. However, we are still receiving from the states their reports on the hand guns and parts that were received within the buyback period and the compensation which is owed to the states. The buyback period has finished.

Senator LUDWIG—I understood that, but it seemed that, although the buyback had finished, for a whole range of reasons the accounting of it is proceeding after the buyback period finished. It seems to me that there was a lump. But is that the end of the lump or is there an unknown lump to come—or a known lump, as the case may be?

Mr Kennedy—I think this year's expenditure will be the end of the lump, because the program has finished. There will be, as you have suggested, some sort of final accounting and paying back, but it is certainly anticipated that this will be the last year of expenditure.

Senator LUDWIG—In terms of the Attorney-General's administration of the national firearms program in 2004, is there a break-up of the cost or the number of hours? How do you account for the time spent in the administration of that scheme?

Ms Blackburn—Within the Attorney-General's Department?

Senator LUDWIG—Yes.

Ms Blackburn—We have a number of staff who are identified as people who have been working full time on this buyback for some time. Their salary and on-costs are met from the program. The additional administration costs have been recorded. CrimTrac mentioned the establishment of the CrimTrac system, which has supported the buyback throughout the life of the buyback. But, for the Attorney-General's Department, the administrative costs have almost completely been the cost of staff.

Senator LUDWIG—In relation to the policy on the national regulation of firearms possession and ownership, has the Attorney-General's Department provided policy advice to the minister for justice on the national regulation of firearms possession and ownership to date?

Ms Blackburn—Are you quoting from a document of that title or is that a generic term?

Senator LUDWIG—No, it is a general question. 'Where to, next?' is the general thrust.

Ms Blackburn—The Attorney-General's Department works with the minister in the forum of the Australasian Police Ministers Council and its supporting officials group, the senior officers group, and a group under that called the firearms policy working group. Indeed, we chair that group. That has had quite an extensive policy agenda for some years, dating back from the 1996 buyback. The current agenda of the firearms policy working group is looking at issues related to security, safe storage, manufacture and rules for film armourers—that is just a selection. There is quite a range of continuing policy issues associated with the ownership

and use of firearms in Australia and the firearms policy working group is progressing those, inevitably, at the request of the Australasian Police Ministers Council. In that context we provide advice to the Minister for Justice and Customs, who is a member of that council.

Senator Ellison—There is also the national management of firearms, which is a proposal that the Commonwealth is pushing. We have put funding towards a scoping study in relation to that. Advice has been given from the department on how it could possibly work for a national system for the management of firearm ownership.

Senator LUDWIG—Where is the national firearms program up to?

Senator Ellison—The trouble is that not all the states and territories think it is such a good idea, so we are back to square one. There are some who do think it is a good idea. In fact, we are very much attracted to the Victorian model and their firearms registry, which has some good aspects to it. There are other states that are not so supportive. I must say, Victoria has been pretty good. Some of the others have not been.

Ms Blackburn—Would you like me to add to that details about the scoping study that is being undertaken?

Senator LUDWIG—No. I can put those on notice if I need to, thanks. The National Counter-Terrorism Committee program was developed and maintains a nationwide counter-terrorism capability. The original 2003-04 NCTC budget forecast allocated the rephased \$1.65 million. What was that towards? I think this is where Mr Kennedy assists me. It was a rephased \$1.65 million. What was that? Was it a shortfall or was it not spent and then used next time?

Mr Kennedy—I do not recall exactly what the rephasing related to but it was moneys that were not spent in that financial year.

Senator LUDWIG—On page 80 it said that the 2003-04 NCTC budget was \$6.68 million, of which \$1.65 million was subject to rephasing action to carry into 2004-05.

Mr de Graaff—The \$1.65 million was in relation to equipment delays—moneys that had been committed in that financial year but the equipments had not been finally delivered, so they were rephased into the following year.

Senator LUDWIG—The \$1.65 million was originally budgeted, so it simply was not spent and you will spend it this year, basically.

Mr de Graaff—That is correct.

Senator LUDWIG—So nothing was lost, in a sense. Was there a reason why the \$1.65 million was not spent?

Mr de Graaff—No. The money budgeted for the NCTC program will be fully spent but not in the forecast year. That \$1.65 million was carried over into 2003-04. From the 2003-04 budget there was a further amount of money carried over into this year's budget for the same reason, and the reason for this is long lead times on some of the equipments we are purchasing.

Senator LUDWIG—Does it mean that something was not purchased because it was not available and it should have been purchased and should have been spent so there is a lack of capability or capacity?

Mr de Graaff—No, not all. It is just that there was a delay because a lot of this equipment is purchased from overseas so it is affected by lead times through global purchasing of this sort of equipment. So the money is being carried forward to finally pay for that equipment when it arrives in the following financial year. So nothing has been—

Senator LUDWIG—Has that happened in terms of it being rephased and now available? Has it now been spent?

Mr de Graaff—For that \$1.65 million, that has occurred, yes.

Senator LUDWIG—What was it spent on?

Mr de Graaff—I do not have the detail on me, but it is a range of counter-terrorism equipment that we purchased, some of which we need to purchase from overseas.

Senator LUDWIG—Perhaps you could take that on notice and just give us a general outline of what happened to it.

Mr de Graaff—Certainly. I probably cannot give you the specific equipments because that might be classified but we can give you a—

Senator LUDWIG—Where it is not classified, then you can use a general label.

Mr de Graaff—Certainly.

Senator LUDWIG—Thank you. I can put the other questions on notice, Chair.

CHAIR—I have one question, which we might deal with now. What is the status of the US proposal to encourage the Australian government to conclude a bilateral agreement to operate under section 98(2) of the ICC statute?

Ms Blackburn—The minister provided that in an answer to a question on notice on 2 December. I think it was question No. 89.

CHAIR—I have seen the answer; has anything changed since then?

Ms Blackburn—The answer to that question remains as it is in the answer to question No. 89.

CHAIR—Thank you very much.

Senator LUDWIG—I have been asking a number of questions about the firearm buyback. At page 82 the annual report says:

Progress on firearms policy issues was delayed by the need to manage the handguns buyback program.

Why was it delayed? What was the magnitude of the delay for such policy and when does the Attorney-General estimate that it will move forward?

Ms Blackburn—There are a number of issues that both the firearms policy working group and the jurisdictions were looking at at the time of the announcement of the handgun buyback. For example, we were looking at issues associated with theft of firearms. The delay

in some of that stuff came primarily from the jurisdictions, who, once they had to implement the buyback arrangements, were unable to divert staff into looking at some of the broader issues. Similarly within the firearms unit in the Attorney-General's Department the buyback was a priority activity and all of the available resources were diverted to ensuring that that was set up and operating smoothly. That meant a number of issues, particularly related, for example, to theft, storage and manufacture—which had been on the agenda of the firearms policy working group—were simply delayed while both Commonwealth and jurisdictional staff were working on the buyback.

Senator LUDWIG—Has that now caught up?

Ms Blackburn—The buyback has now, as we have indicated, primarily concluded. There is still work to be done on finishing it. We expect now to have more resources available to work on the other issues, although we have diverted for example into the work on the national firearms management system scoping study. We are continuing to work on those other matters I mentioned under the auspices of the firearms policy working group. Again progress on those is dependent both on our resources and on the resources available in state and territory firearms registries and firearms policy units.

Senator LUDWIG—Is the progress on firearms policy issues, as distinct from the guns buyback program, now back on track? It seems to suggest in the annual report that progress on firearms policy issues was delayed by the need to switch resources to the hand gun buyback program. Maybe it is just the way the Attorney-General has expressed it in the annual report, but it gives you the impression that the policy issues—whatever they might be—were delayed. Are they back on track?

Ms Blackburn—The work of the firearms policy working group continues. The contribution of the Attorney-General's Department to that work continues. I now have more resources available to put into that work because we have less work to do on the buyback.

Senator LUDWIG—So perhaps it was just an expression.

Ms Blackburn—It was an expression of answering the question. There are a number of projects on which progress has been delayed or we have not been able to take matters forward. That was an attempt in the annual report to explain that there have been some delays in that work and the reasons for that.

Senator LUDWIG—Perhaps you could take on notice those projects which were delayed as a consequence.

Ms Blackburn—I am certainly happy to provide further advice.

Senator LUDWIG—Thank you.

Mr Cornall—Just one last matter that came out of this morning's questioning about Mr Hicks and Mr Habib: Senator Bolkus asked me about an answer I gave to estimates on 24 May, which is recorded on Page 15 of the *Hansard*, about the application of the Geneva conventions. In answer to a question from Senator Kirk, I said that we had not done a detailed comparison but that the arrangements at Guantanamo Bay were said by the Americans to comply with the broad principles of the conventions and, in many respects, we believe they do in terms of humane treatment, the right to religious observance, religious or culturally

appropriate meals and so forth. I have discussed that matter with the Attorney, and he takes the view that has been taken for some time—that is, that the details of the application of those arrangements in Guantanamo Bay are very much a matter for United States authorities.

CHAIR—Thank you very much for that clarification, Mr Cornall. It being 6.35 p.m., we will confirm that we have finished with output 2.1 and, when we resume, we will begin with output 2.2.

Proceedings suspended from 6.35 p.m. to 7.35 p.m.

CHAIR—We will begin again in output 2.2 and continue until we have finished the outputs in outcome 2. Then we will go to the Australian Customs Service, as we discussed earlier in the day. Senator Ludwig.

Senator LUDWIG—Thank you, Chair. I need some clarification. Was, for want of a better title, the document verification in 2.1 or 2.2? I can put it on notice if it was in 2.1. If it is in 2.2, I can deal with some parts of it now.

Mr Jordana—It is probably in 2.1, but I could answer a question on that if you would like to give it to us now.

Senator LUDWIG—No, I will leave it and put it on notice and we can move on. It was just unclear whether it was a criminal law venture or information.

Mr Jordana—It sits within the criminal justice area. It has clearly some ramifications that stretch across into national security as well.

Senator LUDWIG—I will go to the ‘Business-government ministerial forum’, 2.2. How many individuals were invited to attend the Business-Government Ministerial Forum on National Security?

Mr Jordana—There were 11 private sector participants and a number of Commonwealth government ministers and officials.

Senator LUDWIG—Were the private participants from NGOs or private as in commercial businesses?

Mr Jordana—No, they were private business representatives.

Senator LUDWIG—How many actual individuals were there? Were there 11 groups or in terms of bodies?

Mr Jordana—They were 11 individuals. I would like to clarify that, too. There were a couple of representatives of business organisations.

Senator LUDWIG—I will go back a little bit further. Were those 11 who represented private interests directly from the particular business or business sector or were they representing as advisers or representatives of or consultants to the particular industry?

Mr Jordana—They were largely CEOs or close to being CEOs; CEOs or their alternates.

Senator LUDWIG—So, of the nearly 40 business leaders, 11 were private sector CEO or near CEO.

Mr Jordana—There were two events that took place. One was a ministerial forum called the business-government ministerial forum that took place in June last year. Then there was

the business-government advisory group in December last year. The kinds of numbers I have been talking about with you just now relate to the business-government advisory group, which in a sense was spawned out of the first meeting.

Senator LUDWIG—Is the advisory group still meeting, or was it just for one purpose?

Mr Jordana—The advisory group will have an ongoing life. It met for the first time in December and it will have an ongoing existence. The date for the next meeting has not been set yet but it will continue.

Senator LUDWIG—What is the total number on that group?

Mr Jordana—They were the kinds of numbers I have just been mentioning. There were 11 business representatives at that meeting and, as I said, a number of ministers and Commonwealth government officials.

Senator LUDWIG—Turning back to the forum, what was the number there in terms of a breakdown between NGOs, private business, consultants representing industry and government?

Mr Jordana—I think we might have to take that on notice. I don't think we have the exact breakdown right here.

Senator LUDWIG—Thank you.

Mr Jordana—They were, again, predominantly from the private sector. The aim was to open up a dialogue on national security matters with the private sector.

Senator LUDWIG—In respect of the trusted information sharing network, how many infrastructure assurance advisory groups—the IAAGs—for different business sectors have been established?

Mr Jordana—There are eight IAAGs and one is about to form, the transport one, which would make nine.

Senator LUDWIG—So there would be nine in total?

Mr Jordana—That is right.

Senator LUDWIG—Can you establish from which industry or business sector they are from? You can either take that on notice or provide it now, depending on whether you have it there.

Mr Jordana—We can give that to you straightaway. We have the banking and finance group; the communications group; the energy group; the transport group, as I said, is about to form itself; the water services group; the emergency services group; the food chain group; the health group; and the icons and public gatherings group. I think those are the nine.

Senator LUDWIG—Is there an intention to establish further groups? Are there sectors that have been established as high-priority areas where you think there should be an infrastructure assurance advisory group but it has not yet formed?

Mr Jordana—At this stage there are no plans for further groups, but nothing is ruled out.

Senator LUDWIG—Have they all met to date?

Mr Jordana—As I said, yes, they have all met. A couple of the subgroups of the transport advisory group have met and they will probably eventually come together and meet as a transport group. Eight of the nine have met; the ninth has kind of half met.

Senator LUDWIG—In terms of the eight, is there a view about how they are going to be supported in terms of a secretariat and how often they are going to meet? Have they met and determined what secretariat or committee support they might need and the frequency of the meetings and the forward agenda? Has work of that nature been undertaken?

Mr Jordana—Because they have formed over different periods of time, they are all at a different stage of their development. To a significant extent, for some of those groups, the Attorney-General's Department will provide secretariat services. For other groups where there is a Commonwealth line agency, for example in health we have a health department, so they will provide the secretariat services. Some of the groups are even determining to fund some of their own secretariat services as well. So it is a mixed picture. But certainly they have all met and they themselves determine the tempo of their own meetings and of their own work program. Some of them constitute subgroups; some of them work just through the main group.

Senator LUDWIG—Perhaps you could take it on notice. I was after the dates that each committee has met and the dates of any future meetings, if they have been scheduled.

Mr Jordana—We can certainly provide that.

Mr Cornall—Regarding those dates, the larger group met on 23 June and the smaller group met on 10 December.

Senator LUDWIG—Is that all of the eight?

Mr Jordana—I think he might be talking about the advisory groups.

Mr Cornall—Sorry; my mistake.

Senator LUDWIG—Which was the one that met?

Mr Cornall—The larger group that Mr Jordana was talking about met on 23 June and the smaller group of CEOs met on 10 December.

Senator LUDWIG—Thank you; that is helpful. Would Habib and Hicks normally come under output 2.2 as well?

Mr Cornall—That is right.

Senator LUDWIG—I think the only issue that remained from the last time we were here was about the international Red Cross and their involvement. Was that material—the summary or copy of the International Committee of the Red Cross—ever obtained?

Mr Cornall—No, it was not provided to us.

[7.46 p.m.]

CHAIR—We will move on to output 2.3, Provide national leadership in the development of emergency management measures to reduce risk to communities and manage the consequences of disasters. Welcome, Mr Templeman. You have been very patient; thank you.

Senator LUDWIG—Has the draft report of the national response plan for mass casualty incidents involving Australians overseas been provided to stakeholders?

Mr Templeman—The overseas mass casualty plan was distributed to jurisdictions on 20 December.

Senator LUDWIG—Has the report been finalised and published or made available to date?

Mr Templeman—It was issued as a provisional document on 20 December. We had some minor issues to do with one jurisdiction. We feel they have been settled, and it will be issued as a final document very shortly.

Senator LUDWIG—Is that on your web site?

Mr Templeman—It will not be on the EMA web site until we can get that minor issue sorted out with the Victorian jurisdiction.

Senator LUDWIG—I am sorry—did you say that would be finalised shortly?

Mr Templeman—Very shortly, yes.

Senator LUDWIG—When that is finalised, will it be a public document?

Mr Templeman—Yes.

Senator LUDWIG—Could you make one available to the committee when it becomes public?

Mr Templeman—Certainly.

Senator LUDWIG—Alternatively, if you put it on the web site, a link to the web site will be sufficient.

Mr Templeman—All the other plans are on the web site at the moment, so it will be on the web site.

Senator LUDWIG—When you say it was a provisional plan, do you mean that the national response plan has not been implemented?

Mr Templeman—It is a standing plan. We wanted to issue it and have it available should there be a need to use it prior to the Christmas-New Year period. Certainly all jurisdictions have essentially endorsed the plan. As I said before, there is only one minor issue to sort out with one jurisdiction. When that occurs we will be able to issue it as a final document.

Senator LUDWIG—In terms of current guidelines or plans for dealing with mass casualties and incidents involving Australians overseas now and up to 20 December, were there guidelines that were being used?

Mr Templeman—There were guidelines which evolved from lessons learned post the Bali tragedy.

Senator LUDWIG—Were they in a concrete or written form?

Mr Templeman—The plan evolved following the direction by government to develop a plan, which related to a decision that was made on 28 October 2002 to have a plan in place by mid last year. We needed to get an extension because of the extensive consultation that was

required with jurisdictions about the development of the plan. Essentially, there were guidelines which were evolving, which had generally been agreed with jurisdictions should we actually have to activate and use that plan.

Senator LUDWIG—Was that plan or guideline used in the tsunami disaster?

Mr Templeman—No, because we were not repatriating any injured people from that disaster.

Senator LUDWIG—So the guideline or plan that you are referring to is only about casualties, triage and evacuation.

Mr Templeman—That is correct.

Senator LUDWIG—Is there a need to augment the plan, given the tsunami disaster? What covers that instance now?

Mr Templeman—We have procedural arrangements that have developed post Bali in relation to the repatriation of remains, which is a procedure we have used quite adequately with the repatriation of remains following the tsunami disaster.

Senator LUDWIG—What guidelines are they? Are they available?

Mr Templeman—They are guidelines which have been agreed with the Department of Foreign Affairs and Trade, the Federal Police, us and the Department of Finance and Administration.

Senator LUDWIG—They were used in the tsunami disaster?

Mr Templeman—They have been used all the way through with the repatriation of all the remains that have come home.

Senator LUDWIG—Will they be published? Perhaps I can short-circuit it a bit. Is there an intention to go through a draft plan, formulate it and then augment the current one, or use it as a stand-alone plan?

Mr Templeman—We have a stand-alone document, which is essentially a procedural document that relates to the involvement of the Department of Foreign Affairs and Trade and policing authorities at the time as to when remains are to be brought home and which takes account of jurisdictional responsibilities and, very critically, the role of coroners. Essentially, it is a plan which can be adapted to any circumstances where we might be handling, unfortunately, a large number of deaths overseas. On an ordinary day-to-day basis—and I am not here to speak from the Department of Foreign Affairs and Trade perspective—my understanding is that, on average, they are dealing with consular activities regarding the repatriation of Australians. The incidence of death of an Australian overseas is probably one or two a week. That procedural document is not required for this particular process. There certainly needs to be a procedural arrangement in place to deal with a large number of deaths of Australians overseas.

Senator LUDWIG—Is the intention to publish that?

Mr Templeman—We have not seen it as necessary to publish it because it is really an internal working procedural document for the needs of people in the National Emergency Management Coordination Centre, Foreign Affairs consular staff, Federal Police officers and

state and territory jurisdictions, so I do not necessarily see that there would be any need to publish the document formally.

Senator LUDWIG—Will there be any more work done on the plan in light of the experiences in Bali and the tsunami disaster?

Mr Templeman—There is certainly no more work that is necessary in relation to the overseas mass casualty plan. The one aspect of overseas mass casualty arrangements that we are continuing to look at and work on is in relation to the air transport arrangements if we have to rapidly transport a large number of casualties from a particular area. That is another aspect of mass casualty handling, which is quite separate to this. It is a separate piece of work which is necessary to be undertaken. In relation to the repatriation of remains, we have certainly been able to use this plan of a procedural statement very effectively, very quickly and with no complaint and no misunderstanding with regard to families, state and territory policing authorities or coroners.

Senator LUDWIG—The Australian Disaster Conference—is it the intention to release the report?

Mr Templeman—The conference report has been out for quite some time. It is available on our web site, and I am more than happy to provide you with a copy of it.

Senator LUDWIG—Not if it is on the website. What about the list of contributions—are they all there as well?

Mr Templeman—From the presenters?

Senator LUDWIG—Yes.

Mr Templeman—Yes, they should be.

Senator LUDWIG—The Graduate Certificate in Emergency Management—where is that offered? Which universities?

Mr Templeman—With respect to the articulation and accreditation, the delivery of the program is through Emergency Management Australia and arrangements with Charles Sturt University and RMIT.

Senator LUDWIG—The Chemical, Biological and Radiological Enhancement Program—is that under your—

Mr Templeman—Correct. Senator, you have asked me questions in previous estimates about that.

Senator LUDWIG—I know. It is a long title. I just did not want to start by making an error. The \$17.8 million allocated to the CBREP over four years—has that been expended?

Mr Templeman—It was a 2002-03 decision for four years. We have now satisfactorily completed the basic equipment buys in the first two years: \$15.3 million to equipment and \$2 million associated with that was for training and support costs and then there was \$0.5 million of project costs, which adds up to \$17.8 million. In the first year we rolled out the basic protective detection equipment. In the second year we rolled out the decontamination systems, the last of which was delivered a few months ago. We had one minor complication with regard to one of the decontamination systems relating to the rapid decontamination system.

That has now been rectified, so the program and the project are completely on track, on time and on budget.

Senator LUDWIG—I have a number of questions but I might put those on notice given the concise answers you have just given.

Mr Templeman—I am happy to take more if you want me to answer them now.

Senator LUDWIG—I will put them on notice.

[7.57 p.m.]

CHAIR—We will now move to output 2.4, Development and promotion of protective security policy advice on common standards and practices, and the coordination of protective security services, including counter-terrorism and dignitary protection.

Senator LUDWIG—In terms of the National Counter-Terrorism Committee, has the government currently accepted or adopted any of these recommendations?

Mr de Graaff—I am sorry, I do not understand which recommendations you are talking about.

Senator LUDWIG—Those on page 105 of the annual report that came out of the Council of Australian Governments. They have endorsed 23 National Counter-Terrorism Committee recommendations on protecting national critical infrastructure in June 2004. The annual report further states:

COAG also agreed that industry should be consulted as soon as possible on draft National Guidelines for Protecting Critical Infrastructure from Terrorism before their final endorsement by Heads of Government.

The Attorney-General's Department will in fact manage the consultative process. Where are you up to with those recommendations? That is where I am up to in terms of both the annual report and what I understand COAG to have agreed on—correct me if I am off the beam.

Mr Jordana—There were a number of recommendations to come out of COAG. You are right: one of the recommendations was the development of guidelines for critical infrastructure protection from counter-terrorism, and the Attorney announced the conclusion of those guidelines, I think it was on Thursday last week. Essentially, those guidelines have been agreed to at a Commonwealth level and by the states and territories, although I think we are still waiting for a couple of formal agreements to come through from the states and territories, but that piece of work has been completed.

Senator LUDWIG—So you released the national guidelines to protect critical infrastructure this week.

Mr Jordana—Let me put it this way. The guidelines are not for public release. The aim of the development of the guidelines was to provide a tool which would be taken to industry, particularly those businesses or industry sectors that were identified as critical infrastructure and where there were perceived vulnerabilities. They would be used for consultation with those businesses about what might be done by those businesses to better protect themselves. It was not meant to publicly release the guidelines, but the guidelines have been completed and have, to all intents and purposes, been agreed nationally. The idea of developing the

guidelines was to provide a nationally consistent approach to the question of critical infrastructure protection. It was a major contribution in that direction.

Senator LUDWIG—Let us come back a step then. In the annual report it says:

... the Council of Australian Governments (COAG) endorsed the 23 NCTC recommendations on protecting national critical infrastructure. The recommendations include undertaking specific threat assessments for infrastructure identified as vital to the nation ...

How do they relate to the guidelines?

Mr Jordana—There has been an extensive exercise undertaken under the auspices of the NCTC, which has been an exercise aimed at identifying critical infrastructure across the nation that is considered to be vital. ASIO has been substantially responsible for that work. Through the identification process of those pieces of critical infrastructure, the next step will be to go and consult with those businesses, business entities et cetera. Sometimes they will be Commonwealth owned; they might be state and territory government owned. The guidelines will be used as a basis for the discussions with those particular asset owners and operators. That is the connection between the two. The exercise involving ASIO was to identify the vital assets, and the guidelines will be used as the basis to discuss with the owners and operators of those assets what might be done to better protect them.

Senator LUDWIG—Can you inform the committee whether all the recommendations that were endorsed will then be implemented as part of walking the guidelines around? You are obviously not going to make the guidelines public. If I ask for them, you are not going to provide them—or will you provide them to the committee?

Mr Jordana—I would have to double-check that. I would have to check whether they could be made available on an in-confidence basis to the committee members. I am fairly confident they could be.

CHAIR—For the record, if they are tendered in the process of an estimates hearing, they are tendered as a public document.

Mr Jordana—I see. That may be a difficulty.

CHAIR—It is important to bear that in mind in relation to the standing orders. Unravelling that is quite complicated.

Mr Jordana—Thank you for that clarification.

Senator LUDWIG—So they cannot be provided in camera as such.

CHAIR—Correct. Not if they are provided in this process.

Mr Jordana—I apologise for that.

CHAIR—Not at all.

Senator LUDWIG—That was the purpose of my novel question.

CHAIR—Sorry I was listening!

Senator LUDWIG—I did not think you could bring them forward here. If any of the shadow ministers wanted a particular brief on that they could then seek a private briefing with the minister in relation to those guidelines, if they have not done so already.

Mr Jordana—Yes.

Senator LUDWIG—The process is that the guidelines will be used as a consultative tool with industry—is that what you said?

Mr Jordana—That was the objective. The guidelines provide some suggestions as to how the owners and operators of assets might be able to respond to a situation where they are deemed to be both vital and, perhaps, have vulnerabilities if you take a look at the threat environment in which they operate. If the states, territories or ourselves approach those particular asset owners and operators we can provide a nationally consistent approach to what they do about the fact that they have been identified as vital and may have some vulnerabilities.

Senator LUDWIG—Regarding the consequences of the consultative process, is it mapped out how long that will be and when it will conclude, if at all?

Mr Jordana—It may never conclude. The aim of the exercise is that this would open up an ongoing dialogue between government and business, if, as I say, these particular assets are privately owned, because some of them are government owned. If they are privately owned, the ongoing dialogue will be particularly through the states and territories in which those assets sit. Also, it will be used as a basis for an ongoing dialogue with business about what the arrangements will be. There will be reviews done on an annual basis by the NCTC as to whether or not there need to be new assets added to or taken off the list. It will be an ongoing program of review and of consultation with business.

Senator LUDWIG—Will that process inform you as to whether any legislation or regulation is required in this area?

Mr Jordana—That is quite an important and interesting question. Some of the assets that may be identified may already fall within a regulated sector. I am talking somewhat hypothetically now, but if they fall within a regulated sector then conceivably what they would need to do to protect themselves could be done through government regulation. If they are owned by a Commonwealth, state or territory government, then clearly there is a degree of influence that those governments have over those particular assets and they could be asked to carry out certain measures that would help to better protect them. If it is a privately owned asset and belongs to an unregulated sector, then the government's preference would obviously be to enter into a dialogue with that particular asset owner and, in a collaborative way, to reach an understanding about what might be the appropriate protective and security measures they could take.

Senator LUDWIG—I am missing the point, perhaps, in terms of the original recommendations. I can understand what the guidelines might be used for, how they might develop and how things might flow from that, but how do we examine whether they in fact meet the recommendations—because they are not public and the guidelines, by the look of it, are not public? So how do I ascertain, rather than by asking you to reliably inform me, that in fact the recommendations are being met and that the guidelines will form part of that process?

Mr Jordana—The recommendations are from COAG and a member of COAG is the Prime Minister. Therefore it flows from that that we will, at a Commonwealth level, seek to implement what the COAG agreement has been. I am aware of the body of recommendations.

I cannot off the top of my head remember precisely all of them, but most of them, as I recollect them, revolve around the kinds of issues that you have been raising about the guidelines and the need to consult with industry and so on. Certainly that is what is being done.

Senator LUDWIG—That seems clear, I think, from all sides. But at the moment we have a position where some assets are protected, or potentially protected, and others are not.

Mr Jordana—No. I would not quite put it that way. Part of the process is an analysis being done by ASIO as to what the threat environment might be for a particular asset and what particular vulnerabilities they may have. Security is not a new thing for many of the owners and operators of these assets, so it is not as though they will be starting with a blank sheet of paper. But the aim of the exercise is to enter into a dialogue with the owners of those assets to ensure that they have a level of security and business continuity arrangements in place that are appropriate for the particular threat environment which prevails at the moment. But it would not be quite accurate to say that some of them are unprotected. That is probably not the case at all.

Senator LUDWIG—In the consultative process that you mentioned is being undertaken in respect of the guidelines, can you tell the committee what industry sectors are being consulted with, or what sorts of and how many meetings are going on—an idea of the scale?

Mr Jordana—First of all, the guidelines themselves were developed through a consultative process. Indeed, the guidelines and draft versions of them were discussed with the advisory groups, the names of which I outlined for you a little while ago when we were talking about the TISN. The guidelines were also, for example, made available to the business government advisory group which the Attorney hosted in December last year. So the guidelines themselves were developed partly through a consultation process with business. The consultations that will take place with the owners of the assets that have been identified will be a rolling program. Clearly, if you have identified an individual asset that requires some particular attention, then the idea will be to meet specifically with the owner and operator of that asset. This part of the process will not take place in groups; it will just be with the owner of that asset. The process will involve, for example, relevant Commonwealth agencies and appropriate state and territory agencies, particularly the state and territory police.

Senator LUDWIG—Will the guidelines deal with where the costs should fall? We were talking more broadly about some that may require legislative change and higher security levels than they currently have, or other issues that they need to address. Will the consultative process for the guidelines discuss who should bear the costs?

Mr Jordana—Again it depends on who owns the asset. If the assets are owned by the Commonwealth or owned by the state and territory, then obviously that has implications for who will bear the costs if there needs to be some additional measures taken. If it falls outside a Commonwealth owned structure or a state and territory government owned structure, then clearly that is a different matter. There is a basic principle which has been accepted as part of this process, and that is that security ultimately is a cost of doing business and therefore measures taken to improve security are a cost of doing business. There have been instances in, for example, the transport sector where there have been measures that have been mandated by

the government, and in certain circumstances there has also been some financial assistance provided. So I cannot answer your question categorically, but I think the basic principle that security is a cost of doing business is the government's view as it currently stands.

Senator LUDWIG—Can we restate the principle like this: if it is the Commonwealth they will foot the bill; if it is the state or territory they will foot the bill; if it is the owners of the particular asset in question, if it is a private business they will broadly accept that the cost will fall onto them unless they kick up enough of a stink and then you come and help them. Is that correct?

Mr Jordana—I probably would not have characterised it in that black-and-white way. It is to this stage somewhat hypothetical; we have not reached that point yet.

Senator LUDWIG—I am just trying to establish the principle.

Mr Jordana—But your characterisation of the basic principle is not something I would necessarily take great exception to.

Senator LUDWIG—Is visiting foreign dignitaries under 2.4?

Mr de Graaff—It is 2.5.

Senator LUDWIG—It is the same people, but technically we will move to 2.5, chair.

CHAIR—How about literally we move to 2.5 as well.

Senator LUDWIG—I would have to turn the page if we did that! The Attorney-General's Department provided 13 advance security surveys in relation to nine overseas trips undertaken by the Prime Minister in 2003-04. That is in addition to the visit of the President of the United States and the President of China. What was the total cost for the Attorney-General's Department to provide advance security surveys in relation to overseas trips undertaken by the Prime Minister? I am happy for you to take that on notice if you do not have those figures available.

Ms Mack—We will take it on notice.

Senator LUDWIG—What was the total cost to the Attorney-General's Department to manage and coordinate security for the visits to Australia of President Bush and the President of China? Perhaps you could deal with them separately.

Mr Jordana—It is quite a difficult calculation to do because of the number of different assets that have been brought to bear from different types of agencies: defence assets and so on. Just for the department?

Senator LUDWIG—Just the expenditure in terms of what A-G's could do. We can ask the others. Take the agencies that are covered in your area.

Perhaps you can take these on notice too. I suspect you will not have the information at your fingertips. I will run through them: the total number of foreign dignitaries who visited Australia in 2003-04 in an official capacity and just an overview of, if not the dignitaries, if there was a delegation then perhaps the leader's name if available, so that we can identify the dignitary or the issue involved, and the cost of protection, if there was an individual cost, by the protective security element of A-G's. If not, please tell us the cost to A-G's.

The Attorney-General's report also states:

Expectations of foreign security services, who often interpreted the security environment differently to Australian agencies, have increased.

What does that mean? I think I know what that means, but I am curious what you thought it meant.

Mr Jordana—I should imagine—and my colleagues will correct me if I am wrong—that, in the post September 11 environment, clearly countries who may be sending visitors to Australia have their own particular security environment in their own country and also have their own views about what the risks to their people who are travelling overseas might be. They come into an environment such as Australia. We would say with some confidence that we have the best handle on what the particular threat environment in our own country is and would therefore have a view as to what would be an appropriate set of security arrangements to adequately protect our visitors. So in those circumstances there could be different levels of expectation. It is probably not surprising that many of our visitors from overseas might have growing expectations about what the appropriate security arrangements should be.

Senator LUDWIG—The rest of my questions go to the same issue of visiting foreign dignitaries, so it might be easiest if I put those on notice. Is there any part of the Australian Federal Police Protective Service left within output 2.5 or is that now all within the Australian Federal Police?

CHAIR—Are you asking whether there is anything of the APS administration left in 2.5?

Mr Cornall—No, the whole agency has been transferred to the AFP.

Mr Jordana—Through the guarding function, which is coordinated through PSCC, the Australian Protective Service, which has now been absorbed into the Australian Federal Police, provides that service. So there is a relationship between those two issues.

Senator LUDWIG—The annual report says at page 114:

State or Territory police provided guarding services where the AFPPS was unable to meet requirements. Private sector guards were employed at less sensitive locations.

The Australian Federal Police Protective Service would otherwise do the guarding. Are you able to say in how many instances they were not able to meet the requirements of the provision of protective security services, and contractors were then utilised?

Ms Mack—Yes. I will take that on notice.

Senator LUDWIG—Is there a criterion or circumstance that would dictate when you would accept that as an answer—that contractors may be used?

Ms Mack—It could be that you are in a state that has fewer protective security personnel assigned to it normally. There could be competing events in the state at the time, and so on a priority basis the AFP or the state police would provide us with support where we needed it. If they were unable to do so, we would resource security from elsewhere.

Senator LUDWIG—When you provide that answer in terms of how many instances, if you are able to can you also give a short synopsis about why you were unable to meet the

requirement in that particular instance. Was it a lot of instances or was it a few? I am just trying to work out the workload.

Ms Mack—Certainly. Off the top of my head I could not tell you. I would say it was fewer rather than many. As to the reasons for it, they would not always give us their operational reason why they were unable to help us out with a request to provide security.

Senator LUDWIG—If they did not, you could put a line saying that, for operational reasons, they did not supply a reason. You would be able to then include in how many instances and in what circumstances private sector guards were utilised to replace the AFPPS—in other words, what option you then went to, who that was, and the cost of each particular one for each incident that was required, and then the total cost that was utilised. You would be able to take those on notice?

Ms Mack—Yes, I will take those on notice.

Senator LUDWIG—Thank you. That is all I have.

CHAIR—That concludes our inquiries in relation to outcome 2. Thank you very much, Mr de Graaff and Ms Mack.

[8.33 p.m.]

Australian Customs Service

CHAIR—I welcome the officers of the Australian Customs Service.

Senator LUDWIG—With respect to the apprehension of suspected foreign illegal fishing vessels, does that come under output 3? Is it better to deal with it there, or do you want to deal with it now?

Mr Woodward—When Coastwatch comes on, if there are any other questions we can perhaps pick it up then.

Senator LUDWIG—With respect to the intelligence area, I might come back to that as a general question. The budget allocated to the ACS for intelligence—is that better off dealt with as a general question or under an output?

Mr Woodward—Either way.

Senator LUDWIG—I will ask that now: how many officers are engaged in the area of intelligence in ACS? Is there an intelligence section as such?

Mr Woodward—The basic intelligence group has got about 150 or 160 in it but it has been made more complicated in some ways because of the additional work we provide in relation to profiling for containers and other purposes. I think—and we would need to check this and confirm the approximation—it is in the vicinity of 250 or 300 altogether.

Senator LUDWIG—Does that section liaise with ASIO and other intelligence agencies?

Mr Woodward—I stress it is not a unit in the sense in which you describe it. We have an intelligence branch in our central office. We have intelligence units in each of our regional offices and we have people who, in relation to operations, work very closely with our enforcement operations people. They would be our intelligence area, and we have a separate law enforcement and security branch which has a particular responsibility for liaison with the

Federal Police and the Crime Commission. It does briefings for the Crime Commission board. It provides a secretariat for the Heads of Commonwealth Law Enforcement Agencies, so between those two areas are the principal points of contact for organisations such as ASIO.

Senator LUDWIG—Is there a common communications platform between ASIO and the Australian Customs Service intelligence area?

Mr Woodward—We can communicate in a secure manner with all of the major intelligence organisations and we have very high security links into various parts of Defence.

Senator LUDWIG—In respect of the joint offshore protection command, the federal government announced on 15 December 2004 that it is to assume direct responsibility for counter-terrorism prevention interdiction and response in all offshore areas of Australia using the joint offshore protection command. Has the Australian Customs Service requested or received any legal advice concerning the ability of the joint offshore protection command to order any vessel within the 1,000 nautical mile Australian maritime identification zone to report to the ACS the contents of its sea cargo?

Mr Woodward—We have sought, obviously, longstanding legal advice in relation to the powers that can be exercised in relation to the various parts of protection of the border. Those relationships are extremely complex and, in large part, they are the powers that are actually exercised by staff on our Customs vessels and also on patrol boats and other naval vessels. Can you repeat the second part of the question.

Senator LUDWIG—If there is any ship within the 1,000 nautical mile radius, which is within the Australian maritime identification zone as distinct from the traditional zones that we have had—

Mr Woodward—We already have powers. I think there may have been a little bit of public confusion earlier on—not in this committee, obviously.

Senator LUDWIG—There was confusion with me, I am happy to admit.

Mr Woodward—We already have many of the powers that have been mentioned in various press releases. We have the ability now to get information in relation to cargo at 48 hours out. In relation to a cargo vessel travelling at about 20 knots, 48 hours is very close to a thousand miles—in fact, it may be slightly more. We also have the ability to get, and we do get, advance passenger information in relation to crews of vessels. That information is available to us at an early point and is manipulated. We have impending arrival reports, which we are able to activate, that tell us of cargo on cargo vessels. So regarding much of what has been included in some of the material that was put out several months ago, there are already powers in the Customs legislation. There is obviously some refinement that needs to take place and there is more work that needs to be done in relation to powers in the vicinity of installations, so there is more work to be done on that.

Senator LUDWIG—What about the ability to stop and board a ship in the thousand-mile zone?

Mr Woodward—We have that ability now in a range of circumstances. Let me give the broad array of circumstances—I am sure my colleagues will correct me if I am wrong. If it is in the territorial sea, within 12 miles out from the Australian coastline, there is a clear ability

to board and question any vessel. In the contiguous zone, the next 12 nautical miles, there is another array of powers—in other words, it is diminishing. In the EEZ, which extends out to 200 nautical miles, if there is a suggestion that an offence has occurred involving the Customs Act, fisheries legislation, natural resources related legislation and, again, depending on whether or not the vessel is an Australian vessel, an unflagged vessel or the vessel of a foreign state, there are certain powers which can be exercised. There is another array of powers which already exist in relation to incursions within 500 metres of an oil or gas installation. In terms of boarding, many of those powers are in fact currently exercised. They were exercised in relation to people smuggling and they are exercised virtually on a daily basis in relation to fishing offences.

Senator LUDWIG—But in terms of having an unfettered power to board and check up to a thousand nautical miles, that is not right.

Mr Woodward—My recollection, and I will pass over in a second to the admiral, is that what is intended is a layered source of information, a series of zones where information will be progressively obtained. One is at a thousand miles, one at 500 and another I think at 200. So it is information rather than a power to actually do anything. The point I was making at the beginning of my answer was that much of the information-gathering ability that has been mentioned already exists, not just in theory but in practice under the Customs Act. But there may be additional points which the admiral wants to add.

Senator LUDWIG—In terms of the thousand nautical mile limit, the joint offshore protection command is using existing powers, those powers that were already there, and there is no additional power that has been granted.

Mr Woodward—I would stress that, at that point, it is an information exercise. What we also propose to do—when I say ‘we’, the command will act under the directive of the Chief of the Defence Force and me; it is a joint directive—is to develop over time an information management system which will better enable us to manipulate the data which already exists out of the Customs system. And we will be able to better gather and manipulate information which other agencies have, such as the security side of the transport department, and I have no doubt that it would pick up AMSA and other agencies.

Senator LUDWIG—Did the admiral want to add anything to that?

Rear Adm. Crane—Senator, I think Mr Woodward has provided the clear indication that what we are really looking for is the information systems. We suspect that a good deal of the information that we are after is already available. We want to bring it together in a coherent package where it can be managed properly.

Senator LUDWIG—Has there been any request for legal advice about how the 1,000 nautical miles will operate—in the sense of what the limits are? Or is there existing advice that you are intending to run on?

Mr Woodward—There are two pieces of legal advice. We have been getting advice from lawyers over the years, because we are exercising many of those powers on a day-by-day basis. For years we have got progressive additions to that legal advice, including access to the international legal experts in the Attorney-General’s Department. There are the sensitivities of having Customs legislation, Customs related legislation and the law relating to that. We also

have Defence legislation, and constitutional provisions are going to be exercised out of Defence. Obviously Defence is the appropriate authority to be seeking legal advice in that area. But the two will be brought together. In a sense, we are lucky to have an existing senior serving officer with an understanding of Customs who will be ensuring that all of those angles are properly brought together.

Senator LUDWIG—What I am trying to ascertain is that it will not provide, in terms of the operation of the joint command, any additional power that it does not already have. Will it require, as a consequence, any changes to the operations as to how you then ‘police’ the 1,000 nautical miles?

Mr Woodward—I would not want to leave you with the impression that there is not further work in relation to the law that needs to be done. Clearly, there is more work that needs to be done. That could involve some variation in relation to defence powers. In all probability, at least in the short term, it will involve some changes in relation to Customs and Customs related powers, but the particular difficulty that we have got is that, certainly, the Customs Act changes have to be in the context of the relevant conventions, and the conventions are currently an impediment to bringing about some of the changes that we think may be necessary. There is international work going on which, hopefully later in the year, might help us on that.

Senator LUDWIG—What sort of work is that?

Mr Woodward—I cannot recall the name of it, but it is known as the SUA convention. What ‘SUA’ stands for I am not 100 per cent sure. I am not sure whether my colleagues from Attorney-General’s can help me out, but it is a transport driven maritime convention.

Senator LUDWIG—Does that mean that there might be changes to the convention which allow an increase in powers in terms of the 1,000 nautical mile limit?

Mr Woodward—In the same way that what we can do in an international convention sense is limited by the Law of the Sea and the relevant international maritime conventions, there is further work going on within the international maritime environment with regard to the current limitation that we have, particularly in the 200-mile zone, limiting us to the ability to exercise powers in relation to quarantine, Customs and fisheries related activities, and I think there may be one other. There may be the ability to extend that and provide us with the ability, acceptable in the international arena, to exercise more extensive powers, particularly in the area adjacent to installations.

Senator LUDWIG—I will move on a little bit, unless Attorney-General’s want to add anything to that in relation to that treaty.

Mr Cornall—I am sorry, I just cannot recall any—

Senator LUDWIG—Perhaps you can take it on notice.

Mr Cornall—I will endeavour to do that for you tomorrow morning.

Senator LUDWIG—Thank you. Will the agencies or other departments submit tasking requests to the joint command?

Mr Woodward—We have tasking arrangements now in relation to Coastwatch. There will be the ability for taskings to be put into the new joint command. But one of the significant changes is that the new command will have a clear patrolling requirement in a security, counter-terrorism related area which will be clearer than has occurred in the past. Obviously the principal patrolling will be done by patrol boats. In particular the new Armadale class will be directed in effect by the admiral, but that is an area that I would again pass on to him.

Rear Adm. Crane—They will be augmented security patrols, which I think was included in the announcement in December by the Prime Minister. These controls will be conducted by both Customs and Australian Defence Force assets, and current planning is that we will commence those in early April, if not before.

Senator LUDWIG—Will anyone task those security requests? You may get a number of requests to do A, B, C and D: who will receipt those, prioritise them and then implement the particular missions?

Rear Adm. Crane—The tasking of the assets for the patrols will be done from the joint offshore protection command. I anticipate that there may be requests coming forward from agencies for additional patrols. The risk assessment will be done against those tasking requests within the joint offshore protection command and it will be their responsibility to come up with the security patrolling regime.

Senator LUDWIG—Will the joint command be responsible for determining, if there are multiple similar level security requests, which agency or department wins in the sense of the mission?

Rear Adm. Crane—It will not be a case of which agency wins; it will be a case of which tasking request carries the higher priority. I anticipate that we will be able to use the current risk assessment methodology that we use for tasking requests that come in for the Coastwatch organisation in support of the civil maritime surveillance program. We have many thousands of requests coming in from agencies that we support. They are put through a common risk assessment methodology and then at the end of that we are able to task our assets in support of the civil maritime surveillance program. We will be using the same type of approach in tasking augmented security patrols.

Senator LUDWIG—So this has not been worked out with particular agencies or departments yet; it is a work in progress. Is that the way you characterise it?

Rear Adm. Crane—It is certainly still a work in progress, but it is a work in progress that we are moving very quickly on, and it will be in place very shortly.

Senator LUDWIG—You have not finalised the risk assessment model that you will use yet either. You have indicated that you may use Coastwatch, but it is not suitable. Obviously, it is for a different role or purpose that Coastwatch use it.

Rear Adm. Crane—We will make some adjustments to it if necessary but, at this stage, we intend using the same sort of approach that we use for the taskings that we get through for Coastwatch.

Senator LUDWIG—You will be responsible for enforcing legislation that will fall within this area. Have you been tasked with which pieces of legislation you will be responsible for and able to use?

Rear Adm. Crane—Part of the advantage of this particular approach is that we already have a responsibility for the coordination of the surveillance effort or for providing the surveillance effort and then coordinating response services to that surveillance effort. So, through our client agencies, we already provide a level of response. We see the same thing applying here. The response may well be different if we are faced with contingencies that might include counterterrorist type activity, but it is a very similar approach. We are not looking to apply separate legislation or anything like that.

Senator LUDWIG—Yes, I know that. I can appreciate that, but I am interested to understand which pieces of legislation you may then be required to call on and use as part of this operation. You must have some idea of that. One will clearly be the customs legislation, but what other pieces of legislation?

Mr Woodward—That was the point I was making before. Most of the powers that will be used are the powers that are currently used not just by Customs but also by the Navy—that is, the Customs Act. There are provisions in the Customs Act that are also mirrored in the immigration legislation in relation to people-smuggling. In the short term, the principal powers that will be exercised will flow from the Customs Act, but the point I also made was that there are certain additions to those powers which need to be made. At the same time, further work will be done in relation to the potential for exercise of Defence Act powers. I also stress that the powers under the customs legislation are already extensive and extend in certain circumstances to the point of firing across the bow of a vessel or at or into a vessel, so the powers are basically there. We do not often use those particular powers, but they are extensive.

Senator LUDWIG—That will give you the ability to board vessels and exercise coercion or force.

Mr Woodward—I stress that there is an array of circumstances. The circumstances depend on where the vessel is in relation to distance from Australia; whether it is Australian-flagged, foreign-flagged or unflagged; whether it is in the territory of another nation, and there are obviously difficulties in relation to that; and the proximity to an installation, whether it is within 500 metres or beyond 500 metres. All of those variables add up to a very complex legal mix.

Senator LUDWIG—So it could include customs legislation and legislation administered by the Australian Federal Police.

Mr Woodward—I cannot see any reason why AFP legislation would need to be amended. As I say, agencies are able to use Customs Act powers now, including the Defence Force, so it would be using or exercising powers that already exist until any legislative amendments are made, either to our legislation or defence legislation.

Senator LUDWIG—That would also include those powers that are available to you under fisheries, quarantine and the environment, I think?

Mr Woodward—We do work in relation to environment and we do have the ability in certain environmental circumstances—I will correct that if I am wrong—to exercise those same powers out to the 200 nautical mile area. If that is wrong, I will correct that.

Senator LUDWIG—So those identified heads of power or the relevant agencies will be able to exercise those powers that those agencies now operate with in the same way?

Mr Woodward—In the same as we do now. If it is a fisheries offence, an environment offence or a people-smuggling offence, they are basically the powers that are exercised now.

Senator LUDWIG—Is the number of assets that are available all of the current patrol boats? Is there anything else?

Mr Woodward—I will pass over fairly quickly to the admiral on this. The assets that will be used, at least in the short term, are the assets that are currently available: the ACVs and the existing patrol boats. The assets flowing from the 14 Armidale—12 boats and two additional ones, making 14—class patrol boats will become progressively available for use in this and obviously other work. The admiral might like to add to that.

Read Adm. Crane—That is essentially the picture. It is not unlike what occurs today, where the Fremantle class patrol boats are provided from Defence in support of the Civil Maritime Surveillance Program in a response sense. In the future, we see that the Armidale class patrol boats would be provided in a similar way, only to a joint offshore protection command. In the same way, the Australian Customs vessels would be added to the list.

Senator LUDWIG—What about infrastructure of Coastwatch and their aircraft? Will they be available? Will they form part of that?

Read Adm. Crane—Yes, they will. The important part of the process is that this is a bringing together of what is available in Defence now and what is available in Coastwatch. The Coastwatch dedicated surveillance assets—our 17 aircraft—would be available as well for work inside the joint offshore protection command.

Senator LUDWIG—Will the command deal with future strategic planning or will it be more operational with someone else doing the strategic planning for it?

Read Adm. Crane—The way that it is envisaged at the moment is that the command will also be responsible for developing the contingency planning for future operations at the strategic level as to where we might go as well as executing the operational plans.

Senator LUDWIG—Does that also include what assets might be needed into the future?

Read Adm. Crane—From a user's perspective, yes. I would stress, though, that it is not envisaged that the joint offshore protection command would have any ownership role in these assets. The joint offshore protection command would use these assets to execute a particular operation during a particular period of time and then hand the asset back to the owner, if you like—be it the ACV back to the relevant area of the Australian Customs Service, the patrol boat back to Navy or some other asset back to its parent owner. The joint offshore protection command would not actually be the owner of the vessel; it would be the employer.

Senator LUDWIG—How would that work in the future when Coastwatch moved to a new phase? I think their contracts come up in 2007—is that right, Mr Woodward?

Read Adm. Crane—The middle of 2007.

Senator LUDWIG—A tender process is in train or will be in train where they may be required to meet the broad parameters of Coastwatch performance, so the assets in that kit may change over time. If the assets turn out to be satellites or satellite technology for different roles, how will the joint command utilise those assets if there are already contractual arrangements in place which say that these are designed to be used for X—that is, Coastwatch duties—and the assets are not owned by Coastwatch? I am thinking of a satellite where you might buy satellite time as part of the Coastwatch contract to deliver a particular role. How do you use that? I am just trying to work through the things that come to mind.

Rear Adm. Crane—I assume when you talked about the renewal of contracts you were talking about the renewal of the air support to the Civil Maritime Surveillance program. Is that correct?

Senator LUDWIG—Yes.

Rear Adm. Crane—They are planned to be renewed in the middle of 2007. In terms of ownership of the assets, the air assets are directly employed and tasked by Coastwatch. Unlike the surface assets—the Armidale class patrol boats or the Australian Customs vessels—they are specifically tasked and employed by Coastwatch. So in the sense of future technologies such as unmanned aerial vehicles and satellite technology, there is certainly every intent to use that sort of technology in support of the joint offshore projection command as it comes on line in the same way that we would use it in support of the Civil Maritime Surveillance program.

Senator LUDWIG—Who has the ministerial responsibility for JOPC? Do you intend to use that acronym or is there another one I should learn?

Rear Adm. Crane—JOPC is the acronym we are using.

CHAIR—One should do.

Senator LUDWIG—You can say it a couple of different ways. I always get it wrong, apparently.

Senator Ellison—We say JOPC.

Senator LUDWIG—Are you responsible, Minister, or is it the Attorney-General?

Mr Woodward—It is a fairly tricky set of ministerial responsibilities, as the head of the command is given a joint directive by the Chief of the Defence Force—and obviously the CDF has a line back to the Minister for Defence—and by the Chief Executive Officer of Customs, who has a line back to the Minister for Justice and Customs. The joint involvement of two ministers in issues such as this is not unusual. Indeed, fisheries is an example where you have not only two ministers involved working closely together but three ministers and sometimes more.

Senator LUDWIG—When will you have a clearer picture of what legislative requirements might be needed for the JOPC to operate within the 1,000 miles, if any?

Mr Woodward—Work is already under way on that on an interdepartmental basis and obviously in close consultation with A-G's and external legal advisers. There will be a need for decisions in the end to be taken by ministers and there will also be contextual issues of the

constraints of conventions, but that work is proceeding. In fact, it preceded the decision to establish this command and it has a new focus and a new impetus now.

Senator LUDWIG—If I want to hold a particular minister accountable, how will I be able to work out which minister, or when will you be able to tell me?

Senator Ellison—You get two for the price of one.

Senator LUDWIG—I cannot imagine that ever happening. I am sure you will sort out which one of you is responsible.

Senator Ellison—You just look at some of the issues we have been dealing with. They cover other ministers and it just gives you more ministers to chase, which makes it easier.

Senator LUDWIG—I am not so sure about that.

CHAIR—You can spread the joy over several estimates committees there, Senator Ludwig.

Senator Ellison—There you are.

Senator LUDWIG—That is something I can look forward to for the next three years. Is there an intention to do a guideline or something to work through that? I think other agencies have guidelines or administrative orders to determine which departments and which pieces of legislation they deal with.

Mr Woodward—There is a directive already to the head of the joint offshore protection command. The directives involve the exercise of powers which are vested in the CDF, in relation to Defence law enforcement matters, and the CEO of Customs, in relation to Customs Act matters. So that directive has already been given. What we are talking about is the further work that is needed to turn the concept into reality—and it is virtually to that point—and the further work that has to be done in relation to powers.

Senator LUDWIG—Is that directive available?

Mr Woodward—No.

Senator LUDWIG—When you finally develop it into orders will it be available?

Mr Woodward—There are subordinate orders that are available. There is a directive and there will be a series of subordinate operational directives which will exist. Can I take the import of your question on notice and see what further information we can provide you in relation to that?

Senator LUDWIG—That would be helpful, particularly with the concept of the JOPC and when it is likely to be finalised. Just coming back to that legislative framework, if you are the captain of the vessel and you met with a certain set of circumstances, you would have to then have some sort of framework to work it through, to work out what power you have and what power you have not got. If you overstep the mark because there is a different set of circumstances or you perceive the set of circumstances as differing from the power that you have, then you are in hot water straightaway.

Mr Woodward—I accept that, but you have to remember that we have commanders of naval vessels and commanders of Customs vessels that are already exercising many of those

powers now. There are directives that they have for circumstances. For example, they can fire over the bow of a vessel or not fire over the bow of a vessel. Those operational directives, which are obviously fairly sensitive directives, already exist. It is the addition to directives which already exist that we are talking about, and work is well under way under the guidance of the admiral.

Senator LUDWIG—What work is that that is under way?

Mr Woodward—In relation to the directives. You have the directive, you have operational directives, if I can call them directives—I am sure that is not the word that is actually used. But what we—

Senator LUDWIG—What word is used just so that I know?

Mr Woodward—There are instructions which are available now to the commanders of vessels and it is the accretion, addition or elaboration of those instructions which is being worked on and the operational directives which are being worked on. But the overarching directive is finalised.

Senator LUDWIG—So the commander can look, at the end of the day.

Mr Woodward—He has guidance now. If this happens, here is what you are to do.

Senator LUDWIG—This is a reflection, I guess, but I will wrap it up in a question. It seems to me—and perhaps you can disavow me of this—that there are holes, there are powers, there are exceptions and arrangements. At the end of the day, I am left in a quandary as to whether or not it will gel together in an effective JOPC or whether it will be bogged down in a wad of paper trying to work out what its powers are, what it can do, how it can operate and how it can access its various assets.

Mr Woodward—I guess that is why I have been trying to emphasise that it is not as if we are building something entirely new. There is an array of powers which already exist, which not only exist in law but are exercised on a day-by-day basis already. What the government has decided to do is to add to the civil surveillance capability, which already exists with Coastwatch, and the parallel arrangements which exist in Defence in relation to offshore maritime patrolling by linking the two of them together under one head.

So, while I can understand anyone being quizzical in the first instance—and I had to be convinced myself that it would work, and not only work but work better—I have been convinced, and the basis is already there. It will not be long before it is a fully effective unit, accepting of course there is some further work to be done in relation to powers and assets.

Senator LUDWIG—Will the cargo reporting for the JOPC be a separate agreement or provided in that?

Mr Woodward—The cargo reporting is not part of the Coastwatch charter.

Senator LUDWIG—I know.

Mr Woodward—We get information in relation to vessels, crews and what is on those cargo vessels, for the purposes of, first of all, enabling the clearance of the vessels and, secondly, ensuring that the government requirements in relation to prohibited imports, quarantine and environmental issues and, more recently, security related issues are properly

covered. But we already have the system. We have our cargo management system, which will be adding to the quite powerful tools we already have, and the admiral's people will be tapping into that not as the sole source of information but as one of the sources of information. They will then, as I see it, need to have IT systems which will be able to manipulate that information which comes in from a range of sources. That will take a bit longer but the essence of it already exists and is available to Coastwatch, but they do not collect it.

Senator LUDWIG—What percentage of vessels currently report their sea cargo to Australian Customs in the 48 hours prior to their arrival?

Mr Woodward—I need to check. I thought it was any vessel of more than 500 tonnes.

Senator LUDWIG—I could not determine it from the annual report. It is probably there but it did not seem to jump out at me. I am happy for you to take that on notice, and provide the number of actual vessels that do this rather than the percentage. I think the ANAO audit report No. 16 contains an examination. No, I will withdraw that.

Mr Woodward—The questions were: which category of vessels and how many are there? You are about to go on to the third part of the question.

Senator LUDWIG—Numbers rather than percentages, I guess, as well.

Ms Grant—I have the answer to your first question, which was on the percentage. Eighty-four per cent of sea cargo reports are coming in on time at the moment, but I do not have that broken down into the numbers that you have just requested, so I will need to take those on notice.

Senator LUDWIG—Sorry about that. Thanks. The number of vessels that were intercepted as a result of any failure to make such report in the 2003-04 reporting period.

Ms Grant—We do not actually intercept the vessels that would be late reported. We would discover the fact that they had reported late when we got their arrival report as opposed to their impending arrival report.

Senator LUDWIG—What happens if they fail to report?

Ms Grant—The vessels themselves always do report their arrival. The cargo on those vessels, if it has not been reported in the time frames as required by the Customs Act, will be dealt with in various ways. Customs cannot risk assess that cargo until the cargo report is received, so by virtue of waiting for the cargo report that cargo will be delayed. We might want to have a special look at any cargo that has been late reported or we will follow up why it has been late reported and work with those reporting people to find out why they have not met the requirements of the Customs Act. It can be anything from educating them through to penalising them for the late report.

Senator LUDWIG—They can turn up in a port where they have not reported and you then do not know what the content of the containers on the vessel are—is that right?

Ms Grant—For cargo that is not reported, that is correct: we do not know what is in those containers if it is not reported.

Senator LUDWIG—So it could include anything: dangerous materials, what have you?

Ms Grant—Hence our compliance program to get cargo reports reported within the statutory time frames.

Senator LUDWIG—And what is that percentage that turns up in a port without a report?

Ms Grant—Eighty-four per cent of cargo reports are on time, therefore 16 per cent of cargo reports are late at this point in time.

Mr Woodward—We stress that that is the cargo reports as distinct from the vessel. I think Ms Grant said initially that we do have information on the arrival of every vessel. My point at the beginning was what size. We know that all pleasure craft are reported, but I am just not sure in relation to cargo whether it includes vessels below 500 tonnes or not. But they all report and, if they do not report, the worst that can happen is that they are not allowed to tie up or discharge their cargo. So the powers are there.

Senator LUDWIG—You know what the vessel is then, and if you do not know—

Mr Woodward—We know in advance that a vessel is coming. The point that Ms Grant was emphasising was one particular difficulty that we are attempting to deal with and that will have to be dealt with, which is that some of the cargo on those vessels, as distinct from the vessels, is reported late, not that it is not reported at all. The only time when the cargo is not reported at all is if there is a major issue which involves law enforcement agencies and those circumstances.

Senator LUDWIG—And if a vessel that is over 500 tonnes and falls into this category turns up and is unreported, what happens? Do you intercept it?

Mr Woodward—I am not aware of any vessel which has simply rolled up and said, ‘I am here,’ and there has been a tussle between us and the vessel in relation to its ability to actually tie up in a Customs controlled environment and, subject to all the other approval processes, discharge its cargo. Are you aware of any?

Ms Grant—The vessel is required to provide an impending arrival report 48 hours prior to arrival in Australia, which is then confirmed by an actual arrival report. So the worst case scenario would be that they did not provide the impending arrival report, but we always do get the arrival report.

Senator LUDWIG—You always get the arrival report?

Ms Grant—We do.

Senator LUDWIG—But you still do not know what cargo it may have on board?

Mr Woodward—In most circumstances we do know. Can I again stress the words that Ms Grant used: there is a certain percentage of cargo that is late reported. We want reports on time. It is not that it is not reported at all.

Senator LUDWIG—How many that turn up are not reported at all?

Mr Woodward—The circumstances that I can recall are those where there is a deliberate attempt on the part of someone to conceal the fact that there is a container on a vessel. I am sure that that has happened, but the number of occasions when that happens, with 1.9 million containers arriving each year, I think would be very small.

Senator LUDWIG—Perhaps you would just check your figures as to how many times, if at all, a boat has turned up without reporting its cargo.

Mr Woodward—We will give you that information in relation to those that we know. The real problem is if there are any that we do not know about. We cannot tell you what we do not know about.

Senator LUDWIG—No—unless you discover it subsequently.

Mr Woodward—If we discover it after the event, then it is known.

Senator LUDWIG—But it still turned up unreported.

Ms Grant—We do actually have an obligation on the stevedoring industry to advise us of any surplus cargo on a vessel. That can happen if a container is loaded at the last minute at the overseas port—they have had a bit of space on an earlier vessel and the recipient here thought it was going to be on a later vessel. They will advise us of surplus cargo, which is essentially unreported cargo, so that we can then keep an eye on that cargo and match it up with the appropriate cargo report.

Senator SCULLION—Mr Woodward, just for my clarification, when a vessel enters our economic zone—I understand this is almost like two estimates again; AMSA can probably provide some good advice on some of the requirements that are not outside cargo—correct me if I am wrong but the process is that it is a SOLAS ship. In other words, it is not a ship making a domestic voyage. When it enters the AUSREP area, which is effectively our exclusive economic zone, it has a requirement to go through the AUSREP process. There is a requirement that is nothing to do with cargo. It is the fact that it is a non-Australian registered ship on a SOLAS voyage entering Australia's controlled water space and there is a requirement—is that right?

Mr Woodward—There are two reporting requirements. One is a requirement for a report to go into AMSA, which is I think the class you are talking about.

Senator SCULLION—Yes, that is the AUSREP program.

Mr Woodward—But there is a requirement also that the vessels report their impending arrival and that they also report in advance the cargo that they have on board and crew details. There are two streams. The end result of all of this will be the ability of the joint offshore protection command to massage all of that information and produce a better array of intelligence and operational response, and I think we are able to at the moment.

Senator SCULLION—I agree. I am just trying to get on the record a clear understanding of the separate processes. When the ship crosses into our areas of responsibility—I am reluctant to say 200 nautical miles, because it differs—there is the pratique process. There is not only the manifest; there is a full crew list under which all the health requirements of each ship crew member must be declared. The last three ports of call, concerns about quarantine and all those sorts of issues are all part of that 48-hour process. Before they get there, part of that processing regime at least to AMSA has to provide for all of those arrangements. Are you telling me that 16 per cent of ships coming to Australia have failed to do that or that they have simply failed somehow in the cargo manifest area?

Mr Woodward—The 16 per cent relates to late reporting of cargo, not that they are not reporting cargo at all. They have been reporting it later than we want it, because we need to be able to manipulate it. One other point that I should mention—and, again, I will be corrected—is that I think the information we get now has the last 10 ports of call rather than the last three ports of call. With pratique, in a number of circumstances we undertake that work on behalf of the quarantine authorities, particularly in relation to the small craft.

Senator SCULLION—I was getting the impression that you could have gleaned from the evidence you have just given that 16 per cent of vessels just suddenly turned up, and I want to ensure that we were not giving that picture.

Mr Woodward—No, you are quite right, we do not mean that 16 per cent roll up without us knowing that they are coming.

Senator LUDWIG—So there are about 205,000 containers that are late reported that arrive in Australia—is that about right?

Mr Woodward—You have done the maths based on 16 per cent of 1.9 million, and I assume your arithmetic is right. That figure is reducing significantly. When our new cargo management re-engineering systems are in place and the new legislation comes into force in July—again, I will get my experts to correct me if I am wrong—I think that automatically many of those problems will be resolved because it simply will not be possible for that to occur. With the new CMR systems and the new CMR legislation, the ability for anyone to report late will be significantly diminished or perhaps not exist at all.

Senator LUDWIG—I said containers but I mean manifests. I think we both mean those manifests that are late reported that are not provided. It is a manifest that is provided or not provided, as the case may be, within the 48 hours. Is there a time line as to when those late records then do turn up? Do you have a position if they do not turn up within the 48 hours? There are 205,000 of them—when does it go to zero? When do you get all the manifests? Is it prior to the ship actually docking—if I can use that phrase—post that point before unloading, post that point before leaving the wharf or post that point?

Ms Grant—The majority of the manifests are reported within 24 hours of arrival within Australia, although the statute requires 48 hours. There is a small proportion—and I do not have the current percentage with me—that do not report until after arrival, so in those cases the containers would be discharged from the vessel but then they are held at the wharf and cannot move from the wharf until the cargo has been reported to Customs. I know in the past in some cases some people have taken a couple of days after discharge to report their cargo, which, of course, we view very suspiciously and we put a hold on that cargo so that it cannot move.

Senator LUDWIG—Perhaps you could have a look at those figures anyway and provide them. So you are also saying that they cannot move the containers until such time as a manifest or that they still can?

Ms Grant—No, the container cannot be moved until that cargo has been reported to Customs, we have risk assessed it and given them authority to deal with that cargo.

Senator LUDWIG—Does any of that get selected for the container examination facility prior to the manifest being reported?

Ms Grant—Any containers that have been sitting around for some time do become of great interest to us, and we can order them to be removed to the container examination facility if we believe the risk is such that we should examine those containers.

Senator LUDWIG—The question was more: do you?

Ms Grant—Yes, from time to time we do. If they have been unreported for some time, that is an automatic notification to Customs by our stevedores.

Senator LUDWIG—In terms of the X-ray facilities that currently exist at the ports—and I have asked a number of questions about this over the last couple of years—and the tests for radiological scans, is there any intention to increase the current number of assets that you have got: both mobile X-rays and cargo examination facilities?

Mr Woodward—The major additions will be in Adelaide, which we expect to be able to open in April. A new facility has been built, but the X-ray there will be a pallet sized X-ray. The other facility is an improvement in the building capability that we have in Darwin but, given the numbers of containers which actually go into Darwin, the government is not moving down the track of installing an X-ray facility within that building—at least in the short term.

Senator SCULLION—We do have a portable X-ray unit there, I understand.

Mr Woodward—Yes, there is an X-ray capability but not as large as the one we will be putting into Adelaide.

Senator LUDWIG—In respect of the cargo examination facility, perhaps we can deal first with the Auditor-General's audit report recommendations 1 through to 8. Have they been finalised?

Mr Woodward—Which ones are these?

Senator LUDWIG—I will go back to the Auditor-General's report No. 16. Has the implementation of the recommendations been finalised? I think it is 1 through to 8 in the Auditor-General's report.

Mr Woodward—My recollection is that we are well under way in relation to all of them, including a systems issue that was mentioned in the process of developing a systems change to replace a rather ad hoc approach that we had adopted. Ms Kelley will have some more information on that.

Ms Kelley—We have made progress on recommendations 7 and 8. In terms of recommendation 7, we have had detailed discussions with the relevant service providers, a national framework has been established, and local management and service providers are finalising the logistics plans. In terms of recommendation 8, we have already renegotiated some key performance indicators with the stevedores and the transport providers. The stevedores have agreed to a new KPI, in terms of delivering all the containers to the CEFs with 24-hour storage still on them. We are still in the process of negotiating some further revised KPIs. In terms of the other recommendations, we are working through those at the

moment and we have plans in place that we are about to implement to commence addressing those.

Senator LUDWIG—Like what?

Ms Kelley—We are looking at doing a complete review of the contracts that are currently in place because they are due for renewal in 2006. So we are looking at the range of options that we have for those. We are working with our other branches, like the Risk Identification and Intelligence Branch, around recommendations 3 and 2. We are also looking at having a business analyst coming in and looking at the databases that I mentioned for exams in particular so that we can improve the data integrity.

Senator LUDWIG—Have you changed or do you intend to continue with the way the containers are prioritised—as in priority 1, priority 2, priority 3—in the annual report? Is there any change to that, or is it as detailed in the annual report?

Ms Kelley—That is as detailed in the report.

Senator LUDWIG—Are there statistics kept on how many containers are currently inspected under the priorities 1, 2, 3 and 4 and how many are not inspected under the container examination facility?

Ms Kelley—We use the term ‘inspected’ for an X-ray and the term ‘examination’ for when we physically open the container.

Senator LUDWIG—So you use the word ‘inspected’ for when you actually open the box, and you use ‘X-ray’ for when you—

Ms Kelley—We use the term ‘inspection’ to equal X-ray, and ‘physical examination’ for when we actually open the container.

Senator LUDWIG—So when I say physically inspected it makes it difficult.

Ms Kelley—But you mean when we physically open the container?

Senator LUDWIG—We will break it down then and say: how many containers were X-rayed and how often was the box opened in 2003-04 as a percentage of the total number? What I am trying to do is get a snapshot. I think it is somewhere between five and seven per cent of those X-rayed of the total number.

Ms Kelley—The numbers that I can give you now are that since the container examination initiative commenced in November 2002, until 31 December 2004 we had inspected or X-rayed over 169,000 TEU, which is around 122,000 containers. We have not broken that down into annual figures but we could do that if that is what you wish.

Senator LUDWIG—Thank you. The audit report mentioned resource constraints which container examination facilities were subject to during the 2003-04 report year that contributed to the CEFs’ failure to meet their inspection targets. What type of resource constraints was that alluding to?

Ms Kelley—I think the audit report picked up that there was a lack of targeting support to some of the actual target selection officers. As part of the additional funds that were given for the CEFs in July this year, under the maritime security initiative there were additional funds

for staffing, and some of those funds have gone towards the risk identification or the targeting officers to provide that additional support.

Senator LUDWIG—I accept that. It is clear to me in the audit report, but that is the next section. It then went on to say, ‘what analytical support services were target section officers lacking which contributed to the container examination facility’. But if you go back and look at the phraseology in that audit report, it seems to suggest something other than that as a resource constraint—unless you say that the audit report got it wrong and they are confusing the two issues.

Ms Kelley—It could also have been that the container examination facilities were not fully staffed during some of that time. Some of the issues that were picked up in the report were that we were in the process of trying to negotiate with the stevedores around the free storage day issue. There was enormous pressure from industry around storage days and the costs associated with that. Staff were trying to manage selecting targets and also not incurring storage charges for people in industry. So there were a number of complications there that people were trying to manage at that time.

Senator LUDWIG—The next question is: what analytical support services were target selection officers lacking which contributed to the container examination facility failure to meet their inspection targets?

Ms Kelley—I think I said before that we have now got some funding and we are employing additional staff there.

Senator LUDWIG—But what was the analytical support service? Can you give me a concrete example of what we are talking about? I have got to tell you that I do not know what ‘analytical support services’ means.

Mr Thomson—Perhaps I could answer that. The key issue was essentially a lack of officers at the very lowest levels in data support. The process of identifying, reconciling and getting information into the systems and getting it back out was somewhat bigger than we anticipated because of the lack of integration with the stevedore systems and the lack of familiarity with the whole process. Since we were operating at the higher analytic level we had to retrain staff downwards to deal with the lower level data entry and extraction processes. That was what the ANAO picked up, but we are in the process, as Ms Kelley has said, of remedying that. We have done so since.

Senator LUDWIG—Did that contribute to what the audit report was also highlighting—that there were TSOs randomly selecting containers to meet the quota? Was that going on?

Mr Thomson—I do not believe that containers were randomly selected to meet quotas, no.

Senator LUDWIG—Do you rule that out? It did not happen?

Mr Thomson—You cannot say it did not happen.

Senator LUDWIG—That is what I am asking. You said you did not think it did, so can you rule it out?

Mr Thomson—There is a process always for selecting containers against risk criteria. The systems that throw containers up for our attention have inbuilt risk criteria. So a container never comes to our attention by a random process.

Senator LUDWIG—So they were not selected by TSOs to fill quotas.

Mr Thomson—A number had to be selected, but they were not selected randomly.

Senator LUDWIG—I will rephrase it: to meet the quota, were containers added to the list—in addition to the way that you would normally risk assess a container and then put it through the cargo examination facility? In other words, do you make up the numbers? I think you get the concept.

Mr Thomson—I get the concept but—

Senator LUDWIG—I am just asking you to either rule it in or rule it out. Was it going on? If it was not going on, can you rule it out?

Mr Thomson—I will go back to the beginning: containers are not selected randomly.

Senator LUDWIG—I have stopped using that phrase so that we do not get confused.

Mr Thomson—If you take the container examination selection process, the container examination facility has expanded the number of containers that can be examined, and therefore that have to be selected, by a very large amount—roughly twentyfold—so the criteria that applied to the selection of containers when we could only examine four or five containers a day in Sydney involved a very stringent selection process. A container did not get examined unless it met a very large number of criteria, and there was a good deal of research involved in weeding out containers simply because we did not have the capacity to examine. When we go to a process that can examine 100 containers a day, we necessarily relax the criteria. That does not mean that containers are selected at random but it does mean that the criteria become quite wide for selecting a container. The sort of thing that would not have justified a container selection before the facilities went into operation would certainly justify a container selection after they were in operation.

Senator LUDWIG—So you shift the goalposts to throw in extra containers in category 4 to make up the lack of targeting.

Mr Thomson—The number in all the categories expanded. Even category 1 is considerably bigger than we could do without the container examination facilities.

Senator LUDWIG—You added in numbers to categories 1, 2, 3 and 4 to make up the numbers.

Mr Thomson—Yes.

Senator LUDWIG—Did the relative experience of the TSOs contribute to the CEF failures to meet their inspection targets?

Mr Woodward—I think the point that has been made is that in relation to any major project of this kind you have got to get staff and train and develop them, and it did take us a while—it took us a fair while to get people, and get them working and working effectively. That was reflected in a number of ways. Early on there were fewer containers being inspected or examined than we anticipated. That was reversed so far as inspection procedure is

concerned in that by the July to December period 99.7 per cent of the containers that we anticipated would be inspected were in fact inspected nationally, but the figure was much lower on earlier on.

We went through a learning period. We did not do everything as well as we are now doing it, and I think there are further developments that can take place. There could well have been categorisations that went higher up in the process that would appear now to be lower in the order of priorities. I want to emphasise that, increasingly, we in the organisation are saying that there ought to be less of a focus on numbers and percentages for their own sake and that the focus ought to be on the results and the information and intelligence that are needed to make better selections. Anyone can categorise a particular container as being important enough to either inspect or examine. It is much harder when you are talking about hundreds of thousands of them. We believe the success or failure of what we do in the CEFs should not be measured by whether or not we meet numbers or percentages but by the results. I think the results have proved themselves.

Senator LUDWIG—The audit report also indicated that training programs may be required in that area. Have any been developed and/or implemented for TSOs since the audit report?

Ms Kelley—I think that is picked up in those couple of recommendations that I mentioned before that we were commencing work on.

Senator LUDWIG—That is the analytical support?

Ms Kelley—Yes, and the logistics support as well.

Senator LUDWIG—They are not training programs or modules for staff that have been developed and implemented?

Ms Kelley—No. There was a specific recommendation around some of those training modules and, yes, that is what we will be looking at. But we are in the process of working on that.

Senator LUDWIG—So none of those have been developed or delivered to date?

Ms Kelley—Not since the audit report was released.

Senator LUDWIG—Is there a date by which they are likely to be implemented?

Mr Thomson—On the target selection side, yes. We have a program to develop and deliver those courses in this calendar year.

Senator LUDWIG—Before 31 December?

Mr Thomson—Yes. The target selection process is tied in with the introduction of the cargo management re-engineering system. So the selection processes will change when that system comes in.

Senator LUDWIG—With respect to the examination of empty containers, are any of those selected for X-ray?

Mr Woodward—Yes. A small number of empties are selected. I think you have raised this issue before, and we have examined whether we ought to be looking at more in the way of

empties. In the answer to one of your questions on notice we indicated one example of an empty—not in the interior of the empty but in the infrastructure of the empty—involving the discovery of cannabis. We work fairly closely with the quarantine service, who do external scrutiny of empty containers and who look at the internal side of containers for quarantine reasons. From time to time we do mass inspections of every container on a vessel. The results of that have been nothing in relation to empties, but certainly there has been something productive on occasion in relation to full containers. So we are talking about a large number. Unless there was a particular reason why we would want to have a look at an empty—and that would have to be based on intelligence that we received—we do not see a massive pay-off in having a major diversion from full containers to empties.

Senator LUDWIG—Can you give us a figure for the latest number of empties that you are X-raying.

Mr Woodward—My recollection is that the figure is about 190—194 in a two-year period.

Senator LUDWIG—What are the dates for that?

Mr Woodward—November 2002 to November 2004.

Senator LUDWIG—In relation to the country profiles that are used for the target selection officers, as I understand it the audit report indicated that they were, to use my term, outdated. Has any work been done on updating those country profiles?

Mr Woodward—For a whole series of reasons we are looking not just at country profiles but at profiles generally, in part because we have to—because of the new cargo re-engineering systems and to build what is necessary flowing from that. But quite honestly there have been deficiencies in the past in having too many profiles injected at a regional level—in other words, not enough of a national approach—and, secondly, too many profiles. Unless you have massive systems, it is impossible to manipulate thousands of profiles. If you have one person who injects a profile that catches every second container then the whole profiling system falls apart. So we are having a fundamental look at profiling.

Senator LUDWIG—Does that include the meeting of the risk assessment panel? I take it they have not met yet.

Mr Woodward—The work that I am talking about was initiated six to 12 months ago and has been progressively under way since then. It was not something identified by the ANAO report; it was something that we decided at one of our senior executive conferences, which was held around the end of 2003, from memory.

Senator LUDWIG—The audit report is all I can go on. It indicated:

A system profile review was undertaken by Customs between February 2003 and March 2004. The review team evaluating the national country of origin profiles currently in the Sea Cargo Automation system, recommended further examination of these profiles. Customs recognises the limitations of its current approach to country of origin profiling and is considering alternative approaches to risk-rating and targeting countries of origin. Customs' draft National Cargo Targeting Strategy recommended that an expert panel review this data ...

Mr Woodward—That is true, but it is within the context of a larger profiling review which has been under way. They have identified one part of what I have seen as a larger problem that we have to deal with, and that work is under way.

Senator LUDWIG—But has that panel that is referred to in audit report No. 16 been reconvened and work undertaken, or has that been subsumed into the larger work? You might want to take that on notice in terms of detailing what that larger work is, because the audit report certainly did not touch on it.

Mr Thomson—There was an earlier audit report into cargo targeting which also looked at national profiles. All the national profiles in the sea cargo and environment were overhauled, and that recommendation is now complete. This recommendation builds on that recommendation. One of the branches in my division—the Risk Identification and Intelligence Branch—has undertaken a comprehensive national look at all the national profiles and quite recently put out guidance to the all the regions on that. So, yes, that work has been done but, as Mr Woodward said, in the context of a much larger overhaul of profiles, of which national profiles are an element.

Senator SCULLION—Mr Thompson, I had discussions when I visited a facility in Melbourne about how you triage and how wide you make it and what sort of impost that is on industry. I know that this is what has been driving this whole function to try to get some efficiency as well as a really high level of confidence. Interestingly, as you have had the higher throughput and the capacity through Melbourne as opposed to other places, you have told me today that you have widened the area that you are looking at. So it is quite likely that we are looking at areas that are now of moderate risk for those sorts of things. Has there been an opportunity to look at the results of those inspections to validate our risk assessment process? For example, are all the hits in those areas that we have assessed to be of the highest risk? Are the non-compliance hits actually falling within that area or are we also finding them in areas of what we would have thought to be moderate or low risk? In other words, there is an opportunity to test the system. You have been running it at increased levels. There has been an opportunity to look at that. How do you find we have been going, because we have had this opportunity to have a higher population in terms of the sampling?

Mr Woodward—Can I start to answer that, and my colleagues can add to it. It was a point that I was making before. Instead of looking at what might be seen as dargs or figures that we aim for, it is the results that count. Our figuring suggests, based on street level prices of drugs and street level prices of precursors, that the examination facilities have been involved in the detection of drugs and precursors to the value of about \$800 million since they opened and revenue items of about \$35 million. We are continuing, almost daily in some cases, either solely or in close concert with other agencies—particularly the Federal Police and the Crime Commission—to detect enormous quantities of drugs, precursors, revenue items and intellectual property items. I think on any test, the facilities have already paid for themselves, probably many times over.

Senator SCULLION—Quite specifically, what percentage—perhaps you can take this on notice—of those containers or those cargoes that you have assessed as low risk are you finding precursors, drugs and all those sorts of things in? Perhaps you can take that on notice. That is where I am getting to. It is an opportunity to look at that.

Mr Woodward—We will see if we can do some sort of categorisation on that. Can I stress that the ultimate test is the find rather than whether we initially classified it as low risk or high risk.

Senator SCULLION—Indeed. Thank you.

Senator LUDWIG—I might move to the same output but a different topic—that is, firearms. Page 43 of the 2003-04 Customs annual report shows that there is an increase in newly imported hand gun dealers, which it seems to then say is ‘due primarily to the buyback scheme’. I am interested to know how you connect that to the buyback scheme and on what basis the connection was made in the annual report.

Mr Burns—I did not quite get the end of that question.

Senator LUDWIG—I am really interested in how you make the connection.

Mr Burns—Can you help us with the page number in the annual report?

Senator LUDWIG—It is page 43, under firearms. In the right-hand column, in the first paragraph, the penultimate line says, ‘2002-03, an increase due primarily to the buyback scheme.’

Mr Burns—I do not know. I will have to take that on notice. The issue of certification of dealers is a function of the number of dealers that come to Customs seeking authority to import firearms. That is an industry generated number. We have something of the order of 352 registered firearms dealers as at 11 January. Of that 352, 26 of those we would consider to be involved in imports of greater than 10 at a time. The buyback scheme, as you well know, cleared against a whole lot of criteria a number of hand guns and firearms. I am not sure about the link between the two there. I will take it on notice.

Senator LUDWIG—Who writes that in the annual report then?

Mr Burns—That is a question I will ask.

Senator LUDWIG—It has me curious anyway. The issue that obviously flows from that is: on what basis was the connection made? Was there a report review undertaken to establish that link that is in the annual report? If there was, can you provide details of how that has come about? If it is a mistake, can you explain that too?

Mr Burns—Certainly.

Senator LUDWIG—More generally, how is the review of the current firearm import legislation proceeding?

Mr Burns—The review of the firearms regulations has been undertaken by the Attorney-General’s Department. We are certainly assisting in that regard. A number of the existing regulations are being tidied up. A number of regulations are being modernised as a result of industry applications to seek different treatment. In particular, an outcome of that was the decision to allow the importation under permit of paintball guns. There are submissions to the review from the film industry and the like in terms of the arrangements under which they can import firearms. At the moment they are required to destroy or re-export firearms after they have used them. They have made a request to the government that they be allowed to keep those firearms in secure storage so that they can reuse them on future occasions.

Senator LUDWIG—In terms of the interception of prohibited and restricted imports and exports, particularly drug smuggling, in the *Sydney Morning Herald* in December last year there was an article titled ‘Guns for drugs and gold as PNG trafficking revs up’. Are you familiar with that article?

Mr Woodward—I have a vague recollection of it. An article like that appears every six months or so. I am not sure whether I can recall that particular—

Senator LUDWIG—No, it was more a matter of jogging your memory about the particular area we are talking about rather than the specifics of that particular report.

Mr Woodward—We are certainly aware that there have been apprehensions of people moving drugs into Australia out of PNG and moving firearms out of Australia into PNG. In my time the number of examples has been extremely small; the number of firearms is extremely small and the quantities of drugs that we are talking about are also very small. What has worried us is that from time to time there are reports of mass movements of planes bringing in tonnes of cannabis and thousands of weapons going the other way. We are simply not aware of mass movements of that kind.

Senator LUDWIG—More specifically in terms of anticorruption measures, there are also allegations in this article that the Australian Customs Services might be involved in a sophisticated network which is smuggling marijuana from PNG to Australia via the Torres Strait island of Daru. What type of procedures do you put in place with respect to anticorruption measures?

Mr Woodward—Within Customs?

Senator LUDWIG—Yes.

Mr Woodward—It does not just relate to the Torres Strait. We have an internal affairs unit which is headed by a former senior Federal Police officer. It has a staff of about six or seven people. Any allegation of corruption involving Customs officers anywhere in Australia is reported to that unit. It reports in turn to one of the deputies and in some cases to me. If the initial examination undertaken by that group suggests that there is or may be corruption—in other words, prima facie evidence—it is referred to the Federal Police for investigation.

Senator LUDWIG—Are you able to advise the committee whether that unit has any current investigations going on in relation to allegations raised in that article headed ‘Guns for drugs and gold as PNG trafficking revs up’? I can provide a copy of that article if you want to have a look at it.

Mr Woodward—I am not aware of any current investigation under way. Can I stress also that some of these investigations are undertaken in close cooperation with partner agencies, and it is surprising how many allegations of corruption involving Customs officers are made which upon investigation, either by our own internal affairs unit or by the Federal Police, are found to be quite unfounded. But we take every one of them seriously.

Senator LUDWIG—There seemed to be an allegation in that article and I was only trying to gather what, if any, action the Australian Customs Service have taken on it. It is highlighted there; it might help draw your attention to it. It might be unfounded; I do not know.

Mr Woodward—I am told that the internal affairs unit did look at the allegation, but I am not sure how far we want to go in terms of what came out of that investigation.

Senator Ellison—Should we take it on notice and see what we can do?

Senator LUDWIG—Yes, I think that might be a better way of doing it.

Senator Ellison—There may be a point of conclusion where we can say something. We will take it on notice.

Senator LUDWIG—Thank you. I do not want you to go any further than you are able to in those matters, so if you can include whatever you can. In respect of the tamper-evident secure container—I think it is called a TSC—there was a report in the *Australian Financial Review* in January 2005, ‘Tightening the lid on containers’, about a tamper-evident cargo security system developed by General Electric. Have you had a look at that at all, or is this one of many that occasionally pop up in the system?

Mr Woodward—There are many firms in that business. I did read that article, and in fact I contacted our senior representative in Washington myself to see if there was any more information she could provide on it, which she did. General Electric is one of a number of companies which are looking at tamper-proof or tamper-evident seals. Some of them are mechanical and some of them are electronic—some electronic and passive, some of them electronic and active. US Customs is having a close look at that particular technique and, through our representative in Washington, obviously we will be keeping a close watch on how that is going. Our assessment is that, as part of the need worldwide to improve security of containers, these sorts of devices—not necessarily the General Electric option but those sorts of devices—are going to become absolutely necessary, but it involves getting not only the regulatory agencies enthusiastic about it but also the shipping companies—some of the major shipping companies are in fact very interested—the transport companies and the manufacturers of containers.

Senator LUDWIG—I was just thinking about that question you took on notice. If you cannot answer it because of the nature of the advice—you would either rule it in or rule it out—you could deny the allegation, if you are able to, as a way of adding to it or indicating that for operational reasons you perhaps cannot go any further. I might put some of my questions on the tamper-evident containers on notice as they go to what you might be doing over time to address these sorts of things, because it exercises my mind that they will come up every now and then and you would be chasing your tail looking at every different one all the time.

Mr Woodward—Can I stress that, to the extent that you are thinking of something like a tamper-proof or tamper-evident seal, that can only be implemented successfully on an international basis. In other words, there is no way that if we say, ‘We’re just going to insist on it in Australia,’ it will come to fruition—perhaps if the Americans said it; they have set a number of those standards and they have come to fruition. But work on it is being done internationally, driven partly through the World Customs Organisation and partly through the maritime security related organisations. I think there might even be a bit of enthusiasm in APEC for it as well.

Senator LUDWIG—You will end up a price taker on this, in that sense of the word. If the market changes, you will pick it up; if the market does not change, you will not implement it.

Mr Woodward—We are pushing that sort of thing as strongly as any country, but the Americans in particular are pushing it.

Senator LUDWIG—Briefly on consultancies: the annual report indicated that 43 per cent of the number of consultancies were put out to public tender, and 47 of the 55 consultancy contracts were not publicly advertised. Why do half not go out to public tender when you already have, as I understood it, a pretty open tender process—a number of huge contracts in other areas, like assets.

Mr Woodward—I will pass over to our chief financial officer in a second. I think there is an understanding concerning the material that I think we have provided to you that the ground rules in relation to consultants changed on 1 January with the US free trade agreement and, in effect, a requirement—although there are ways in which it can be massaged—for contracts over \$80,000 to go out to public tender. That does not rule out selective tendering arrangements, but in some of the comparative material, including the material that would have been included in our last annual report, it was based on the previous requirements, which were far less restrictive and value for money was the critical test that had to be applied. I suspect that when the next series of reports come in, on the basis of the 1 January 2005 reports, that figure may well change, but I am sure our CFO will add to that.

Senator LUDWIG—What happens after 1 January, Mr Brocklehurst?

Mr Brocklehurst—There is now a requirement under the revised Commonwealth procurement guidelines which picks up the requirements of free trade agreements that any procurement over \$80,000 has to go through a market process. There are exceptions to that under certain circumstances, but that is generally the principle that has to be applied. I think for procurements below \$80,000 you still work on the value for money principle and that means there is no requirement necessarily to do a full market process or whatever. You really base it on what is the best way to get the procurement and achieve that value for money outcome.

Senator LUDWIG—And that applies to Customs and generally other agencies as well?

Mr Brocklehurst—That is across the whole Commonwealth. The procurement guidelines are published by the Department of Finance and Administration.

Senator LUDWIG—And you are required to put in your annual report those consultancies above \$100,000?

Mr Brocklehurst—I think we are required to disclose consultancies in the annual report. I am not sure.

Senator LUDWIG—Is that all consultancies? Is there a cut-off amount?

Mr Brocklehurst—I would have to check on that.

Mr Jeffery—Certainly we disclose consultancies well below \$100,000 in this annual report.

Senator LUDWIG—I thought that, but that might be optional. I was just curious as to whether there is a bottom threshold level.

Mr Jeffery—I think it is the definition of consultancy. We are required to divulge consultancies. I had a quick look and I do not think we did anything below \$10,000. It seems to be that the bottom level is about \$10,000—in what we divulged last year.

Senator LUDWIG—Is it the intention to change the reporting requirements, in the sense of splitting it up between those above \$80,000, those below \$80,000, those below \$80,000 which will be value for money and still split up, and those above \$80,000 which are market process driven?

Mr Brocklehurst—I do not think the reporting requirements for the annual reports are governed by the \$80,000. The procurement guidelines say that, if the amount is above that level of \$80,000, you have got to implement certain procurement processes.

Senator LUDWIG—It would be more helpful in the sense that, when you go to unpack the figures, if you do not have those guidelines at the forefront of your mind then it is going to skew the result that you might otherwise jump to, depending on the number of consultancies. If you have a lot of little consultancies it might be skewed one way, but if you have a lot of major consultancies it can be skewed the other way.

Mr Brocklehurst—I have not seen any variations to the annual report guidelines, and that is probably what will drive it. But if they come out for the next annual report, we will let you know.

Senator LUDWIG—It may take a while for that to catch up, as sometimes happens with these things. In the complaints handling process does the Australian Customs Service maintain records of the nature of each complaint?

Mr Woodward—We record to the death—we record by numbers and by region, and we categorise the types of complaints and the types of compliments we get. We do not just record it; we see the trends that come out of it, because they are a bit of a guide to how we are performing so far as the community is concerned.

Senator LUDWIG—What about those which relate to the container examination facility? Are they all in that area?

Mr Woodward—We do categorise the types of complaints, and I stress that the number of complaints about containers being returned—with brokers and, in the end, importers having to pay for extra storage—has reduced significantly. In the last quarter, which was to the end of December, from memory the number was around 25, and that was a reduction from around 60 to 70 in the previous quarter. We take that area very seriously, but we take all complaints seriously. As I say, we have got categorisations covering the major complaints that are made to us.

Senator LUDWIG—Is there a current review going on in that area of complaints handling?

Mr Woodward—There is ongoing work in relation to the container examination facilities—

Senator LUDWIG—What about complaints handling?

Mr Woodward—In relation to complaints generally, we receive a report on a quarterly basis which goes to the senior executive. We have a look at that to see what the trends are and to see if corrective action needs to be taken. So it is action rather than review. I would just add that your question No. 156 sought information on categorisation concerning containers and we have given you a fair bit of information in response to that.

Senator LUDWIG—Yes. Is the Customs hotline under output 1 or 2?

Mr Woodward—I am not sure, but if you can ask the question we will go with that.

Senator LUDWIG—The number is, as you know, 1300363263. It seems to have excessively long waiting times before a phone call is answered. On two occasions when called, the hotline put us on hold for 24.42 minutes and another 30-odd minutes. Furthermore, the 1300 number appears to be better advertised on the Customs web site in large font at the top of the page as opposed to the 1800 number, which is used to report suspicious activity.

Mr Woodward—We certainly get complaints. That is one of the things we look at. For example, in the quarter ended December there were 70 complaints about being kept on hold for too long. What we attempt to do is establish whether there is a pattern and what we can do about it. It is inevitable if you have got a call facility and there are pressures from the community and industry that people will be held on the other end of a line. We attempt to do the best we can to deal with that.

Senator LUDWIG—You do not think that 24 minutes at 9 a.m. on the morning of 27 February or 30 minutes at 10 a.m. on 28 February was a bit excessive?

Mr Woodward—I think ‘a bit’ is probably not the right word; it is grossly excessive and it should not occur.

Senator LUDWIG—So what are you doing about it?

Mr Woodward—It depends on when those particular examples you gave occurred. We are in a process of upgrading our telephone systems, and there have been the inevitable teething problems as part of that process. I need to know when this was. If I can get some more information I would like to follow up those cases, but we moved—

Senator LUDWIG—I said February, but it was the 27 January at 9.19 a.m. when it was finally answered.

Mr Woodward—I will get someone to jot down those times.

Senator LUDWIG—I am told that it was 24.42 minutes. It was answered at 9.19 a.m. on 27 January and the second one was 30.24 minutes answered at 10.44 a.m. on 28 January.

Mr Woodward—I am sure you would not expect me to know the answer to that, but we moved our accommodation at the end of last year into the new building in Sydney. The particular facility you are talking about is based in the new building and, again, I do not know whether that might have had something to do with it. But we will check it out because the figures you are talking about, assuming they are correct—and I do not question that—

Senator LUDWIG—That is what I am told.

Mr Woodward—That should not happen, so we will look at it.

Senator LUDWIG—Is there a target time for waiting? Some of the call centres in other agencies that I talk to have particular targets that they try to meet in terms of answering the phone within a certain time.

Mr Woodward—I am sure there are but, frankly, I do not know what they are. Can we take that on notice?

Senator LUDWIG—Yes. I tried that number but I will not put you to the test. I did not write down the date and time, but it took a long time to get answered. It seemed longer than I would expect. My office does constituent inquiries at Centrelink and a whole range of other places, and it did not fit within normal queue time of those other agencies.

Mr Woodward—We may not be able to track those. We are putting a management system in at the moment to be able to track that. So, whilst we will try, it may not be possible to track those particular dates and times. But the new call centre that has been put in, the telephone arrangements that were put in in the last quarter, have significantly reduced that. That was in the most recent quarter. So we will do what we can but a management system is going in very shortly that will enable us to closely track those sorts of issues.

Senator LUDWIG—The other issue is that on your web site you have got the 1800 number and the 1300 number. The 1800 number is harder to find. Could you make it a bit easier or get someone to look at your web site to arrange things so that, if you want them to report particular activity, like suspicious activity, you direct them to that number and, if it is a general inquiry, direct them to that number. That is why I went back and had a look after the constituent inquiry. It is worth a look at, I think. It did not seem to sit well.

Mr Woodward—Thanks for that.

Senator LUDWIG—In respect of work at airports and ports on behalf of the department of immigration, who gives the direction to Customs officers as to the manner in which they are required to perform their duties: is it Customs or is there an MOU?

Mr Woodward—The last I heard, we were negotiating an MOU. I am told there is an MOU in place. But I think the word ‘instruction’ is not the way I would describe it. There are government endorsed responsibilities of Customs officers at sea ports and airports and we have got responsibilities under the legislation. In some cases the immigration minister has a set of responsibilities. We perform a role of functions on their behalf. The Immigration staff provide training to our staff to undertake the immigration functions. We have a relationship with them such that complex cases are referred to them and trends are referred to them. If there are particular issues which should be resolved at the local level, that is where they are resolved; and if there are major issues affecting relationships between the two agencies flowing from that then there are regular meetings involving the heads of Immigration, Customs, Quarantine and Transport where those issues are sorted out.

Senator LUDWIG—Do you also do quarantine on behalf of the quarantine service when necessary?

Mr Woodward—Yes, we do. That stretches from doing all quarantine work in some of the outlying ports where there is no Quarantine officer to a different set of responsibilities in the

maritime environment—the second quarantine line that you see—including the X-ray facilities, operated by Quarantine staff at airports. So we work closely with them at one end of the spectrum through to doing the entire quarantine work in outlying ports.

Senator LUDWIG—When you work with the department of immigration, who decides on who takes the lead in terms of if the team is put together at an airport?

Mr Woodward—The primary line versus the secondary line?

Senator LUDWIG—Yes.

Mr Woodward—That was a government decision taken back in the era of the Labor government.

Senator LUDWIG—Yes. It does not seem to have changed since then. Is there an overlap?

Mr Woodward—I am not sure what you mean by an overlap. What we have, let us say, in an airport environment, which everyone is familiar with, is that the primary examination is undertaken by Customs officers. There are an intelligence contribution and a systems connection through to DIMIA's system that enable Customs officers to do their work. So it is not just a Customs officer looking at whether someone should go through or not; there is a lot of information that they have, including through systems intelligence and through the information in their passports and electronic visas, that enables us to take an array of decisions.

If we have any doubt, or in circumstances prescribed by immigration, we automatically bring in the secondary line immigration officer. That occurs probably a couple of hundred thousand times a year, that there would be a channelling back to the immigration officer. I do not believe that that is overlap. In fact, I think that what we do and the arrangements that we have here are the envy of many other countries. You would be surprised at how many countries send people out to see how we do things.

Senator LUDWIG—In the percentage of foreign vessels which are visited by Australian Customs officers for the purpose of checking the immigration status of crew, do you know how many foreign crews went missing from their vessels during the 2003-04 year? Do you keep those figures?

Mr Woodward—There is a figure of 35 to 40 in my mind but, unless someone has the figure, can we take that on notice?

Senator LUDWIG—Yes and, of those, have they all been apprehended or are they still at large? I am happy for you to take that on notice as well.

Mr Woodward—I think we had figures on how many were subsequently detected and how many are still at large. But can we take that on notice unless there is an answer here?

Mr Jeffery—I cannot find it quickly, but I think it is amongst one of the questions that you put on notice that we have already responded to.

Senator LUDWIG—One of the difficulties is that we are getting some of the responses quite late—I am not portioning blame here—and I have had to turn my mind to the current questioning regime rather than to reviewing the old.

Mr Jeffery—If I can find the number before we finish I will give it to you.

Senator LUDWIG—I have re-asked some questions because I cannot recall if I actually had an answer. So thank you for jogging my memory. If it has been answered I will look for it in the post-estimates blues. I think I have asked this a couple of times, but has the Tomson case been finalised yet?

Mr Woodward—Is that the averments inquiry?

Senator LUDWIG—I do not want to keep asking this one.

Mr Woodward—The response to the House of Representatives committee report has not yet been approved by government. It has been under active consideration between departments and agencies and it is at a point of consideration by ministers.

Senator LUDWIG—Yes, I went back and read the report. I think there was a question on notice that I put to the minister indicating that Mr Tomson's legal adviser had stalled an independent review of the case by not supplying answers to questions asked of him. The minister indicated that an independent barrister would reopen the review to again ask Mr Tomson's legal advisers questions deemed necessary to progress the review. Did that happen?

Mr Woodward—Counsel did prepare two reports for us on the way in which Customs conducted the case. Of course, some might regard the Tomson case as being almost ancient history—it took place in the late 1980s—and therefore there has been a lot of reliance on papers and files. But Mr Bellew looked at parts of that on two occasions and I am sure that his reports, the report of the House of Representatives committee and the subsequent report by the interdepartmental working group will be weighed up by ministers.

Senator LUDWIG—The other matter is that there was a question of compensation and review. Has that progressed any further?

Mr Woodward—This is all part of the report which is going to ministers. The report by the House of Representatives committee did, among other things, allude to that. That issue will be picked up in the report that we are talking about.

Senator Ellison—There was a majority, as I recall.

Senator LUDWIG—Yes, there was a dissent. Or was it an additional statement? I cannot recall.

Senator Ellison—I think Duncan Kerr dissented from the rest of the committee with respect to the payment of compensation. Customs did take action in relation to public reporting of that matter. I think two corrections were made as a result of inaction by the ABA.

Senator LUDWIG—There were a couple of issues that I was interested in—first, what happened to averments and whether they are going to be reviewed. The second issue related to the more personal issue of Peter Tomson himself, what might come of that issue and whether it is finalised. The third area was one of the other recommendations contained within it that now escapes me.

Mr Woodward—At the moment both issues are being wrapped up together because they were both picked up in the report. There is a need to respond to the House of Representatives committee report.

Senator LUDWIG—I think we have been here before about this, Minister, but will you see if you can wrap that up at some point in the near future?

Senator Ellison—The committee handed down its decision on 31 May last year. There were three months and then an election was called. The caretaker provisions and then the new ministry took that virtually up to November. Then of course we had the break. That is where a bit of time has elapsed.

Senator LUDWIG—The other question I had been pursuing was the ‘schoolies’ cruise raids.

Senator Ellison—P&O?

Senator LUDWIG—Yes. There was an article in the *Daily Telegraph* and a press release from you. How many outbound cruise ships had been searched in the last period—especially where you have got the drug dogs out or something like that?

Mr Woodward—We are just having a look. I think you have put a series of questions to us on that. I think the answer is only a couple, but I cannot give you the precise figure.

Senator LUDWIG—I thought there were two.

Mr Woodward—I think the answer is two.

Senator LUDWIG—Is that in the last period? My understanding is that this was from when you were first formed, in 1904.

Mr Jeffery—It was over the last 12 months.

Senator LUDWIG—And how many were there before that?

Mr Jeffery—We would have to take that on notice. We do not have that. That is one of the answers we just provided to you, I think.

Senator LUDWIG—That does not seem a frequent event, even with two in the last 12 months.

Mr Jeffery—Bearing in mind that it is schoolies, which will only occur at the end of each year. There may only be two trips a year.

Senator SCULLION—Mr Jeffrey, do you think you could cast your response in terms of the ships that were actually on the domestic voyages—the domestic cruisers, for instance, that go up and down the coast and stay within non SOLAS voyages?

Mr Woodward—If they are purely domestic voyages then we do not have responsibility, but many of the cruisers that we are talking about on the surface are not much more than domestic cruisers. Some of them go off to Willis Islets and become international cruisers through that.

Senator SCULLION—That is what I was trying to get to. If you say there are only two cruises a year, it might not sound particularly impressive. But your responsibility is only for those vessels that are making what is called a SOLAS voyage. In terms of a ship leaving Australia, coming from an Australian port and going back to an Australian port, without going into international waters, would that come under your jurisdiction?

Mr Jeffery—By way of clarification, I was referring to the fact that there may only be two schoolies cruises. There are many more cruises a year—

Senator SCULLION—Indeed.

Mr Jeffery—but because of the timing as to when those events take place, they will always be in November-December. If a vessel is on a purely domestic voyage, it is not one that we are involved with. If it is on a voyage that contains an international component, whether it be just going out into the Pacific, cruising and coming back, we will deal with that.

Mr Woodward—I stress that we are taking your words literally—‘purely domestic’. If a vessel arrives in Australia and then visits a number of ports, if it came in as an international vessel we would still have an interest in it. So the vessels we are talking about in the answer we gave are purely domestic—and I am not sure there are many. Certainly, there are domestic fishing trips but many others are on international legs.

Senator SCULLION—I understand.

Senator Ellison—As I recall, on this occasion New South Wales police also conducted a search. The question of illicit drugs in schoolies week is a big concern. I think we will see more and more cooperation between law enforcement agencies across state, territory and federal jurisdictions. It is not uncommon—the Australian Crime Commission, for instance, is there for that purpose—to have the different jurisdictions involved in these sorts of activities, especially if intelligence is gained that adults might be using the opportunity to prey on school leavers. That could relate to instances where the drugs have been imported. If it is heroin, it has almost certainly been imported. So it would not be unprecedented for Customs, the Australian Crime Commission, the Australian Federal Police and state and territory police to work together. I predict it will occur more frequently in future.

Mr Woodward—I think you did ask four questions of us. We are providing answers to those four. If there is more information that you would like, obviously we will provide it to you.

Senator LUDWIG—I might go to some of those questions. Minister, in response to your answer, is it the intention to boost this type of operation in future?

Senator Ellison—Certainly, where you have a concentration of young people in a situation like schoolies week, I would like to see increased law enforcement scrutiny. If the Commonwealth has a role to play, I would certainly want it to play that role. I believe that very strongly. I think there is a role for national law enforcement here. The people who are involved in supplying illicit drugs to school leavers are highly organised and operate across state borders—and, indeed, could be using imported drugs. That alone gives rise to the Commonwealth jurisdiction. If we are going to see more schoolies cruises which go into international waters, which is a phenomenon of more recent times—it certainly was not a feature in my day—I certainly would like to see more involvement of Customs and federal law enforcement, working with state and territory police.

Senator LUDWIG—Are you able to say what risk assessment was undertaken in this instance involving those particular searches? I ask that because it seems from the report that

they were a particularly good bunch of kids in this instance. There was not much recovered in the way of contraband or illicit substances.

Mr Woodward—I do not think we can give you an answer now. I do not know the nature of the risk assessment that took place or whether there was specific hard intelligence that led us down that route. Can we look at that and see whether there is any more information we can provide to you on that point? I think you are right about the outcome—there was not much recovered.

Senator LUDWIG—It is a significantly expensive operation and it would be based—as I think you always say for this type of operation—on a risk assessment. The risk assessment would have to demonstrate that there is a need to undertake that type of operation, because you would expect some result from it—otherwise your resources would be better placed targeting other, more lucrative, markets. The other question that comes from this in relation to the television presence of *Border Security* is: is there an MOU or an agreement with border security to be the sole media presence in this type of—

Mr Woodward—No, they are not the sole media presence. I do not know the circumstances which actually led to them being there. They are doing a lot of work with us in various places, so they were probably close by and someone said, ‘Let’s grab them.’ But we have pretty good relationships with all of the channels, and others have done very useful work with us—including Channel 9 in relation to one of the Southern Ocean cruises—so there is no particular first preference for Channel 7.

Senator LUDWIG—It is just that in answer to the question on notice you indicated that they were the only media outlet contacted.

Mr Woodward—I think they were the only media outlet contacted, but I think it was more of a convenience than a contractual arrangement which said, ‘We are only going to deal with Channel 7,’ because that simply is not the case.

Senator LUDWIG—So you do not have a contractual arrangement—

Mr Woodward—We have a contract with Channel 7, but in relation to the production of that series, not in relation to other news stories that arise.

Mr Jeffery—Could I clarify that. They were not contacted as a media outlet; they were doing part of the series that there is a contract for. They were filming at the time, and that was one event that we told them we were involved in and that they could film. The contract relates to the preparation and presentation of the series that is going to air at the moment.

Senator LUDWIG—So it is not a case where the *Border Security* TV show drives your particular event.

Mr Jeffery—No.

Senator LUDWIG—You can rule that out?

Mr Woodward—I know it was not implied in your question, but any suggestion that we put on media stunts to get them on *Border Security* is just not true.

Senator LUDWIG—I think you are going to take on notice what the results of the search were, if you are able to provide that.

Senator Ellison—And intelligence as well, if that is possible.

Senator LUDWIG—Yes.

Senator Ellison—You mentioned the young people involved. In my remarks earlier I mentioned adults who tend to prey upon them. It is the adults we are really concentrating on, and you will find that police ministers councils would discuss this. It is a common story from my colleagues—

Senator LUDWIG—I would need to get you to invite me there.

Senator Ellison—But it is the adults who go and prey upon schoolies during schoolies week that we are really looking at.

Senator LUDWIG—I see. I saw the particular piece but, when you looked at it, it seemed to significantly inconvenience the young people concerned, and it seemed to be that they were the target—at least from my perspective; I am not suggesting they were and nor am I imputing it to you or your department, Minister. But I think that they would have felt that they were the particular target in all of this because they were the ones who had their bags searched—the dogs, the police and Customs then create the presence. For a 17- to 21-year-old I suspect it is a significant event in their life. It was a long time ago that I was 17, but I suspect it would have been significant if that had ever happened to me on a normal cruise ship—although I understand, from what you have now said, that the target is the adult. I wonder if that explanation is imparted to those people participating in the process that sometimes occurs.

Senator Ellison—It is much like state police when they attend rave parties and dance parties and they question young people. Obviously if they find a young person with illicit drugs they want to know where they got them from. They are more interested in getting the source, and it is well known that these sorts of parties are run by people who supply the drugs elsewhere and then they attend the function. That is one of the problems we have today with amphetamines.

Senator LUDWIG—I think the point I am trying to make—or the answer I am trying to elicit, perhaps—is that in those instances the presence of police and their operations in the illicit drug market at various venues is better understood: what their role is, how they are combating illicit drugs and assisting in ensuring that there are no illicit drugs at the venue. However, in this instance it is Customs taking the lead, doing a search. Most people's recollection of that is at airports, where you have sniffer dogs; it tends to target the person more. The same confusion could readily occur in this instance.

Senator Ellison—I might add that part of the deterrence is in the visual factor as well. I think it is no bad thing for young people who are travelling, starting out on a life of travel, to experience tough border control. That might instil in them an attitude not to smuggle illicit drugs, because in some countries where they end up they could face the death penalty. I applaud Customs and border control having a very visual impact for that deterrence, especially with young people. I think Australians have learnt a lot about quarantine over the years—about being quarantine conscious—and I think Australians are more border control conscious than most other people I have met in the travelling public. If we can instil that in

our young people and deter them from taking illicit drugs across our borders into other countries where they could really end up in huge strife, then I think the exercise is worth it.

Senator LUDWIG—I will put the rest of my questions on notice, thanks, Chair.

CHAIR—Thank you for that salutary lesson, Minister.

Mr Cornall—Just before we close, I want to record a clarification in respect of an item that came out of evidence from Mr Graham and Mr Fry under output 1.5, talking about ComLaw leases. I have been asked to record that there are five servers supporting ComLaw, at a cost of \$150,960 over a period of three years. The only other point is on the publication of contracts and so on: the requirements are that contracts worth over \$10,000 are to be published, and contracts over \$80,000, under the new procurement guidelines, would be subject to a mandatory tender process.

CHAIR—Thank you very much.

Senator Ellison—Is ASIO first tomorrow? Sorry—is that Customs finished?

CHAIR—Yes, that does conclude the section on Customs. Senator Ludwig is going to place any further questions on notice. Mr Woodward, I think you have already taken a number of questions on notice. The return date for those answers is 8 April, from memory. The advertised program for tomorrow morning, Minister, is to begin with the Australian Federal Police at 9 a.m., followed by ASIO and so on from there.

I note for the record that it did seem to become inordinately warm in this room just about the time the House rose, which of course is in tune with the view—

Senator Ellison—They switched off the airconditioning.

CHAIR—that that is where life begins, continues and ends, but we will raise that with DPS tomorrow. It is not very pleasant to be here till 11 o'clock at night in those circumstances. May I thank you, Minister, and you, Secretary, for your assistance and that of your officers today. We will resume at 9 a.m. tomorrow. Thank you.

Committee adjourned at 10.58 p.m.