



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

**(Budget Estimates)**

TUESDAY, 24 MAY 2005

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**

**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**

**Tuesday, 24 May 2005**

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

**Senators in attendance:** Senator Payne (*Chair*), Senators Allison, Bartlett, Buckland, Carr, Greig, Kirk, Ludwig, Mason, McGauran and Scullion

**Committee met at 9.02 am**

**ATTORNEY-GENERAL'S PORTFOLIO**

Consideration resumed from 23 May 2005.

**In Attendance**

Senator Ellison, Minister for Justice and Customs

**Attorney-General's Department**

**Management and Accountability**

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

Ms Sue-Ellen Bickford, Chief Finance Officer

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

**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 & Civil Procedures Branch

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

Ms Sue Pidgeon, Assistant Secretary, Family Pathways Branch

Mr Kym Duggan, Assistant Secretary, Family Law Branch

Mr Peter Arnaudo, Principal Legal Officer, Administrative Law and Civil Procedures 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 Philippa Lynch, First Assistant Secretary, Information law and Human Rights Division

Ms Helen Daniels, Assistant Secretary, Copyright Law Branch

**Output 1.4**

Ms Renee Leon, First Assistant Secretary, Office of International Law  
Mr Bill Campbell QC, General Counsel (International Law)

**Output 1.5**

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

**Output 1.6**

Mr Iain Anderson, First Assistant Secretary, Legal Services and Native Title Division  
Ms Katherine Jones, Assistant Secretary, Native Title Unit  
Ms Tamsyn Harvey, Acting Assistant Secretary, Native Title Unit

**Output 1.7**

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 Geoff Gray, Acting Assistant Secretary, Criminal Law Branch  
Mr Chris Dennis, Acting Director, Firearms Unit  
Dr Dianne Heriot, Assistant Secretary, Community Safety and Justice Branch  
Ms Katherine Hawkins, Acting Assistant Secretary, International Crime Branch  
Ms Robyn Frost, Principal Legal Officer, International Crime Branch  
Mr Andrew Walter, 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 Ed Tyrie, Executive Director  
Mr Paul de Graaff, Assistant Secretary, Counter-Terrorism Branch  
Ms Leonie Mack, Assistant Secretary, Security Programs Branch  
Ms Belinda Moss, Assistant Secretary, Information Coordination Branch  
Ms Kelly Williams, Assistant Secretary, Policy and Services Branch  
Ms Susie van den Heuvel, Director, Public Affairs

**Output 2.5**

Ms Leonie Mack, Assistant Secretary, Security Programs Branch

**Administrative Appeals Tribunal**

Mr Doug Humphreys, Registrar  
Ms Sian Leathem, Assistant Registrar  
Mr Steve Wise, Finance Manager

**Australian Crime Commission**

Mr Alastair Milroy, Chief Executive Officer  
Mr Andrew Phelan, Director Corporate Services  
Mr Kevin Kitson, Director Intelligence

**Australian Customs Service**

Mr Lionel Woodward, Chief Executive Officer  
Mr John Drury, Deputy Chief Executive Officer  
Mr John Jeffery, Deputy Chief Executive Officer  
Mr Jon Brocklehurst, Chief Financial Officer  
Mr Murray Harrison, Chief Information 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  
Ms Gail Batman, National Director Border Intelligence and Passengers  
Ms Sue Pitman, National Manager Trade Measures  
Ms Roxanne Kelley, National Manager, Research and Development  
Mr Michelle Kinnane, National Manager, IT Applications  
Mr Mathew Corkhill, National Manager, Cargo Systems  
Mr Peter Thompson, National Manager, Risk Identification and Intelligence

**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 Government Solicitor**

Ms Rayne de Gruchy, Chief Executive Officer  
Mr David Riggs, Chief Financial Officer.

**Australian Institute of Criminology and Criminology Research Council**

Dr Toni Makkai, Director

**Australian Law Reform Commission**

Professor David Weisbrot, President  
Mr Alan Kirkland, Executive Director

**Australian Security Intelligence Organisation**

Mr Dennis Richardson, Director-General

**Australian Transaction Reports and Analysis Centre (AUSTRAC)**

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

**Commonwealth Director of Public Prosecutions**

Mr Damian Bugg AM QC, Director of Public Prosecutions  
Mr John Thornton, Acting First Deputy Director  
Mr Ian Bermingham, Acting Deputy Director Legal & Practice Management  
Mr Graeme Davidson, Acting Deputy Director Commercial & International  
Ms Stela Walker, Deputy Director Corporate Management

**CrimTrac**

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

**Family Court of Australia**

Mr Richard Foster, Chief Executive Officer;  
Ms Jennifer Cooke, Executive Director Client Services;  
Mr Bruce Hunter, Executive Director Corporate; and  
Ms Dianne Gibson, Principal Mediator.

**Federal Court of Australia**

Mr Warwick Soden, Registrar and Chief Executive Officer  
Mr Philip Kellow, Deputy Registrar  
Mr David Llewelyn, Acting Chief Finance Officer

**Federal Magistrates Court**

Mr John Mathieson, Chief Executive Officer  
Mr Brian Scammell, Chief Finance Officer

**Federal Police Disciplinary Tribunal**

Ms Jennifer Hedge, Registrar

**High Court of Australia**

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

**Human Rights and Equal Opportunity Commission**

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 Sally Moyle, Director Sex Discrimination Unit  
Mr Craig Lenehan, Deputy Director, Legal Services  
Mr David Richards, Finance Manager

**Insolvency and Trustee Service Australia**

Mr Terry Gallagher, Chief Executive and Inspector-General in Bankruptcy  
Mr Peter Lowe, Executive Director  
Mr David Bergman, Adviser, Policy and Legislation

**National Native Title Tribunal**

Mr Christopher Doepel, Registrar  
Mr Hugh Chevis, Director Service Delivery  
Mr Erwin Winkler, Chief Financial Officer

**Office of Film and Literature Classification**

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

**Office of Parliamentary Counsel**

Mr Peter Quiggin, First Parliamentary Counsel

Ms Glenyce Francis, General Manager

**Office of the Privacy Commissioner**

Ms Karen Curtis, Privacy Commissioner

Mr Timothy Pilgrim, Deputy Privacy Commissioner

Mr David Richards, Finance Manager (Human Rights and Equal Opportunity Commission)

Mr Kym Duggan, Assistant Secretary, Family Law Branch, Attorney-General's Department

**CHAIR**—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. The committee today will continue its examination of the Attorney-General's portfolio, beginning with the Australian Federal Police and proceeding according to the order on the circulated agenda. Today's hearing will be suspended for a lunch break from 1 pm to 2 pm and a dinner break from 6.30 pm to 7.30 pm. These breaks will be taken as close to the scheduled times as possible. The committee has authorised the recording and the broadcasting 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 15 July 2005 for receipt of answers to questions taken on notice and additional information.

I welcome Senator the Hon. Chris Ellison, the Minister for Justice and Customs and Minister representing the Attorney-General; Mr Robert Cornall, Secretary of the Attorney-General's Department; and officers of the department and associated agencies. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1988, 'Procedures to be observed by Senate committees for the protection of witnesses', and in particular to resolution 110, which states in part:

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

I also draw witnesses' attention to resolution 116, which states:

An officer of a department of the Commonwealth or of a State shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a Minister.

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

**Senator Ellison**—I just want to say two things. Firstly, the secretary has a commitment in Melbourne with the Australian Crime Commission, and other commitments, so the secretary will have to leave at quarter to six today. I think that has been communicated to your committee.

**CHAIR**—I am aware of that, yes. Thank you, Minister.

**Senator Ellison**—Looking at today's list, I take it that all of those agencies and courts are required today. Are there any that are not required?

**CHAIR**—They have all been specifically called. Those that were not required have not been called. If that changes, I will alert officers and they can escape.

**Senator Ellison**—I appreciate that. Your committee is always very good in that regard.

**CHAIR**—Thank you.

[9.05 am]

#### **Australian Federal Police**

**Senator BUCKLAND**—I had a few questions in relation to the return of Australian Federal Police officers from Papua New Guinea after the Papua New Guinea Supreme Court removed the prosecutorial immunity from the actions of APS officers. What has been the effect of the Papua New Guinea Supreme Court ruling on the prosecutorial immunity of Australian Federal Police in Papua New Guinea?

**Mr Keelty**—The impact has been that, given that there will be no immunity from prosecution for members of the Australian police serving up there, we have had to withdraw the police from PNG.

**Senator BUCKLAND**—I understand from reports that some have remained. In what role have they remained?

**Mr Keelty**—There is an administrative party of 10 members, who represent part of the wind-down phase of the mission. We have a group of people who are involved in the administrative arrangements, looking after some of the contracts that are in place. They will also be involved in communicating to us the progress of some of the contractual arrangements that we have been obliged to deal with up there, and some security advice is also being provided by those people. Things like police vehicles and other important equipment have now been put into a compound and secured. We have secured all the weapons that were part of the mission. There is a lot of administrative work being done there in that regard. Any ongoing deployment or retention of these people will be subject to review as part of the negotiations between the two governments.

**Senator BUCKLAND**—Are any negotiations going on between the two governments at the moment in relation to that?

**Mr Keelty**—I think that is a matter for the government.

**Senator Ellison**—The Minister for Foreign Affairs announced yesterday that the Papua New Guinea Minister for Internal Security, Bire Kimisopa, is coming to Canberra this week for talks with the government. I think that is about as far as we can take it, other than to say that we are totally committed to getting the ECP back on track and I think that there is a will, certainly in my counterpart, Minister Kimisopa, to put it back on track.

**Senator BUCKLAND**—Could you consider the remaining officers to be there for care and maintenance or is there a finite time before they will be removed?

**Mr Keelty**—It will be subject to continual review. They are still providing things like IT and financial support up there but, as I said, it will be subject to review.

**Senator BUCKLAND**—So it is not a policing role that they are now fulfilling; it is more an administrative role.

**Mr Keelty**—That is correct. The majority of these people—except for the commander, who is expected to return to Port Moresby to work with the Australian High Commissioner, Michael Potts—will not be sworn police up there.

**Senator BUCKLAND**—Have the AFP been provided with any advice from the Attorney-General's Department as to the effect of the ruling that was made on Australia's future police involvement in Papua New Guinea?

**Mr Keelty**—Yes, we have.

**Senator BUCKLAND**—Is that something that will be pursued further with the New Guinea government in these negotiations you are talking about?

**Mr Keelty**—It will be up to the government to look at the points for negotiation.

**Senator BUCKLAND**—I wonder if you could humour me a little bit and tell me what that advice was.

**Senator Ellison**—Chair, we do not normally reveal the advice given to government and agencies in relation to these matters. I can appreciate Senator Buckland's question but we are engaged in talks with the government of Papua New Guinea. To reveal at this stage even more would be inappropriate. I am sorry to say that.

**CHAIR**—That we cannot humour Senator Buckland is what you are telling me.

**Senator Ellison**—Cutting to the chase, yes.

**Senator BUCKLAND**—You would like to but you cannot.

**CHAIR**—That is disappointing for Senator Buckland.

**Senator BUCKLAND**—I understand. What will happen to remaining funding for the Enhanced Cooperation Program?

**Mr Keelty**—That will remain as part of the negotiation process but we have with the Department of Finance and Administration a no win, no loss arrangement with respect to the moneys that have been provided to us for all of our International Deployment Group arrangements. So if we do not spend the money we will hand it back.

**Senator BUCKLAND**—That would depend, I guess, on the negotiations you have told me about as to how long it would be.

**Mr Keelty**—That is right. At this point in time, we have redeployed the police who have returned. A percentage of them have gone to the Solomon Islands. A percentage of them have been deployed to other areas. In fact, of all of the police who have returned, we have given 81 per cent their first choice of where they wanted to be redeployed. The majority of that was within the International Deployment Group. So we are trying to work with the police who, too, are affected by the withdrawal in the sense that they went up there with a very strong and positive operational focus, and it has been cut short.

**Senator BUCKLAND**—With regard to the return of officers and their redeployment, if negotiations mean that there is a return of a group of officers to Papua New Guinea, does that

come out of that funding or will the funding that has been made available need to be renegotiated?

**Mr Keelty**—We are in continual negotiations with the Department of Finance and Administration about the expenditure of those funds. Obviously with the return of the police and the fact that we have, in the immediate future, no other police going up there, there will be funds that will not be expended. So we are continuing to negotiate with the Department of Finance and Administration on an appropriate return of funds to the department on a no win, no loss basis.

**Senator BUCKLAND**—Has there been any advice to the AFP at this stage as to when there is likely to be a return?

**Senator Ellison**—No.

**Senator BUCKLAND**—So the Attorney-General has not provided advice to keep people on standby or on how far down the track they are with these negotiations?

**Senator Ellison**—Chair, I think that is more a question for the Minister for Foreign Affairs, who is taking the lead on this. The Attorney-General and the AGD provide the legal advice as to the immunities and how the law applies. But the negotiation of the ECP with the government of New Guinea is being led by the Minister for Foreign Affairs. Any questions about the discussions on that are best directed to him.

**CHAIR**—There are always the foreign affairs estimates next week. The fun just goes on and on.

**Senator BUCKLAND**—Yes, I understand that; I am just wondering, though, if that could not be the subject of a question on notice. If I can get that from Foreign Affairs, I am sure the minister—

**Senator Ellison**—I think we can pass on Senator Buckland's question to Foreign Affairs—

**CHAIR**—That is very generous of you, Minister.

**Senator Ellison**—and they can deal with that. We can give it to them on notice and they can deal with that next week at estimates when they appear.

**CHAIR**—Is that of assistance, Senator Buckland?

**Senator BUCKLAND**—It would be of assistance, given that I will not be able to attend those hearings.

**CHAIR**—I will keep an eye on it for you, then.

**Senator BUCKLAND**—I am very grateful. I am grateful to you both, I am sure. You mentioned the returning officers being redeployed; I think 81 per cent were redeployed to their first choice. Most were within International, but where in particular?

**Mr Keelty**—I have the breakdown, but a percentage of them have gone to the Solomon Islands as part of RAMSI. There are a percentage of them who are doing logistical work here in Canberra at the International Deployment Group. Seventy-nine have in fact gone to the Solomon Islands. I will give you the proper breakdown, Senator. There was a total of 115 members who were repatriated last Tuesday.

**Senator BUCKLAND**—Can you repeat that?

**Mr Keelty**—That was 115. There are 99 members who were redeployed within the International Deployment Group. Five transferred out of the International Deployment Group, 13 were deployed to their normal work location, 13 were provided with training or term transfer opportunities within Australia and seven are undertaking selection courses for other career streams. The remaining 21 are still being processed.

**Senator BUCKLAND**—I am not entirely naive; if they are still being processed, they would be here in Canberra just putting stamps on letters or something to fill in the time?

**Mr Keelty**—No. Some of them actually had days off when the decision was made; they were availing themselves of leave. So those who were on leave are now being looked at—

**Senator BUCKLAND**—I see.

**Mr Keelty**—as a second priority.

**Senator BUCKLAND**—All right. That is as far as I need to go. Thank you.

**Senator ALLISON**—I wonder if it could be explained why immunity was considered important for AFP and other personnel in Papua New Guinea.

**Mr Keelty**—The reason why immunity is important is that, in this mission, the police were availing themselves of police powers up to and including lethal force, and so it was important that we had some governance over the opportunities to prosecute them for any alleged wrongdoings in PNG.

**Senator ALLISON**—Sorry—the wrongdoings of the Australian police?

**Mr Keelty**—That is correct.

**Senator ALLISON**—I am sorry; that is not self-evident to me. Could you expand a bit on what sorts of circumstances might give rise to the need for immunity?

**Mr Keelty**—If I could take the question out of the PNG context, given that negotiations are continuing and I would not want to say anything that would have a negative impact on the negotiations—because clearly the issue of immunity is at the heart of the negotiations—the reason why immunity from prosecution is required for Australian personnel is that they are subject to the laws of the host country and they are in fact exercising their police powers in that country.

**Senator ALLISON**—Are the PNG laws with regard to the use of force, or whatever it is Australia is doing there, so different from Australian laws?

**Mr Keelty**—It is not so much the issue of whether or not they are different. It is a matter of—I do not want to answer that question, actually, because we have gone back to where I said we did not want to go.

**Senator Ellison**—I can give a general policy statement for the government which might assist. Madam Chair, Australia has been involved for many years in overseas policing. We have done so mainly through the United Nations but also in relation to exercises which, although not United Nations hosted exercises, have been done with the support of the United Nations. It is common international practice for these assistance missions to have immunities

of this sort for those people who are deployed. In fact it is common international practice for visiting defence force members, diplomats and United Nations officials to have these sorts of protections. The standard United Nations arrangements provide immunity from prosecution in the host country and give the home country exclusive jurisdiction. What we are proposing is along those lines.

These police personnel serving in PNG would be subject to Australian law. They do not escape the rule of law in any shape or form; they are subject to Australian law. I also agree with the commissioner that we want to be very careful what we do say about the particular situation in PNG because of the ongoing discussions. If you look at current international practice and the practice of the United Nations over a long period of time, you see that we have simply followed that format.

**Senator ALLISON**—I would like to ask about the situation for other countries—for instance, Indonesia. Was immunity sought in Indonesia as well?

**Senator Ellison**—Do you mean with respect to Australian Federal Police serving there?

**Senator ALLISON**—Yes.

**Senator Ellison**—No, because they carry out a different role. This was an issue we canvassed yesterday in response to Senator Ludwig's questioning. They are not exercising the powers of police—powers to arrest or powers to use force in appropriate circumstances—they are there assisting and they are in a completely different role. The commissioner can perhaps better describe than I can the two different roles and why immunity is not sought for those officers who are serving in that capacity.

**Senator ALLISON**—Okay, let us take some more similar roles—for example, the Solomon Islands or Fiji.

**Senator Ellison**—In the Solomons we have immunity.

**Senator ALLISON**—We do have immunity in the Solomons. So it is the same situation?

**Senator Ellison**—Yes, that is right. As we do in East Timor and Cyprus.

**Senator ALLISON**—I see. Did other countries working there also have immunity?

**Mr Cornall**—Yes, including PNG itself.

**Senator ALLISON**—How does that relate to the International Criminal Court where we have not sought immunity in the same way as the United States has?

**Mr Cornall**—That is an unrelated question to this question of the immunity of our forces.

**Senator ALLISON**—And you are not able to say any more about what steps are being taken to work through those immunity issues with PNG?

**Senator Ellison**—Those are government-to-government discussions and we do not divulge the content of those discussions. The Minister for Foreign Affairs made a statement in the House yesterday about this matter. There will be talks this week. All I can say is that the Australian government is totally committed to getting the ECP back on track.

**Senator ALLISON**—Is Australia monitoring the impact of the removal of those forces at the present time?

**Senator Ellison**—I think the commissioner has just been describing how that removal has taken place. The commissioner might want to add something.

**Senator ALLISON**—Maybe I was not listening carefully enough, but I did not hear anything about the impact on the ground of the troop removal.

**Senator Ellison**—Sorry, as to the effect of that withdrawal on the community of Papua New Guinea—if that is your question—that is a different aspect. That would be best dealt with by Foreign Affairs.

**Senator ALLISON**—My question is not related to the immunity. We have removed troops from PNG now. What is, then, the effect on law and order in those areas where they previously were working? Are we monitoring that?

**Mr Keelty**—That is a matter for the Department of Foreign Affairs and Trade and is obviously subject to the negotiations between the two governments.

**Senator Ellison**—That question is one which will be monitored by our mission in Papua New Guinea, and of course that is in the area of the Department of Foreign Affairs and Trade. As the commissioner has said, we have withdrawn people. We have 10 there who will remain in an administrative capacity. Any monitoring of that sort on the ground is done by our mission in PNG. Again, I can take that on notice and refer it to the foreign affairs estimates committee.

**CHAIR**—Thank you, Minister.

**Senator ALLISON**—So it is now up to Foreign Affairs and Trade to monitor rather than AFP.

**Senator Ellison**—Normally we rely on our mission overseas to monitor events in the country where they are. As we have now withdrawn, we do not have the capacity to see what is going on that we had previously. Naturally we only have 10 remaining and they are in an administrative capacity. We rely on our mission for these things and that is why we have a mission posted in foreign countries: they monitor those sorts of things for us. So we rely on them. But all the funding for this came from AusAID, as I recall. It was done under the umbrella of AusAID, so really Foreign Affairs and Trade have been the lead agency, if you like, in this matter.

**Senator ALLISON**—So it was never contemplated that AFP personnel would stay on not in an operational role but in the role of monitoring? They are there for administration.

**Senator Ellison**—The commissioner has touched on the withdrawal and the reasons for it. We would not have people maintaining an operational role because of the change in circumstances which we have outlined.

**Mr Cornall**—There are other Australian officers there in advisory roles in various departments: in financial management, in legal administration and in prosecutorial advisory roles and correctional advisory roles. So there are still a number of people from the ECP program in PNG who would be working with the mission staff in relation to the project that they are undertaking pending resolution of the current situation.

**Senator ALLISON**—But they are not in a position to report back to Australia on law and order and whether or not it is being maintained or is breaking down, or what the impact of our withdrawal has been.

**Senator Ellison**—I think the mission we have in Port Moresby is well-placed to do that for us.

**Senator ALLISON**—Have they? What is going on?

**Senator Ellison**—I will take that on notice and direct it to Foreign Affairs and they can give you that report.

**CHAIR**—Any further questions in this area, in relation to PNG? Senator Ludwig has some questions on Bougainville, which is related.

**Senator LUDWIG**—In terms of the AFP's deployment in Bougainville, has there been any variation to the patrol numbers since the answers were given last time? It is questions on notice Nos 236 and 237.

**Mr Keelty**—The major difference obviously is that the police have been withdrawn from Bougainville as well, so the patrol numbers that were given in respect of previous questions have now been totally withdrawn.

**Senator LUDWIG**—So the recent PNG High Court decision has also affected the deployment in Bougainville?

**Mr Keelty**—That is correct.

**Senator LUDWIG**—So what is there now?

**Mr Keelty**—Nothing in terms of an Australian police presence.

**Senator LUDWIG**—There has been a complete withdrawal. Are there any administrative personnel left in that area?

**Mr Keelty**—No, there are not.

**Senator LUDWIG**—It seems to me that there is a shaking of heads behind you.

**Mr Keelty**—I understand from the New Zealand police that they have also withdrawn from Bougainville.

**Senator LUDWIG**—Are there currently any discussions with the government about that issue?

**Mr Keelty**—That would be subject to the same discussions in respect of PNG.

**Senator LUDWIG**—So in that instance I am better off directing the questions to the Department of Foreign Affairs and Trade next week.

**Mr Keelty**—That is correct.

**Senator Ellison**—The same situation applies. We can alert them to the fact that these questions have been asked and they will be asked for answers.

**CHAIR**—I venture to guess that they will be asked next week anyway by other senators. So they will be dealt with.

**Senator LUDWIG**—Thank you.

**Senator CARR**—Could the Australian Federal Police tell me the number of inquiries they currently have under way concerning unauthorised disclosures of information within the federal Public Service?

**Mr Keelty**—There are 22 inquiries on unauthorised disclosures for this financial year to date.

**Senator CARR**—Can you tell me what departments those 22 relate to?

**Mr Keelty**—Yes, I can. Madam Chair, I have a table here—

**Senator CARR**—That would be very helpful—it would save us a lot of time.

**Mr Keelty**—that might help us. Senator Carr, I want to correct something, through the chair. There is going to be a different number in this table because I gave you year-to-date figures for this year and obviously the table includes unfinished investigations from previous financial years. In total there are 37, and I have got a breakdown of the departments.

**Senator CARR**—Thank you. Can I have a copy of that?

**CHAIR**—Do you need to make some changes to that document, Commissioner?

**Mr Keelty**—Yes. I have just realised that there are individuals' names on this which will not indicate whether the individual, if it was a member of parliament, did the referral as a chair of a committee or did the referral as an individual person.

**CHAIR**—The document contains names and, if it is tabled in the estimates process, it must be tabled as a public document. I think in the circumstances you should—

**Senator CARR**—It is in relation to a member of the federal parliament referring an inquiry, is it not?

**CHAIR**—Perhaps you could let me finish. I think in the circumstances, Commissioner, you may want to consider how best to provide the committee with that information. We are grateful for the offer of the information, but I do think the commissioner has indicated he would like time to consider how best to provide the information to the committee. I understand that you want it now, Senator Carr. I would be happy to walk through the names of the departments, if that would assist you in the short term, and do it that way, rather than have individuals' privacy traversed by the committee.

**Senator Ellison**—I think that is a sound suggestion, because this also has the potential to mislead somewhat. If a senator or a member has referred something in their role as chairman at the direction of a committee, that is a very different situation to whether they have done it themselves. I think that needs to be clarified in the first instance. It is something that I think is important.

**CHAIR**—The committee has dealt with this problem before. I would be much happier if the commissioner would read the names of the departments into the record for the benefit of Senator Carr—and then you can amend the document as you regard necessary, Commissioner, before you make it a public document. Can you provide us with the names of the departments?

**Mr Keelty**—Yes. The Department of Defence has two referrals; the Department of the Prime Minister and Cabinet has two referrals; the Department of Employment and Workplace Relations has one referral; the Commonwealth Director of Public Prosecutions has one referral; the Department of Finance and Administration has three referrals; the Civil Aviation Safety Authority has two referrals; the Department of Immigration and Multicultural and Indigenous Affairs has three referrals; and the Department of Foreign Affairs and Trade, the National Gallery of Australia, the Aboriginal and Torres Strait Islander Commission, the Australian Electoral Commission and the Department of Health and Ageing all have one referral each. There are two investigations that were internally generated by the AFP. The Office of National Assessments has three referrals; the Department of Transport and Regional Services has one referral; Centrelink has two referrals; and Aboriginal and Torres Strait Islander Services, the Department of Veterans' Affairs, the Australian Customs Service, the Commissioner for Superannuation, the Australian Broadcasting Authority and the Australian Security Intelligence Organisation each have one referral. The others are individual names.

**CHAIR**—Thank you, Commissioner.

**Senator CARR**—With the individual names, was the reference there to the inquiry regarding the Department of Veterans' Affairs?

**Mr Keelty**—There is a separate referral from the Department of Veterans' Affairs.

**Senator CARR**—Is that the case that involves a reference to a member of parliament, who happens to be committee chair?

**Mr Keelty**—I cannot discern that from this list, I am sorry.

**Senator Ellison**—We can take that on notice and get back to the committee quite shortly, I would imagine.

**CHAIR**—Thank you, Minister.

**Senator CARR**—How long would it take you to delete the reference that you are concerned about regarding the committee chair?

**CHAIR**—Perhaps one of your staff could assist, Commissioner—there is a veritable bevy of them.

**Senator CARR**—Have the two matters from Prime Minister and Cabinet both been resolved?

**Mr Keelty**—I do not have that information in front of me. I will have to take that on notice, I am sorry.

**Senator CARR**—I am particularly interested in the raid on the newspaper the *National Indigenous Times*, which occurred on Remembrance Day last year. Has that inquiry been concluded?

**Mr Keelty**—I am aware of that inquiry. Unfortunately, I do not have the papers on that matter with me. Could I also take that on notice?

**Senator CARR**—Would it be helpful if I came back later in the proceedings when you have had a chance to collect your papers?

**CHAIR**—We will advise you, Senator Carr.

**Senator CARR**—Is that fair enough?

**Senator Ellison**—I think we can do that.

**CHAIR**—Yes, I said we will advise the senator.

**Senator Ellison**—Perhaps there are some other matters we can go on with in the meantime.

**Senator ALLISON**—I want to ask about Australia's response to the situation for Schapelle Corby. Minister, you said that the government is unable to intervene. Mr Keelty, your comments some weeks ago were to the effect that there was no intelligence to back up Ms Corby's version of the events. Can you explain why you made those comments at that point in time and on what basis?

**Senator Ellison**—Can I say firstly, Madam Chair, that if questions of this nature are to be put they can at least be put on the right premise. I do not think that is exactly what was said. I would say to the committee that this is a matter which is before an Indonesian court which is listed to hand down its decision this Friday. It is at a very sensitive stage of the hearing and I think that the committee should exercise due care in the way it deals with this issue, having regard to the fact that this matter has now reached the stage of proceedings that it has. If this were in Australia, the matter would be sub judice. I think it would be unhelpful if this matter was canvassed in detail and matters trawled over in the fashion that I suspect people might want to. I believe the committee should carefully give thought to the questions it wants to ask on this matter.

**CHAIR**—I take that very seriously, Minister. I would also encourage committee members to do the same. I understand the sensitivity regarding the point in proceedings to which you refer. I am cognisant of the implications and ramifications of any discussion this committee may entertain. At the same time I am not in a position to explicitly restrict committee members in the asking of questions. I am sure that, between you and the commissioner, in terms of the questions that are asked, you will make an appropriate assessment of what it is possible to say or not, as the case may be.

**Senator Ellison**—As is the standard practice, we can take on notice those questions that we need to.

**CHAIR**—Indeed.

**Senator ALLISON**—It does go to that central question of whether the government has exercised due care. I am glad you used those words, Minister. I wonder whether, Mr Keelty, before making the comments that you made about this case, there was discussion with the minister or other members of staff. What advice did you receive?

**Mr Keelty**—The media statements I made were in respect of specific issues. Whilst on each occasion we advised the minister's office that we were to make a statement, we did not advise the minister's office on the content of that statement. Obviously, the content was dictated by the questions that were being asked.

**Senator ALLISON**—I am sorry; what questions?

**Mr Keelty**—Questions of me.

**Senator ALLISON**—Questions from the media to you?

**Mr Keelty**—That is correct.

**Senator ALLISON**—Did you feel the need, after answering those questions, to clarify them in any way or modify them?

**Mr Keelty**—No.

**Senator ALLISON**—Because they were, to the best of your knowledge, true?

**Mr Keelty**—That is correct.

**Senator ALLISON**—So regardless of whether or not they were helpful in the circumstances, you made those comments?

**Mr Keelty**—I do not think that is a question I can answer.

**Senator Ellison**—Madam Chair, the question is an ambiguous one. Helpful to what? The commissioner has said that he answered questions which were put to him, questions which he answered in a truthful fashion, and that is what the commissioner has said. I really think that is an answer which is a satisfactory one for the purposes of this inquiry. To go further than that would be to delve into the facts of a matter which has been and is in court.

**CHAIR**—And is awaiting judgment.

**Senator Ellison**—And also has been the subject of a police investigation in Australia. In that regard we can certainly take the line of questioning on notice and see if there is anything we can add to it, and we will do that. But I do not think anything further can be expanded on usefully at this point.

**Senator ALLISON**—To what extent were those comments at odds with the subsequent letter which was provided to the Indonesian court with regard to airport arrangements and the concerns—I think that was the way it was expressed—about drug smuggling activities in airports?

**Senator Ellison**—Which letter are you referring to?

**Senator ALLISON**—I have not seen a copy of the letter, but press reports were to the effect that, in the late stages of the court case, the government provided a letter to the Indonesian court expressing some concerns about baggage handling and drug smuggling.

**Senator Ellison**—As I understand it—and I raised this with the Attorney-General for Indonesia—the Indonesian law allows for these sorts of representations to be made. I did not want to do anything improper when I spoke to the Indonesian Attorney-General. I put to him a number of matters which had been asked of me by the defence team for Schapelle Corby when I saw them in Jakarta. I made it very clear that I could only put to the Attorney-General of Indonesia those things which were appropriate and within the bounds of the law. As I understand it, the letter—which has been delivered on behalf of the Australian government by our mission in Indonesia—is in accordance with appropriate action that can be taken. If your question is that we have done something improper by making that submission—

**Senator ALLISON**—Not at all. I will rephrase my question. It is the extent to which the content of that letter is at odds with Mr Keelty's remarks some weeks earlier.

**Senator Ellison**—I do not have a copy of the letter with me. We would need to take that question on notice, and I will have to have a look at the letter again. I do not have a total recall of the content of that letter, and I would have to check that. Senator Allison has put a question forward as to whether there is any contradiction between the two. We will take that on notice and look at it.

**CHAIR**—Thank you, Minister.

**Mr Keelty**—There is no contradiction at all between what I said publicly and the contents of the letter. In fact, I support the provisions of the letter, and I have said that publicly as well.

**Senator Ellison**—I think you have your answer there, Madam Chair.

**Senator ALLISON**—I am not sure, Minister, whether the letter has been made publicly available, but could it be?

**Senator Ellison**—I think there has been one in the press. We will have a look at that and very quickly get back to you. It could be something that we can resolve very quickly. The secretary tells me that he thinks there was a photocopy of it in the press. I am just conscious of the fact that it was a letter from DFAT, albeit to a court, not a government. It was between Australia and another country.

**CHAIR**—This is creating a lot of work for the Department of Foreign Affairs and Trade, for which I am sure they will be ever grateful, but we will pursue that. If you could have your officers check that, Minister, we would be grateful. Is there anything further?

**Senator ALLISON**—Not on that point.

**CHAIR**—Thank you. We go to Senator Kirk.

**Senator KIRK**—I have some questions in relation to the Regional Rapid Deployment Teams—the RRDTs. Can you tell us where the teams are located?

**Mr Keelty**—Yes. In relation to the counter-terrorism teams?

**Senator KIRK**—Yes.

**Mr Keelty**—I can give you a breakdown of where they are. There is one team located in the Philippines. There is another team located in Indonesia.

**CHAIR**—Are we speaking at cross-purposes here?

**Senator KIRK**—Yes, I think we are.

**CHAIR**—There is a terminology issue here.

**Senator KIRK**—There is. I was interested in the ones that are based in Australia. We do come to the counter-terrorism ones later.

**Mr Keelty**—The Regional Rapid Deployment Teams commenced operations from Melbourne airport on 1 January this year. Additional teams are being deployed or based in Brisbane, Sydney and Perth airports and will be operational from 1 July.

**Senator KIRK**—So at this stage they are only based in Melbourne?

**Mr Keelty**—That is correct.

**Senator KIRK**—And, come 1 July, there will be three of them. Does the Melbourne based team have responsibility just for airports within the state of Victoria?

**Mr Keelty**—No. It will cover also Tasmania and I think there will be some crossover between it and the Perth team for Adelaide or South Australian airports.

**Senator KIRK**—At this stage, who has assumed responsibility for the airports in New South Wales, Queensland and Western Australia?

**Mr Keelty**—There is ongoing risk assessment in relation to deployments there, but so far the teams have only been deployed out of Melbourne to Victorian regional airports and some metropolitan airports. They have been deployed to Broome in Western Australia and Launceston, Devonport and Burnie in Tasmania. Deployments to New South Wales airports or other state airports will be on a risk management basis until we get the teams permanently placed, which is about five weeks away.

**Senator KIRK**—As I understand it, at this stage the risk management analysis has not deemed it necessary for there to be deployment to New South Wales, Queensland or the Northern Territory.

**Mr Keelty**—That is correct, but, if that changes, a deployment can be arranged for those places.

**Senator KIRK**—Can you explain for the committee exactly what is involved with the rapid response team?

**Mr Keelty**—I can. Each team has eight Protective Service officers, including an explosive detection canine team and a bomb appraisal team. Each team will conduct about 50 deployments per year. For example, the Melbourne team is expected to visit a total of 23 different airports over the next 12 months. Each of the teams enables us to deploy rapidly to counter-terrorism first response capability and is able to undertake highly visible operations at regional airports. There will be two types of deployment. The first type will be a threat based deployment with very short notice deployments triggered by intelligence indicating an increased threat at a particular regional airport, which is the basis upon which the previous answer in respect of New South Wales and other state airports relates. The second type of deployment is a preplanned deployment, which is a routine planned deployment decided to practise deployment protocols, familiarise other stakeholders with the Regional Rapid Deployment Team capability and to provide an active deterrence against terrorist threats to regional aviation.

**Senator KIRK**—How many deployments has the Melbourne team been responsible for so far?

**Mr Keelty**—The Melbourne team has taken 11 deployments in the time that it has been up and running since the beginning of this year.

**Senator KIRK**—How do they break down into the threat based and the preplanned types of deployment?

**Mr Keelty**—I have just been advised that they were all preplanned.

**Senator KIRK**—Is the preplanned deployment in a sense really just an opportunity to plan for the hopefully unlikely event that there would later be a threat based deployment? Is it like a training or preparation stage?

**Mr Keelty**—It is not like training. It is almost like random breath testing, if I can draw an analogy. What you do is examine where the high-risk areas are and then you map out a plan of where to deploy. Obviously there will be other occasions where they are not so much high risk. But the deterrent is from random activity to deter people from getting involved in criminal activity. The same applies to these regional rapid deployment teams. It is the same theory that, if people see and there is high visibility of the teams when they are visiting these regional airports and people do not know when they are going to visit, obviously that is a way of deterring any criminal or terrorist activity.

**Senator KIRK**—I understood from what you said that there are currently eight officers involved, plus an explosives expert on the team. Is that correct?

**Mr Keelty**—There are eight to a team.

**Senator KIRK**—Okay—eight in total.

**Mr Keelty**—And as I say, the team is based in Melbourne at the moment. There will be other teams based in Brisbane, Sydney and Perth.

**Senator KIRK**—Tell me about the plans that have been made for the establishment of the teams in Sydney, Brisbane and Perth. Have officers been recruited? Will existing members of the AFP be trained?

**Mr Keelty**—These are new positions. What we will have is a compilation of people who are experienced moving into these areas whilst other people are receiving training in other areas. They will also be continuing their own training in these specialised areas: they have to be requalified on a regular basis so that the skill level remains. But they are new positions.

**Senator KIRK**—Has the training commenced for the officers who will be taking up positions on 1 July?

**Mr Keelty**—Yes, it has.

**Senator KIRK**—And is there a new purpose-designed training program established for the purposes of these teams?

**Mr Keelty**—As I understand it, Senator, and I will correct the record if I am wrong, these skills already exist within the counterterrorism first response roles at the major airports in Australia—that is, the skills of the bomb appraisal officers and the explosive detection canine teams. So it will be an extension of the existing skill level that we have.

**Senator KIRK**—I take it that there are approximately 30 more officers who will be filling these positions. Will there be eight per city, as there are in Melbourne, or will there be less in some of the smaller places like Perth?

**Mr Keelty**—No, the teams will be the same size.

**Senator KIRK**—Going back to the actual detail of how the rapid response team operates, I want to know what they do from A through to Z from the time that an incident occurs at an airport. Perhaps you could walk us through the stages of that as to what responsibility there is

on the airport to contact either local police or the AFP, how the RRDT becomes involved, if you can see what I am saying. I would be interested to learn about that process.

**Mr Keelty**—First of all, the selection of deployment sites is an AFP operational matter that is informed by intelligence-led policing practice combined with input from the government agencies and also the state and territory police forces. We have consulted extensively with the agencies involved. We have briefed the Department of Transport and Regional Services in each jurisdiction on the package of measures. We have briefed the aviation industry through the aviation security committee and the Australian Airports Association annual meetings. In consultation with state and territory police, we have agreed to a set of protocols to establish liaison requirements for planning and conducting of the deployments. We have established an interdepartmental working group that includes representation from Prime Minister and Cabinet and the Department of Transport and Regional Services to ensure that the rapid response team capabilities are integrated with other government infrastructure. Basically, in terms of the work that is done, it is both proactive and reactive. The proactive work is trying to establish a routine for the testing and checking of security at the airports. The reactive capabilities are in response to suspect items or activities at airports.

**Senator KIRK**—Has the Melbourne team been involved in any reactive incidents to date or only the proactive?

**Mr Keelty**—Not the regional team, no—not that I am aware of. They were preplanned deployments. Certainly, on a daily basis, the counterterrorism first response capability of the AFP Protective Service officers based at the major airports means that they can respond to a number of incidents on any given day.

**Senator KIRK**—Going back to walking through the process, if an incident occurs at the airport, is the onus on the airport to contact the local police, the AFP or both? I understand that you say that there has been consultation with the state police and agreements drawn up between the two, but, on a practical level, who is it that is contacted first?

**Mr Keelty**—Obviously, if the deployment team is present in an airport, the stakeholders in the airport will be aware of it. In the normal course, the people will contact the state or territory police. The thing that has to be remembered is that this is a pre-emptive capability designed to deter terrorist attacks. We obviously cannot be all things to all people. It goes back to that deterrence from the random activity that I mentioned before. We have done a lot of consultation to ensure that there is no confusion about who should be contacted because we do not want to usurp the role of the state and territory police. But, at the same time, we want to be part of that layer, if you like, of security that surrounds airports. The regional airports are obviously an area of concern.

**Senator LUDWIG**—I have been listening very carefully. That is interesting. Why is it called the Regional Rapid Deployment Team if it is pre-emptive? Correct me if I am wrong: what you have been describing is an area which goes out in a planned way as a presence to deter. But the name ‘Regional Rapid Deployment Team’ brings to mind a ready response—in other words, if an incident occurs then the team will be deployed to resolve that incident. Which is their role? Is it the former or the latter?

**Mr Keelty**—It is both. The former is the one I have been describing but, if intelligence was received about an incident at a regional airport and there was potential for us to respond to that incident then we would respond to that incident.

**Senator LUDWIG**—You have the main airports, so I will pick South Australia. Have you got a team there?

**Mr Keelty**—No. The team is operating out of Melbourne for South Australia.

**Senator LUDWIG**—So, if the incident is in Coober Pedy, in a regional airport, how do they get to Coober Pedy and how long will it take?

**Mr Keelty**—That is where the involvement of the state and territory police is essential to the success of the security matrix. Obviously from Melbourne, they would not be able to respond, or it would not be practical for them to respond, if an incident were occurring now. But, if they had intelligence of people planning for an incident, suspicious activity or routine activity that they want to examine more closely, they can obviously be deployed to Coober Pedy ahead of any preplanned deployments that they might otherwise have had on their program.

**Senator LUDWIG**—But they are not a rapid deployment team in that sense. That is still the formal role. In other words, they are doing a presence and deterrent role. We are talking about a heading that says ‘regional rapid deployment team’. Melbourne to Coober Pedy I think is something in the order of 1,360 kilometres. Is there a mechanism which will facilitate the Australian Federal Police to go there and to do work in response to an incident or is there not capability for that?

**Mr Keelty**—There is a capability within this team to respond to the threat, as opposed to the actual incident itself. Short of having people permanently based at each of these regional airports, this is considered an appropriate response to the threat that exists for those airports. In terms of the word ‘rapid’, the reality is that they will be able to deploy much more rapidly than would otherwise be the case without impacting on existing resources at the metropolitan airports. Prior to this new policy, the situation was that if a threat had existed at a country airport in a state and was outside the capability of the state police, in that instance we would have to have taken the resource away from one of the major airports. This is a way of supplementing that capability and spreading it across a much larger area. But it is threat based rather than incident based.

**Senator LUDWIG**—When you say threat based, you define that as when you have intelligence that there is something that may happen in the future. It is not an incident response team.

**Mr Keelty**—That is correct. To differentiate from what we have got, for example, at Sydney airport today, if an incident occurs there is a team on the ground permanently located there. They would respond directly to that incident. In this case, the regional rapid response teams deploy to the threat rather than the incident because of the distance. It is like many other types of policing that you do. If you happen to be walking the beat in a particular suburb at the time of a break and enter then you are there at the time of the incident. That is quite different from walking the beat in a suburb because you believe that there has been a high

incident level of crime in that particular suburb. It is the same analogy. It is the way a lot of policing is done.

**Senator LUDWIG**—How would you deploy your team to deal with threats? Are they driven there or flown there? Is there a central point?

**Mr Keelty**—It depends on the circumstances and how far away it is. It will vary from case to case.

**Senator LUDWIG**—We are stuck on Coober Pedy so let us use that one.

**Mr Keelty**—They may well access a charter flight.

**Senator LUDWIG**—In a sense, they are not going to be able to be deployed within a day. How long will it actually take, even with a threat? If there is a concern with a threat at, say, Coober Pedy—we are stuck on Coober Pedy so we will use it—how long will it take to deploy to Coober Pedy to deal with that possible threat?

**Mr Keelty**—We aim to be in the particular place where the threat is within 24 hours of receiving the threat.

**Senator LUDWIG**—Could you go through how you would deploy to Coober Pedy to be there within 24 hours? Is there a plan of action to be able to do that?

**Mr Keelty**—I do not have the details of a plan of action but part of their work is to have the capability to be in those places within 24 hours of the threat being received. In a case like Coober Pedy, I imagine the only way to do that would be to charter a flight out of one of the airports in Melbourne—either Essendon or one of the other regional airports in Melbourne. It may well be that they are already in South Australia looking at one of the other airports. So they will just simply move from the airport they are at to where the threat is. It will vary from time to time.

**Senator LUDWIG**—Have you worked out indicative times regarding what it might take to deploy to various locations, depending on resources, and how you might then go about it?

**Mr Keelty**—They have. Part of the predeployment will be to rehearse those deployments. A good indication of just how quickly we can mobilise those resources was that, for example, with the tsunami we were on the ground within 24 hours. With the Bali bombings we were on the ground within 24 hours. So we do have a capability within the AFP to mobilise very quickly, and we are extending that capability to these teams.

**Senator LUDWIG**—I am moving to a different topic. Has the position of the national coordinator for counter-terrorism been established?

**Mr Keelty**—Sorry, is that an AFP position you are referring to?

**Senator LUDWIG**—I may need to bring you up to date. I had an opportunity with A-G's, and I asked a number of questions there which also may concern the Australian Federal Police. Some of these are carry-over questions. I thought I would wait to ask them today. I do not think I mentioned this yesterday, but there were a couple that I thought I would bring and ask at the same time. It may in fact be the AGD that answers that question. But it depends where they sit and who then has the responsibility for that position. It could very well be the AFP, the ACC or ASIO; I am not sure.

**Mr Cornall**—Could you read back the question?

**Senator LUDWIG**—In the government's election package 'Fighting terrorism at its source', it said:

To coordinate the international activities of these Counter Intelligence and Counter Regional Engagement Teams the AFP will appoint a National Coordinator for Counter Terrorism.

Has this position been established?

**Senator Ellison**—We might take that on notice. You might ask some other questions in the meantime, and we will get back to you very shortly.

**Senator LUDWIG**—I have a series of questions that surround that.

**CHAIR**—I thought it was a PM&C position myself. Is it a PM&C position?

**Mr Cornall**—I am a little bit uncertain of that; that is why I am unable to answer it. Senator Ludwig, where are you reading from?

**Senator LUDWIG**—It is the government's election package 'Fighting terrorism at its source'.

**Mr Cornall**—So it was not in any of our department or portfolio budget releases.

**Senator LUDWIG**—No, it was an election package commitment.

**CHAIR**—Perhaps if we could move on in the meantime, the officers could pursue at least a location of the position.

**Senator LUDWIG**—That is why it is always difficult. If I ask the Australian Federal Police, it is a bit unfair if they did not write the election commitment. But it is sometimes helpful.

**Senator Ellison**—It will only take a moment. The department is getting that information.

**CHAIR**—That is fine. Thank you, Minister. We will move on.

**Senator KIRK**—I have some questions in relation to protective service surge capacity. I understand that the government has committed an extra \$21.9 million to this program but I am uncertain as to why the additional money was allocated. I wondered if you could inform the committee of its purpose.

**Mr Keelty**—The reason we needed a surge capacity, if that is what you are asking, is that within the Protective Services over a number of years we have been deploying as required to some very high-risk areas. Obviously, that was having an impact on the areas that were already being protected by the protective service element of the AFP. What we sought from government was the capability to have a surge capacity in there so that we could meet the emergent demands as the threat assessments were coming in. That is the basis of that new policy.

**Senator KIRK**—Where does the money go to? Is it to the employment, recruitment and training of surge teams?

**Mr Keelty**—Yes. This financial year there will be \$7.5 million spent on additional recruiting and equipment.

**Senator KIRK**—Only \$7.5 million is being budgeted for in this financial year?

**Mr Keelty**—That is correct. This is a \$21.9 million initiative over four years. We plan to spend \$7.5 million in 2005-06, \$4.7 million in 2006-07, \$4.8 million in 2007-08 and \$4.9 million in 2008-09.

**Senator KIRK**—So there have been additional officers recruited. How many?

**Mr Keelty**—Forty additional officers.

**Senator KIRK**—Whereabouts are they located?

**Mr Keelty**—At the moment they are still in training but they will be located both here in Canberra and at the major centres, most likely Sydney and Melbourne.

**Senator KIRK**—When do they come on board? You said that they are still training, so when does the program begin?

**Mr Keelty**—The new funding commences from 1 July, so we would hope to have them deployed as soon as possible after that. There will be a capacity to deploy them to all major cities other than Brisbane.

**Senator KIRK**—What sorts of situations require a surge capacity?

**Mr Keelty**—All of the protective service elements are deployed currently to high-risk government installations or overseas missions. As the threat level changes, for example, the number of missions that are covered today may not be the same number of missions that are covered next week should the threat level increase. Similarly where they are located at government institutions, some government institutions that are not currently receiving protective service skills in their area may become high risk at some time in the future. It is to give us capacity to deliver that service without having an impact on where they are already located.

**Senator KIRK**—So it is really just a matter of bringing people in from whether it is Sydney or Melbourne to a particular area that requires the assistance at that time.

**Mr Keelty**—That is correct—to minimise the impact on where they are currently engaged.

**Senator KIRK**—You say they are going to be based in Canberra, Sydney and Melbourne and they can be deployed to any capital city other than Brisbane. What happens with Brisbane?

**Mr Keelty**—At this stage there are not a lot of installations that we protect in Brisbane other than the airport, so at this point in time we have had no requirement and there is no threat to have a surge capability within Brisbane.

**Senator KIRK**—Would the majority of the officers be located in Canberra, given the number of government institutions here?

**Mr Keelty**—As I say, they will be in every major centre other than Brisbane, but the majority would be here in Canberra, yes.

**Senator KIRK**—From the way you have explained it, up until now, or rather up until 1 July, there has not ready been the capacity within the AFP to respond to security risks in government installations. Is that fair to say?

**Mr Keelty**—It means we have had to rob Peter to pay Paul, in a sense. We have had to move resources or put people on overtime working additional shifts. This is to alleviate that demand on our services.

**Senator LUDWIG**—Chair, I have the source document that I was quoting from earlier. I can table that if it might help you find it.

**CHAIR**—That is very good of you.

**Senator LUDWIG**—It is on page 4—the second dot point at the top.

**CHAIR**—Thank you so much.

**Senator LUDWIG**—We can come back to that, but in terms of the protection of visiting dignitaries—

**CHAIR**—I think we also have a response for you, Senator Ludwig.

**Mr Keelty**—There is a position of international counter-terrorism coordinator as part of the new policy for the AFP that was linked into our international deployments on CT, and that position has been filled.

**Senator LUDWIG**—Who has filled that position?

**Mr Keelty**—Federal Agent Ramzi Jabbour.

**Senator LUDWIG**—Was that position advertised?

**Mr Keelty**—He was transferred to the position at that level, as I understand it.

**Senator LUDWIG**—When was that?

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

**Senator LUDWIG**—What level was that position?

**Mr Keelty**—Coordinator, which equates to a superintendent.

**Senator LUDWIG**—So, effectively, a position has been administratively created?

**Mr Keelty**—That is correct.

**Senator LUDWIG**—There is no requirement for legislative change to underpin the position?

**Mr Keelty**—No.

**Senator LUDWIG**—What was the process used to fill the position? Did you advertise it internally?

**Mr Keelty**—I am not sure. Normally we would, and I do not know that this was an exception.

**Senator LUDWIG**—Was he co-opted and dragged in!

**Mr Keelty**—No, he has been working in the CT area for some time. He is very experienced. He has done work, obviously, in the Middle East and other places. He has been in the position since 1 January.

**Senator LUDWIG**—What tasks will he do?

**Mr Keelty**—I will ask the deputy commissioner to answer that.

**Mr Lawler**—The role of coordinator of counter-terrorism is to coordinate the Australian Federal Police's international terrorism activities, and that goes across a range of activities offshore that we are currently involved in and that the commissioner has already spoken about, including our work in Indonesia and in the Philippines.

**Senator LUDWIG**—Is the remuneration for the position at the same level as that of a superintendent in the Australian Federal Police?

**Mr Lawler**—I understand the remuneration is consistent with that of a coordinator across the organisation, yes.

**Senator LUDWIG**—The position was created administratively. Did you then assign—I am unsure of how the process goes—a salary, or did you decide that in this instance it should be a superintendent who takes his salary with him?

**Mr Lawler**—My understanding is that the position is created and has a dollar salary attached to it which is equivalent to that particular level in the organisation, and a particular person fills it and draws that salary.

**Senator LUDWIG**—When was the position created? It was filled on 1 January.

**Mr Lawler**—I understand the salary would have been drawn down from 1 January 2005, as the commissioner indicated.

**Senator LUDWIG**—So the position was created and filled on 1 January? You can see that there is a difference. You have had the opportunity to tell me how it was advertised internally, but—

**Mr Lawler**—I would need to take that on notice, as to when the position was physically created, but I understand it was filled on 1 January.

**Senator LUDWIG**—So there may have been another lag whilst the officer transferred across or took up the duties?

**Mr Lawler**—My understanding is that the officer was already in Canberra, so I cannot envisage a delay in that regard. It is quite possible that, in the administrative setting up of that position, there may have been a lag, but I will need to clarify that.

**Senator LUDWIG**—All right. Perhaps you could take that on notice and, if there is any change to the information you have provided to the committee, could you update that please. The position does not require the exercise of special powers or any other duties that would require legislative change—is that right? It is a coordination role?

**Mr Lawler**—That is right, albeit the occupant is a sworn member of the Australian Federal Police and of course would be able to exercise police powers, like any other member of the Australian Federal Police, in accordance with the Australian Federal Police's mandate.

**Senator LUDWIG**—How many staff are allocated to the position?

**Mr Lawler**—There is one person who is occupying that position, the coordinator.

**Senator LUDWIG**—What is the reporting arrangement then? Where do they fit within the—

**Mr Lawler**—The coordinator of counter-terrorism is within the functional stream of counterterrorism. That particular functional stream within the AFP's structure is headed up by a national manager or an assistant commissioner of police. Ultimately, the coordinator of counter-terrorism would be reporting to that national manager, albeit through the manager of counter-terrorism.

**Senator LUDWIG**—Do you have an organisational chart which places them in the functional stream that you have just outlined?

**Mr Lawler**—There is an organisational chart that outlines the functional streams that make up the AFP's structure, yes.

**Senator LUDWIG**—Can the committee have a copy of that? Will that reflect where that role of the coordinator is?

**Mr Lawler**—It depends on which structural chart one is looking at and whether that goes down to a level that may not be indicated on those charts. I will need to look at the functional structural charts that are available to see whether it captures that position.

**Senator LUDWIG**—We might be able to come back to that. Do the reporting arrangements at least go through to the national manager of counter-terrorism?

**Mr Lawler**—The national manager of counter-terrorism ultimately to me is the deputy commissioner, yes.

**Senator LUDWIG**—If you do have the organisational chart. It may not reflect that position. I am not asking you to amend it but perhaps annotate it to then demonstrate where that position would fit in.

**Mr Lawler**—Certainly.

**Senator LUDWIG**—That would be helpful. Thank you. Is there a separate budget that has been set aside for that position?

**Mr Lawler**—That would be captured within the total budget for the new policy initiative. There is a finite salary package that is attached to that particular position that could be determined.

**Senator LUDWIG**—How will they then interact with the counterterrorism regional engagement teams? Will they form part of that as well? In other words, will they play a role in coordinating with that activity, or will they coordinate in a domestic capacity?

**Mr Lawler**—They will certainly perform a very important role in relation to those particular teams, yes.

**Senator LUDWIG**—What will that be?

**Mr Lawler**—As I said, it is a coordination role in ensuring that whatever the particular task that the AFP is engaged in through these teams is properly coordinated, firstly, in a whole-of-government context and, secondly and importantly, within the reorganisation itself. It is important, of course, that it coordinates across our other responsibilities, which overlap, particularly the role of the international network.

**Senator LUDWIG**—Was there a coordination problem?

**Mr Lawler**—I do not know that there was a coordination problem but, given the expanded role that the AFP is performing in this area, this position adds capacity in this area to ensure that, as I said, the whole-of-government response is effective.

**Senator ALLISON**—Can you explain what the AFP's role is with security and baggage handling at airports?

**Mr Keelty**—The role for security at airports is one for the airline operators and the airport operators.

**Senator ALLISON**—I understand that, but the AFP presumably has had some involvement in setting up systems. Given the objectives of your agency, it would seem pretty clear that this is a key area of interest.

**Mr Keelty**—The involvement of the AFP is in respect of our work in protecting the borders in terms of drug trafficking, people-smuggling and other sorts of crimes committed through the airports—as it is through other means. In respect of baggage handlers themselves, it would be in respect of working with the other agencies at the airports, which include, as I say, the airline operators, the airport operators, AQIS, Customs and the other government departments working at airports. We are also responsible for the criminal record and background checks for the issue of the Aviation Security Identification Card, known as the ASIC. Baggage handlers form part of the occupations at the airport that are required to undergo checks to be issued with an ASIC. Other requirements prior to the issue of an ASIC are a security assessment conducted by ASIO and, if the person is not an Australian citizen, a check conducted by the Department of Immigration and Multicultural and Indigenous Affairs as to whether he or she is an unlawful noncitizen.

**Senator ALLISON**—Have all baggage handlers now been issued with the ASIC and had security checks?

**Mr Keelty**—The only people who work outside of that process are, as I understand it, temporary staff who work at airports.

**Senator ALLISON**—Temporary staff are not required to have ASICs?

**Mr Keelty**—Temporary staff are provided with a temporary pass but they must be supervised by somebody who has had a background check at all times while they are in the airport.

**Senator ALLISON**—As you would be well aware, the parliament passed legislation some time ago giving powers to personnel working in airports to conduct frisk searches and the like. Was it ever envisaged that this power would be given for use on not only passengers but also baggage handlers?

**Mr Keelty**—That is a policy question for government.

**Senator Ellison**—Madam Chair, could Senator Allison just repeat that question. I have the letter here that was requested previously, by the way, and I was just attending to that for the purposes of tabling it. If we can just deal with this issue first then we will table the letter.

**Senator ALLISON**—Some time ago we passed legislation which gave new powers to APS personnel working in airports dealing with passengers. Individual passengers can be frisked

and required to give their name, address, a reason for being where they are and so forth. Is it anticipated, in the light of recent developments, that there might also be a focus on baggage handlers in terms of increasing surveillance over their activities—or indeed those kinds of demands?

**Senator Ellison**—As I recall it the policy setting for that legislation was one of national security and dealing with counter-terrorism first response, which is handled by the Australian Federal Police Protective Service. It was thought that they needed the power to act where they thought that there was a possible breach of security. They were to do so with certain requirements—that is, they could not just willy-nilly ask someone to provide their bag to be searched; there had to be reasonable grounds for it. I think there was a good deal of Senate scrutiny in relation to that.

We are dealing here with a situation where you are talking about baggage handlers and the screening of them as a whole—that is, across the board—not in the context of the AFPPS powers where that is in response to a circumstance which presents itself, such as a person acting suspiciously, but in the circumstances of people working at the airport. That is a different policy consideration, because what you have there is a blanket approach, if you like, to how those people are screened.

Baggage handlers never used to be screened. They are now, to the extent that they have ASICs, and that involves a background check on them. Of course, there is closed-circuit television at airports. Airport operators, Customs and Qantas have their closed-circuit television, which adds to the security of the airport environment. But the point you make about the Australian Federal Police Protective Service is more to do with a discrete power that was given to them in relation to their counter-terrorism, first-response role.

**Senator ALLISON**—Are closed-circuit television arrangements present in baggage-handling areas?

**Senator Ellison**—I understand that Qantas recently announced an increase in coverage. About a month or two ago, Qantas announced that it would be increasing its closed-circuit television coverage, which included baggage areas.

**Senator ALLISON**—Prior to that, were all operations within baggage-handling areas covered under the CCTV arrangements?

**Senator Ellison**—I understand there was CCTV in baggage-handling areas. As to which airports, I would have to take that on notice, but I understand that there was provision of closed-circuit television in baggage-handling areas.

**Senator ALLISON**—For how long are the tapes from those systems maintained?

**Senator Ellison**—I would have to take that on notice. That is a matter for Qantas airlines. I understand, from discussions with Qantas, that they are kept for a month or so. It depends on the workload in relation to the tapes and the systems concerned, but I will take that on notice and get back to the committee.

**Senator ALLISON**—Mr Keelty, are tapes from surveillance in airport luggage-handling areas ever used by the AFP in their investigations?

**Mr Keelty**—They could be. It would be in an investigation, as I mentioned before, of a breach of the legislation that we operate under.

**Senator ALLISON**—So that would be related to terrorism—is that what you are saying?

**Mr Keelty**—It could be terrorism, it could be narcotics trafficking, it could be people-smuggling, it could be identity fraud—it could be a raft of issues.

**Senator Ellison**—You also have to remember that state police have jurisdiction as well, so it is something that state police could avail themselves of.

**Senator ALLISON**—So the AFP can, at any point in time, ask for the tapes on baggage handling on certain days if there is suspected narcotics activity?

**Mr Keelty**—That is correct, if the tapes exist—remembering that the security at airports is governed by the Department of Transport and Regional Services. They set the standard and we are but one, as I have mentioned to you before, of a large number of agencies that operate out of the airports, including the state and territory police. All of the airports are privatised and general community policing at airports is the responsibility of the state and territory police.

**Senator ALLISON**—I understand that, but you have an interest, surely, in being able to secure evidence that might be collected on that CCTV.

**Mr Keelty**—If it was a matter in which we had an interest, yes—and if the tapes existed.

**Senator ALLISON**—Such as drug trafficking?

**Mr Keelty**—That is correct.

**Senator ALLISON**—Can you give the committee some idea of how frequently you request evidence from CCTV on drug trafficking within baggage-handling areas?

**Mr Keelty**—I do not have the information here. I would have to take that on notice. But you are talking about every operation we involve ourselves in at airports, so it would take me some time to gather that information. We would need to know between what dates you required the information.

**Senator ALLISON**—I am sorry. I did not mean to ask for something which would be onerous to collect, but I want a general sense of how frequently the AFP uses this information and how readily it is available. I would have thought that, in your talks with airport authorities, whether they are private or otherwise, this would be fairly central to your evidence-collecting capability—is it not?

**Mr Keelty**—Which question do you want me to answer?

**Senator ALLISON**—Is the collection of information via the CCTV, tapes of the CCTV and baggage handling areas, of interest to the AFP?

**Mr Keelty**—It may or may not be, depending on what the case is that is being investigated and whether the evidence exists.

**Senator ALLISON**—I will go back to the first question and ask you to provide information about the number and occasions on which the AFP has requested tapes within baggage handling areas related to drug trafficking.

**CHAIR**—Which you have taken on notice, Mr Keelty.

**Senator ALLISON**—Perhaps over the last three years, for want of a better time frame.

**CHAIR**—It has been taken on notice, Senator.

**Senator ALLISON**—Was Minister Downer wrong, then, when he indicated that the reason that the CCTV tapes were not available in the case of Ms Corby's arrest was that they were usually destroyed within a few hours? That obviously is not correct from what you have just indicated.

**Senator Ellison**—There are a number of tapes involved. There are tapes by the airport corporation, Customs tapes and tapes by Qantas. So you have to look at which ones you are talking about because—

**Senator ALLISON**—I am talking about the CCTV tapes of baggage handling activities.

**Senator Ellison**—I will have to take this on notice and make sure that this is right, but there are cases, I understand, where some of the closed-circuit television of baggage handling areas is by the airport concerned. We are dealing with two airports, in the case that you are speaking of, and Qantas has its CCTV as well. So I will need to take that on notice. As I prefaced my remarks, it was a general understanding I had in relation to tapes being held for a period of time. That could change in certain circumstances. I did not say it was ironclad. I cannot comment on what Alexander Downer has said; I do not know what he was referring to.

**CHAIR**—There are a number of questions that have been taken on notice there, Senator Allison. I am sure we will have those answers as soon as we can.

**Senator Ellison**—I can table that letter. I might add that it was addressed to the defence team for Schapelle Corby; I think I said it was to the court concerned. I believe it was provided to them with the expectation that it would be provided to the court. There were reports, of course, that said it was to the court. I am not sure what the involvement of Foreign Affairs was in relation to whether it was going to the court or to the defence team. But, suffice to say, there is one letter. This is a copy of it, and I table it.

**CHAIR**—Thank you for tabling that. I will have that collected.

**Senator ALLISON**—Could we also have on notice the changes being proposed to surveillance in baggage handling areas? Minister, I think you said that Qantas was proposing to put in some additional surveillance points. Is it possible to provide the committee with details of those changes?

**Senator Ellison**—Yes. I can take that on notice.

**Senator ALLISON**—Did they arise from either AFP or other recommendations to Qantas?

**Senator Ellison**—I think Qantas did this on something of its own motion, which it did before any revelation of the alleged cocaine importation. That was done before that surfaced, although of course Qantas was aware of the investigation. I think it was something that Qantas was looking at in any event. We have worked closely with Qantas in relation to aviation security. They do a good job. That was my understanding. If it is incorrect, I will advise the committee.

**Senator ALLISON**—Has AFP had talks with other airlines or other airports about surveillance? Are there negotiations under way at present over the extent to which surveillance is available in baggage handling areas?

**Senator Ellison**—A high-level group has been set up in relation to aviation security. On that group there is representation from the airlines; they are included in that group. So if you are talking about ongoing consultation, that is the primary body that would be involved in that.

**Senator ALLISON**—Which federal agencies are also involved?

**Senator Ellison**—Transport leads that. There is Transport, Australian Federal Police and Customs. The airline owners are represented, as are the airports. I will have to check to see who else is on that body. That is my recollection.

**Senator ALLISON**—Does that body have the power to require Qantas, Jetstar or various airlines to put in surveillance points—CCTV surveillance—where it might be deemed to be undersurveilled?

**Senator Ellison**—I think it is fair to say that the work we do with the airlines is on a very cooperative basis. We have had to legislate where necessary to give people certain powers. The ASI card was just one case in point. We had to have legislation for the ASI card because of the mandatory aspects of that. In relation to the measures that Qantas has taken, it is largely done on the basis of cooperation with Qantas. We have an excellent relationship with the airlines. You talk of Qantas; I also want to include other airlines such as Virgin Blue. Where legislation is required then we go down that path. It is done in consultation with the airlines and the airport owners. The ASI card was just one example.

**Senator ALLISON**—In those talks or in that group has there ever been a suggestion put by the AFP or other agencies that a greater level of surveillance should be provided, and which has been rejected by the airports or Qantas?

**Senator Ellison**—I cannot comment on the extent of those discussions. I would have to take that on notice. I cannot speak for every official who is represented there. In that group ASIO is also represented. Any further questions of that sort I will direct to the department of transport. The department of transport is the lead agency for that body, so I will take that on notice.

**Senator ALLISON**—But the department of transport does not have the same interest in security as the AFP or ASIO, presumably.

**Senator Ellison**—No, the department of transport has a very strong interest in aviation security. The Deputy Prime Minister has taken a very close interest—

**Senator ALLISON**—We will perhaps raise these questions with ASIO when they appear a little later. Going to this letter to the Indonesian lawyers on the question of drug importation into Australia and baggage handlers, I will read the second paragraph, which states:

Following a joint investigation which has been conducted over the last six months, the Australian Federal Police and the New South Wales Police have dismantled a Sydney based syndicate involved in trafficking of drugs. Police are currently investigating a number of baggage handlers who work at the Sydney international airport about these drug-trafficking activities. The police believe these baggage

handlers were on duty on 8 October 2004 when a shipment of drugs was brought into the Sydney international airport.

Mr Keelty, that does seem to me to be somewhat in contradiction to your comments a couple of weeks earlier, which were—and correct me if I am wrong in my recollection—that an investigation had been conducted and no evidence had been found to support the claim that there had been interference in baggage handling or drug related activities.

**Mr Keelty**—There is no conflict between what is contained in that letter and my public statements. To go into greater detail might create problems in terms of what was agreed between madam chair and the minister.

**CHAIR**—These are matters currently under continuing investigation?

**Mr Keelty**—Can I point out that the matter regarding the international airport involving the AFP and the New South Wales Police is ongoing and charges have been preferred. That matter is now before the court. With respect, I think the other issues come into the ambit of the discussion that the minister had with you, Madam Chair, at the outset of these proceedings in respect of the Corby matter.

**Senator Ellison**—I think that is appropriate. You are talking about a situation where you clearly have mention of a matter which is before the courts. The other matter was an investigation carried out by the Australian Federal Police and the Queensland police. Of course, Commissioner Keelty's comments were made in the context of that previous investigation by the Queensland police and the Australian Federal Police and not in the context of this subsequent development, which was made public when arrests were made and people taken before the courts. To comment on this now is inappropriate because of the matter being before the courts. Of course, a number of people are before the courts. There are ongoing investigations as well. So there is more than one reason for declining to go into these matters in detail.

**Senator LUDWIG**—Minister, the commissioner has given us a short overview of those matters that surround the Sydney international airport drug-trafficking activities. Is the commissioner able to provide a more expansive explanation of the circumstances that he can put on the record about those activities and what the current investigation or its stretch is or about the lead-up to the current investigation which culminated in the arrests? Rather than ask the question—Senator Allison can come back to it—it is a matter of putting the ball in your court and asking what you can say in terms of those activities.

**Senator Ellison**—In relation to the operation involving the alleged cocaine smuggling?

**Senator LUDWIG**—It is not unusual for us to ask that at estimates, to be able to then elicit from the commissioner what he can say, given the nature of the issue and given that obviously it is an ongoing operation.

**CHAIR**—The committee is cognisant of those restrictions.

**Mr Keelty**—I will precis the public information on this, which would be the facts presented before the courts. It is a joint investigation involving the Australian Federal Police, the New South Wales Police and the New South Wales Crime Commission. The investigation has been going on for some months. There are people who have been charged with conspiring

to import cocaine into Australia through Sydney airport—the international terminal. It is an investigation that spans not only Australia but also South America, where, the committee will be aware, there is an AFP presence. There have been many months of telephone intercepts and listening devices used as part of that investigation. An aspect of the investigation was a focus on a small number of baggage handlers who were employed at Sydney airport and who were operating on the international side of the airport.

**Senator ALLISON**—Can I ask whether it is the case that AFP personnel are also under investigation?

**Mr Keelty**—A matter has been referred to our professional standards area as a result of an allegation—I would not put it any more strongly than that—that arose out of that investigation.

**Senator ALLISON**—Is that investigation complete now or is it still under way?

**Mr Keelty**—It is still under way.

**Senator ALLISON**—And that also related to Sydney airport?

**Mr Keelty**—It did, but it in no way pre-empted or caused the operation to be executed at the time, which was for reasons that I cannot disclose publicly. There was another reason the operation had to be brought to fruition on the day that it was.

**Senator ALLISON**—Did the allegation involve just one officer or was it more?

**Mr Keelty**—An allegation has been made against just one AFP officer. We are very much aware of that allegation. It was not a revelation to us. It is an ongoing matter within our professional standards area.

**Senator ALLISON**—Has the officer been suspended while the investigation is under way?

**Mr Keelty**—No.

**Senator ALLISON**—So he or she is conducting normal activities?

**Mr Keelty**—That is correct, and that is why I say I would not put it any higher than that the allegation has been made. We have to keep an open mind in these matters. We treat allegations of corruption very seriously. This happened to be a matter about which we had prior knowledge and so we were proactively investigating it in any event. I think to say any further probably will have a negative effect on that investigation.

**CHAIR**—We understand.

**Senator KIRK**—I have some questions in relation to the costs of protecting visiting dignitaries. I would like to know what the cost of providing security for such dignitaries was in the years 2003-04 and 2004-05.

**Senator Ellison**—Whilst that answer is being looked at, we do have some further information for Senator Carr. I thought that, since that was raised earlier, we could deal with that now.

**CHAIR**—Is the information for tabling or will this be a question-answer process?

**Senator Ellison**—The commissioner can deal with that.

**Mr Keelty**—In respect of Senator Carr’s earlier questions, the investigation into the unlawful disclosure of information resulting in the execution of a search warrant on the *National Indigenous Times* has not been completed; it is ongoing. I am not sure if Senator Carr is aware of this, but on 4 November 2004 the AFP received a referral through the Minister for Justice and Customs from the Department of the Prime Minister and Cabinet relating to the unauthorised disclosure of Commonwealth documents. A search warrant was then obtained as a result of that investigation commencing. The search warrant was executed on the *National Indigenous Times* office in Canberra on 11 November 2004. I am not sure that I can give you any further details, Senator Carr, unless there was something specific that you wanted to know.

**Senator CARR**—There are a number of questions that I have on this issue. Last night at the Senate estimates hearing with the Department of the Prime Minister and Cabinet I was advised that the investigation had been concluded and that the AFP had written to the Department of the Prime Minister and Cabinet, so could you check that information that you have just given to this committee.

**Mr Lawler**—I understand that the case is still ongoing. It is, under our systems, awaiting finalisation but has not been finalised at this particular point in time. So whilst there may have been correspondence, from an AFP perspective the matter has not been finalised.

**Senator CARR**—If I could follow that up, the Department of the Prime Minister and Cabinet have advised the Senate that a letter was sent by the AFP saying that no charges will be laid, because of insufficient evidence: no-one has been identified as the source of the material. Can you confirm that?

**Mr Lawler**—I cannot confirm that this morning, but I would not dispute it. What may very well and very often does happen in an investigation is that formal notification will be provided to the referring agency, and the AFP, in the course of finalising its investigations, will go through a range of steps which, from an agency perspective, means that the investigation is ongoing and not finalised. So the two are not inconsistent. It is likely in a number of investigations that the formal referring agency will be provided advice as to the status of the investigation or the conclusion of the investigation without the matter having been finalised by the AFP. It is not until we go through our steps of quality control, ensuring that everything has been done in relation to the investigation, that it is formally recorded within our holdings as being finalised and complete.

**Senator CARR**—The word that was used in the estimates last night was ‘concluded’, but you are advising me that may be a PM&C term, not your term?

**Mr Lawler**—Indeed. And the correspondence may very well have said that. As I said, the two are not inconsistent. One is a notification to the client agency, but from an organisational perspective the operation has not been finalised.

**Senator CARR**—At what point are the people who have been accused, or are the subject of investigation—that would perhaps be a better term—advised? That is, when would the editor of the *National Indigenous Times* be advised?

**Mr Lawler**—That is part of the process for the finalisation of matters, where the referring agency and—depending on the circumstances of a particular case—stakeholders involved in the investigation will be advised of its outcome.

**Senator CARR**—Since the word ‘concluded’ is being used and it is not being disputed by you insofar as its use by Prime Minister and Cabinet, I would like to ask you some questions about that investigation. Are you prepared to accept questions on that matter now?

**Mr Lawler**—I do not have the specifics of the investigation before me. As I have said, whilst I have not seen the letter from the AFP to the Department of the Prime Minister and Cabinet, I do not dispute that that word may have been used, but I would need to check that, of course.

**Senator CARR**—Yes, of course.

**Mr Lawler**—And, as I said earlier, according to the AFP’s check this morning of its holdings, the matter has not been finalised.

**Senator CARR**—In this case the unauthorised disclosures appeared in a number of mainstream publications. My inquiry of the AFP is: why was the *National Indigenous Times* the only publication whose premises were subject to a raid?

**Mr Lawler**—Might I just make the comment that, in the execution of a search warrant on any person or organisation, the AFP is required to present information on oath before a magistrate, and after that magistrate is duly satisfied a search warrant is issued to the Australian Federal Police. It is only at that point in time that a search warrant is executed.

**Senator CARR**—Yes, that explains to me how you got a search warrant for the *National Indigenous Times*, but it does not explain to me why you did not apply for a search warrant for the premises of other publications that also carried the unauthorised disclosure.

**Mr Lawler**—Again, that may be in the context of the investigation, but quite clearly there was sufficient evidence presented to the magistrate, based on reasonable cause to suspect that there would be contained within the premises of the *National Indigenous Times* evidence to support further the investigation of those criminal offences under the Crimes Act 1914.

**Senator CARR**—Surely the same argument would apply to the other publications that covered the unauthorised disclosure?

**Mr Lawler**—It may or may not. That would depend on the facts and on the investigation as it was proceeding. I do not want to second-guess the investigators that are conducting this particular matter, but suffice to say that the investigators satisfied an independent magistrate that there was on the premises of the *National Indigenous Times* evidence to support the commission of an offence under the Crimes Act 1914.

**Senator CARR**—That there had been an unauthorised disclosure.

**Mr Lawler**—Yes.

**Senator CARR**—But, equally, there was evidence of unauthorised disclosure in a number of publications which covered or published the same material. My question is: why did you not seek to raid them as well? How do you answer the charge, in essence, that there has been a measure of partiality in the investigation?

**Mr Lawler**—I do not accept that. AFP investigations are conducted in an impartial way on all occasions. The specific facts surrounding this case would be the basis on which a search warrant was sought for those particular premises—no other reason. It was on that basis that an application was sought and indeed a search warrant was granted.

**Senator CARR**—But you did not inquire into any publication other than the *National Indigenous Times*?

**Mr Keelty**—I might be able to help you there. I think the circumstances were that the organisation that was the subject of a search warrant published their article ahead of the publications in other newspapers and also, as part of their publication, made the claim that they in fact had the document in their possession.

**Senator CARR**—There are also statements here that they were informed by the publications. The *National Indigenous Times* of 24 November, in commenting on these events, said that they had been informed by other publications. Was that considered in your investigation?

**Mr Keelty**—As the deputy commissioner has pointed out, we can only go by the facts that we have to present before a magistrate, and the facts as they existed at the time—I think you are reading from an article that was subsequent to the search warrant—

**Senator CARR**—Yes.

**Mr Keelty**—As the deputy said, on the facts that existed at the time, to be put before the magistrate, the *National Indigenous Times* claimed to have a copy of the actual leaked document. So evidence placed before the magistrate would have been along those lines.

**Senator CARR**—And no effort was made to investigate how the other newspapers came to be in possession of the same documents?

**Mr Keelty**—I am unaware of whether that formed part of the investigation or not.

**Mr Lawler**—I would need to take that on notice to find out the exact facts and the sequence as to which media outlets—

**Senator CARR**—What was the cost of the investigation?

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

**Mr Keelty**—It has not been finalised yet, so when it is finalised—

**Senator CARR**—Would you be able to tell me what the cost of the investigation to date is?

**Mr Lawler**—Yes, we would.

**CHAIR**—Mr Lawler has taken that on notice, Senator.

**Senator CARR**—Thank you. I now turn to the other investigation. I need to get this clear in my own mind: how do you embark upon an investigation? What is the process that leads you to embark on an investigation of an unauthorised disclosure?

**Mr Keelty**—The referral comes to us generally from the minister or through the minister's office and the matter is examined and given a prioritisation. This is a process which we have

detailed before this committee on many occasions in the past. Once the matter is prioritised, it is then allocated for investigation.

**Senator CARR**—So not all unauthorised disclosures are investigated by the AFP?

**Mr Keelty**—That is correct.

**Senator CARR**—Is it only by way of referral from the minister that you investigate—or are you able to initiate your own investigations?

**Mr Keelty**—We can initiate our own investigations, and on occasions some departments will refer directly to us.

**Senator CARR**—There are only two occasions when that has occurred in the last year?

**Mr Keelty**—Going from that list that you had before—

**Senator CARR**—Are you able to give me that list now? Is that document available for tabling now?

**Mr Keelty**—It is.

**Senator Ellison**—We have an amended list, which we now table.

**CHAIR**—Thank you. We will get Senator Carr a copy of it.

**Senator CARR**—I thought you indicated there were two occasions on which you commenced investigations under your own auspices.

**Mr Keelty**—I think that is right.

**Senator CARR**—Are those matters concluded?

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

**Senator CARR**—Can you tell me what the matters referred to?

**Mr Keelty**—Not off the top of my head, unless the deputy is aware.

**Senator CARR**—Are you able to tell me of the other 37 who referred those cases? Do I take it that the list would automatically imply that if there were two in Defence they were referred by Defence, and so on and so forth through the list?

**Mr Keelty**—That is correct.

**Senator CARR**—That would be a reasonable conclusion to draw? Could I have an indication of what the cost has been of each of those investigations?

**Mr Keelty**—Yes, you can, but we have not got those figures here now.

**Senator CARR**—Do you have an aggregate cost for this year to date?

**Mr Keelty**—We would have.

**Senator CARR**—For leak inquiries?

**Mr Keelty**—Yes, we would have.

**Senator CARR**—Could I have that, please?

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

**Senator CARR**—You have answered on notice a question put by Senator Collins. It was answered on 3 August 2004. It was a question in the chamber, question No. 2904. That revealed that between 1997 and 2004 there had been 111 inquiries. Can we update that question to give us the figure for the year to date? Would that be 37 or are there others?

**Senator Ellison**—Could I have the number of that question on notice?

**Senator CARR**—The question on notice was no. 2904. It was a chamber question. It was answered on 3 August 2004.

**Senator Ellison**—I do not have that to hand. Have you got a copy of it there?

**Senator CARR**— I have.

**Senator Ellison**—If you could provide us with a copy, that would be useful.

**Senator CARR**—I will obviously need to get a photocopy of it myself.

**Senator Ellison**—For sure. Whilst that is being done, is there anything else you want ask?

**Senator CARR**—In the 2004-05 period, what was the aggregate number of investigations?

**Mr Keelty**—New referrals were five—

**Senator CARR**—Is that 2004?

**Mr Keelty**—You asked for 2004-05.

**Senator CARR**—Yes.

**Mr Keelty**—That is what I am giving you. New referrals were five, investigations undertaken were 17 and investigations finalised were four.

**Senator CARR**—So what is that 37 figure you referred to before?

**Mr Keelty**—If you recall, my explanation—

**Senator CARR**—I see; that is for the period from 2002 to 2005.

**Mr Keelty**—That is correct.

**Senator CARR**—I am sorry; what do the figures five and 17 refer to?

**Mr Keelty**—New referrals are five and investigations undertaken are 17. So some would carry over the financial year.

**Senator CARR**—So 216 is the total number of investigations that you have conducted, if we were to use that question as the base. How many convictions have there been in those investigations?

**Mr Keelty**—I will have to take that on notice. There have been several, but I will have to get the exact figure for you.

**Senator CARR**—It has been put to me that over a 14-year period—that is, from 1991—there were only 22 convictions. This was an article that appeared in the *Financial Review* on 19 November last year. Does that figure sound correct?

**Mr Keelty**—I am not in a position to dispute the figures, but the very nature of leak inquiries is that they are often a difficult type of investigation. You very rarely get cooperation and so conviction rates are not as high as they might be on other investigations. That is not to

say that they ought not to receive priority, given that many of the leak inquiries that we do undertake go to the heart of undermining the government and government policy.

**Senator CARR**—Indeed they do, and that is why no-one supports unauthorised disclosures, despite the fact that this building survives on them.

**CHAIR**—Speak for yourself, Senator Carr.

**Senator CARR**—Are you telling me that is not true?

**CHAIR**—No. I just said, ‘Speak for yourself, Senator Carr.’

**Senator CARR**—Is that right? I look forward to your next period of opposition.

**CHAIR**—You can come and enjoy where I am right now!

**Senator CARR**—Let us look at the costs. The figure I had in the question on notice was that the cost incurred was \$183,118. But you do not have any costs for the period prior to 2000. Is that right?

**Mr Keelty**—I would suggest that might be right, because we only moved to a position where we could calculate the costs or the hours attributed to this type of investigation more recently. I can tell you that, from the period July 2002 to December 2004, there were 9,491 hours attributed to unlawful disclosure investigations.

**Senator CARR**—What is the cost of that, because that does not include witness expenses, does it?

**Mr Keelty**—No, it would not reflect the total cost of the prosecutions.

**Senator CARR**—What was the cost of the 9,491 hours?

**Mr Keelty**—We would have to extrapolate that for you. We do it in hours because salaries vary. Sometimes people do not work full time on a particular investigation; they only work part time on the investigation and their work is attributed to other areas at the same time.

**Senator CARR**—How many convictions have there been in the last year?

**Mr Keelty**—I asked if I could take that on notice.

**Senator CARR**—I know you did. I was just wondering if your memory had been refreshed, given that you can see that 9½ thousand hours have been spent on this exercise and that this does not include all leaks. The question arises as to whether or not those leaks that are not investigated ought to be. There was a case that appeared in the *Sydney Morning Herald* on 29 April this year. A cabinet-in-confidence document was on the front page of the *Sydney Morning Herald* from Senator Coonan. It was clearly leaked by her or her office. I trust that that is not part of an investigation, is it? Is that the case? Is there an investigation into this—

**Senator Ellison**—Madam Chair, if Senator Carr is saying that Senator Coonan is guilty of an improper disclosure, or the office is, then he should withdraw that.

**CHAIR**—I think the minister is correct, Senator Carr.

**Senator CARR**—Let us have a look at it. The letter was marked—

**CHAIR**—No. In fact we will not have a look at it. I understand exactly what you said, I understand exactly the point the minister has made and I think it is appropriate to seek that you withdraw that statement.

**Senator CARR**—What statement—‘Senator Coonan leaked the document’?

**CHAIR**—Repeating it will not make it any better.

**Senator CARR**—I just want to know what statement it is you want withdrawn.

**CHAIR**—Yes.

**Senator CARR**—Since there has been no AFP investigation, I obviously will have to withdraw it.

**CHAIR**—You will indeed. So you do withdraw, Senator Carr?

**Senator CARR**—I have withdrawn at your request, Madam Chair. I just indicate to you that this letter relating to an IVF matter, marked cabinet-in-confidence, appeared on the front page of the *Sydney Morning Herald*. It was a letter between the minister and the Prime Minister. Commissioner, was this matter referred to you?

**Mr Keelty**—Not that I am aware of, no.

**Senator CARR**—It is clearly a serious breach of the cabinet-in-confidence document.

**CHAIR**—That is an observation that you are making, Senator Carr. I assume you are not inviting the officers to comment on your personal observations.

**Senator CARR**—No, I am not. I am just wondering how it is that some documents get referred to you for investigation and others do not.

**Mr Keelty**—I do not think the AFP is in a position to answer that question, Senator, because the AFP is not the instigator of the referral.

**Senator CARR**—Yes, that is right. Minister, you are the minister responsible for referrals. Can you indicate to the committee why that matter was not referred to the AFP?

**Senator Ellison**—In those circumstances, I normally receive a letter from the departmental secretary or the minister in the area of responsibility, and I am asked to refer that to the Australian Federal Police. I will have to check my records to see if I have received any such correspondence on that matter. I do not recall receiving any, but I will check and advise the committee accordingly. My decision to refer is made when I receive the relevant correspondence from either the department or the minister concerned.

**Senator CARR**—So, unless you receive a letter, you will not refer matters? You do not initiate your own inquiries?

**Senator Ellison**—There could well be a situation where I would refer a matter to the Australian Federal Police because of something which is drawn to my attention or where something is within my own area of responsibility.

**Senator CARR**—We have a situation where the *National Indigenous Times* is raided and the editor’s house and car are searched. The same material is covered by a number of other publications which are powerful institutions in this society, and they are not touched. We have a minister’s letter to the Prime Minister marked ‘cabinet-in-confidence’ on the front page of

the *Sydney Morning Herald* in March of this year—which is not investigated. Minister, why should I not take the view that the leak inquiries launched by this government are not political?

**Senator Ellison**—Senator Carr, your questioning has revealed that there have been many other referrals in relation to unauthorised disclosure, and that reveals that the government is concerned across the board in relation to these unauthorised disclosures. The *National Indigenous Times* situation was just one of them. It is not as if that is the only one that has been investigated. All the others have been followed up too.

**Senator CARR**—Minister, in the last five years, how many raids have there been on a newspaper office for investigations in regard to an unauthorised disclosure?

**Senator Ellison**—I will have to take that on notice, Madam Chair.

**Senator CARR**—Commissioner, can you help me?

**Mr Keelty**—I do not have the number. There have been several.

**Senator CARR**—In regard to what matters were these raids launched?

**Mr Keelty**—Some would be leak inquiries. I do not have the details in front of me, but I know that some would be for leak inquiries. I do not know that all would be.

**Senator CARR**—It is extremely unusual, isn't it, to raid a newspaper office?

**Mr Keelty**—I would not agree with that. If the newspaper is the medium through which the leak is revealed, obviously that medium needs to be investigated as part of the overall investigation. More often than not, it is revealed through a publication or a media outlet.

**Senator CARR**—With regard to the investigation into a Veterans' Affairs cabinet document which led to the prosecution of a Melbourne man, a Mr Kelly: has that been concluded?

**Mr Keelty**—I might defer to the deputy.

**Mr Lawler**—I am advised that that matter is before the court currently.

**Senator CARR**—How long has it been before the court?

**Mr Lawler**—I would need to take that on notice to provide that specific detail.

**Senator CARR**—Were there any other officers charged in regard to the Veterans' Affairs matter?

**Mr Lawler**—No, I am advised that there were not.

**Senator CARR**—I formally ask the commissioner if the table published in the *Hansard* of 3 August 2004, question No. 2904, could be updated.

**Senator Ellison**—Yes, we have a copy of that now. We will take that on notice and give you an update.

**Senator CARR**—Thank you, I will leave it there.

**Senator KIRK**—I return to the question that I asked earlier in relation to the cost of providing security for visiting dignitaries in 2003-04 and 2004-05.

**Ms Fagan**—We have to take those questions on notice. Are you after just the Federal Police costs, because there is a broader range in high office holder security which would go beyond the AFP?

**Senator KIRK**—Yes, I think I would need the broader cost, in which case I might need to ask A-G's for the remainder.

**Mr Cornall**—We will take that question on notice and do our best to provide you with the details you have asked for, with the assistance of the AFP.

**Senator KIRK**—Thank you. My other question is in relation to this coming financial year—2005-06. You may need to take that on notice as well because it is across the board.

**Mr Cornall**—Yes.

**Senator KIRK**—I wonder whether you could tell us the joint cost, for both A-G's and the AFP, of the security for the recent visit of the Crown Prince of Denmark and his wife, Princess Mary?

**Mr Lawler**—From an AFP perspective that information would be available, but it is not available this morning and we would need to interrogate our computer systems to provide that information.

**Senator KIRK**—If you could do that.

**Mr Cornall**—Yes, we will do that.

**Senator Ellison**—We will take that on notice. We will interrogate the systems.

**Senator KIRK**—Thank you. While you are at it, perhaps you could provide the total that was spent for the various visits to this country by the British royal family between 1999 and 2005.

**Mr Cornall**—Yes.

**Senator KIRK**—Thank you. I now have some questions in relation to the protection of high office holders. I would like to know how much the AFP has been allocated in this current budget to spend on diplomatic guarding over four years.

**Mr Lawler**—The costs for 2005-06 for providing diplomatic guarding are broken up as \$28.7 million for operating and \$1.6 million in capital, totalling \$30.3 million for 2005-06.

**Senator KIRK**—I understand that there was an announcement by the government that there would be an additional \$120 million put towards diplomatic guarding. I am trying to understand how I reconcile that with the \$30.3 million that you just cited.

**Mr Lawler**—The \$28.7 million and the \$1.6 million were for diplomatic guarding for 2005-06 in the additional budgets.

**Senator KIRK**—So does the \$120 million go to the protection of high office holders, foreign dignitaries and missions, perhaps?

**Mr Lawler**—I understand that the figure that you might be referring to is the four-year figure. The figures I have quoted were for the 2005-06 year. In 2006-07 the total, without breaking operating and capital, was \$29.9 million. The 2007-08 figure is \$29.6 million and

the 2008-09 figure is \$30.3 million, which gives a total of \$120 million. I do not know whether that is the figure you are referring to.

**Senator KIRK**—I imagine that is right. It would be over four years. What I was trying to understand is whether or not this additional \$120 million over four years is a new program that has been introduced or whether it is simply the same program with another name attached to it—in other words, it is the money that has been allocated in the past and it is just continuing. Could you clarify that for me?

**Mr Cornall**—I might be able to help. Prior to 30 June this year, the diplomatic guarding funding was allocated to this department and we purchased services from the Australian Federal Police Protective Service. It was agreed that, now we have moved away from a separate APS and the AFP is not normally a fee-for-service organisation, it made more sense for the diplomatic guarding funding to be transferred to the AFP and for it to then provide the services as requested by PSCC for guarding purposes. This was on the basis that the funding is allocated to it and that it can then plan for the amounts of money that it will be able to allocate to guarding for the whole of the year. So what has happened is that this now reflects the transfer of that funding to the AFP from the department. That is really the substantive change.

**Senator KIRK**—So essentially there is no change. It is just a shift of the funds from A-G's to AFP.

**Mr Cornall**—That is correct.

**Senator KIRK**—I understand that the existing program will 'result in reduced minimum response times and the capacity for additional, short-term protective security requirements'. How will this program lead to that outcome, given that essentially it is just a transfer of funds from A-G's to AFP? How is that going to be tested?

**Mr Cornall**—The AFP can expand on this answer but the proposition is that, if the AFP has a set amount of funding from the commencement of the year, it can plan its guarding resources and personnel for the whole year without having regard to the fluctuations in income that might have otherwise occurred during the year depending on the demand for the guarding services.

**Senator KIRK**—Were any of the existing moneys now with the AFP transferred from A-G's? Was there any component?

**Mr Cornall**—Yes. The allocation that we received for guarding was specifically for guarding services. That amount has been transferred to the AFP.

**Senator KIRK**—Was that approximately \$40 million?

**Mr Cornall**—No, it was more of the level that has been transferred. But it did fluctuate from year to year, depending on the demands of the guarding requirements.

**Senator LUDWIG**—I wanted to turn to the line of questions I was asking in relation to the counterterrorism regional engagement teams. This is the other part of 'fighting terrorism at its source', which was a package of the Howard government's announcements. There were a couple of other groups that were a part of that—the counterterrorism regional engagement teams, the counterterrorism surveillance team and, I think, the intelligence officers and other

specialists. I will see if I can bring all of those together in some way. Dealing with, in the first instance, the counterterrorism regional engagement teams, has the AFP engaged in negotiations with its counterpart agencies in the Philippines, Indonesia or Malaysia for the deployment of these engagement teams?

**Mr Keelty**—Yes, we have. We have a number of initiatives under that funding. Is this the \$102.7 million funding?

**Senator LUDWIG**—It is really about the engagement teams themselves.

**Mr Keelty**—It is the funding that commenced from 1 January this year.

**Senator LUDWIG**—Yes.

**Mr Keelty**—They have engaged in the Philippines. They have also engaged with a number of other countries as part of a multinational operations support team established out of Indonesia. There are also four other countries that have been engaged in dialogue.

**Senator LUDWIG**—Are you aware of the comments by the Malaysian Prime Minister during his recent visit to Australia regarding the establishment of regional engagement teams in Malaysia?

**Mr Keelty**—Yes, I am.

**Senator LUDWIG**—Has the AFP engaged in any negotiations with its counterpart agency in Malaysia?

**Mr Keelty**—Yes, we have. I met in the margins of the ASEANPOL meeting last week in Indonesia with the inspector general of the Royal Malaysian Police, Tan Sri Mohd Bin Haji Omar. We look set to engage in a memorandum of understanding on mutual cooperation in the investigation of terrorism.

**Senator LUDWIG**—You mentioned four other regional neighbours. Who are they?

**Mr Keelty**—The countries are in the early part of negotiation, and I would not want to put the negotiation at risk. I have the countries listed here, but I could take that on notice and check.

**Senator LUDWIG**—Yes, thank you. So you can indicate that you have spoken to Malaysia and the response to date has been positive, notwithstanding the Malaysian Prime Minister's comments—is that right?

**Mr Keelty**—That is correct. I point out that in that we have a commitment from the Philippines, Thailand, Malaysia and Singapore to contribute to that multiagency centre that is being established in Indonesia. My discussions with the ASEAN chiefs of police were to the effect that there is a commitment to cooperation, and we will pursue a number of memorandums of understanding as a result of that.

**Senator LUDWIG**—Are you able to say whether any regional neighbours have refused to negotiate or engage in discussions about the deployment of a regional engagement team?

**Mr Keelty**—There have been none. The purpose of the program is to engage the host nation first rather than to deploy unilaterally; to, where possible, engage under an existing

memorandum of understanding; and, where one does not exist, to establish one. As I say, so far the program has been very positively received in the countries that have been approached.

**Senator LUDWIG**—Are you able to say which ones are using the current MOUs that are in place or whether any new ones have been negotiated specifically as a consequence of this new initiative?

**Mr Keelty**—New ones will be entered into in the countries that I undertook to take on notice for you. In addition to that, the Philippines has an existing MOU, under which we are operating. There is one to be signed in Singapore, which I will do early next month and one to be signed in Malaysia, which I will do probably some time next month, and there are existing ones with Thailand and Indonesia.

**Senator LUDWIG**—Have any regional engagement teams been deployed?

**Mr Keelty**—Yes, they have.

**Senator LUDWIG**—To where have they been deployed?

**Mr Keelty**—To Indonesia and to the Philippines.

**Senator LUDWIG**—How many personnel are involved?

**Mr Keelty**—There are nine personnel in the bilateral team in the Philippines and three in the multinational team in Indonesia. Four are identified and are actively engaged in the host nations in the four other countries that I undertook to take on notice for you.

**Senator LUDWIG**—What is their role—what are their qualifications in that sense or what will they bring to the mission?

**Mr Keelty**—Their role is in terrorist tracking and investigations. Particularly in the Philippines it is working with the Philippines national police on some existing investigations. In respect of the multinational team, their role is to provide enhanced intelligence support capabilities. We are attempting to also enhance the language skills and cultural awareness of our own staff using that money. There is an existing team of 10 which is not funded under this initiative, but they operate in the Jakarta operations centre. We are engaging with a number of these countries to establish regional bomb data centres. We are also obviously providing some Australian based support capability out of that funding. The size and makeup of these teams will differ from time to time in terms of the mission that they are sent out to do.

**Senator LUDWIG**—Aside from the establishment of the regional bomb data centres, will the role encompass both intelligence and policing or investigative functions? What will it depend on: the requirements of the country or the requirements of the issue that you are then addressing?

**Mr Keelty**—Yes, it will. It will range from intelligence support, investigation support, financial investigation support, forensic support and technical advice and capacity building. So there is a raft of activities in which they will engage depending on the requirements of the host nation.

**Senator LUDWIG**—What is the amount of money that has been expended to date on those initiatives?

**Mr Keelty**—I can give you that figure. The cost is \$14.8 million for the 2004-05 financial year up to 1 May.

**Senator LUDWIG**—I think I tendered the document that said it was effectively for fighting terrorism at its source, but it mentioned there was a counterterrorism regional engagement team. It also mentioned intelligence officers and other specialists and there were to be two countercriminal intelligence teams of nine persons each with a combined cost of \$28.3 million over five years. Then it said that there was the counterterrorism surveillance team with two dedicated counterterrorism surveillance teams at a cost of \$15.6 million and the government allocated \$17.3 million to this program in the budget, as I follow it. Are we talking about the same thing in the sense that they are three areas but the work that you have outlined crosses those three areas or are you only talking about the work so far in respect of the regional engagement team?

**Mr Keelty**—I was answering your questions in respect of the regional engagement team.

**Senator LUDWIG**—I was trying to work out whether I had to ask all those questions again in respect of the intelligence officers and other specialists. Are there separate teams doing that work as well?

**Mr Keelty**—The initiative rolls out under a number of programs. One is the ‘fighting terrorism at its source’ new policy initiative which was the one that we were talking about. That is made up of the teams that I described to you—the one in the Philippines, the multiagency team and the ones that have been engaging with other countries. From 1 April it also provides funding for coordination of law enforcement agency activities in the region. The AFP will have about \$500,000 to \$1.2 million in operational costs per year to operate offshore. Obviously, that will be dependent upon the environment and the needs.

As I mentioned before, that policy initiative also contains reference to the regional bomb data centres that we are establishing and also the language training, which commenced in April. Twenty-one members have commenced training in Tagalog, Bahasa, Arabic, Mandarin and Cantonese. Last week another seven members commenced training in Russian, Arabic, Tagalog, Bahasa and Mandarin. Further language training will be undertaken next month in Russian, Tagalog, Bahasa and Thai.

**Senator LUDWIG**—Apart from the counterterrorism regional engagement team, do you have separate teams comprising intelligence officers and other specialists out in the region?

**Mr Keelty**—That is correct.

**Senator LUDWIG**—Then you have counterterrorism surveillance teams?

**Mr Keelty**—In addition—that is correct.

**Senator LUDWIG**—So there are three groups, apart from the capacity building projects and the bomb data centres?

**Mr Keelty**—That is correct.

**Senator LUDWIG**—Have any of the intelligence officers and other specialists been deployed? If there are three areas, do you keep them discrete in the sense that they are employed in carrying out different tasks? That was the earlier question I was going to. Do you

roll them up into a program and then decide which outcome you are seeking at a particular time? Do you then decide to deploy the regional engagement team, intelligence officers, surveillance teams or all three in a functional role in a region?

**Mr Keelty**—All of it is combined or aggregates up to a capacity to provide the service offshore or wherever it might be required. So it is a combination of all those skills and there is a capacity capability for the organisation.

**Senator LUDWIG**—You have got regional engagement teams deployed; what about intelligence officers and other specialists? Are they deployed?

**Mr Keelty**—They are part of that, yes.

**Senator LUDWIG**—They are part of those earlier teams? Where are they now deployed? Are they deployed with those nine—

**Mr Keelty**—Some are with the nine and some are with the group in Indonesia.

**Senator LUDWIG**—What about the counterterrorism surveillance teams?

**Mr Keelty**—That is part of the technical capacity that I referred to before. I would not want you to have in your mind a surveillance capacity such as you might imagine might occur at home. This is a technical surveillance capacity which is for terrorist tracking teamwork. If I can explain it more simply to you, Senator, it is an expansion of the work that we initiated in Indonesia and that continues today following the Bali bombings, so that did not have a negative impact on the resourcing for our domestic work.

**Senator LUDWIG**—One of the problems—for me but not so much for you, I suspect—is trying to tie it back to the portfolio budget statements and the budget announcement. In the PBS it seems to have been funded to \$31 million but, when you add up the funding here, it is \$42-odd million if we leave out the capacity building and just add those three areas together. I am not sure whether this is a question to the minister or to you in that respect, Mr Keelty. It seems to me that the election promise was \$42 million and it has been funded to \$31 million—or is there money that I missed elsewhere? I am not sure whether you want to answer that, Minister, or whether the commissioner can.

**Senator Ellison**—I am just trying to ascertain where you say that there is a difference. Where is the \$42 million?

**Senator LUDWIG**—If you go to ‘Fighting terrorism at its source’ and you look at the policy measures there, it equals \$42 million if you take those three teams and total them up to get the total millions of dollars spent. There is \$33.3 million, \$11.5 million and \$12.1 million. You then go to the portfolio budget statements to see what has been allocated and you get a lesser amount.

**Senator Ellison**—We will just have a look at that, Madam Chair, to make sure that we are comparing apples with apples.

**Senator LUDWIG**—That was the purpose of the question—to make sure that I was.

**Senator Ellison**—Perhaps we will take that on notice and look at that.

**Mr Keelty**—Subject to the minister’s approval, in order to clarify it for you, what we can do—while I cannot speak for any election promise; nor would I ever want to—is to put

together the exact funding that we have allocated to these programs out of the PBS and how they aggregate to the final figure and then we will put that to the minister.

**Senator Ellison**—Then I can give that on notice in relation to ‘Fighting terrorism at its source’.

**Senator LUDWIG**—That would be helpful. It would be helpful if you could break it down into what is coming out of your own budget and what is new money which is then for specific outcomes. Maybe, if you do not mind, you could have a little note at the bottom so that I can understand how the three different programs might interact. Then there is the more general question—looking at the counterterrorism surveillance teams and the intelligence officers and other specialists and the first one, which is the regional engagement team—of whether any officers are currently being deployed, the number of officers being deployed in those roles and whether or not there is any intention to employ further officers. In other words, by the time you get around to that, could you let us know whether any have been finalised or completed—not those that have not been.

The language would sit outside that; it is a separate one again. I have a couple of questions in respect of that. Was there a program in recognition that there was a lack of language skills within the Australian Federal Police for regional engagement?

**Mr Keelty**—That is correct. Whilst we had some language expertise in the organisation, we did not have critical mass, and this is to provide critical mass in some of the language skills that we see as required. It is intelligence driven in the sense of what our current workload is in the region.

**Senator LUDWIG**—How long will that take? You mentioned a number of languages and a number of programs earlier. How long will it take to get the Australian Federal Police up to the standard that you need?

**Mr Keelty**—I do not have the length of courses, but, as I say, some of the programs have commenced on 1 April and some this month and some will commence next month. We are trying to get to a level of competency in these languages as soon as we possibly can. I do not have a time frame in front of me. It will obviously depend on the existing skill set of some of the people.

**Senator LUDWIG**—Was there a needs analysis done to determine that there was a shortage of particular language skills in certain areas? Did you recognise that you were lacking in operational expertise amongst regional countries? The languages that you have identified go further than simply our regional neighbours.

**Mr Keelty**—They do go further than our regional neighbours but it is intelligence driven. We have looked at the number of operations that we had and how those operations were dependent upon a language skill. Some of it is about being able to communicate with police officers overseas, many of whom in the countries in which we are now operating do not have good English training. So we have done the reverse to equip ourselves, particularly in Tagalog and Bahasa. The other language skills have been required for other types of operations.

**Senator LUDWIG**—I have just been rereading the ‘Fighting terrorism at its source’ document, as you do, or as I seem to do. The strategy comprises four parts. I want to make

sure we are comparing apples with apples, for the benefit of the minister. There is the establishment of two new counterterrorism regional engagement teams to be co-located in the region at the cost of \$42.8 million over five years. However, there is a costing attachment at the back which has policy measure and then costing, but the figure I was using appears on page 2. The PBS indicates \$31 million, but I am sure the minister will be able to explain the 'Fighting terrorism at its source' document and how those figures come about.

The other area is that there was a press report in March this year in the *Australian* about police wanting a terror court. I think they at least attributed remarks to you, Commissioner Keelty, about backing the police bid for reform, that a terrorist court should be taken offshore and given to an international body to administer. Are you referring more generally to an overseas type court or one that would be established in Australia? It seems to me that there was a bit of confusion as to whether they were talking about a terror court in Australia. The Attorney-General's comments were that he was in these instances aware of the pitch but he wanted more detail before deciding whether to act. I understand there are about four terrorism related trials on foot at the moment. I am happy to be corrected about that if there are others that are currently on foot. I did not want to go to those but I am trying to determine where you say the need for that is.

**Mr Keelty**—Did you say that article was published in March this year?

**Senator LUDWIG**—It was published on 21 March 2005 on page 1 of the *Australian*.

**Mr Keelty**—The source of the information for that article was a speech or a discussion paper that I had done after the Bali bombings. It related to a discussion about the difficulty in trying to rationalise the criminal justice system and the sorts of investigations that we are now engaged in. It was an idea that was proposed and no more than that. It was drawing the comparison between creating a terrorist court and having specialised courts, such as drug courts. Part of it was also related to difficulties in accepting evidence in criminal prosecutions where we had had one such prosecution here in Canberra in relation to some documents that had a number of caveats on them. It was more or less a discussion point and no more than that. It has not been put forward as a formal policy.

**Senator LUDWIG**—Was that your view as the commissioner? I suppose it is hard to divorce it really, isn't it?

**Mr Keelty**—I am finding it even more difficult in the current environment. It was more or less a discussion point on the difficulties of this new type of crime. It was nothing more than that.

**Senator LUDWIG**—I was going to ask whether consideration had been given to the number of judges, the type of court, the cost and those sorts of issues and whether a cost-benefit analysis had been done in relation to our existing court structure as against setting up a new court structure but, if it was a discussion point, I will leave it at that unless you wanted to volunteer any comment in relation to that.

**Mr Keelty**—Absolutely not, unless the department has done any work on that.

**Senator LUDWIG**—The other area is the National Missing Persons Unit. Is that within the Australian Federal Police operation?

**Mr Keelty**—Yes, it is.

**Senator LUDWIG**—What resources are allocated to the National Missing Persons Unit? Does it have a discrete budget?

**Mr Keelty**—Yes, it does. The National Missing Persons Unit came across to the AFP after the formation of the Australian Crime Commission. The National Missing Persons Unit, or National Missing Persons Bureau as it was formerly known, was previously attached to the Australian Bureau of Criminal Intelligence but it moved to the AFP on 1 July 2003. When the NMPU was transferred to the AFP, the AFP funded it for the financial year 2004-05 at \$280,000.

**Senator LUDWIG**—How many personnel are assigned to the unit?

**Mr Keelty**—As I understand it, two people are assigned.

**Senator LUDWIG**—Are their APS levels available, or are they officers?

**Mr Keelty**—No. One is sworn and the other is unsworn.

**Senator LUDWIG**—What is the rank of the sworn officer?

**Mr Lawler**—I understand that the National Missing Persons Unit is staffed by a team leader and a team member.

**Senator LUDWIG**—I see. Are both sworn?

**Mr Lawler**—One is sworn and one is unsworn.

**Senator LUDWIG**—Whereabouts is the unit located?

**Mr Keelty**—It is in our headquarters building here in Canberra.

**Senator LUDWIG**—What is its role? Does it have a charter or a mission statement?

**Mr Keelty**—It does. The centre is basically a support centre for the collective national missing persons units around the country. That is why it is such a small organisation. Its functions are to provide a secretariat and chair to the National Advisory Committee on Missing Persons and the Police Consultative Group on Missing Persons. It also contributes to workshops and brings together representatives from police services and non-government tracing services such as the Salvation Army, the Red Cross, International Social Service Australia and other missing persons groups. That is what the National Advisory Group on Missing Persons does. The Police Consultative Group on Missing Persons is basically the heads of all the missing persons units in the state and territory police around the country. The other role of the unit is to coordinate National Missing Persons Week in terms of the advertising program for that. It provides input into a program run on the Nine Network called *Without a Trace*. It also maintains a national web site and 1800 number.

**Senator LUDWIG**—Who maintains the 1800 number?

**Mr Keelty**—I am instructed that it is the unit.

**Senator LUDWIG**—Is that a call centre or do the two officers answer the calls?

**Mr Keelty**—I do not know that the officers answer the calls. My understanding of it is that the calls come into the centre and then they are redirected to the missing persons unit in the appropriate jurisdiction.

**Senator LUDWIG**—Perhaps you could take that on notice. The information I was seeking was how in fact the 1800 number operates, whether or not the number is routed to various regional areas or whether there is a separate—

**Mr Keelty**—I think the deputy knows the answer.

**Mr Lawler**—I understand that what occurs is that the 1800 number after hours is a recorded message service. Messages are left there by persons wishing to report matters, and the National Missing Persons Unit will refer those to the relevant state or territory police as the case may be and as required.

**Senator LUDWIG**—How many calls does it receive? Is there a breakdown of the numbers of calls received and passed on?

**Mr Lawler**—There would be statistical data available, but of course we do not have that level of detail before us this morning.

**Senator LUDWIG**—I am happy for you to take that on notice.

**Mr Lawler**—We would be happy to provide that.

**Senator LUDWIG**—It was established in 2003, was it?

**Mr Lawler**—That is correct.

**Senator LUDWIG**—We could probably start from there as the start date for the information. Have there always been two officers employed there—one sworn and one unsworn? If that has changed since the establishment in 2003, perhaps you could let me know.

**Mr Lawler**—I think it has changed. I think the numbers have been increased, but we will check that and provide that with the additional answer.

**Senator LUDWIG**—Is the allocation of the funding effectively for payment of staff and ancillary costs?

**Mr Lawler**—Costs for performing the functions and roles that the commissioner outlined. One can think of the normal costs that go with doing such an activity.

**Senator LUDWIG**—Yes. Perhaps you could break that down as well from 2003. That would be helpful. I think you indicated that the national advisory committee and the police consultative group are two separate bodies, if I can put it that way—one committee and one group—and they have different roles and functions. The role of the police consultative group is, I think you indicated, to draw together all the state missing persons units, but what role or function does the national advisory committee have?

**Mr Keelty**—It brings together representatives from the police services and the non-government organisations involved with missing persons. It is an advisory committee which aims to raise public awareness and provide advice to government on missing persons' issues.

**Senator LUDWIG**—Who is on that committee?

**Mr Keelty**—The Salvation Army, the Australian Red Cross, International Social Service Australia and, as I understand it, the police missing persons units—but I stand corrected on that.

**Senator LUDWIG**—Do they appear on both the committee and the group?

**Mr Keelty**—Yes, because the aims and objectives of the two different groups are separate. The aim of the Police Consultative Group on Missing Persons is to standardise and improve the police response to missing persons.

**Senator LUDWIG**—What is the aim of the national advisory committee?

**Mr Keelty**—To raise public awareness and provide advice to government on missing persons.

**Senator LUDWIG**—Do both those groups meet regularly?

**Mr Keelty**—I do not know the frequency of those meetings. Could I take that on notice?

**Senator LUDWIG**—Yes. Is the national missing persons hotline coordinated out of this unit?

**Mr Keelty**—Yes, that is the 1800 number I referred to before.

**Senator LUDWIG**—Is that only an after-hours number?

**Mr Keelty**—It works all the time. I think the deputy was anticipating your concern that there were only two people there and what happens to the response to—

**Senator LUDWIG**—Yes, it is not 24/7. What hours are covered?

**Mr Keelty**—Normal office hours.

**Senator LUDWIG**—Is it nine to five or eight to four? It is hard to say what normal is anymore.

**Mr Keelty**—Yes. Can I take that on notice? I imagine it is 8.30 to 4.30 or nine to five. The groups that you spoke of meet annually or as required.

**Senator LUDWIG**—When was their last meeting?

**Mr Keelty**—I will find that out for you.

**Senator LUDWIG**—Thank you. Is there a breakdown of how much it costs to run the web site and how many hits or page impressions it receives? I understand you will need to take some of these questions on notice.

**Mr Keelty**—Can I take that on notice.

**Senator LUDWIG**—Does DIMIA utilise the National Missing Persons Unit? I am asking particularly in relation to the two issues that have been in the media, Rau and Solon, or their aliases. Has DIMIA contacted the Missing Persons Unit in the last 18 months or so in relation to those persons?

**Mr Keelty**—I will ask the deputy to answer that.

**Mr Lawler**—I understand that the Department of Immigration and Multicultural and Indigenous Affairs have not accessed the National Missing Persons Unit up until recent times.

But certainly in relation to the matter of Ms Alvarez, I understand the National Missing Persons Unit was used to assist interaction with the state police services.

**Senator LUDWIG**—When was that?

**Mr Lawler**—That was fairly recently.

**Senator LUDWIG**—Do you have the details of that and what transpired?

**Mr Lawler**—Yes. I understand that the National Missing Persons Unit facilitated access to the Queensland Police Service and one of their missing persons files.

**Senator LUDWIG**—Could you describe what happened in that instance and provide a date?

**Mr Lawler**—I do not have the specific details about who contacted whom, but they did facilitate, on behalf of DIMIA, a contact they knew who of course was responsible for the missing persons units in Queensland. They contacted the Queensland Police Service and worked to gain access to that file on behalf of DIMIA.

**Senator LUDWIG**—How recently was that?

**Mr Lawler**—I understand it was recently.

**Senator LUDWIG**—Do you have a date?

**Mr Lawler**—I think it was around about 22 April. I understand that that activity then continued over a number of days.

**Senator LUDWIG**—And this was to facilitate DIMIA's access to Queensland's missing persons unit?

**Mr Lawler**—Correct.

**Senator LUDWIG**—What happened prior to that? Did DIMIA regularly contact the National Missing Persons Unit?

**Mr Lawler**—I understand that they did not.

**Senator LUDWIG**—The unit does not have a database, or does it? Does it operate in an advisory capacity or does it have a database?

**Mr Lawler**—The unit does not have an operational responsibility or capability. It has the roles that the commissioner has outlined—those four roles—and that is the extent of its activities.

**Senator KIRK**—I have some questions in relation to Securing our Regional Skies, having read the fact sheet produced by the Department of Transport and Regional Services. Could provide us with a breakdown of the implementation of the \$48 million package? I am not sure whether or not this is primarily addressed to you, Commissioner, or to the A-G's department. I would like to know about the new screening capacity for 146 regional airports for which there was \$8.5 million allocated.

**Mr Keelty**—Our only part in that program was the Regional Rapid Deployment Teams, which we answered questions on earlier.

**Senator Ellison**—The remainder is covered by the Transport and Regional Services. As I recall, that deals with strengthening cockpit doors, CCTV and a number of other issues. We would have to take that on notice. We will refer it to the department of transport estimates committee because that is really where you will get the details. This is their issue.

**Senator LUDWIG**—I want to ask about the national child sex offenders strike team. There was an election promise made by the coalition government last year in relation to that strike team. How many officers have been assigned to that strike team?

**Mr Keelty**—The total number is 23.

**Senator LUDWIG**—Are they sworn officers?

**Mr Keelty**—There are 17 investigators, three intel officers, one analyst and two intel support staff.

**Senator LUDWIG**—Is the focus of the team predatory behaviour investigations or coordination in this area?

**Mr Keelty**—Are you talking about the transnational sexual exploitation targeting team?

**Senator LUDWIG**—If that is the National Child Sex Offenders Strike Team; they sound awfully similar.

**Mr Keelty**—The online child sex exploitation team is a separate program, but I think the one you are talking about is where we have teams looking at the investigations into the trafficking of children for sexual exploitation. The other one is a high-tech crime type team that has been established to look at the exploitation of children on the internet. One is \$7 million over four years and the other one is \$28.4 million over 3.5 years.

**Senator LUDWIG**—The one I am particularly referring to, which I think has the \$28.4 million, is the National Child Protection Initiative, which was announced by the Prime Minister in September 2004. I quote:

The Coalition will set up an Australian Federal Police (AFP) National Child Sex Offenders Strike Team containing three specialist teams to probe and prosecute paedophile networks and online child sex abuse.

Under a re-elected Coalition government, the AFP will receive an additional \$28.4 million over four years to set up a national centre for major international and national referrals of child sex abuse material and images with the power and resources to target, infiltrate and shut down organised online paedophile networks.

**Mr Keelty**—That is the online one. That budget allocation is from 1 January this year for a period of 3.5 years. It has capacity for 53 investigations, intelligence and specialist staff. Forty dedicated staff are currently deployed and five positions are also being utilised for other work as well as for this team. The team comprises 11 intel staff, four ANCOR staff, 20 investigations and computer forensic staff, eight evaluation staff, seven referral specialists and three staff tied up in prevention and education.

**Senator LUDWIG**—So that is the one that will, I guess, complement the Australian National Child Offender Register, ANCOR.

**Mr Keelty**—That is correct.

**Senator LUDWIG**—The other one you mentioned had the 23 in total. What was their—

**Mr Keelty**—They are the transnational sexual exploitation targeting team.

**Senator LUDWIG**—What is their role?

**Mr Keelty**—Their role is to look at the trafficking of people for sexual exploitation.

**Senator LUDWIG**—The one that you have the budget initiative for is the first one that—

**Mr Keelty**—The \$28.4 million.

**Senator LUDWIG**—Is the transnational one continuing operational work you have been doing out of your budget, or is there separate funding for that?

**Mr Keelty**—There is separate funding for that. That is \$7 million over four years.

**Senator LUDWIG**—That was in this current budget.

**Mr Keelty**—It is last year's.

**Senator LUDWIG**—I could not recall it. I thought I would just check on that. So that was last year's initiative, which is now in year 2 of a four-year program.

**Mr Keelty**—Yes, that is correct.

**Senator LUDWIG**—The \$28.4 million is for a four-year program?

**Mr Keelty**—That is correct. From 1 January for this financial year \$5.184 million is allocated. The balance will be allocated over the remaining 3½ years.

**Senator LUDWIG**—Is the child sex abuse hotline through the AFP or is that an AGD matter?

**Mr Keelty**—I was not aware of a hotline. Through that network there is an online process for children and parents to access assistance and advice from the police. The deputy commissioner might have more information on that.

**Mr Lawler**—I understand that there is no dedicated hotline under that program. What is utilised to report these matters is Crime Stoppers in the states and territories and, as recently announced, the virtual global task force and an online capacity to report.

**Senator LUDWIG**—Crime Stoppers seems to have a dual purpose, with both drugs and basic criminal activity being reported. Are those reports then referred back to the Australian Federal Police, where a federal offence has been committed? Or is the ACC involved in that, or the AFP with the various states involved in fighting that crime?

**Mr Lawler**—The AFP online child sexual exploitation team is working very closely with the child protection units of each of the states and territories and coordinating relevant operational activity, depending on capacities and expertise. This will depend on whether the breaches are of Commonwealth legislation or are matters that go to the real-time abuse of children, where of course we would work in consultation and close cooperation with the states and territories.

**Senator LUDWIG**—I might come back to an earlier issue. We were talking about overseas deployments. Has the Jakarta Centre for Law Enforcement been finalised? It is due

for completion in 2006. There was a question on notice about it, No. 256, and it is unclear from the answer what stage the construction of the centre is at.

**Mr Lawler**—The centre opened on 1 July last year. This was a \$38.5 million funding project over four years, as I recall. There is still some structural work being done on the centre. The second of the buildings was commissioned in recent weeks. There are plans to build an accommodation site there, but that will have to wait for further funding. There are a number of international donors now coming into the centre. The status of the centre, as I speak, is that three buildings have been built; a fourth building and the auditorium will be completed later this month. In fact, I think they are very close to completion now, from the reports I had in Jakarta last week.

**Senator LUDWIG**—So the centre is open but the construction has not finished—that might have been the confusion. Are there still a number of different stages to be completed?

**Mr Keelty**—It has been added on to. We opened the centre on National Police Day in Indonesia last year, which is 1 July, and the other buildings have been added since then.

**Senator LUDWIG**—There were some questions on notice in relation to Charles Zentai on investigations for alleged war crimes. I think at that time it was still an operational matter. My understanding is that DFAT claimed to have handed over the dossier, for want of a better word, on 16 December. What date did the AFP receive the allegations from DFAT in relation to Mr Zentai?

**Mr Keelty**—On 14 November 2004 DFAT received the information from the Simon Wiesenthal Centre, and a month later on 14 December they referred the matter to the AFP.

**Senator LUDWIG**—When did they hand the dossier to you: on the 14th?

**Mr Keelty**—On 14 December 2004.

**Senator LUDWIG**—Regarding the report of 16 January 2005, the AFP is quoted, as I understand, as saying their records indicate the allegations had yet to be referred to them. That was on 16 January.

**Mr Keelty**—If that is what is reported then the statement is wrong, because the matter was referred to us by DFAT on 14 December 2004 and on 17 January 2005 the matter had been evaluated and accepted for investigation. The AFP has had ongoing contact with Mr Zentai and his legal representative since then.

**Senator LUDWIG**—Is that still an ongoing investigation or has it been completed?

**Mr Keelty**—It is still ongoing.

**Senator LUDWIG**—We might swap it around, then. What can you tell me about where we are up to in respect of that issue? I will ask the minister separately about the extradition issue. In terms of the investigation, I am after only so much as you can say.

**Mr Keelty**—Given that it is still ongoing and given the sensitivity of it, I would be reluctant to give a description of the investigation, unless we can find a way around it.

**Senator Ellison**—I think this is a situation where the commissioner has gone as far as he can in relation to the investigation, but there are perhaps more things we can say in relation to the processing of the request from Hungary. The secretary can comment on that.

**Senator LUDWIG**—That is the next area I was going to look at. Thank you, Minister.

**Mr Cornall**—The Australian government received a formal request from the Hungarian government on 30 March 2005 seeking the extradition of Charles Zentai for alleged war crimes. That request is under consideration but before it can proceed additional information is required under our Extradition Act, and that information has been sought from the Hungarian authorities.

**Senator LUDWIG**—Is that a no-evidence treaty?

**Mr Cornall**—I cannot answer that question. I will seek instructions from the department and get back to you as soon as I can.

**Senator LUDWIG**—Do you know when the extradition treaty was entered into?

**Mr Cornall**—I will take that question on notice.

**Senator LUDWIG**—You are familiar with the two types. There are either prima facie or no-evidence rule treaties or what I call the old UK ones. I suspect it would originally have been one of the old UK ones, but if it is a more recent addition then it is probably the no-evidence model that is currently being used as a template. But I will wait for that to be returned in answer to a question. Is the matter currently before the minister for consideration?

**Mr Cornall**—No, we are waiting on information to enable us to complete the consideration of the extradition request.

**Senator LUDWIG**—So you are waiting on the Australian Federal Police to provide their report.

**Mr Cornall**—No, we are waiting on the Hungarian authorities to respond to material we require to supplement their request for extradition.

**Senator LUDWIG**—So there has been a request to the Hungarian authorities for more information.

**Mr Cornall**—That is correct.

**Senator LUDWIG**—Can you say what the nature of that is?

**Mr Cornall**—No, Senator.

**Senator LUDWIG**—Is it the case that you have requested the Australian Federal Police to provide a report in relation to this matter as well?

**Mr Cornall**—My instructions do not go to that. The only information I have got here in relation to the extradition is that we have sought additional information from Hungary.

**Senator Ellison**—The issue at hand is the information we are seeking from Hungary, as I understand it.

**Senator LUDWIG**—Yes.

**Senator Ellison**—I am not aware of any other issue at the moment. If there is, I will advise the committee as much as I am able to. At the moment, I understand that the information that we are seeking from Hungary is the issue at hand, and that will determine the progress of the matter.

**Senator LUDWIG**—In terms of the Australian Federal Police, how long does it take to go through your process before you decide to commence an investigation into an allegation?

**Mr Keelty**—It depends on the matter. Also, I would point out the obvious, and that is that it came to us just prior to the Christmas-New Year break. That obviously did impact on the speed at which the matter was looked at. Given the age of the allegation, I am not sure whether that would have had any other impact on securing any current evidence.

**Senator LUDWIG**—It first came to you on which date?

**Mr Keelty**—On 14 December 2004.

**Senator LUDWIG**—I think you use a case management tool to determine whether or not there is an investigation. When was that action?

**Mr Keelty**—17 January this year.

**Senator LUDWIG**—So it was just more than a month. What happens in that respect, when it sits in an in-tray?

**Mr Keelty**—It is like any other referral that comes in. As I pointed out, it was over the Christmas-New Year period, so that would account for some of that time loss. I do not know that the delay in accepting the matter for referral had any detrimental impact on available evidence in relation to the matter.

**Senator LUDWIG**—Was there a separate prompting to action that on the 17th? Was there another complaint received prior to the 17th to initiate the investigation?

**Mr Keelty**—I do not have any record of a separate complaint. If there was, I will advise you.

**CHAIR**—We will go to Senator Bartlett and hopefully conclude with the AFP by the lunch break.

**Senator BARTLETT**—Could I ask a couple of questions which I do not think have been covered this morning, and that is the issue that arose around the arrest of what have come to be known as the ‘Bali nine’. I do not particularly want to touch on their specific case but on the broader question of the guidelines that the AFP use in other countries when dealing with offences or areas that might involve people being subjected to the death penalty. Does the AFP have a specific set of guidelines that cover that sort of question? I presume you know the dilemma I am referring to.

**Mr Keelty**—Yes, we do. We have a set of guidelines, which are called *AFP Practical Guide on International Police to Police Assistance in Death Penalty Charge Situations*. That guide has been in place for a number of years. In fact, it has been in place since 26 October 1993, so it has not changed for the current government nor for the previous government.

**Senator BARTLETT**—Is that a public document or can it be made public?

**Senator Ellison**—We do not normally table these, but there has been a good deal of public comment on this. The situation is that these guidelines have been in existence since 1993. I have no objection to their being tabled.

**CHAIR**—Thank you, Minister.

**Senator BARTLETT**—I appreciate it. It is a difficult area and an important area of public debate, I realise, but just the fact that they have been around for that long might show they are good; it might also show that perhaps it is time to have a look at how they are operating.

**Senator Ellison**—It does demonstrate that there has been a consistent approach by the Australian Federal Police over a lengthy period of time under two different governments. That is something I want to make absolutely clear, because there has been some comment which has been unfair comment, in one case accusing the AFP of being guilty of exporting the death sentence and that this was somehow some new occurrence or some development. It is the case that the approach to this issue has been the same under this government as it was under the previous government—extradition, mutual assistance and these guidelines.

**Senator BARTLETT**—Thank you for that, Minister. Looking at the situation that may or may not happen with the group in Bali that brought this issue to public prominence again, every time something like that happens does that lead to any review or assessment of whether or not the guidelines have been followed adequately in the situation? Are you comfortable that was done in this case or is it too soon to say?

**Mr Keelty**—In one respect it is a little too soon to say. What I think has been unfortunate in this matter is the unhelpful confusion in the public debate in relation to the distinction between formal requests for assistance in criminal matters from a foreign government to the Australian government, which fall under the Mutual Assistance in Criminal Matters Act 1987, and the informal assistance provided through police to police and other agency relationships. Clearly with the latter we take it very seriously when we are engaging on a police to police basis with an overseas law enforcement agency. But the criterion that is used and the criterion espoused in the guideline is that we will continue to liaise up until the point of charging. In the particular matter that you are discussing, the people have not yet been charged in Indonesia.

**Senator BARTLETT**—It might be better if I put this on ice until next estimates, partly because of that fact you raised and partly because I think it is driving more at government policy. Obviously the AFP is implementing government policy here. Some of the questions go more to that issue, which obviously are not appropriate for you to answer.

**CHAIR**—I appreciate that, Senator Bartlett.

**Senator Ellison**—I am obliged to Senator Bartlett for that, Madam Chair. In relation to the legal aspects of mutual assistance, the secretary might be able to assist the committee as well on a point—it is of general application.

**CHAIR**—All right. Thank you very much, Mr Cornall.

**Mr Cornall**—The commissioner referred to police to police assistance. In cases where we receive a formal governmental request for assistance under the mutual assistance legislation to investigate an offence which carries the death penalty, the Attorney-General or the Minister for Justice and Customs has the discretion to refuse to provide assistance. Where a foreign country requests assistance where a person has been charged with or convicted of an offence which carries the death penalty, the Attorney-General or the Minister for Justice and Customs must refuse to provide the assistance unless there are special circumstances. Special

circumstances include where the evidence would assist the defence or where the foreign country undertakes not to impose or carry out the death penalty.

**Senator BARTLETT**—In each of those, going to your first example, it is a decision of the Attorney-General.

**Mr Cornall**—There is the discretion to refuse assistance if at some point it looks like you might get to a charge which carries a death penalty but not an obligation to do so at that point.

**Senator ELLISON**—The decision is with the Attorney-General or with me.

**Senator LUDWIG**—Just to be clear, there are two catches. There are 8(1B) and 8(1A) and they have a different operation. I think this is where a lot of the confusion comes in, if a person has not been charged—and ‘charged’ is probably a loose word because the act actually uses the word ‘prosecution’. I would rather keep the terms a bit cleaner in that respect, because I think that is where some of the confusion also is. Obviously, there is a difference when it is in a civil law jurisdiction, such as in this instance, which has a different basis upon which their law is structured, as distinct from ours, which is common law. So they also have a different investigatory and prosecutorial role, so I think that has to be taken into consideration. But in 8(1A) there is a discretion prior to the prosecution which then allows the Attorney-General to take a number of factors into consideration. But, post a prosecution—in other words, after that has commenced—there is a different consideration, which is almost bordering on a mandatory consideration not to provide unless it is of an exculpatory nature. That is my understanding of how it operates.

The other confusion that sometimes comes into this is that there is a treaty in place—I think I went through this with Ms Blackburn yesterday—together with a regulation made under that treaty as late as 1999. There is interaction between that act, the treaty and the regulation made under the act, because of course the regulation has a different standard. That might be a question for the Australian Federal Police to consider: do you follow the act or the regulation? They are in fact different. When you read the act, it tends to refer back to the regulation taking precedence, but that always struck me as a difficult point of law, because sometimes the stream cannot rise above its source—but it seems to suggest that in this instance it can. I am not going to start the debate about whether this is a valid excise of delegated legislative power here.

But, in terms of the advice that the Australian Federal Police receive, do you receive advice as to how the mutual assistance legislation actually operates? If you do, what is that advice? It seems to be that you have a clear and longstanding understanding of how the mutual assistance works in terms of policing, police-to-police cooperation and when you should refrain. But how has that been communicated to the Australian Federal Police by the Attorney-General? I know that it is a longwinded question, but I thought it needed to be put in context.

**Mr Keelty**—In the guidelines that have just been tabled, one of the things that you have mentioned and that we rely upon is that, on 26 June 1996, the then Attorney-General made the distinction that you are talking about quite clear in his second reading speech on the amendments to the act. He said:

To avoid confusion, I mention that decisions under subclauses 8(1A) and 8(1B) relate only to assistance under the act. Assistance not involving coercive powers and given directly by police or other agencies is not regulated by the act but by administrative direction.

What has been the case in the past is that we have relied upon the policy, which, as I have said, has not changed since 1993 and has remained current through two governments. That is, we have continued to provide assistance in a matter until charges have been laid for a crime attracting the death penalty. We believe the guidelines adequately reflect the law and adequately reflect the current way we are operating. Obviously, this particular case was seized upon for other reasons, but they are the reasons that I think Senator Bartlett restricted his questioning, remembering that this matter now has charges before the courts in Australia, which puts it into an entirely different context for me to discuss in any detail.

**Senator LUDWIG**—We have addressed it on the same basis. These are court matters.

**CHAIR**—Senator Bartlett, have you concluded in that area?

**Senator BARTLETT**—Just briefly, in the trial that is happening—and again I am not wanting to cut across or interfere with anything there—in Brisbane at the moment concerning somebody accused of involvement in the SIEVX tragedy, a number of witnesses to date have given evidence which is consistent with what has been said before in the public arena about the involvement of Indonesian men, armed and in uniform—apparently police or military—and also the Indonesian coastguard. Has there been any new information over recent months since this was last raised at estimates that sheds any more light from the point of view of the AFP about the involvement of Indonesian officials in this event?

**Mr Keelty**—Unfortunately, I think that, if we were to comment on that, that would actually be a commentary on the evidence before the court in Queensland. I do not think we would be able to do that.

**Senator BARTLETT**—I will have to put that on ice for a little while as well. In relation to that trial more broadly, I presume the AFP, as part of the investigation, has provided such evidence as has been necessary to help back up the prosecution. Are you just monitoring how that trial unfolds in terms of the evidence—that is, once it is before the court, you do not have any specific involvement beyond seeing how it plays out?

**Mr Keelty**—No. We are responsible for putting the matters before the court in pursuit of the persons involved in SIEVX, but obviously we are monitoring the court outcome very closely given that we are the people who provided the information for the Commonwealth Director of Public Prosecutions to launch the prosecution.

**Senator BARTLETT**—I might leave that one bobbing for a little while as well until the courts proceed further down the track.

**CHAIR**—There is a lot in the pending file.

**Senator KIRK**—I have some questions in relation to RAMSI. I understand that in the budget the AFP is being allocated around \$490 million over four years to continue its program in the Solomon Islands. I would firstly like to know whether the \$100 million that was allocated to the AFP in the last financial year, 2004-05, was all spent.

**Mr Keelty**—We are still finishing off that financial year, so it would be close to being spent. Obviously the funding that has been handed down in the budget is for the out years. We were only funded for the current financial year in respect of RAMSI. As I understand it, we do plan to spend the allocated \$49.35 million—

**Senator KIRK**—A sum of \$100 million was allocated in the last financial year.

**Mr Keelty**—I mentioned before that there is a no win, no loss arrangement with the department of finance. The indications are that there is probably only going to be expenditure of \$49.35 million this financial year, and that means \$45 million will be returned to Finance.

**Senator KIRK**—Given that there has been \$490 million allocated over the next four years—which is just over \$100 million a year—how is it anticipated that the money will be spent in the financial year that is about to begin?

**Mr Keelty**—Those allocations in the forward estimates also include some contractual arrangements that we are administering on behalf of the Department of Defence. So, whilst the AFP is looking after the allocations, the reason it is a larger sum of money is that we are now involved in some other areas. Of course it all reverts back to the no-win, no-loss arrangement with the department of finance. The estimates were based on the best estimates we had for the staff, the equipment and the training that was going to be provided under RAMSI.

**Senator KIRK**—Obviously there was a \$45 million excess thereabouts in the last financial year. What was the reason for that? Did you just overestimate the number of officers and the amount of equipment that would be deployed? What happened there?

**Mr Keelty**—Some of that was in respect of start-up—we did not get the start-up that we anticipated. Whilst it is a lot of money, some of it also represents money for other agencies involved in RAMSI. As I say, we are managing some contracts on behalf of other departments.

**Senator KIRK**—How many officers are currently in the Solomon Islands?

**Mr Keelty**—There are 204 officers there.

**Senator KIRK**—Has that number remained fairly constant or have there been variations over the past year?

**Mr Keelty**—It varies. It includes 49 Protective Service staff. Largely it remains about the same depending on the requirements. There were additional people involved after the murder of Protective Service officer Adam Dunning towards the end of last year, but primarily it will remain around the 200 mark.

**Senator KIRK**—Is it expected that RAMSI will continue beyond the currently funded four-year period?

**Mr Keelty**—That would be a question for the government.

**Senator Ellison**—We have budgeted for quite a lengthy period of time. We will look to our future involvement as our mission progresses. I think the commissioner mentioned the various phases that we have—phases 1, 2 and 3. We are into phase 2. We have always said that we are

there for the long haul, and I think we have demonstrated that by the amount of funding and personnel that we have committed.

**Senator KIRK**—You are right; four years is a long time. If it goes beyond that, it is a big job.

**Mr Cornall**—There was a question earlier about the treaty with Hungary. The date of the treaty with Hungary was 25 October 1995. It is a no-evidence extradition treaty.

**CHAIR**—I thank the commissioner and his officers for spending the last four hours in our company. We are very grateful for your assistance this morning over a long time period. I understand that a number of questions have been taken on notice. We look forward to your assistance with those responses.

**Proceedings suspended from 12.59 pm to 2.01 pm**

**Australian Crime Commission**

**Senator LUDWIG**—Have you been represented at the formation of the ACLEI?

**Senator Ellison**—The corruption and integrity body we are setting up? What is the question?

**Senator LUDWIG**—Have the ACC been consulted in the formation of that proposal?

**Mr Milroy**—Yes.

**Senator LUDWIG**—In what way? Will it apply to the ACC?

**Mr Milroy**—Yes, it does.

**Senator LUDWIG**—What current disciplinary procedures do you have in place?

**Mr Milroy**—Currently we are governed by a number of areas, including of course the Commonwealth Ombudsman. Seconded officers come under the relevant Commonwealth, state and territory agencies from which they have been seconded. If there are any issues of misconduct or corruption detected whilst so employed by the ACC, the process is that we would advise the relevant jurisdiction and initiate an investigation, or it would be carried out by their internal affairs or Police Integrity Commission department. As well, of course, we would advise the Commonwealth Ombudsman. That is the current position at the present moment. Within the organisation, we have a very strict regime in place with the professional standards and integrity officer. We carry out a number of proactive measures within the organisation to address corruption and misconduct.

**Senator LUDWIG**—Just moving into a different area, what is the role of the examiner at the ACC?

**Mr Milroy**—I think the process is that, where the board approves a determination for the special powers to be allocated to either an investigation or an intelligence operation, I as the CEO would brief, in writing, the examiners for their engagement to conduct examinations relative to those areas where the special powers have been so approved by the board. For example, with regard to cases that have been prepared for examination, the legal officers within, say, an investigation team or an intelligence operations team would prepare the relevant submission for the examiner to consider using his powers. Then, as a result of the

examiners agreeing that it meets the requirements, the examiner then would issue summonses for the attendance of individuals or notices for the production of documents. Then the relevant hearings or examinations of those documents or persons would proceed.

**Senator LUDWIG**—Do they have a case load or a workload?

**Mr Milroy**—Yes, they do.

**Senator LUDWIG**—How is that reflected? Is that reflected in a number of case loads or a target that they are required to meet, or is there a total number that is shared between the examiners?

**Mr Milroy**—It depends on the cases that they have agreed to undertake following consultation with me and on the number of cases that are currently available. There is a process whereby, once it is determined that an examiner would conduct a hearing on a particular matter, we have a roster that is made out in advance. At the present moment, it is some two or three months in advance in relation to the number of hearings and the nominated examiner who will conduct that hearing in the relevant location and the associated arrangements that need to be put in place for the hearings to be undertaken.

**Senator LUDWIG**—How many examiners do you have?

**Mr Milroy**—We currently have three examiners.

**Senator LUDWIG**—Two were recently brought on board—is that right?

**Mr Milroy**—Yes. The ACC was established on 1 January 2003. Prior to the merger there were three examiners operating for the former National Crime Authority. At the merger, one examiner left, and there were two examiners in place when I took over the role as CEO. One of those examiners left to go into private practice. We subsequently advertised for an examiner and, as a result of the increased workload, the government appointed two examiners who came on board towards the end of 2003 and January 2004. Our current examination workload is quite extensive and we have the examiners booked about two months in advance. The workload is increasing as the powers are becoming widely used not only by the ACC but also by the jurisdictions. Of course, the results from the examination are quite significant in a number of matters. Law enforcement agencies and our own staff have more of an understanding about the effective use of the powers. We can see a need in the future to reconsider the number of examiners if the current workload continues.

**Senator LUDWIG**—The waiting time is about two months—is that right?

**Mr Milroy**—That has a lot to do with the strategy that is deployed, because using the examinations is part of the tactical option that we have available in an investigation or in a special intelligence operation, so we use the powers when we feel that we would get the appropriate outcome, either earlier or later, in an intelligence operation or investigation. The booking ahead has a lot to do with the tactical options that we have available and the timetable of when we want to examine certain individuals—and there is a preparatory period in between. There is the issue of notices to gather documents that would enhance the examination process. That has a lot to do with the reasons for the forward bookings for the logistical arrangements.

**Senator LUDWIG**—In terms of workload, is there a way that you monitor the workload of each examiner?

**Mr Milroy**—Yes. There is currently a quarterly report submitted by the examinations coordinator which produces all the relevant statistics in relation to the use of the powers. There is also an assessment made of each of the examiners' examinations following each examination and there is a national suboperations committee which looks at the prioritisation of the use of the examinations and the tactical options available during investigations and operations. That is basically a weekly process. There is significant flexibility to either change the examination timetable as a result of other work carried out within the ACC relative to a particular matter or in an emergency to engage the use of an examiner earlier than first anticipated.

**Senator LUDWIG**—You mentioned that there are statistics. Are there statistics available that demonstrate the workload of the examiners from 2003 onwards?

**Mr Milroy**—Yes, there would be.

**Senator LUDWIG**—Could you make that available please?

**Mr Milroy**—Yes.

**Senator LUDWIG**—Does it show an increase in required use of powers as well—the section 29 production of documents orders?

**Mr Milroy**—Yes. I can indicate, as I have said previously, that the use of examinations has increased. For example, in 2001-02, with the former agency, the number of summonses issued for the attendance of personnel was 176. In 2004-05, with the ACC, it is 577. So the use of examinations, and in particular examination of individuals, has virtually tripled from the former agency. Similar statistics are available in relation to the notices issued for the production of documents and other relevant material.

**Senator LUDWIG**—Have you explored the option of employing a further examiner?

**Mr Milroy**—Yes—at the current moment subject of course to the submissions that we make to the board for the menu of work. Of course there are some board meetings this year that will be reviewing a number of the determinations which have been in operation for two years. Looking at the current trends, the need for a permanent or possibly a part-time examiner could be part of the upcoming review, but of course that would be a matter for government, subject to the information that we would be able to provide.

**Senator LUDWIG**—On another issue, the criminal intelligence IT systems and databases: you have ALEIN; is that an internal operational IT system?

**Mr Milroy**—Yes. I will ask Mr Phelan to provide a further briefing to you on that.

**Mr Phelan**—Yes.

**Senator LUDWIG**—Do you also have ACID?

**Mr Phelan**—Yes.

**Senator LUDWIG**—What does it do?

**Mr Phelan**—It is the criminal intelligence database for Australia. ALEIN, just to make the difference clear, is the real-time secure intelligence communications system which provides the means through which law enforcement agencies access the Australian criminal intelligence database, which is ACID.

**Senator LUDWIG**—I am sorry; you have lost me again.

**Mr Phelan**—ALEIN, which is the Australian Law Enforcement Intelligence Net, is the communications system which allows law enforcement agencies to communicate between each other in a highly protected environment but also, importantly, to access the Australian criminal intelligence database, which is a database also maintained by the Australian Crime Commission within which is held criminal intelligence for the whole of Australia. All of the law enforcement agencies—Commonwealth, state and territory—contribute intelligence to ACID and are able to access and conduct searches across ACID, mostly via the Australian Law Enforcement Intelligence Net, or ALEIN.

**Senator LUDWIG**—Let us pick, for example, DIMIA. Can it access, through the ALEIN network, the ACID database?

**Mr Phelan**—Yes.

**Senator LUDWIG**—I guess there are certain protocols that they would have to go through, or do they have a graphical user interface which they can log on to and then obviously a relevant officer who is qualified or cleared to use it can search?

**Mr Phelan**—Yes.

**Senator LUDWIG**—I am describing it reasonably correctly?

**Mr Phelan**—Yes. They have access from within their department.

**Senator LUDWIG**—So, from the network to ACID, do they have access through to CrimTrac, or is CrimTrac—

**Mr Phelan**—It is separate. I do not know what they can access from their own desktops, but if it is like, for example, the Australian Crime Commission and many of the law enforcement agencies, they would have through their desktop systems, however described, the ability to search into ACID but also to conduct whatever searches are needed into CrimTrac.

**Senator LUDWIG**—So those two databases are not cross-indexed or cross-referenced?

**Mr Phelan**—No.

**Senator LUDWIG**—They are discrete databases.

**Mr Phelan**—That is correct—but accessible.

**Senator LUDWIG**—If you log on through the network into ACID, can you then, as a consequence, search on CrimTrac, or is it a different route?

**Mr Phelan**—It is a different route.

**Senator LUDWIG**—Who maintains ACID?

**Mr Phelan**—The Australian Crime Commission.

**Senator LUDWIG**—Is that a relational database?

**Mr Phelan**—I am not quite sure. It is certainly a database.

**Senator LUDWIG**—Is it indexed? Can you search on any field or do you need a name to search on?

**Mr Phelan**—You have a wide range of options to search against. I do not have the full set of parameters for the searches. I could probably give you a full breakdown of the options available to conduct searches within it. You can search against a name, search against phone numbers and search against locations. The strength of it is the ability to establish links between those sorts of things. Under the ALERT initiative, which is referred to in the annual report, we are working to enhance the tools available for law enforcement agencies to conduct analysis across the ACID database. This includes geospatial analysis and other more advanced forms of contextual searching, and trying to use the systems themselves to make the link between various references to drugs and location and therefore to operate iteratively with analysts to allow a higher level of value adding across the database.

**Senator LUDWIG**—Last estimates you also mentioned a working group which was progressing the Australian Criminal Intelligence Database as a one-stop shop for criminal intelligence for Australia. The working group was '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'. Where is that up to now?

**Mr Phelan**—Since the last estimates hearing we have completed our first-cut analysis of all the issues affecting the ability of each of the law enforcement agencies to contribute intelligence to ACID and also to search across it. The chief executive of the Australian Crime Commission has written to all of the state and territory police commissioners and also Commonwealth law enforcement agencies escalating the involvement to work one on one to remedy or deal with any of the impediments that are found to exist.

**Senator LUDWIG**—Is there a time line for when that is likely to be finalised or a report made? Or is it an ongoing working group?

**Mr Milroy**—This is a matter that was initiated by the Crime Commission board in 2003. We provided the board, at board meetings and out of session, with updates in relation to the work that Mr Phelan is doing as the chairperson. At this stage, we hope to be able to provide a more detailed report to the board at its November board meeting. I think it is an issue, of course, that there is such a range of privacy issues surrounding all of these databases which are operated by various agencies. Of course, there is legislation specific to privacy and the ability to access that information. Part of what the working group is doing is looking at identifying the databases and their contents to understand how law enforcement can deal with any legislative, privacy or any other issues to encourage the maximisation of the provision of the information to ACID. We have the statistics in relation to the agencies that use ACID, the amount of reports that are submitted to ACID on an annual basis and the number of searches that are carried out by the total number of agencies that have access to it.

**Senator LUDWIG**—It does not have a missing persons capability?

**Mr Phelan**—It is for intelligence. It is not an identity tool, if I can put it that way.

**Senator LUDWIG**—The time line for the report to go to the board: what will move on after that? You have indicated that that working group will report to the board, and I think you might have said the report is prepared or nearly prepared. What happens after that? Does the board consider the report? Is it made public or is it an internal working document for the board to determine the future direction of ACID?

**Mr Milroy**—It would be an internal process. We would submit the report to the board to indicate how information sharing could be improved in the future, what would need to be done to do that, the implications and what agencies would be involved. It may of course be wider than the current membership of the ACC board. We would expect that somewhere along the line it would move forward following a board recommendation either for further work or referral to other agencies for further attention.

**Mr Phelan**—It is common ground that the intention is to maximise the flow of intelligence into ACID. The report will deal with any ways and subprojects et cetera that might assist in achieving that aim. There will be a whole series of projects coming out of it. But, as I mentioned before, ALERT, which is a Commonwealth government funded initiative, is looking to improve not only the analytical tools but also the hardware and capability of ACID to embrace just about any quantity of intelligence likely to be available within Australia.

**Senator LUDWIG**—Turning to the cash laundering task force, how many of the ACC officers are seconded to that? Is that Taskforce Gordian?

**Mr Milroy**—That is correct. I do not have the total number of staff with me at the moment but that, for your information, was initiated by the ACC and subsequently approved by the board. There are probably in the vicinity of 40 to 50 personnel in total. But that takes into consideration the contributions from the Australian Federal Police, the Australian Taxation Office, Victoria Police, the New South Wales Police, the New South Wales Crime Commission and the ACC. I can give you the figures in relation to the break-up of the personnel as it relates to the ACC on notice if that is appropriate.

**Senator LUDWIG**—Yes, that would be helpful. If you could also include how long they have been seconded for, if there is a duration—

**Mr Milroy**—The task force has been approved at this stage by the board for a period of 12 months commencing on 2 May 2005.

**Senator LUDWIG**—Is there a mechanism for it to report back to the board about its operation?

**Mr Milroy**—Yes. I will report back to the board either out of session, if it is considered to be urgent, or at each board meeting on the progress of the task force. I should point out that the task force will currently only work on specific cases and that information on any matters that the task force might uncover during its investigation that are the remit of another agency will be disseminated. It is a case driven approach.

**Senator LUDWIG**—Is the ACC officers's main role or function within the task force being determined?

**Mr Milroy**—Yes. Within the task force we have looked at the skill that would be required to properly service the cases that have been approved for the work of the task force. That

would involve legal officers, analysts, financial investigators and staff of that type being allocated from the ACC. Those staff have been identified and are appointed on a permanent basis to the task force.

**Senator LUDWIG**—So they are not there for the use of their coercive powers.

**Mr Milroy**—Their coercive powers will be used as well; that is correct. We have calculated the amount of use and appointed an examiner for the duration of the 12 months based on past experience.

**Senator LUDWIG**—What do you expect that to be?

**Mr Milroy**—Again, I can provide you with the estimate that we believe that we require, the coercive powers.

**Senator LUDWIG**—Thank you, that would be helpful.

**CHAIR**—Thank you, Mr Milroy and Mr Phelan.

[2.25 pm]

#### **Australian Security Intelligence Organisation**

**CHAIR**—Welcome, Mr Richardson. Congratulations on your appointment.

**Mr Richardson**—Thank you.

**CHAIR**—The committee will miss you. I suspect you might not reciprocate our feelings, but we wish you all the best.

**Senator LUDWIG**—We will come and visit.

**CHAIR**—You might regret that.

**Senator LUDWIG**—I may. I want to associate myself with those remarks. It has been a rewarding experience to work with you, Mr Richardson, in this limited role that we have in questioning you about your area of responsibility. From the Labor Party, we thank you for your cooperation.

**Mr Richardson**—Thank you. I might just reciprocate and say that I have been appearing before this committee for about 12 years in different roles and I have actually enjoyed it. I mean that genuinely. I wish you well too.

**CHAIR**—Thank you. However, the inevitable overtakes us and we will go to questions.

**Senator LUDWIG**—I suspect this will be nearly your last estimates, and then we can wish you bon voyage. I also suspect you won't cut us any slack either, Mr Richardson, try as we might. Has ASIO been requested or required to cooperate with the AFP or other agencies on the matter of aviation or airport security?

**Mr Richardson**—Our role in terms of aviation security is through the threat assessment process, through at times some protective security advice and also through the ASIC where we do the security checking component part of the ASIC.

**Senator LUDWIG**—Right. Are they the only parts that you have been required to engage on?

**Mr Richardson**—That is right.

**Senator LUDWIG**—What about physical airport security and those sorts of issues?

**Mr Richardson**—Not unless our advice is sought.

**Senator LUDWIG**—Have you been invited onto any joint operations with either the ACC or the AFP in respect of organised drug smuggling and the like?

**Mr Richardson**—No, because it would be illegal for us to be involved in any matter that is not directly related to our functions as defined in legislation. Drug running and the like do not constitute part of our responsibilities.

**Senator LUDWIG**—I understand. Do you have a role in security protection overseas?

**Mr Richardson**—Not in the actual physical protection. Our role in respect of Australian interests overseas is in the provision of threat assessments, which in part inform the travel advisories.

**Senator LUDWIG**—Is that to both DFAT and the PSCC, or just DFAT?

**Mr Richardson**—It is. In terms of overseas that is primarily to DFAT.

**Senator LUDWIG**—What form do those threat assessments take? What is the current threat assessment in relation to Australia?

**Mr Richardson**—The general threat level for Australia as a whole at present is assessed at medium. However, there is a whole variety of layers. You can go below that. You can go to the overall threat assessment relating to particular areas of the economy and you can take it down even further.

**Senator LUDWIG**—That is usually on request, where you have been requested to provide a threat level or a threat assessment in respect of a certain industry or sub part of an industry?

**Mr Richardson**—That is right, but particularly in the context of the protection of critical infrastructure.

**Senator LUDWIG**—Have you provided a threat assessment in terms of diplomatic guarding?

**Mr Richardson**—We provide threat assessments in relation to foreign interests in Australia, and that helps inform the judgment made by the PSCC and others about what level of security might be afforded to certain foreign interests here in Australia.

**Senator LUDWIG**—In respect of Mr Brigitte, is there an update you can provide the committee with? We have been following this for some time now. From the last update I had, I understand the French were considering prosecuting him.

**Mr Richardson**—Mr Brigitte remains in custody in France. He was taken into custody in France in October 2003. Under French law, the investigating magistrate has until October 2006 to determine whether there is a case for him to answer before the French courts.

**Senator LUDWIG**—Have you made any requests, if no prosecution is pursued, for the return of Mr Brigitte?

**Mr Richardson**—That would be a hypothetical at this point because there is still another 18 months or so to go under their legal process.

**Senator LUDWIG**—In terms of Omar Mohammed, is it the same issue? Is Australia or ASIO considering pursuing extradition or return?

**Mr Richardson**—No, because I am not aware of him being in breach of Australian law. That would not be a matter for us anyway, but I am not aware of him being in breach of Australian law.

**Senator LUDWIG**—Thank you.

**Senator KIRK**—Mr Richardson, the budget process for 2005-06 indicates that \$48.1 million has been allocated over four years to enhance capability 'to further ASIO's analytical and technical capabilities to meet the demands of counter-terrorism investigations'. Just looking at that, I wondered why that money had been allocated and whether or not any gaps have perhaps been identified in the analytical and technical capabilities of ASIO which this money is designed to fill.

**Mr Richardson**—It is really part of the growth within ASIO provided for by the government since 9-11 to meet the security environment. We have been building as quickly as we can and this is another step in that direction.

**Senator KIRK**—How is the money going to be allocated across ASIO?

**Mr Richardson**—It will be allocated primarily in the analytical, technical and collection divisions of the organisation.

**Senator KIRK**—Is that to employ additional staff?

**Mr Richardson**—Yes.

**Senator KIRK**—How many additional staff are you looking to employ?

**Mr Richardson**—I think the budget papers show approximately 60 to 70 additional people.

**Senator KIRK**—Have you advertised for those positions as yet?

**Mr Richardson**—Yes—not all of them but most of them.

**Senator KIRK**—When do you expect to have those new people on board?

**Mr Richardson**—It takes between three and six months to recruit someone into ASIO. We placed some of the advertisements one or two months ago in anticipation of this, so we are well down the track in respect of some of them.

**Senator KIRK**—So by the end of the year you should have the 60 or 70 on board—is that right?

**Mr Richardson**—Over the next 12 months, yes.

**Senator KIRK**—Whereabouts would those staff be located—will they join the existing team or will they be a separate unit?

**Mr Richardson**—They will be located in Canberra and in our state offices, especially Sydney and Melbourne.

**Senator KIRK**—In the budget statements \$19.9 million has been allocated over four years to establish a new unit, which I believe is designed to coordinate and enhance cooperation in

the region. Could you tell the committee how it is that the unit will coordinate and enhance cooperation in our region?

**Mr Richardson**—It will, first of all, work with other agencies in the Australian intelligence community. In terms of our interaction with the region, it will assist in three ways. Firstly, it will enhance some technical collection capabilities within the region; secondly, it will provide some training; and, thirdly, it will be an avenue to bring people together.

**Senator KIRK**—When you say it will bring people together, do you mean for the purposes of sharing information or dialogue?

**Mr Richardson**—Both. We have some things we can learn from our partners in the region and they have some things that they can learn from us. It is very much a two-way thing.

**Senator KIRK**—Which countries does the region include?

**Mr Richardson**—It is primarily focused on the countries in South-East Asia.

**Senator KIRK**—Will there be additional staff appointed to participate in the activities of this new unit?

**Mr Richardson**—Yes, there will be.

**Senator KIRK**—How many do you anticipate?

**Mr Richardson**—There will be around 10.

**Senator KIRK**—Have those positions been advertised?

**Mr Richardson**—Yes, they have. A number of them have already been filled.

**Senator KIRK**—How many have been filled?

**Mr Richardson**—About six or seven.

**Senator KIRK**—Whereabouts will the unit operate from?

**Mr Richardson**—Primarily from Canberra.

**Senator KIRK**—When there is dialogue between Australia and the South-East Asian countries, at what level do you think the dialogue will take place at?

**Mr Richardson**—It already takes place now. To the extent that there is additional dialogue under this program, that will take it out into more specialised areas. Quite clearly we have been working closely with our regional partners for some time. There is consultation there up and down the chain, both at head of agency level and down to the working level.

**Senator KIRK**—So in a sense it is really just formalising what already exists.

**Mr Richardson**—I think in some specialised areas it will expand it.

**Senator KIRK**—Are those specialised areas in areas of technical capability?

**Mr Richardson**—Yes, there will be some of that.

**Senator KIRK**—Are the AFP involved in this process as well insofar as you say that you will have contact with other agencies in Australia?

**Mr Richardson**—The other agencies that are most closely involved are those in the Australian intelligence community, but clearly, given the AFP's own role in the region, we talk to the AFP about it to make sure that we are working cooperatively and are on the same track.

**Senator KIRK**—So there will be information sharing between the AFP and the new unit?

**Mr Richardson**—The new unit is not designed to collect information; it is really designed to assist with the counter-terrorism capabilities within the region. So the question of it sharing information really does not arise.

**Senator KIRK**—Would the same go for state police?

**Mr Richardson**—It does not arise. The issue of sharing information from that particular unit simply does not arise.

**Senator KIRK**—Is DFAT likely to be involved as well?

**Mr Richardson**—We have certainly discussed the matter with DFAT. We keep them informed, because quite clearly they have a legitimate interest in respect of what any agency is doing overseas.

**Senator KIRK**—I notice also that \$2.7 million has been allocated over four years to establish a business liaison unit.

**Mr Richardson**—Yes.

**Senator KIRK**—Can you tell the committee what type of information the business unit will be providing to owners and operators of critical infrastructure.

**Mr Richardson**—It will be providing more detailed threat information. It will be a vehicle through which we can better meet the queries we get from industry in the protective security arena. It will be a vehicle through which our intelligence role and industry can more closely come together.

**Senator KIRK**—What will be the relationship or will there be any cooperation between the business liaison unit and the trusted information sharing network?

**Mr Richardson**—The trusted information sharing network, managed by the Attorney-General's Department, is a slightly different animal. Our business unit is really making the link between our responsibilities as an intelligence organisation and industry. There has not been a great link in that respect. There has been some machinery and some mechanisms whereby we do have linkages. This is designed to, I suppose, formalise it and also lift it to a new level.

**Mr Jordana**—One of the very important parts of the critical infrastructure agenda which ASIO is assisting with is the production, for example, of threat assessments on particular sectors of our economy or particular industrial sectors. That information and those threat assessments are obviously confidential, but they can form the basis for what are called risk context statements, which are a way, I guess, of translating a threat assessment into something which is both non-confidential but also perhaps provides some guidance to an industry sector about what might be a possible way to address the threats that have been identified in the threat assessment process. It is through those types of vehicles that there will be a connection,

albeit a little indirect, through to the TISN structure. It will be those risk context statements that are perhaps shared with the TISN groups rather than the threat assessments that ASIO does themselves.

**Senator KIRK**—I understand. How are these risk context statements and other information that is generated by these units distributed to industry? Does industry come to ASIO and request information or is it distributed to—

**Mr Richardson**—It is both. When this unit is up and running effectively, I would hope that we would be less reactive and there would be much more of us going out to industry.

**Senator KIRK**—When do you expect the unit will be up and running?

**Mr Richardson**—We are doing some of the functions now. We have advertised for the positions, and I think they will be filled over the next few months.

**Senator KIRK**—How many positions have you advertised?

**Mr Richardson**—Three or four.

**Senator KIRK**—Are you intending to have about that number—three or four people—in the new unit?

**Mr Richardson**—Yes. But we are already doing some of the work that it would be doing, in anticipation.

**Senator KIRK**—Will they be new staff?

**Mr Richardson**—Yes, they will be.

**Senator KIRK**—So there is no movement of existing staff?

**Mr Richardson**—Positions are advertised. They are advertised both externally and internally. Decisions are made on merit. I would certainly expect that at least some of the positions would be filled externally, but the four positions are a net increase in respect of the number of positions in the organisation.

**Senator KIRK**—So if one or more of the positions are filled by existing staff then I take it that the gap that is created in whichever other area will be filled as well.

**Mr Richardson**—Precisely.

**Senator KIRK**—Finally, what role will the business liaison unit have, if any, cooperating with the PSCC?

**Mr Richardson**—It will have a relationship with the PSCC but it is not the primary vehicle through which ASIO interacts with the PSCC.

**Senator KIRK**—In the budget statement, \$9.6 million has been allocated over four years to improve ASIO's border control monitoring activities, including enhanced information technology links with DIMIA. What are the current policy and operational arrangements that exist between DIMIA and ASIO?

**Mr Richardson**—We work very closely together in terms of the border security or border protection arrangements. A range of government departments and agencies work closely together: Immigration, Customs, Transport, Attorney-General's, ASIO, the AFP, some state

agencies from time to time. There really are a number involved. An important area for us in respect of Immigration is that they have overall ownership of the movement alert list. It is that interaction at that point that is especially important for us.

**Senator KIRK**—Is that what is intended to be enhanced?

**Mr Richardson**—The \$9.6 million is intended to do two things. First of all, it is intended to provide ASIO—and to provide Australia—with a full-time 24/7 operation. There is a 24/7 operation, but in that area it is on a call-out basis. This is designed to make it full time. Secondly, it will improve the system's interconnectivity between ASIO and DIMIA.

**Senator KIRK**—How do you see that improving the existing system?

**Mr Richardson**—It will improve it through, firstly, making it a full-time 24/7 arrangement. Given the number of call-outs we have now during the night and over the weekends, this will be a more efficient way to do it. There is the connectivity between DIMIA's systems and our own systems. The existing connectivity was really not designed to meet the environment in which we are currently working, so it really is designed to bring the systems integration up to meet existing needs.

**Senator KIRK**—That is going to occur with DIMIA but, as you mentioned, there is a range of other agencies with whom ASIO has relationships. Is there any suggestion that there might be an improvement there?

**Mr Richardson**—There will be, I think, especially with Customs. There is not precisely the same need in the area I have been talking about in relation to the other departments and agencies.

**Senator KIRK**—So perhaps Customs might be next.

**Mr Richardson**—Customs will automatically be linked in with this given their own role in terms of front-line border management.

**Senator GREIG**—I have a question best directed to the minister about the report by Tom Sherman into named person warrants and his recommendations to government in terms of reporting aspects. Specifically, did the government undertake any consultation or discussion with ASIO before deciding not to accept his recommendation for basic public reporting mechanisms?

**Mr Richardson**—I can certainly say that there was consultation with ASIO in respect of the government's response to the Sherman report.

**Senator GREIG**—I have a question more for the minister: can you detail why the government felt that you could not accept his recommendation for basic public reporting procedures? How does that sit with comparable jurisdictions in terms of how intelligence agencies operate in perhaps the UK or the USA?

**Senator Ellison**—I am not aware of what the Attorney-General has placed on the record in relation to this. I will take that on notice and check and see what the Attorney-General has said, unless Mr Richardson can help us.

**Mr Richardson**—I can offer some information in respect of that. About three years ago the Joint Parliamentary Committee on ASIO, as it was then called—since renamed the Joint

Parliamentary Committee on ASIO, ASIS and DSD—conducted a public inquiry into ASIO's public reporting of its activities. It received a number of submissions recommending that ASIO should publicly report on the number of warrants that are issued, named person and others. We also made a submission to the joint parliamentary committee. The joint parliamentary committee did not recommend that ASIO publicly report on the number of warrants and the like and, against that background, I think it was not surprising that it did not accept the Sherman recommendation. Mr Sherman took a different view but, equally, a joint parliamentary committee took a view different to Mr Sherman. In relation to other jurisdictions, it varies. There are some jurisdictions similar to ours in which there is public reporting. There are others in which the reporting is of a broader and different kind. There are some jurisdictions in which our counterparts do not make a public report to their parliament, as we do.

**Senator GREIG**—Is it a fair summary to say that ASIO does have particular concerns that reporting of this nature could compromise national security? If so, are you able to articulate within reason what that would be?

**Mr Richardson**—The answer to the first part is yes. The answer to the second part is: that was fully articulated to the joint parliamentary committee when it conducted its hearings at the time, and I could send you a copy of that.

**Senator GREIG**—I have a second issue: the allegations raised by Australian man Talaal Adree about torture in Kuwait. Does ASIO have any role or interest in investigating that? If so, has anything in particular taken place?

**Mr Richardson**—ASIO does not carry consular responsibility for Australians overseas. That is a responsibility of Foreign Affairs. Where an Australian citizen makes allegations of that kind, that is something which Foreign Affairs takes forward.

**Senator GREIG**—So that is not a matter of interest at all for ASIO at this stage?

**Mr Richardson**—To the extent that we can assist Foreign Affairs through our own channels with information that might be relevant to their consular responsibilities, we would, but we do not carry a responsibility for investigating allegations of that kind made by Australians overseas.

**CHAIR**—Once again, Mr Richardson, thank you very much. Our very best wishes go with you.

**Mr Richardson**—Thank you.

[2.56 pm]

**Australian Institute of Criminology  
Criminology Research Council**

**CHAIR**—Welcome, Dr Makkai.

**Senator LUDWIG**—Now that it is the AIC and the CRC, do you work together on issues? How does that interaction come about?

**Dr Makkai**—It is in the legislation. The legislation created the two bodies. It created the institute and then it created the council. The legislation requires the institute to provide advice

and support to the council. It also requires that four of the representatives of the institute come from the council and that they rotate every 12 months.

**Senator LUDWIG**—So the resources and all of those issues are really with the AIC then?

**Dr Makkai**—No. The council has its own money, because it is a fund to fund research. So the Australian government puts money into it and the states and territories put money into it. The Australian government's contribution provides the institute with money to provide secretariat services. In addition to those secretariat services the institute provides its expertise in terms of criminological research.

**Senator LUDWIG**—And the CRC?

**Dr Makkai**—It provides advice to the CRC.

**Senator LUDWIG**—Are you doing any work in cybercrime at the moment?

**Dr Makkai**—No.

**Senator LUDWIG**—To what extent do you cooperate with bodies such as the ACC or the AFP on issues such as—well, if it is not cybercrime, perhaps law enforcement issues?

**Dr Makkai**—We have an MOU with the AFP and a cooperation agreement with the ACC to work with them where we can in terms of providing research. In terms of the AFP, we are working with the Australian High Tech Crime Centre. We have been doing work there. We have been working with the ACC in terms of looking at organised crime in the fishing industry, which is also with DAFF.

**Senator LUDWIG**—That is fishing with an 'F'.

**Dr Makkai**—Yes.

**Senator LUDWIG**—What is the nature of the work with the high-tech area of the AFP?

**Dr Makkai**—There have been a range of different publications which have come out and are on the web site. We have had some work on Operation Oxen which has appeared. We have also had a bit of work on online child pornography in that area as well. I would be happy to send across copies of the trends and issues if you would be interested.

**Senator LUDWIG**—That would be helpful, thank you. There was a report in the *Sydney Morning Herald* on 25 April 2005 headed 'Bad news if this drought breaks: heroin dry spell may be over'. Is the AIC continuing to monitor the national heroin trade, or whatever they might call it?

**Dr Makkai**—We monitor it in the sense that we have a project called the Drug Use Monitoring in Australia project. As part of that, we have seven sites across Australia where we interview people who have been arrested by police. We also undertake urine testing for those who agree to provide urine. So through that we are able to monitor the extent of drug use. One of the drugs that we test for is heroin.

**Senator LUDWIG**—When is the next report due out?

**Dr Makkai**—The minister released a report recently on last year's data. We produce an annual report, which is produced, obviously, annually. Because it is a quarterly monitoring

system, we provide data straight back to the jurisdictions who are involved in that project on a quarterly basis.

**Senator LUDWIG**—Is that quarterly document a publicly available document?

**Dr Makkai**—We do not write it up as a report; it is tables, tracking trends and so on. They are in Excel spreadsheets, which we provide to the relevant jurisdictions.

**Senator LUDWIG**—So the report is an annual report and it has recently been released. The next one is due out—

**Dr Makkai**—In 12 months time.

**Senator LUDWIG**—in 12 months and it is retrospective. It looks back.

**Dr Makkai**—Yes, it looks back. That is one of the reasons that on a quarterly basis we send data to the relevant jurisdictions, so they have data as timely as we can get it to them.

**Senator LUDWIG**—Is heroin trending upwards or trending downwards currently in your reporting system?

**Dr Makkai**—At the moment, we see that it has been trending slightly up in the Sydney sites but it is nowhere near what it was pre the heroin drought.

**Senator LUDWIG**—And that is available in those statistical tables you provide to the relevant jurisdictions?

**Dr Makkai**—Yes, and that also came out of the annual report.

**Senator LUDWIG**—Did the applications for the AIC Australian Crime and Violence Prevention Awards close this Friday?

**Dr Makkai**—Yes, that is right.

**Senator LUDWIG**—How many applicants were there?

**Dr Makkai**—I am afraid I do not have that to hand.

**Senator LUDWIG**—That is all right. Could you provide a breakdown for that. Is it specified as to how that is broken down: how people get placings or what award they might receive, and if there is any prize attached to it?

**Dr Makkai**—Last year we gave out three national winners. They each received \$10,000. Then there were, I think, five winners who received \$5,000. There were a number of winners—I do not have the exact number to hand—who got \$2,000. Then we give out certificates of merit as well.

**Senator LUDWIG**—Is it your intention to follow that? Do you recalculate that or is there a committee that looks at those sorts of issues and comes up with a new formula each time?

**Dr Makkai**—That has been historically how the money has been allocated. The committee is made up of representatives from all the states and territories. I chair that committee. The committee discusses that at the beginning when it meets to determine if it wants to continue on that way or if it thinks that it would be better to allocate the money in some other way.

**Senator LUDWIG**—When you say the representatives from the various states, are those the policing jurisdictions?

**Dr Makkai**—Some are police, some are from the Attorney-General's Department and some are from crime prevention departments as well.

**Senator LUDWIG**—Are the names of the people who are on that committee available?

**Dr Makkai**—Yes, they are. I can provide them to you.

**Senator LUDWIG**—Thank you. I do not have any further questions.

[3.04 pm]

#### **Australian Transaction Reports and Analysis Centre**

**Senator LUDWIG**—The board of the Australian Crime Commission recently put out a media release, on 27 April 2005, on the establishment of a national money laundering and tax fraud task force. Taskforce Gordian will commence on 2 May 2005. Is AUSTRAC represented on that task force?

**Mr Jensen**—Not directly represented on the task force but we provide analytical and data support, and we provide access to our data to members of the task force.

**Senator LUDWIG**—One of your main roles, I understood, was to deal with money laundering—is that right?

**Mr Jensen**—That is correct.

**Senator LUDWIG**—Did you ask why you were not included on that task force?

**Mr Jensen**—No, I have not asked why we would not be specifically there, but our role in this is one of support—providing intelligence to the task force rather than being on the operational side of the task force. I see our role as quite appropriate where we are.

**Senator LUDWIG**—The annual report has a heading for chapter 2 of 'money laundering deterrence overview'. It states:

The work of the Money Laundering Deterrence (MLD) branch covers the collection of financial transaction reports ...

It goes on to give the primary outputs. Primary output 1 reads:

detering money laundering, serious crime and tax evasion;

Primary output 3 reads:

advice on the effectiveness of the FTR Act;

I would have thought it was central to your operation to be at the front end of money laundering. You don't see that?

**Mr Jensen**—We are at the front end, in the intelligence side of it, Senator. We provide a lot of information—and very vital information—on financial transactions. That information identifies money trails. Law enforcement agencies take the operational issues forward. They catch up with the crooks et cetera and ultimately the assets hopefully are stripped from those crooks. So, yes, we do play a vital role in it and, yes, we are consulted on a range of issues relating to our activity, which involves the financial transactions and the money trail.

**Senator LUDWIG**—What mechanism will be used to have you support Taskforce Gordian, which will commence on 2 May? What will be your role?

**Mr Jensen**—There are two things. One is a reactive role—that is, the task force will identify items of interest or persons that they will be pursuing and we will provide data relating to that. In addition, through our technology, we will be able to proactively provide information from the financial transactions database to the law enforcement agencies, to the task force, which they can then investigate. That role is similar to what we have been doing for the past 15 years.

**Senator LUDWIG**—That is if you are asked?

**Mr Jensen**—We can provide it straight to the task force.

**Senator LUDWIG**—If asked?

**Mr Jensen**—No, we can provide it straight to them as an item of interest, if we find something that we believe—

**Senator LUDWIG**—I see; without a request you can simply direct the information to the task force as it presents itself to you?

**Mr Jensen**—That is correct.

**Senator LUDWIG**—Are you intending to do that?

**Mr Jensen**—Certainly, we intend to do that with all the data we find. It is a major part of our work to find the things that perhaps law enforcement have not been able to identify from other sources.

**Senator LUDWIG**—There are two parts. Tax evasion is one part and money laundering is the other. Do you have a way of determining what the main priorities are in your organisation or the main emphasis at any particular time, or the weight that you might give to one or the other of those two items?

**Mr Jensen**—Invariably there is an interlinking between the two. We select the major items that we perceive to be significant. They may well be tax evasion; they may be drug related activity; they may be some other activity. Quite often all of those elements will be within the activity that we find. We will pass that on to a task force such as Gordian, to the ACC or directly to the Federal Police or others, based on our judgment of what we believe is contained in that information.

**Senator LUDWIG**—Where is the anti-money-laundering review at the moment?

**Mr Jensen**—That is with the Attorney-General's Department.

**Senator LUDWIG**—You have completed your work.

**Mr Jensen**—We contribute to the process.

**Senator LUDWIG**—What did you contribute in this instance?

**Mr Jensen**—We have been working closely with the department on all the major areas that they have been looking at. We have been assisting the minister with dealings with the private sector.

**Senator LUDWIG**—Was part of that role to undertake consultations with industry?

**Mr Jensen**—Yes, we have been involved in consultation with industry.

**Senator LUDWIG**—Has that now been completed?

**Mr Jensen**—It is with the department. They are managing that process. We provide assistance in that process.

**Senator LUDWIG**—So you do not do the consultation with industry about money laundering and the like.

**Mr Jensen**—We do do that. As part of the department's management of that process, we conduct certain inquiries with industry. They will provide us with information which we will pass on.

**Senator LUDWIG**—But there has been no formal mechanism undertaken recently for consulting with industry more generally about money laundering and the new guidelines?

**Mr Jensen**—Yes, there has been a formal process. But, again, it is managed by the Attorney-General's Department.

**Senator LUDWIG**—Could you explain that to me? What do you mean by 'managed by' them?

**Mr Jensen**—There is a working group that the department chairs. We provide a secretariat service plus consultation services, if I can put it that way, bringing the private sector and their issues forward to the Attorney-General's Department, who provide them to the minister.

**Senator LUDWIG**—Mr Cornall or Mr Jordana, we were talking yesterday about where the FATF is presently at. Does AUSTRAC provide secretariat support to that working group? If my recollection is right, that is still in the process of being finalised, there will be a subsequent bill and then there will be a report to the overseas group. I am trying to work out AUSTRAC's role in this.

**Mr Jordana**—AUSTRAC is obviously one of the important agencies that we liaise with in the development of the bill. They are also involved in consultation arrangements we have with the private sector. Those consultation arrangements are through formal mechanisms that have already been mentioned. But we also receive lots of representations, as does our minister, from members of the private sector about that piece of proposed legislation.

**Senator LUDWIG**—Where is PayPal at? I saw some reports that it is obviously causing some people some grief. There was going to be some legislation. Did you provide any review or assistance to the AGD in respect of that system of overseas payment? One of the issues, of course—I think you will already be familiar with it—is that you can identify and track internal banking, and it is part of your job to go through that. But, if it is an overseas transaction, as the case may be with PayPal, where credit cards are involved and there are payments overseas, as far as I can see it is not within your ability to track or check those payments.

**Mr Jensen**—That is correct. In terms of the overall assessment of the current financial sector environment, I think that is probably part of that. The legislation does not cover them at this point in time. So, from our perspective, we are not dealing with that particular issue. But it may well be an issue that is part of the overall anti-money-laundering review.

**Senator LUDWIG**—Do you know the size or scale of the issue? You monitor all domestic transactions of a certain nature, which you are required to do under your legislation. Do you know what you are not monitoring in the sense of what is being transacted on PayPal? Has any research been undertaken to determine, from that total you work on for domestic purposes, how much is being dealt with by PayPal that you are not?

**Mr Jensen**—I do not have those figures and I do not believe we have those figures available to us. Certainly we deal with the major systems, if you like— those that would necessitate a report to us under our international funds transfer instructions—and we get something like 10 million reports a year. As to how many are specifically electronic outside of that reporting component, no, I do not have an answer to that.

**Senator LUDWIG**—Does it concern you in the sense that one of your primary aims is to check on these sorts of transactions and there is a section of the market that you currently cannot access or do not check?

**Mr Jensen**—I guess there are lots of sections of the market that do not come under the provisions at this point in time. Does it worry or concern me? It is an issue, along with a range of others that are outside our ambit, for which we need to determine whether in fact they are being used for money-laundering. Just because there is a system there does not necessarily mean that it is being used for money laundering.

**Senator LUDWIG**—No, I am not making that assumption.

**Mr Jensen**—There are issues there that would need to be considered. We also look at trends and patterns from overseas and we would look at those in terms of whether PayPal or any other type of facility is used for money laundering, and we would rely to a large degree on that. At this point in time, as I said, we have not progressed down that particular line.

**CHAIR**—Mr Jensen, I want to ask you some questions about AUSTRAC's international role, particularly the technical assistance and training initiatives. What countries in the region in particular in recent periods have you been providing your training and seminars in?

**Mr Jensen**—I think we have pretty much covered off most of them in South-East Asia and the Pacific over the past 12 months in terms of making an initial approach. Indonesia in particular we did a lot of work with.

**CHAIR**—That is part of the large package, the counter-terrorism package.

**Mr Jensen**—That was part of an AusAID funded program that finished at the end of last year. We spent two years working in the PPAATK, which is the financial intelligence unit there. We have discussed issues with Singapore, Malaysia, Myanmar, Laos, Vietnam, the Philippines and others. Then through the South Pacific we are particularly working on trying to develop a small stand-alone database for the very small financial intelligence units within the Pacific. So we have two areas. One is the technical assistance and training-mentoring type assistance with some technology assistance to South-East Asia, and in the Pacific there is a program whereby we are just looking to develop a database for those countries.

**CHAIR**—In terms of the full response on that, could you take on notice to provide me with information about the Pacific and any further information for South-East Asia that would be relevant. When AUSTRAC is going into those countries and participating in seminars or

setting up training, what liaison do you do with Australian agencies that are already represented in those countries such as the AFP beforehand and during that process?

**Mr Jensen**—We certainly touch base with the AFP and with DFAT before we go into any of the countries.

**CHAIR**—So they would always know to expect you.

**Mr Jensen**—They would know to expect us if we were going in there. We may require their support for some other reason, but certainly they would know that we were there.

**CHAIR**—In putting together the answer to the first question on notice, could you identify for the committee where there are any gaps in the development of FRUs where you think there is more that could be done and where Australia can make a greater contribution as well.

**Mr Jensen**—Yes.

**CHAIR**—Thank you, Mr Jensen.

[3.20 pm]

#### **Office of the Privacy Commissioner**

**CHAIR**—I welcome Ms Curtis and Mr Pilgrim. I think you have been appointed for some time, Ms Curtis, but we have not seen you at estimates before, so welcome.

**Ms Curtis**—That is correct.

**Senator KIRK**—Good afternoon. Could you provide the committee with your compliance section statistics for the year—that is, the number of complaints, the waiting lists et cetera?

**Ms Curtis**—I will ask my deputy to answer that one.

**Mr Pilgrim**—Yes. The figure for complaints received to the office year to date is 1,052. We have received approximately 17,231 telephone inquiries and 1,656 written inquiries.

**Senator KIRK**—How many of those complaints have been resolved?

**Mr Pilgrim**—We have closed 945 of those complaints.

**Senator KIRK**—Out of the 1,052?

**Mr Pilgrim**—That is correct.

**Senator KIRK**—What is the progress on the 100 or so that remain unresolved?

**Mr Pilgrim**—In terms of time to be resolved?

**Senator KIRK**—Yes.

**Mr Pilgrim**—I would have to take that on notice because, as you can appreciate, the cases would vary quite significantly due to the complexity of them.

**Senator KIRK**—Sure. That would be helpful, thank you. Are the telephone inquiries—the 17,200 or thereabouts—to the hotline?

**Mr Pilgrim**—That is correct.

**Senator KIRK**—Do you keep some sort of record of the nature of those telephone inquiries?

**Mr Pilgrim**—We do keep a record of the nature of those inquiries, yes.

**Senator KIRK**—Perhaps you could provide the committee with a copy of that.

**Mr Pilgrim**—Yes. It would probably be easier to provide it because it is quite a long list.

**Senator KIRK**—Thank you. How do the numbers of calls and formal complaints compare with previous years?

**Mr Pilgrim**—At the moment, in regard to complaints, if we extrapolate out the figures we have received to date we would expect to have virtually the same number received this current financial year as we received in the preceding financial year. With telephone calls, again it is probably fairly close to being the same level of inquiries.

**Senator KIRK**—Could you tell the committee what some of the major investigations that you have completed during the course of this year have been?

**Mr Pilgrim**—I am just trying to think through it again. Given the nature of the complaints we receive, which are quite diverse, it would probably be difficult to try and summarise a number of those. Again, perhaps we could provide some sort of feeling of that by taking it on notice.

**Senator KIRK**—Certainly. As opposed to just complaints, are there any investigations that you have undertaken into perhaps an industry or a particular area that would stand alone from the complaints?

**Mr Pilgrim**—We can provide a general overview of the complaints received by sector. I will break it down first of all under our areas of key jurisdiction. We have received approximately 684 complaints under the national privacy principles, which apply to the private sector generally. We have received around 173 complaints which are related to the credit provisions of the Privacy Act. We have received 142 complaints under the information privacy principles, which cover the Commonwealth agencies and ACT government agencies. There were approximately 23 other complaints which fell under other areas, such as spent conviction schemes, data matching and those sorts of other provisions.

**Senator KIRK**—Tell me about staffing levels. Have they remained fairly constant throughout the course of the year?

**Mr Pilgrim**—Yes, the staffing levels have remained fairly consistent. We have a figure of around 35 or 36 staff, which we remain fairly consistent around. We have some additional staff on contract, as opposed to ongoing staff, to pick up some extra workload such as undertaking the review of the Privacy Act.

**Senator KIRK**—How are you operating with the current funding—are things going well? Of course everyone always wants more funding.

**Ms Curtis**—Our role is to manage the organisation with the funding that we are given. To date we are on budget for the end of this financial year.

**Senator KIRK**—If there were to be extra funding, what would be the priority areas that you would move into?

**Ms Curtis**—In the review that I recently completed about the private sector provisions it was clear that there was a general call by industry, as well as by the consumers and the

government departments and agencies, for increased awareness and education about both the rights of individuals and the responsibilities and obligations of business. So I think an education and awareness program would be a priority.

**Senator KIRK**—Are you able within your existing funding to allocate moneys towards improving upon that awareness in the form of education programs?

**Ms Curtis**—Within our current funding we do provide advice and we do have education and awareness. We maintain a web site. We have lists of people that we send information to. We try to communicate as effectively as possible with the wider community, but an integrated education awareness program would be of use.

**Senator KIRK**—What sort of expenditure would that require?

**Ms Curtis**—We have not costed that as yet.

**Senator KIRK**—Going back to the privacy review that you mentioned, could you inform the committee as to how much was spent on the review of the Privacy Act?

**Ms Curtis**—Roughly speaking we allocated about \$100,000 for the conduct of the review, but that did not include all of the staff that were involved in the preparation of the issues paper, the consultations, the analysis of the submissions and then the writing of the report.

**Senator KIRK**—How many staff were engaged in doing all those sorts of things?

**Ms Curtis**—I would have to get back to you with the detail of that. We could hazard a guess but I would rather give you an accurate figure.

**Senator KIRK**—Sure, but it just seems to me that if they are engaged in reviewing the Privacy Act then they are not going to be performing their usual roles.

**Ms Curtis**—We did engage one extra person to assist with the conduct of the review. There were a number of people within one of our sections who worked full time on it and other people devoted some time at different stages to the review.

**Senator KIRK**—How did that impact upon your primary role, which is, as I understand it, receiving complaints and giving advice?

**Ms Curtis**—We had to manage the resources, and we did that.

**Senator KIRK**—So there was no additional money given to you?

**Ms Curtis**—No, there was no additional money.

**Senator KIRK**—Over what period of time did the review into the Privacy Act take place?

**Ms Curtis**—The Attorney-General gave me the terms of reference on 13 August last year and he asked that I give him a report by 31 March this year. We met that deadline.

**Senator KIRK**—You made 85 recommendations. In the Attorney-General's press release and media comments he highlighted four in particular, those being improving national consistency in privacy regulation, particularly in the area of health privacy; simplifying the application of the small business exemption; ensuring that privacy is adequately protected in the face of rapidly developing new technologies; and raising consumer and business awareness of a range of privacy issues. Would you say they were the four primary

recommendations from your point of view? There were 85. Are there others that you consider to be important that were not highlighted by the Attorney-General?

**Ms Curtis**—Those 85 recommendations did cross a number of fields, but I actually think those four were probably the major areas—except that I did make a recommendation that it was probably appropriate to review privacy for Australians in the 21st century. That would involve a review of both the meaning of personal information and whether we needed two sets of privacy principles to cover the government sector and the private sector. I think that overarching recommendation was an important one as well.

**Senator KIRK**—I notice that one of his recommendations was to raise consumer and business awareness of a range of privacy issues, which is something that you indicated you thought was necessary. Has the Attorney-General indicated that there might be some funding directed your way in order to undertake this education campaign?

**Ms Curtis**—The government will be responding to the recommendations and in that context it will be considering whether there is any extra funding.

**Senator KIRK**—When do you expect to receive the government's response to the recommendations?

**Ms Curtis**—That is a matter for the government to respond to.

**Senator KIRK**—The privacy review was released on 18 May—is that correct?

**Ms Curtis**—That is correct.

**Senator KIRK**—A week or so ago, or a bit longer. He said that groups representing consumers and privacy advocacy groups were less satisfied with the operation of the act. Could you summarise for us what the concerns of the consumer and privacy advocacy groups were in relation to the act?

**Ms Curtis**—Generally speaking, it is probably fair to say that the consumer movement would have liked to have seen a stronger regime implemented in 2001, so the light-touch, coregulatory approach was not something they were enamoured with. That would be one of the major reasons why there is still some disquiet about the operation of the provisions. They were also concerned about the complaint-handling process and the time taken to respond to complaints. They would like more transparency in the way complaints were resolved—they would like to know what our findings were.

**Senator KIRK**—Where any of the matters that the consumer groups raised addressed by any of the recommendations?

**Ms Curtis**—Yes, I think I have addressed all of their suggestions, except that I have not recommended that we remove any of the exemptions under the act or resile from the light-touch, coregulatory approach.

**Senator KIRK**—You noted that there have been few industry privacy codes adopted under the act and that most of the sectors are happy to use your office in handling complaints and rely on the national privacy principles. Why do you think that is the case?

**Ms Curtis**—I think the codevelopment guidelines that the office issued were probably quite complex and businesses still had to comply with the NPPs. They had to make a

commercial decision whether it was worth while to introduce another regime that was a little bit more complicated and that would have costs associated with it. I suspect that is one of the reasons why this has not been adopted by business as much as was initially thought.

**Senator KIRK**—Are there many businesses that have adopted their own privacy codes?

**Ms Curtis**—There are three privacy codes approved under the Privacy Act. Many other organisations have privacy policies, but they are not codes.

**Senator KIRK**—Did you speak to or consult with any of those industries or areas that do have their own privacy codes and try to glean from them whether or not they are finding it is working?

**Ms Curtis**—Yes, we have spoken to all three groups. All three said that the process for establishing a code was quite onerous, but I think all three believe there has been benefit for their industry in having a code.

**Senator KIRK**—Are there any ways that you think industry groups could be encouraged to develop their own privacy codes?

**Ms Curtis**—I guess an industry would have to decide it was in their best interest to do so. To date, they have felt that compliance with the act is sufficient.

**Senator KIRK**—It is a commercial decision essentially. Is there any assistance given by your office to industries or sectors that wish to establish their own privacy code?

**Ms Curtis**—We provide advice to them, but we do not provide any monetary assistance.

**Senator KIRK**—So you would perhaps give them some ideas as to what needs to be included?

**Ms Curtis**—Absolutely.

**Senator KIRK**—I understand—and I think you alluded to this—that one of your recommendations was for a wider review of the operation of the act. Do you think that perhaps your terms of reference are too restrictive?

**Ms Curtis**—The terms of reference for the Privacy Commissioner's role?

**Senator KIRK**—Yes.

**Ms Curtis**—That is prescribed by the statute. It covers a wide range of activities: promoting privacy, providing advice to government departments and agencies, educating and advising, and fulfilling a number of other statutory responsibilities with data matching and under the Telecommunications Act et cetera. So we do have a very wide role.

**Senator KIRK**—If there were to be a wider review into the role of the office, what would be some of the major issues that you would like to see considered?

**Ms Curtis**—Just to clarify, I recommended that there should be a wider review of privacy, not a wider review of the privacy office. Is your question about the privacy office?

**Senator KIRK**—Yes. It is about the privacy office and also privacy generally. I am interested to learn.

**Ms Curtis**—The issue is that the principles, both the IPPs and the NPPs, are essentially based on principles that were developed in the OECD in the late 1970s. We really need to consider if they are relevant as we go forward in the 21st century. It goes to the very heart of what is personal information. I think there needs to be understanding in the community. We need to understand what people expect their rights to be. Currently the Privacy Act is really about the protection of personal information, not bodily or territorial privacy. It is quite narrow.

**Senator KIRK**—That probably leads into another question that I wanted to ask you. There seemed to be a suggestion, I think I read it in the joint statement that the Attorney and you gave, that there was some indication that Australia's privacy laws do not achieve European Union adequacy.

**Ms Curtis**—That is correct.

**Senator KIRK**—What does that mean?

**Ms Curtis**—Under the European parliament directive, for EU businesses to deal with businesses from another country the personal information has to have a certain level of protection equivalent to what is called EU adequacy. The EU has not yet given the Australian legislation adequacy.

**Senator KIRK**—Is that because our legislation does not encompass the sorts of things that the EU standards do?

**Ms Curtis**—Primarily it relates to the small business exemption and the employee record exemption. But, again, that is a matter for the government. They are pursuing EU adequacy.

**Senator KIRK**—What implications does that have for Australian businesses who wish to trade in the EU?

**Ms Curtis**—Interestingly, in our review we found that most businesses found that it was not the impediment that they thought it was going to be and they are able to manage it through contractual provisions.

**Senator KIRK**—So you are saying that they enter into some different contractual arrangements so as to avoid their—

**Ms Curtis**—No. They ensure that they meet those personal information standards by contract.

**Senator KIRK**—I understand. So it is in addition to what would be required if they were trading here.

**Ms Curtis**—That is right.

**Senator KIRK**—One of the recommendations, I think it was No. 68, said that nondisclosure rules should be changed to allow disclosure to a responsible person, for example a family member, in a national emergency. When you mentioned that, what circumstances did you have in mind in which it would be necessary to reveal information?

**Ms Curtis**—That recommendation related to large-scale emergencies. With the tsunami of 26 December last year there was some media and some suggestion that the Privacy Act prevented information being passed from private sector organisations to government

departments and agencies. The submissions we received, and I, would like to have the Privacy Act adopt a commonsense approach. We thought we may need to amend the national privacy principles to ensure that the information was available to be released in those sorts of circumstances. The recommendation suggested that appropriate persons probably would be family members or whatever. The NPPs really are based on the notion that information can be used or disclosed as long as people either consent to it or are reasonably aware that something might happen with it. The view we received from people was that in most cases, in that sort of circumstance, they would expect their travel details to be divulged to their loved ones by airlines.

**Senator KIRK**—Were there any obstacles surrounding the tsunami that people raised—that is, not being able to reveal information?

**Ms Curtis**—I believe, from the use by Commonwealth departments and agencies, that the IPPs should have allowed the information to be disclosed; but there may have been some circumstances with the NPPs and private sector organisations where it may not have been appropriate to disclose. That is why we have suggested changing the NPPs.

**Senator KIRK**—Thank you.

**Senator GREIG**—I have three questions in slightly different areas. Firstly, in the commission's report on the private sector provisions of the Privacy Act, the recommendation to government, in part, was that it ought to consider undertaking a wider review of privacy laws in Australia to ensure that in the 21st century the legislation best serves the needs of the people. In the context of that, I am wondering if the commission has turned its mind to what sort of review would best serve that purpose. I guess the subtext of that is: what areas of privacy do you think contain weaknesses, or what laws contain weaknesses that might be better addressed?

**Ms Curtis**—It was a case of recognising, as I mentioned previously, that the laws were based on 30-year-old principles. Technology has advanced greatly in the last 30 years, so there are a lot of technology related issues as to why we should review where we are with privacy. It is not so much a matter of working out where the existing weaknesses are as trying to ensure that, going forward, the regime is appropriate.

**Senator GREIG**—I guess that brings me to the question of genetic privacy. Do you have a view as to the best way to protect the information of genetic privacy for Australians—for example, amendments to the Privacy Act, a stand-alone act, or perhaps even incorporating protections into a national health privacy code?

**Ms Curtis**—Our view is that genetic privacy should be covered by the existing Privacy Act, and initially I think the office provided advice to the effect that it should be the NPPs. But if a national health code is incorporated then it may be appropriate to cover it there.

**Senator GREIG**—Is that something that the commission could engender in terms of further public debate? The review has concluded that the existing act is working effectively, and you have articulated areas of increasing technology—whether it is genetic privacy or increasing use of the internet. A quote leapt out at me from the report, where the ISP provider executive—not named—said:

We ... have the username and password for every one of our users; we have their credit card details, we have a lot of information about their liquidity, we can know about every purchase they make online, with whom, when and for how much. We can know every site they visit on the web - every page, every newsgroup, every picture they look at. We could read all of their mail and know all about their romances and the jobs they're applying for ... The commercial opportunities arising from this are endless ...

Yet your conclusion was that the Privacy Act was working well. Do you still stand confidently behind that conclusion?

**Ms Curtis**—My review was of the operation of the national privacy principles and the other provisions that came in with the Privacy Amendment (Private Sector) Act in 2000. On balance, the provisions seem to be working well, based on the evidence that we are provided with and also the complaints that we have received over the last three years.

**Senator GREIG**—Can you give us some indication of, or take on notice, the sorts of resources provided to the commission in an international comparison in terms of funding and staffing for the privacy commission in Australia and comparable entities in, perhaps, the UK and the USA?

**Ms Curtis**—We will take that on notice.

**Senator GREIG**—Okay.

**CHAIR**—Thank you, Ms Curtis and Mr Pilgrim. If there are any further questions, Senator Ludwig, we will put those on notice.

[3.44 pm]

#### **Australian Government Solicitor**

**Senator LUDWIG**—Are you able to say what the current financial position of the Australian Government Solicitor is? I know there is limited information available to the committee in some respects, but is there an accounts balance that you provide on how your profit is going for the year?

**Ms de Gruchy**—We do publish an annual report each year in which we provide full financial accounts, so with regard to the information that has been published, it would be our 2003-04 financial year accounts. We will not publish our current year accounts until the end of this financial year. We operate under a corporate plan that is developed and we submit that to our shareholder ministers at the end of May each year. Then we report to our shareholder ministers against that plan on a quarterly basis. Those reports are provided not as public accounts but as confidential reports against performance each quarter. I can indicate to you, Senator, that at the moment we are travelling quite well against our corporate plan targets and we expect to finish the year in a financially acceptable position.

**Senator LUDWIG**—With regard to the panel system that is operating within the Commonwealth, is the AGS on every one of those panels of the departments that have panels, or are there some that you are not represented on?

**Ms de Gruchy**—Of the departments that have panels, I think I am right in saying that we are currently not a member of one departmental panel.

**Senator LUDWIG**—You are not on any of the panels?

**Ms de Gruchy**—Of those departments that do have panels, we are not on one.

**Senator LUDWIG**—So you are on all of them?

**Ms de Gruchy**—We are on all of them bar one.

**Senator LUDWIG**—Which one is that?

**Ms de Gruchy**—The Department of Finance and Administration, which was recently reconstituted.

**Senator LUDWIG**—Were you on that previously?

**Ms de Gruchy**—Yes, we had been on the finance panel for some six years prior to that.

**Senator LUDWIG**—Do you win tenders? Is that how you operate in respect of the Commonwealth government and other work?

**Ms de Gruchy**—It is one of the ways that we win work. Many departments and agencies do go out to tender for panels of legal services, whether those panels be for a general panel and, in some cases, for a specific type of panel. There are also requests for a quotation or bid in relation to smaller projects, for example. There is a wide range of tenders that we respond to but, in relation to other work, it may be that we are asked to do certain work not under a panel arrangement but simply because we are asked to do so by a client.

**Senator LUDWIG**—Of the tenders you submit for Commonwealth work, is there a break-up of how many you win and how many you are unsuccessful in?

**Ms de Gruchy**—We monitor that internally and we do report that on a quarterly basis to our shareholder ministers.

**Senator LUDWIG**—Is that information included in the annual report?

**Ms de Gruchy**—We do not publish how many we win and how many we lose. We do give a general—

**Senator LUDWIG**—Perhaps ‘unsuccessful in’ is a better way of putting it.

**Ms de Gruchy**—We give a general description of our market and our client base in our annual report but we do not specifically report on how many tenders are out in the market and how many we are bidding for, on the basis, of course, that that is highly sensitive, commercial information of particular interest to our competitors.

**Senator LUDWIG**—Are your fees and the comparison to private industry set internally by yourselves or are they market driven—whatever the market will bear, in some respects?

**Ms de Gruchy**—I think it is a combination of both. We keep our pricing under scrutiny at all times. We are in a position where we need to pass on our costs of operation to our client to meet our financial targets. That is reflected in our pricing. That said, we also operate in a competitive market and have to consider at what price we will price any particular work. That will vary significantly, depending on the kind of work that we are doing.

**Senator LUDWIG**—Do you monitor the turnover of the AGS staff?

**Ms de Gruchy**—We do.

**Senator LUDWIG**—Has that been trending up or trending down in the last two financial years? ‘Rate of turnover’ is a way of expressing it in some areas.

**Ms de Gruchy**—I would say that our turnover rate is perhaps something in the order of 15 per cent a year, which has been relatively stable over the last few years. I am not aware of any significant up or down movement in relation to that turnover rate.

**Senator LUDWIG**—Do you know how that compares to industry? Is it high or low compared to similar industries?

**Ms de Gruchy**—I do have a sense that it is significantly lower than in comparable law firms.

**Senator LUDWIG**—There you go. I would have thought it was higher. The *Australian Financial Review* on Friday, 20 May 2005 had an article about the Department of Industry, Tourism and Resources requiring law firms who are applying for inclusion on their legal services panel to have expertise in space law, amongst other things. I assume by the fact that you must be now represented on their panel that you have expertise in space law. Do you have expertise in space law?

**Ms de Gruchy**—I would not be able to answer that question without taking it on notice.

**Senator LUDWIG**—Perhaps when you take it on notice you could also tell me what space law actually entails. I am a little bit—

**CHAIR**—Quite possibly a flight of fancy.

**Senator LUDWIG**—The story in the *Australian Financial Review* last Friday said that tenderers for the department needed to have expertise in space law, amongst other areas, even if tendering for work in other areas. Would that be part of the understanding of how tendering rules apply—that they can specify an expertise in space law, whatever that might be? If you were tendering for work you would have to have expertise in that area to be able to apply for that work.

**Ms de Gruchy**—It is up to the department or agency to consider what range of technical expertise it feels it would need in order to meet its needs over the wide range of its programs. In that case, it is up to tenderers to put forward their expertise and to substantiate that. That is what tenderers would do. Of course, it would then be up to the department or agency’s tender evaluation panel to assess those claims to determine whether in fact the need and the requirement are met.

**Senator LUDWIG**—You would not have a sense of how many firms would have an expertise in space law in Australia, would you?

**Ms de Gruchy**—All I could say, which is really just anecdotal, is that space law is something that has been on the increase perhaps for 10 years with the increase in the use of satellites for commercial purposes, for example. I would expect that there are a number of lawyers around the country who have developed some expertise in the area.

**Senator LUDWIG**—One of the issues that really comes out of this is whether the AGD should forbid partial tenderers where they specify oblique issues, which can then cut others out of the market on a more general basis.

**Mr Cornall**—With the department of industry, I do not think that is an oblique issue. I think that it is a significant issue for the department and I think they are entitled to specify the sort of expertise that they will be needing from their practical experience and from the work responsibilities that they foresee for the future. I was just discussing with my colleagues here that there would be, as Ms de Gruchy said, a number of firms that would have experience in space law relating to satellite communications, telecommunications and so forth, so I would not have thought that it would exclude competitors.

**Senator LUDWIG**—That is the only area that I was considering—whether it would reduce competition for smaller firms as a consequence.

**Mr Cornall**—I certainly think it would exclude a lot of firms because they would not have specific expertise. But there would be a number of areas where government does require and quite reasonably could specify particular expertise that would not be available in all firms.

**Senator LUDWIG**—Thank you. That is helpful.

[3.56 pm]

### **CrimTrac**

**Senator LUDWIG**—The last time I had an opportunity of speaking with you, there were a number of programs—part of your key deliverables—that you were still in the process of implementing. Specifically, I mean the CPRS and the DNA database. Perhaps a shorthand way to do this would be if you could provide an update of where we are with those key deliverables and whether they have been implemented or finalised and whether the trials have been completed.

**Mr Mobbs**—I will deal first with the CPRS, which stands for the CrimTrac Police Reference System. The main capability that I advised you we were deploying, back in February, was the minimum nationwide person profile. I advised that we were about to start an operational trial or capability trial of that. That has gone forward. It has been operating since 10 March, and it is set to operate for a 90-day trial period. It represents a new way of sharing information on persons of interest amongst police. We have deployed that. Principally, it is using a new stream of data between New South Wales and Victorian police in the first instance, but it is not ignoring the information that is normally shared via our national names index. The MNPP has been deployed to demonstrate not just to New South Wales and Victorian police but to all police the benefit of sharing a richer information stream. If you wish, I can tell you where the trial sites are for that, but in New South Wales, for instance, there are 700 users of the MNPP—that is, people who are registered and have been given access to it.

It is working extremely well. It is getting a very strong acceptance. I personally visited the Albury and Wodonga police stations recently, to look on both sides of the border at how they are utilising it, what value it is bringing to operational policing and, in some cases, what they would like to see improved and what additional data they would like to see shared in future. That is set to continue until the end of June. At the end of that period, as I said, we will sweep up the lessons learned and provide a report to the board of management on that capability trial, and by then we expect that the jurisdictions will have finalised their estimates of what it

will cost them to make the necessary changes in their IT environments to bring on the MNPP in all the other jurisdictions.

That roll-out, as we call it—that is, the provision of that capability to jurisdictions beyond New South Wales and Victoria—could take 10 to 12 months, on our estimates. That is the current status of the MNPP. Within the MNPP there are of course the missing persons records. We have placed extra emphasis on the police evaluation teams to assess the missing persons record for its usefulness in the treatment of missing persons generally.

**Senator LUDWIG**—Has there been a response to that?

**Mr Mobbs**—We are starting to get the questionnaires back, but we have not collated them and we certainly have not categorised them. On the MNPP generally, I have already had three very strong anecdotes which indicate to me the value of police on one side of the border knowing about the criminals on the other side of the border—in this case I think they are classified as serious offenders or a similar name—that hitherto they did not know about because they could not look into the adjacent jurisdiction's data in detail. There is another anecdote which came back to me from the Western Australian police who were given a demonstration recently of the capability. They just happened to look up a particular person—a known criminal in the Eastern States—who had visited Western Australian recently and had they known—in other words, had they had access to the same string of data—they would have apprehended that person for questioning and so on. They were quite miffed that the lack of information in that case meant that they had missed an opportunity to talk to a person of interest.

**Senator LUDWIG**—To recap, it is a database that searches by name. First of all you are required to have a name before you can search on the database.

**Mr Mobbs**—At present the national names index is constructed that way. In the MNPP, which is the new version, we can search on a wider variety of keys.

**Senator LUDWIG**—When will that be in place?

**Mr Mobbs**—Again, that will depend on whether all police and the board agree that what we have trialled in the trial at the moment is the tool they need and agree on the timetable for rolling it out to the other jurisdictions. I cannot give you a firm date yet.

**Senator LUDWIG**—Is there an expected time line to have it in place?

**Mr Mobbs**—As I said, we will take the results of the capability trial to the board meeting after the end of the trial and that will nominally be the September board meeting this year. If there is, shall we say, instant agreement to that then we embark on the roll-out. By the following September we could have it established in all jurisdictions.

**Senator LUDWIG**—What are the other key search phrases? You indicated that the current system requires a name to be able to search and once you input the name you can then come up with the criminal record or other particular data. You then indicated that the MNPP might have a broader reach than simply a name. What are the key areas that you might be able to search on?

**Mr Mobbs**—I did mention last time I believe that you can search on the CNI number which is associated with a fingerprint record. We expect to be able to search on physical description and date of birth, for instance.

**Senator LUDWIG**—How would that operate? Would you put in a date of birth and would you then get all the records for those people born on that date?

**Mr Mobbs**—That would be the idea, but of course you would get a lot of records back if you searched on a single date of birth. Again, it is wise to go in by name, which is probably the prime piece of information you usually have and then refine your search by date of birth. It has been designed so that you can search on the other demographics, if you like. In relation to missing persons specifically, it is not yet structured so that we can search on the physical description of the missing person. This is something that has come in since the MNPP design started. It is an additional add-on that we are now actively considering.

**Senator LUDWIG**—Why is that? Originally that was not one of your key deliverables in dealing with missing persons.

**Mr Mobbs**—It was not a key deliverable to set up a separate national missing persons database, that is correct. When we brought forward the MNPP, if you like as the modernisation of the national names index, which I said had existed since the mid-eighties, it was pretty much a modernisation of that using web technology and so on. Principally, police were used to using a name as the key. The principal identifier in the MNPP was also meant to be a name and, if you had it, the CNI number relating to a fingerprint. This is a process of evolution. We now know that perhaps more information in relation to missing persons might be useful. We have added that into the mix and asked for police to look at that, particularly: how does this tool serve you, not just for missing persons but for persons of interest generally?

**Senator LUDWIG**—When did that start? That was not part of the original proposal for your MNPP. It seems to suggest it has come a bit later. When was the proposal run up?

**Mr Mobbs**—It began after the attention was given to Cornelia Rau and all that occurred around that particular point. We were asked to provide input to Mick Palmer and Neil Comrie in their investigation. Following that, I put it to my board of management at their March meeting that we should extend the terms of reference for the MNPP trial. If you like, I can quote to you the additional terms of reference that I asked the board for authority on.

**Senator LUDWIG**—That would be helpful. If you have got them there, you can certainly make them available.

**Mr Mobbs**—I wrote to all police commissioners on 12 April following the CrimTrac board meeting on 31 March this year. In that I had asked the board to endorse the following resolution:

The board resolved to endorse CrimTrac's intention to include additional terms of reference for the MNPP pilot and to include an evaluation of its utility for tracking missing persons nationally.

Secondly, that all jurisdictions should encourage participation by the missing persons units in order to evaluate the utility of richer missing persons reports within the MNPP within during the trial period.

Finally, that CrimTrac should develop an options paper with support from jurisdictions if needed for the purpose of informing considered discussion at APMC—

the Australian Police Ministers Council—

on 1 June 2005. This paper should attempt to estimate the costs and benefits of each option.

The way I suggested that it be addressed was twofold. The first option I put was that the police consultative group on missing persons should convene a workshop at CrimTrac to review and discuss the information available on missing persons. Then we would show them the missing persons reports within the MNPP and ask for their assessment of its utility. That would feed into our options paper. The second option I put forward was that staff of the state and territory missing persons units liaise with us to get online access to the MNPP missing persons reports during the trial and then, following their assessment, after comparing that with the information they would normally get via the national names index, they would provide feedback to the National Missing Persons Unit here in Canberra. That unit, the NMPU, in turn would liaise with CrimTrac so that we get a nationwide view of what information would best serve the needs of the missing persons units and police.

The responses to those have in the majority come back to option 2; that is, they would like their staff in their environments to use our tool during the trial period to assess its utility and they would provide the information to the National Missing Persons Unit. I think that is a sensible approach. It is their core business, not strictly ours. We provide information support; they use the tool and apply it.

**Senator LUDWIG**—That is referring to the various police jurisdictions.

**Mr Mobbs**—Yes.

**Senator LUDWIG**—So when is the earliest that might be up and running?

**Mr Mobbs**—It would be delivered with the MNPP roll-out generally, so again we are probably looking finally at, say, September 2006, unless greater priority is placed on it and other matters change.

**Senator LUDWIG**—And that is rolled out to all jurisdictions?

**Mr Mobbs**—That would be to all jurisdictions by, say, September 2006, all things being equal.

**Senator LUDWIG**—That initiative comes from you to include these two options?

**Mr Mobbs**—Yes, as part of general awareness that there might be something lacking in the way missing persons are dealt with. It is certainly my initiative to put it on the board agenda in the first place and then following that to write to all commissioners, bearing in mind that they do not all sit on the board, to raise their awareness that the board considers that it deserves higher priority.

**Senator Ellison**—This will be raised at the Australian Police Ministers Council next week and a report will be given by CrimTrac to the ministers there. It is something that I want to push along at that level.

**Senator LUDWIG**—Minister, is this because you have not had one—although you said, as I recall, that you did have one? I am happy for you to correct the record. My understanding

was that there was supposed to be one, by way of a missing persons bureau, but that this ended in 1996 when Senator Vanstone took over and promised a CrimTrac with a missing persons database. That never eventuated and now, belatedly, Mr Mobbs from CrimTrac, under his own initiative, is starting a missing persons database in order to be able to search using those sorts of functions that you would expect to have continued from the original missing persons unit. We found out today, of course, that the missing persons unit does not have a database with any searchable capacity. So in fact there is not a missing persons database at all. Minister, this issues does not seem to have been driven by you; it seems to have been driven by CrimTrac itself—is that right?

**Senator Ellison**—It was an issue driven by both CrimTrac and the government. The situation that Mr Mobbs has outlined with the minimum nationwide persons profile was a program which could incorporate missing persons. States have the primary responsibility for missing persons; the Commonwealth does not. This is a way of bringing them together. This pilot program will be an important step forward in that regard.

**Senator LUDWIG**—Minister, it was promised in 1999. It is now an initiative that has been tacked onto the MNPP. So I do not think you could rightly say that you have been driving it, quite frankly. It seems that Mr Mobbs has picked it up as an issue from questioning—I suspect from me—about Cornelia Rau or from the general news media. I give Mr Mobbs credit as he seems to be driving it as a way of attaching it to a current program. That seems to be where it has come from, quite frankly.

**Senator Ellison**—As I stated on 16 February this year, the previous minister for justice set out the priorities for CrimTrac when she launched the agency in 1999. The first was to replace the antiquated NEPI hosted NAFIS system with a digital fingerprint and palm print system, which we did. That system is one of the best in the world. The second was setting up the national DNA database, which we have done. The third, running along in parallel, has been the development of CPRS, which is the police reference system which can incorporate a missing persons database. We announced then that a trial would start in March, running for 90 days. I announced back then that I would be raising this matter at the Australian Police Ministers Council. So we have been doing other things. Senator Vanstone did not say that missing persons was a priority for CrimTrac when it was launched in 1999. Those were the priorities announced. The CPRS is a police reference system which incorporates all manner of things—which can include, of course, missing persons. So I do not agree that missing persons were a priority. I will tell you right now: apprehending offenders is a much higher priority than missing persons, and I will maintain that in law enforcement. If the choice is whether we have a DNA database which will exonerate the innocent and convict the guilty as opposed to a missing persons database, I know which one I will go for first.

**Senator LUDWIG**—Thank you, Minister. I will not delay us any further in this area. The record speaks for itself in respect of the lack of a missing persons database. ANCOR: where is that up to, Mr Mobbs?

**Mr Mobbs**—I will give you a summary of that. The Australian National Child Offender Register application has been operational since its launch on 1 September 2004. The present version of the system, which we call release 2.1, which constitutes some improvements to the first system as was planned, has been in operation from 3 March. ANCOR currently provides

the jurisdictions with the majority of the functionality approved in the business case. It was approved by the APMC in November 2003. Under the current version all essential functionality is there for our jurisdictions to meet their legislative responsibility for the registration of persons. The remaining components to be completed are—and there are three of them—specialist reporting, advanced mapping, and a data analysis and visualisation tool. We are currently working on the business case to take forward to my board of management on 22 June for those.

In terms of who is using it or who can use it, all jurisdictions have the technical capability to access it. Queensland, Northern Territory, Western Australia and Victoria have access to the current system while the remaining jurisdictions have access only to the training environment while they complete their legislative requirements. Queensland, the Northern Territory, Western Australia and Victoria have legislation in place and they are using ANCOR. The ACT Legislative Assembly is now considering legislation. New South Wales legislation is awaiting commencement. We anticipate that assent will be given in September this year. We anticipate that all states and territories will be using the system by January 2006. South Australia and Tasmania, I am advised, are still in the drafting stage with their legislation.

I would like to go back and dwell on New South Wales. You may be aware they had a child protection register from 2000, and that is a separate register which they established. In fact, they were the ones that pointed to the need for a national approach to this because people who were being required to register in New South Wales under their legislation, according to New South Wales Police, were fleeing to other jurisdictions. I remember being at the APMC when the commissioner said, ‘Fellas, you need to get online with this because we don’t know where they are going, and it seems that you don’t have the capability to track them.’ So New South Wales now has to consider an amendment which will let them use the National Child Offender Register as opposed to their own child protection register. There about 300 registered persons on the ANCOR system at present. That is probably where I will leave it.

**Senator LUDWIG**—Is that within budget at the moment?

**Mr Mobbs**—No. Those three components that I mentioned are the subject of a further budgetary consideration by the board. It would appear that when we put the original business case forward we underestimated in some areas. That is now affecting those three functional components. However, the board has been advised that funding is available within our recurrent budget to meet that once we complete the business case.

**Senator LUDWIG**—So you were over budget, were you?

**Mr Mobbs**—We will be over budget on the original business case to provide ANCOR, yes.

**Senator LUDWIG**—By how much?

**Mr Mobbs**—It is an estimate only. I would say between \$300,000 and \$400,000.

**Senator LUDWIG**—Will that be delivered on time or is there a time overrun as well?

**Mr Mobbs**—We were originally asked to deliver it by 1 July 2004. As that date approached it was obvious that legislation was not in place and would not be in place. We sought some relief. We finally released it on 1 September 2004, which enabled, from memory, Victoria, which had just got its legislation in, to start using it without delay. So whether it is

on time or not, it is late according to the original date. It is obviously not late for those states and territories that do not yet have the ability to use it.

**Senator LUDWIG**—Which are—

**Mr Mobbs**—South Australia, Tasmania and the ACT, and New South Wales to a lesser degree because they already have their own system.

**Senator LUDWIG**—They are waiting on legislative amendment to be able to bring—

**Mr Mobbs**—I have been advised that New South Wales will be by September this year.

**Senator LUDWIG**—Did we get to the DNA database?

**Mr Mobbs**—No, not yet. There is something by way of an update since I gave you the last advice in February. Since then I have had the valuable assistance of officers from the Attorney-General's Department to bring together all of the state and territory legal officers and persons with an interest in getting the national DNA database up and running. We held a very large workshop at CrimTrac where the remaining obstacles to national operation were examined. It was, from memory, a two-day workshop. Since then, legal officers in the states and territories have gone away to re-examine the ministerial arrangements that were put in place to see if the obstacles still remain.

The very latest advice I have is that Queensland and Western Australia have together brought forward the arrangements that they wish to see implemented for the interjurisdictional matching of their DNA profiles. So once we check the wording of that—I received the Queensland letter only yesterday—we do intend to turn on the NCIDD. That will be the first occurrence of interjurisdictional matching, between Queensland and Western Australia. The other states will follow and provide their advice in due course, I imagine. At the moment we have about 150,000 profiles on the system.

**Senator LUDWIG**—In terms of the CPRS, the DNA database and ANCOR, are reports requested or as a matter of course handed up to the board about the operation of these key delivery areas?

**Mr Mobbs**—It has been the agency's habit to report to the board at its regular meetings or at any intermediate meetings on everything that is afoot in the agency. There are some reports which indicate that this system is running smoothly, and a certain number of transactions have been enacted. Where we have projects as opposed to systems, we are reporting in an ongoing way on the status of the project. For example: is it over or under budget, behind time and so on?

**Senator LUDWIG**—Does it go the other way? Does the board ask for reports?

**Mr Mobbs**—Certainly.

**Senator LUDWIG**—And have they?

**Mr Mobbs**—Yes, they have.

**Senator LUDWIG**—Can you give me a recent example?

**Mr Mobbs**—My colleague reminds me that the board has called for monthly status reports on the minimum nationwide person profile to monitor that closely. We send those out every

month as requested. From time to time they ask for specific reports on other projects. So they are quite proactive.

**Senator LUDWIG**—Have they requested one on the DNA database?

**Mr Mobbs**—No. That is one that I include as a matter of routine, because it has been going on for so long. Whenever there is a significant change, I advise of it.

**Senator LUDWIG**—What about ANCOR?

**Mr Mobbs**—Yes, they have asked for specific reports on ANCOR.

**Senator LUDWIG**—And what was the nature of those requests?

**Mr Mobbs**—In relation to ANCOR, they requested that I engage a particular consultancy company with expertise in project management to review the status of the ANCOR project. They also appointed a superintendent from the Western Australian police, an officer who had assisted me by leading a joint reference group that we put together when we started gathering the requirements for ANCOR. Those two conducted a review of the project and reported back to the board at its last board meeting on 9 May.

**Senator LUDWIG**—What was the nature or the subject of the report? Does it have a title?

**Mr Mobbs**—Yes. It was the timing. It was actually questioning whether those final three components were in fact nice-to-haves or must-haves. There was a range of opinion in and around police that perhaps you did not need a common mapping database so that, when a person comes in and is required to register, everybody sees the same picture of where the person is living, where their associates are and so on. There was some difference of opinion on that. There still is a range of opinions on whether you need an analyst type tool to look at the associations between registered sex offenders. This is not unusual in police. You have nine jurisdictions and a range of views. So they were asked to look at those in particular.

Their conclusion was that all three are required to be delivered to optimise the use of the tool and to exploit it. They gave advice that we should change the form of the business case that we were developing to make it absolutely explicit, if you like, down to the last dollar, so that we did not again find ourselves in a position of underestimating the work required. We have been doing that since before they handed up their report. So that was, if you like, project management expertise which the board took on board. The board accepted the recommendations and gave me the directions to drive it to its conclusion and bring back the final business case on 22 June.

**Senator LUDWIG**—Did that report express unqualified support for the ANCOR project?

**Mr Mobbs**—Yes, it did.

**Senator LUDWIG**—You indicated that you had provided information to the Palmer inquiry. What was the nature of the information that you provided?

**Mr Mobbs**—I need to preface these remarks by saying that a report I gave to Mr Palmer was classified law-enforcement-in-confidence, but I can talk in general terms about the information I provided.

**Senator LUDWIG**—What does law-enforcement-in-confidence mean?

**Mr Mobbs**—It is a security classification we use within police to indicate the classification of a document.

**Senator LUDWIG**—So whose eyes is that for?

**Mr Mobbs**—That would normally only be passed between police and CrimTrac. For instance, a document with a law-enforcement-in-confidence classification would not be made available to the general public.

**Senator LUDWIG**—Then why would it go to Mr Palmer?

**Mr Mobbs**—Because I understand that he has been authorised under the law to conduct an investigation into, amongst other things, the information in the system that we maintain.

**Senator LUDWIG**—What authorisation do you understand he has?

**CHAIR**—I am not sure that is a question Mr Mobbs is in a position to answer. You might want to direct that to the minister, Senator.

**Senator Ellison**—What was that?

**Senator LUDWIG**—What authorisation does Mr Palmer have to be able to receive law enforcement security classified material and how did he come by that?

**Senator Ellison**—That could well be in the terms of his appointment, when he was appointed to carry out the investigation into the Cornelia Rau matter and now the other matter as well. One would think that he was given powers to conduct that investigation. I will have to take that on notice, Madam Chair, but I would not be surprised in the least if he had that sort of power, and I would expect him to have that if there was to be a proper inquiry.

**Senator LUDWIG**—That begs the question of how he gets the report and is able to read it, if it is security classified for law enforcement only.

**Senator Ellison**—Do I understand the question to be: how does Mr Palmer come to receive what is classified information?

**CHAIR**—Senator Ludwig was asking questions about the report or information that CrimTrac has apparently provided to the Palmer inquiry. Mr Mobbs advised the committee that that report was classified law-enforcement-in-confidence. Senator Ludwig then went on to ask some questions about Mr Palmer's position with regard to receipt of such information. We have not actually canvassed the contents or general matter of the report at this stage, but that is Senator Ludwig's question.

**Senator Ellison**—I think that is what I answered—I would envisage he would have that power and I would expect him to have that power to receive it. I will take that on notice and confirm it. The next question would be: can he then publish what he has received?

**Senator LUDWIG**—Mr Mobbs has said, in terms of that report at least, that because it is classified he cannot provide it to me. He was going to give me a summary of the content, which I will hold him to in asking about that in a second, but I needed to sort that classification issue out—as to when Mr Palmer was given that security classification, how he came by that security classification and whether or not he was vetted by ASIO to be able to obtain that. I do not know how it is provided.

**Mr Mobbs**—I imposed that, on that particular document, because it referred to information taken from a protected police system. I thought it was an appropriate classification to place on it.

**Senator LUDWIG**—I understand you would do that because of the nature of the information that I suspect is included within it that you hand on. In terms of the requirement to ensure that your board and your clients are protected with respect to the nature of the information you hand on, you would be expected to do that. These are my words but you can agree with them. That is why you would do that, and that would seem appropriate and right. My question really concerns then providing this information to Mr Palmer, which is then to the minister. Does Mr Palmer have the requisite security clearance to receive the information? I did not see that in the individual terms of reference. It may have been subsequently obtained.

**Mr Cornall**—Senator, I wonder if I could just say this: there are two systems for the classification of material for governmental purposes. One is the national security classification and the other is the general government classification. ‘In confidence’ is not a national security classification. I wonder whether, in fact, the proper classification of this material is simply ‘in confidence’ and ‘law enforcement’ has been added to indicate the nature of the material but the proper interpretation of the classification is ‘in confidence’, which is not a national security classification; it is a governmental classification.

**Senator LUDWIG**—I did not really want to argue with you, but there is a classification Mr Mobbs has given it. I can understand it—he has attached the law enforcement criterion to it because of the nature of the information it contains, given that he has access to policing services outside of the Commonwealth. It is not up to you to change that classification. My question really goes to what power or what classification Mr Palmer has to receive that information. He was a law enforcement officer; there is no doubt about that. It is a question of whether, in his current role, there has been any bestowing of power to ensure that he can receipt that, given that classification. That is the question.

**Mr Cornall**—There was reference, though, to security classifications, and I was trying to make the point that this is not a national security classification; it is a governmental classification.

**CHAIR**—I think the committee understands the point that you were making. I imagine that arrangements made for Mr Palmer’s appointment, his capacity to receive information and so on, are matters that we can well direct to Immigration tomorrow.

**Senator LUDWIG**—Yes. It was just that I did not want to be the position of calling Mr Mobbs back.

**CHAIR**—Quite. I am not keen on that as a plan either.

**Senator LUDWIG**—That is why I covered most of those areas. With the law enforcement powers, I guess there is a question as to whether there was any other reference by the AGD, DIMIA or a law enforcement agency to give Mr Palmer that power or reference.

**CHAIR**—I think we have canvassed as much as we can on that this afternoon.

**Senator LUDWIG**—Yes, we have canvassed as far as we can go today, I am sure. You were then going to give us a summary.

**CHAIR**—Senator Ludwig, I just wanted to clarify something with the minister in relation to this matter. I do not understand—and I would be happy for your advice, Minister—the status of the material to which Mr Mobbs is about to refer in relation to a yet-to-be-completed inquiry being carried out in a different area. I understand that CrimTrac has made a report. Mr Mobbs has told us that. But I have some concerns about the status of the material we are possibly about to discuss in open session.

**Senator LUDWIG**—I understood he was going to explain not the content of the material itself but the nature of the material in general.

**CHAIR**—I appreciate that. I have seen these discussions get out of control before, though.

**Senator Ellison**—I understood Mr Mobbs was not going to hand over the document.

**Senator LUDWIG**—I would like him to, but I suspect—

**CHAIR**—I am sure you would.

**Senator LUDWIG**—He has already said no, and I have accepted that.

**Senator Ellison**—That is not being pursued. The next issue is: in view of that not being handed over, how far can questioning go in relation to the substance of that? I understand that Senator Ludwig has not yet asked a question in relation to that.

**Senator LUDWIG**—Mr Mobbs volunteered a summary of it, as I understood it.

**Senator Ellison**—It is, in general terms, what was provided, without going into the substance and detail.

**Senator LUDWIG**—That is what I understood.

**CHAIR**—I am aware of the constraints that we have previously traversed with Minister Vanstone on the last occasion in relation to these matters. As long as we are comfortable with—

**Senator Ellison**—I am not a party to that. I was not here when Senator Vanstone was before you, so I do not know the ruling you made—

**CHAIR**—I did not make a ruling.

**Mrs Elliot**—or how the committee treated that. There is an inquiry on foot. It is much like the statement, ‘I gave legal advice but I cannot tell you what the content was.’ That sort of evidence can be given. I think we should take it on notice and see what we can provide, if we can.

**Senator LUDWIG**—To be absolutely clear, I asked for the report, and Mr Mobbs indicated that, because of the security classification, he was not going to provide it. I do not accept that, but that is up to Mr Mobbs. He then indicated that he would be able to provide a summary. I think that was the word he used but I stand to be corrected. I took it to be an overview of the nature of the document. If he cannot do that—and I still press for that—and if you are going to take it on notice then I have no other option than to wait for that. Hopefully, you can provide that at the end of the day or tomorrow.

**Senator Ellison**—It may be that over the dinner break or at the end of the day we can give you a form of words that can be applicable, but to do it ad hoc would be unwise, I think.

**CHAIR**—Thank you, Minister, I appreciate that assistance. Are there any further questions for Mr Mobbs?

**Senator LUDWIG**—I will put the rest on notice because time is going to escape us.

**CHAIR**—Mr Mobbs and Ms McLay, thank you very much.

[4.36 pm]

#### **Commonwealth Director of Public Prosecutions**

**CHAIR**—Welcome, Mr Bugg and officers.

**Senator LUDWIG**—There are only a couple of areas I wish to ask questions on. Unfortunately, we have some time constraints, so I will put some questions on notice to you. I appreciate your making yourselves available today. There are a number of areas that I have been following. Question on notice No. 260, which relates to the human trafficking prosecutions, is one of those. As much information as you provided then, I am not sure whether or not you can provide an update of what stage the five prosecutions are at, whether there are any convictions at this point in time and how many other cases of sex trafficking have been referred to the DPP since 1999. There are a few questions tied up in that, so I will pause.

**Mr Bugg**—There are ten defendants currently being prosecuted. Some of these matters are before the court. Therefore, it is really difficult to go into any detail on those. I will give you a brief summary. There are four defendants listed for trial to commence on 14 June in Sydney. It is anticipated that the trial will take several months. There are two defendants in Sydney who are currently on trial. The latest advice I have is that the jury was likely to go out late yesterday. I do not have an update on that. The co-accused of those two defendants are also currently on trial but only for state offences. There are two matters in Sydney listed for committal later this year. Trial will probably be in 2006 based on the scheduling of matters for trial in that state. Then there is a matter in Melbourne which is likely to be tried next year. It is listed for committal in Melbourne in September.

There is currently a trial of two others being heard in Melbourne. Closing addresses concluded on Friday last week and the judge was to commence the charge to the jury yesterday. Obviously it will take some time, but that trial is nearing an end. They are slavery cases as opposed to sexual servitude cases.

**Senator LUDWIG**—Are they the ones from Queensland?

**Mr Bugg**—No. They are the ones in Melbourne that I was mentioning.

**Senator LUDWIG**—I know the ones you mean. Is that the total?

**Mr Bugg**—Yes.

**Senator LUDWIG**—Which ones have criminal justice stay visas?

**Mr Bugg**—I do not have that information.

**Senator LUDWIG**—Do you get involved in organising criminal justice stay visas?

**Mr Bugg**—Yes, it is a process we are involved in.

**Senator LUDWIG**—Is it usually initiated by the law enforcement agency or the DPP in ensuring that the witnesses are available? As I understand, the visas have to be obtained through DIMIA.

**Mr Thornton**—Basically the arrangement is that, if a visa is obtained during the investigation phase, it is the responsibility of the investigating agency until the time of charging and, if it is required after that, it is the DPP's responsibility.

**Senator LUDWIG**—So from the charge onwards it becomes a matter for the DPP. Do you then obtain it through DIMIA? What is the usual process? If there was one prior to then it becomes your responsibility. Is that transferred into the DPP's responsibility through DIMIA? I am curious as to the process. I am happy for you to take that on notice if it requires a little bit more research.

**Mr Thornton**—That might be simpler.

**Senator LUDWIG**—I will outline my area of interest so you have it on transcript. Once the criminal justice visa is recognised as necessary by the DPP to maintain the witness in the jurisdiction, is DIMIA approached and how is that facilitated? Then there can be one of two outcomes. If there is a successful outcome in terms of the prosecution, what happens to the criminal justice stay visa? If it is unsuccessful and an appeal is pending, what happens? I will put it this way—if there is an unsuccessful prosecution, including an appeal process, what happens to the criminal justice stay visa at that point in time? Then, if the witness wishes to remain in Australia, what happens from there? Is that process handled within the DPP or is it handed back to the original arresting authority, the law enforcement authority, or DIMIA? I think that is a catch-all of the issues. That would be helpful. I just wanted to know what DPP's role in that was.

**Mr Thornton**—Certainly. We can outline the role and the part that we play in that process.

**Senator LUDWIG**—Thank you very much. I have one other question and I am going to put the remainder on notice. A narcotics find occurred by way of a container examination facility. That was referred to in question on notice No. 129. In relation to that find, have people been charged in relation to those offences and referred to the DPP? I was looking for general information that you might be able to provide, if it is available, as to how many charges have been preferred, how many people were involved and those sorts of issues—only issues of that broad nature.

**Mr Thornton**—I do not recall that question. Was it to my office or to Customs? I think it may have been to Customs.

**Senator LUDWIG**—Yes.

**Mr Thornton**—I certainly do not recall that question, but I stand to be corrected.

**Senator LUDWIG**—I am sorry. It is late in the day and I am corrected. It would have been a question to Customs. It would have been their No. 129, so you would not have it. I am simply trying to identify the nature of the offence that might have been referred to you for prosecution.

**Mr Bugg**—I suppose we can make inquiries in terms of that particular discovery and see whether it has followed through to a charging process. Could we take that on notice? It is question No. 129.

**Senator LUDWIG**—Yes. It was a Customs question. Sorry—all I was trying to do was to examine the processes that might go through as it went from the Customs area through to the DPP and what happens there.

**Mr Bugg**—There would be an involvement of the Australian Federal Police.

**Senator LUDWIG**—Yes. I imagine that they would also be involved as well. They can exercise powers in relation to narcotics.

**Senator Ellison**—What are the circumstances of the seizure? Which city and container?

**Senator LUDWIG**—I would have to go back to the question.

**Senator Ellison**—You do not have it there.

**CHAIR**—We are all trying to put our hands on it, actually.

**Senator LUDWIG**—I can put the rest of my questions on notice. I do not think it is worth while delaying it any further. I thank the DPP for their work and look forward to the Insolvency and Trustee Service.

**CHAIR**—Thank you, Mr Bugg.

[4.48 pm]

#### **Insolvency and Trustee Service Australia**

**CHAIR**—We move to the Insolvency and Trustee Service Australia.

**Senator LUDWIG**—ITSA is changing its cost recovery model, as I understand it. I think this is a question I have asked you before in terms of whether you are changing your methodology. It appears that you now have. Where did the basis of that change in methodology for your cost recovery come from? Was there a report that initiated that?

**Mr Gallagher**—The review that we undertook was in accordance with a government decision that was made broadly about cost recovery arrangements in relation to government services provided. It was not something that was initiated specifically for insolvency, but, as a government agency that does charge private sector people for our services, the policy applied to us.

**Senator LUDWIG**—When was the report commissioned? Is there a separate document that was commissioned in-house that is available to the committee?

**Mr Gallagher**—The guidelines that were provided by the department of finance required that agencies conduct a review and that there be a cost recovery impact statement prepared as a result of that. That really is the result of the review. Our cost recovery impact statement has been put on our web site and a cost recovery impact statement summary is incorporated into the PBS document.

**Senator LUDWIG**—Did you go out and consult with industry about the model that you have adopted?

**Mr Gallagher**—Indeed we did. We issued two discussion papers. There was an initial discussion paper which outlined the impact of applying cost recovery principles to all of the services that we provide. That initial document included the impact of charging for some services that we do not charge for now. We invited feedback on that. As a result of that feedback, a further discussion paper was issued outlining some compromise approaches that might be taken, picking up that feedback.

**Senator LUDWIG**—Is that document available?

**Mr Gallagher**—The initial discussion paper is there, as indeed is the revised discussion paper.

**Senator LUDWIG**—Are they the earlier ones on your web site?

**Mr Gallagher**—They are indeed.

**Senator LUDWIG**—I am talking about the latter document, when you got closer to the end product.

**Mr Gallagher**—There was no further document released publicly other than the results of the review, which are reflected in the cost recovery impact statement, the CRIS.

**Senator LUDWIG**—I see. So that is really the finalisation of it.

**Mr Gallagher**—Yes, essentially that is right.

**Senator LUDWIG**—Are you aware of any criticism from industry about the cost recovery model that you have adopted?

**Mr Gallagher**—The one that was announced by the government in the budget context, as I say, was the final decision following all of the review processes and the consultations. We were aware, obviously, of some considerable concerns about applying fees for some of the services—in particular charging debtors to file a debtors petition and debt agreement proposals.

**Senator LUDWIG**—Yes, how would they do that?

**Mr Gallagher**—In the ultimate decision, that was not proceeded with. There continues to be no fee for filing a debtors petition. Perhaps I should explain this—it may have been a little misunderstood. It was not a proposal to do that; it was an explanation of the application of cost recovery principles to our various services upon which we sought feedback. The feedback that the government received on that was that there would be concerns about applying that cost recovery policy to those particular services that we provided. There are a whole range of other services that we provide that we do recover on. The fees for those were refined and adjusted to ensure that the level of the fee reflects the cost of the service.

**Senator LUDWIG**—So what was effectively reflected in the portfolio budget papers as to any cost recovery model? Was that the model that was proposed by ITSA itself or has it changed? If it has changed, in what way?

**Mr Gallagher**—What is finally reflected in the decision is different from the outline in the initial discussion paper, but I think there was a little misunderstanding about what was actually a proposal. It was an endeavour to explain what would be the impact of applying cost recovery principles to all of our services. There was never an in-principle decision to charge

debtors or to revise existing policy; the process required us to explain what the impact would be. So there is was subtle difference there about whether it was a proposed set of fees or whether it was just an explanation of applying a broad policy to the full range of our services.

**Senator LUDWIG**—The budget gives you \$3.7 million to implement the cost recovery review, which is in the budget No. 2 at page 11. How is that money then going to be spent?

**Mr Gallagher**—I might have to take on notice the exact nature of that, but it is in two components. There is an amount of money included in our budget on an ongoing basis which is associated with the resources to set our charges and monitor the receipt of the payments. The other component is a capital injection to enable us to upgrade our systems and procedures to cater for the cost recovery implementation.

**Senator LUDWIG**—According to the forward estimates you will still be receiving around half a million dollars for this purpose in 2008-09. What is envisaged in that implementation phase that will require a further half a million dollars in 2008-09?

**Mr Gallagher**—That is the ongoing funding for us that relates to an estimated five additional staff placed around our offices, in all of the state offices, to process the payments and to deal with the receipt of the money and the accounting for it.

**Senator LUDWIG**—Are the charges for filing for bankruptcy going to be forgone or are they going to be implemented as part of this cost recovery?

**Mr Gallagher**—There is currently no fee to file a debtor's petition or to process a debtor's petition and there will not be under these arrangements. So, there is no fee.

**Senator LUDWIG**—I think you said that there was consultation on the discussion papers that were released to industry but that it differs from the current model in some respects, which you have taken on notice. In respect of that end model, can you express a more general view of how different it is from the discussion paper and whether you needed to have taken that back to industry to consult them about the changes?

**Mr Gallagher**—It is not so much a view. We had made it very clear to the industry what the impact was, as I explained earlier, of applying this cost-recovery policy to all of our services. The second discussion paper contemplated the scenario of, perhaps, some exemptions or of not applying it. So all of the options, and the implications of those options, were made clear in that consultation process. The feedback on both of those, and from various information sessions we conducted during the consultation stage, was fed into the decision making process, as is the case with these. But the decision is the final decision. It has been made in the budget. It has been announced by the minister in the budget context, and we have certainly directly provided, to all of the people that we consulted with, the details of that decision. There has not been any adverse feedback received by us, and I think the reason is that, for the areas of most concern, fees are not being applied.

**Senator LUDWIG**—I have a question on notice about internal fraud within ITSA to the tune of, I think, half a million dollars.

**Mr Gallagher**—That is correct.

**Senator LUDWIG**—Where is that up to?

**Mr Gallagher**—The person has been charged, tried and found guilty. I understand the sentencing hearing was scheduled approximately two weeks ago and was deferred to 8 July.

**Senator LUDWIG**—Is there any final summary of how much fraud occurred in ITSA?

**Mr Gallagher**—Yes. It was summarised in the charges that were laid and that were pleaded in the case. That information is available from the criminal court proceedings.

**Senator LUDWIG**—Do you have that there?

**Mr Gallagher**—I will hand over to Mr Lowe, who has the details.

**Mr Lowe**—The simple breakdown of the total value of the fraud in round figures is \$180,000 relating to bankruptcies administered by ITSA, a further \$78,000 in respect of bankruptcies administered by a private trustee and \$264,000 in relation to false claims against the stevedoring industry reform fund.

**Senator LUDWIG**—This was an ex-employee of ITSA?

**Mr Lowe**—Yes.

**Mr Gallagher**—At the time that the offences occurred he was an employee of ITSA. At the time that the charges were laid he was an ex-employee. He had worked for a private trustee and committed offences while working for the private trustee.

**Senator LUDWIG**—There were three charges, effectively, that you have outlined—

**Mr Gallagher**—Three areas.

**Senator LUDWIG**—Three areas, I should say. For how long had the person been employed in ITSA?

**Mr Gallagher**—I have a recollection of approximate dates but I do not have the exact dates with me. The person had been employed in ITSA since about 1990 and he left our employment in 2001, I think. That was when he left to work for a private trustee.

**Senator LUDWIG**—That is the aspect I could not quite understand from the answer. The fraud in relation to the private trustee work did not occur while he was employed by ITSA?

**Mr Gallagher**—Correct.

**Senator LUDWIG**—So that was not work he was doing on behalf of ITSA? I did not think he did any private work?

**Mr Gallagher**—No, he was administering bankrupt estates as an employee in a private trustee firm and defrauded those bankrupt estates in a similar way to what he did to those in ITSA.

**Senator LUDWIG**—So the first and third areas were whilst he was employed by ITSA?

**Mr Gallagher**—Yes, although the timing was not the same.

**Senator LUDWIG**—I will come to that. Can you provide an overview of the timing— from what period until when for the two areas that concern you?

**Mr Gallagher**—As I said, he commenced work in ITSA in about 1989-90 and he left in 2001. The offences that he was charged with and proven guilty of while he worked in ITSA were from the period 1996 to 2000.

**Senator LUDWIG**—Over four years?

**Mr Gallagher**—Over a four-year period.

**Senator LUDWIG**—And that included both the first and the third areas?

**Mr Gallagher**—Correct.

**Senator LUDWIG**—Were they committed at various times during those four years, both as bankruptcies administered by ITSA and subsequently by the compensation fund, to use that shorthand expression?

**Mr Gallagher**—Yes.

**Senator LUDWIG**—What sort of controls do you have in place to deal with fraud?

**Mr Gallagher**—There are a range of controls in place. These frauds essentially relate to making claims by acting as a creditor—falsifying claims on behalf of creditors. There are procedures in place but quite clearly they were proven not to be adequate. Since the fraud was exposed we have certainly reviewed our procedures to endeavour to address that. Indeed, we have encouraged the private sector trustee to address it along the same lines. We did expose the fraud through our own internal processes. Our internal audit review processes exposed the fraud, but it was not exposed, obviously, bearing in mind those time periods, at the time they occurred.

**Senator LUDWIG**—What sort of remedial work have you done to ensure that these things do not go on over the years that they did in this instance?

**Mr Gallagher**—I might have to take on notice all of the detail of that. We have documented revised procedures in a number of areas to address that. We have implemented those and communicated them to staff.

**Senator LUDWIG**—You have undertaken to share that with the private trustees as well?

**Mr Gallagher**—In the detail that we have done internally, I am not sure, but we have a regulatory role in relation to trustees generally, so broadly we have reported the general nature of the incident and encouraged trustees to look at their procedures for assessing proofs of debt. In relation to the particular trustee concerned we have had individual discussions with him in a cooperative sense about measures that should and can be taken to double-check proofs of debt and to look at areas where people can falsify claims.

**Senator LUDWIG**—How much was recovered? Is there an assessment of how much money has been lost or falsely claimed and from which area, whether that has all now been accounted for or recovered and who it is from? Is there an intention to provide compensation by ITSA to those entities that have been harmed?

**Mr Gallagher**—As the trustee of the estates, we are liable to ensure that the creditors who miss out as a result of it are compensated appropriately. There has been and there will continue to be a process within ITSA. Indeed the private trustee reviewed the claims of creditors in those matters and made the adjustments to the dividends that were paid to reflect the amount of the false claims.

**Senator LUDWIG**—How much has been assessed as being—

**Mr Gallagher**—The full amount is assessed. The process is that we have been able to calculate the full amount of the falsified claims. That is the amount that other creditors would have got in the absence of those false claims. We know the amount. Then each of the creditors is paid in the same proportion that they received the original dividends.

**Senator LUDWIG**—Let us come back a little bit. Was any money recovered from the offender?

**Mr Gallagher**—There is a proceeds order against his assets but that is a matter that is proceeding in the context of the proceeds action.

**Senator LUDWIG**—Is that with the DPP at the moment?

**Mr Gallagher**—Yes.

**Senator LUDWIG**—Is that for recovery against the first and the third as far ITSA is concerned, or does that include all the offences?

**Mr Gallagher**—Yes.

**Senator LUDWIG**—The latter? All of the offences? The three areas, I should say.

**Mr Gallagher**—The general proceeds order was in relation to all of the charges made but the amount of the proceeds order as I recall related to the value of his assets. It did not equal the amount of the fraud. So there is a deficiency, if that is what you are getting at.

**Senator LUDWIG**—That is where unfortunately I was going to go to next—whether there was going to be a deficiency in the assets that could be recoverable from an assets order. In terms of the third area, to call it that, or the fund what happens from here? Are there negotiations with the fund with ITSA about the recovery of the full amount?

**Mr Gallagher**—No. It is a very similar procedure to that which applies in a bankruptcy. There were claimants against the compensation fund and they were all paid in proportion to their claims as they were assessed at the time. So the amounts they received were reduced by the amount of the fraudulent claims. Our requirement now is to go back against all of those claims and adjust the amount for the amount that equals the fraudulent amount.

**Senator LUDWIG**—Where will that money come from?

**Mr Gallagher**—It will have to be paid from, in ITSA's case, our own legal and compensation money and, in the registered trustee's case, from his own funds.

**Senator LUDWIG**—When you say compensation, do you have private indemnity or insurance that covers it or is it from your general collection pot of money?

**Mr Gallagher**—We do have insurance in this regard. I might ask Mr Lowe to give you more detail but essentially the timing of these covered two periods where our actual insurance arrangements differed. But we do have insurance arrangements in place and they will be met from those insurance arrangements.

**Mr Lowe**—Our insurance cover is through Comcover. In the period prior to July 2000 when we were a division of the Attorney-General's Department, the Comcover arrangements prevailed for the Attorney-General's Department. Since then, our own direct cover with Comcover will provide the bulk of the value of the fraudulent claims.

**Senator LUDWIG**—How long will it take for that work to be finalised and the compensation readjusted out of the fund?

**Mr Gallagher**—It is imminent. We have been negotiating with Comcover the amount that they are paying under the insurance arrangements, but it is imminent. Some have been paid and some are being examined.

**Senator LUDWIG**—In relation to the bankruptcy administrations, how many does that cover that were defrauded?

**Mr Gallagher**—I will take the question on notice.

**Mr Lowe**—It is approximately 12 different estates or of that order, 12 different bankruptcies.

**Senator LUDWIG**—Is that the ones you have been able to identify or is that all of them?

**Mr Lowe**—Both from our own identification, which, as Mr Gallagher said, was from our own initial findings, and subsequently the defendant confessed to certain other instances. But over a period of time now we have not uncovered any further defalcations.

**Senator LUDWIG**—Are they out of private estates? They are bankruptcies that have been—

**Mr Gallagher**—They were bankruptcies that were administered by ITSA as the official trustee.

**Senator LUDWIG**—Then there is adjustment to creditors.

**Mr Gallagher**—Creditors of those bankrupt estates.

**Senator LUDWIG**—The person was just another creditor in the sense of devaluing the share of the creditors' pool. I do not want to ask how it worked.

**Mr Gallagher**—Just go back to the existing legitimate creditors and pay them the additional amount they would have got had the fraudulent payments not been made.

**Senator LUDWIG**—I do not have any further questions.

**CHAIR**—Thank you very much, Mr Gallagher and officers.

[5.13 pm]

#### **Administrative Appeals Tribunal**

**CHAIR**—Welcome, Mr Humphreys.

**Mr Humphreys**—Ms Leathem is the Assistant Registrar. This is her first time before the committee.

**CHAIR**—I will encourage them to be gentle, but you never know.

**Senator KIRK**—Could you provide the committee with a list—you may need to take this on notice—as to how many applications there have been to the tribunal this year and how many hearings, and how they break down by subject matter?

**Mr Humphreys**—I have some statistics which I can hand up to the committee.

**Senator KIRK**—That would be fine.

**Mr Humphreys**—They are fairly detailed. Minister, you may have a copy. I think it has been provided to the department. These are similar to some statistics I provided on the last occasion. We have done it by the main jurisdictions and we have updated it to the end of March. Then we have continued through with a projection to the end of the year. In terms of lodgments, we have had 5,657 to the end of March. The projection through will show a four per cent increase. For finalisations, we are looking at 7,648. Matters on hand rather than current—it is probably a better term—will be 7,579. There is a graph there of that below.

On the second page, we have broken that down by jurisdiction. The most interesting area, where we are receiving a fairly big increase, is in taxation matters. That is mainly in relation to tax schemes, which is probably the best way of describing them. We are particularly seeing an increase in Western Australia of lodgments in relation to tax schemes. Interestingly, there has also been a small increase in veterans' affairs matters. We are expecting that to go down over time, but it looks like it is going up. Then there is a graph below that.

On page 3 we have finalisations. That goes through them and deals with them. In relation to finalisations, we are finding that we have managed, particularly in the tax matters, to get rid of a lot of matters that were finalised without the need to have a hearing. We are finding that what we have left is the rump of matters. We are having to push those through to hearings in order to get them finalised. In fact, if you have a look on the last page you will see that, for the 12 months ending 31 March compared with the previous year, the numbers finalised after hearings have gone up from 17 per cent to 23 per cent. A lot of tribunal resources are having to go into finalising matters by way of hearings now. A lot of the easy matters, if I can use that term, have gone and we are left with a rump of the hard matters that are having to be pushed on to hearing. I hope that answers your question.

**Senator KIRK**—Thank you, yes; that is helpful.

**Mr Humphreys**—On time standards we are doing a little bit better, but I am not going to say that we are doing fabulously well. Where we are picking up is of course in the taxation division, because we are getting rid of those old matters because we are pushing them on to hearing. Do you need anything more on notice, Senator?

**Senator KIRK**—I think that probably ought to cover it.

**CHAIR**—It is very kind of you to offer, though, Mr Humphreys; thank you very much. I was just slightly taken aback. It just goes to show that something new happens every day!

**Senator KIRK**—What is the average time that a person has to wait to get a hearing in the tribunal?

**Mr Humphreys**—That really depends on the jurisdiction. It varies.

**Senator KIRK**—Is it reflected in these figures?

**Mr Humphreys**—If you have a look on page 5, what you will see under 'time standards' is the percentage finalised within 365 days. We have indicated the percentage of matters that are finalised within the time standard—that is, within a year—and showed the changes. I think that probably gives you a fair idea of where we are going. As I said, it depends. I can give you an average figure—although I would need to take it on notice—but I do not know how much use that would be to you.

**Senator KIRK**—You are probably right, because an average does not really assist, does it, in many respects.

**Mr Humphreys**—Really, we have to look at what the time standards are and then how we are meeting them. From my point of view, they are aspirational—that is the term I use—and they give us a guide. While we have an increasing level of lodgments, the likelihood of us actually meeting those time standards is probably not there, but at least it gives us something to work on in terms of being able to compare apples with apples over time.

**Senator KIRK**—Across the years, yes. Has there been any additional cost associated with the passage of the Administrative Appeals Tribunal Amendment Act?

**Mr Humphreys**—None. We anticipate that, because of the greater amount of flexibility that we have and our capacity to use members in different ways and also because of the fact that members have now been given powers that were previously reserved for senior members and deputy presidents as well as conference registrars being given power to issue pre-hearing directions, that will in fact produce some savings, although I am not in a position to be able to quantify it. It would be a vast guesstimate. All I am saying is that we can now use people more flexibly in different ways. We hope that that is going to assist us in keeping the escalation of costs down—I will use that term. I do not think we are going to save money, but certainly in the future it will stop our need for additional resources from increasing.

**Senator KIRK**—Is there any way of measuring the efficiencies that might be gained as a consequence of what you have just described?

**Mr Humphreys**—We can measure some things. For example, members can now sit with other members. That was not possible before—you would have to have a member sitting with a senior member. We can record how often we do that. I can tell you how many times conference registrars issue directions. But it is not readily quantifiable into a dollar figure. We can record instances where members are doing things that they previously were not doing before, but that would be a fairly large data gathering exercise, and I am not sure that it would really produce a helpful figure for you.

**Senator KIRK**—Moving on to something a bit more concrete, court security—

**CHAIR**—So to speak.

**Senator KIRK**—\$370,000 over four years has been allocated for the purpose. As I understand, in the 2004-05 budget there was an indication that any improvements to court security would be absorbed by the AAT. I would like to know why this now appears to have been changed, given that there has been this \$370,000 allocation.

**Mr Humphreys**—A debate took place over the allocation of additional funds. The AAT was being asked to contribute to funding only in relation to its Brisbane registry. Our registry in Brisbane occupies part of the Commonwealth law courts building. We submitted to government, and government accepted the argument, that it was going to be very difficult for us to justify, for example, recovering fees by way of increasing lodgment fees or things like that—we were, in fact, being asked to cross-subsidise from our other registries, which are not, with the exception of Hobart, located in Commonwealth law courts buildings—for additional security in Brisbane that was not going to be available in other AAT premises. I am very

pleased to say the government accepted our arguments and, as a result of that, we have been funded that money. It is really money going in and out; there is no net addition to AAT resources. We have been funded for the total amount of our contribution to the Brisbane security.

**Senator KIRK**—What new security measures have been introduced across the registries?

**Mr Humphreys**—There will be airport type security within the foyer of the Commonwealth law courts building in Brisbane. No additional security is being introduced in other AAT registries because, with the exception of Hobart, they are located in commercial office premises. As we go through—and, for example, we have to change our premises in Perth—we will be putting in some minor additions to security but nothing of the airport security sort.

**Senator KIRK**—From what you are saying, there is already in these commercial premises adequate security?

**Mr Humphreys**—We are saying that for the needs that we have identified at the moment there is adequate security. If we are aware of a matter where there is either a likelihood of a security issue in relation to the client, the applicant to the AAT, or other people who may be associated with the matter—for example, if the person is in custody—we make arrangements to use either Family Court or Federal Court premises, where there is proper security. There would be a huge cost if we were to build proper holding facilities in commercial office space, and it is simply not worth while. For the limited matters where we are aware that there is an issue or we are advised that there is an issue we use, with their cooperation—and I am most grateful for it—the facilities in the Family Court or the Federal Court. It is working very well and we have not had any problems to date using those facilities.

**Senator KIRK**—We asked the department yesterday whether or not they set any particular standards for security across the courts and tribunals. As I understand, they said it was fairly much left to the individual bodies. Is that correct? Have you made your own assessment of what is required depending on your case load and then determined that there is no need for additional measures in some cases?

**Mr Humphreys**—We have assessed the situation and it is on an ongoing basis and a risk assessment basis. When I assumed the role of registrar, we were having hearings with people in custody within the AAT premises. I was unhappy with that and after consultation with the president and other members of the tribunal, we stopped that and we made arrangements, particularly to start using the Federal Court and the Family Court premises, in relation to matters where people were in custody or where we formed a view that for one reason or another it was appropriate to have additional security. We also have arrangements whereby we can have either uniformed or plain-clothed guards. These are private security people available at the premises if we need them. We have been steadily going through upgrading the registry windows. For example, when we go to the new premises in Perth, I anticipate that we will have upgraded security at the registry windows so that it is not possible for somebody to leap a counter and get in. We are a tribunal. It is very important that we are user friendly and we are not seen as user unfriendly. There is always the tension between being open to the public, being a tribunal and being user friendly and putting up barriers between people.

**Senator KIRK**—To clarify, is the \$370,000 for security in Brisbane?

**Mr Humphreys**—Wholly Brisbane.

**Senator KIRK**—Okay. Have the measures been put in place in Brisbane?

**Mr Humphreys**—Not yet to my knowledge. I was up there last week and certainly they were not there. That is a responsibility for the Commonwealth law courts group. We are simply providing the funding. It is a matter for the Commonwealth law courts group to turn around and actually put them in place.

**Senator KIRK**—Do you have some input into the standards of security that will be required in the Commonwealth law building?

**Mr Humphreys**—We are only a very small player. We go with the majority. It is really their call because, as I said, we are a tenant in one building.

**Senator KIRK**—Okay. Moving on to warrants authorising surveillance.

**Mr Humphreys**—We do not do surveillance warrants; we only do TI warrants.

**Senator KIRK**—Telephone interception warrants?

**Mr Humphreys**—Yes.

**Senator KIRK**—In the 2004-05 budget there was additional funds to handle workload increases in issuing warrants authorising surveillance. I assume that means TI warrants.

**Mr Humphreys**—Yes. We have power to issue warrants under the Telecommunications (Interception) Act and the Surveillance Devices Act. We got the additional funds because of the amendments that were brought in there.

**Senator KIRK**—Are you able to advise us as to how many warrants authorising surveillance were issued by the AAT in the past year?

**Mr Humphreys**—In terms of surveillance warrants, we tend to group them together. From 1 July to 31 March we issued or refused—and only a small number were refused—2,496 warrants. Less than one per cent are refused.

**Senator KIRK**—How does that compare to previous years?

**Mr Humphreys**—We estimate that compared to the previous year—and this is based on a three-quarter then multiplying it through to a projected figure—we are likely to issue 3,328 warrants for the year, which will be an increase of 8.8 per cent over the previous year.

**Senator KIRK**—When did you say you assumed the jurisdiction to do that?

**Mr Humphreys**—We have had powers for telecommunications interceptions under, I think, the 1979 act. I may need to correct this because I am not completely familiar with it. The Surveillance Devices Act commenced on 15 December and it repealed provisions under the AFP Act 1979 and the customs acts relating to the issue of listening devices by AAT members. There has been power there for sometime and changes to the act really increased the sorts of warrants and devices that could be used. I think you are best to talk to the A-G's Department about that. We just issue the warrants.

**Senator KIRK**—So there has only been a fairly small increase of about nine per cent. Has that had cost implications?

**Mr Humphreys**—We have received additional funds through that. I think we are getting a total of \$400,000 this year.

**Senator KIRK**—In the PBS from last year there was an indication that the AAT would conduct evaluations of the concurrent evidence pilot program and the social security procedure pilot in Victoria. You also indicated that there would be a client satisfaction survey. Could you inform the committee as to whether or not this evaluation has taken place—first the concurrent evidence pilot program. Perhaps you could inform us of exactly what that plan is all about.

**Mr Humphreys**—I am going to assume that you are familiar with what concurrent evidence is. Would you like me to explain it?

**Senator KIRK**—I ought to know, but you can explain it in more detail.

**Mr Humphreys**—A colloquial term is ‘hot-tubbing’. In a normal situation, one side would bring their witness in and that witness would then be examined and cross-examined and then the other side, when they run their side, would bring their witness in. We will bring both the applicant’s and the respondent’s expert witnesses in together. One will give their evidence and then the other one will give their evidence and a discussion takes place—refereed is a better term—in terms of why they disagree and whether or not they are able to come to an agreement as to what the joint position should be, hence the term ‘hot-tub’.

**Senator Ellison**—There is nothing else that goes on.

**Mr Humphreys**—What they do outside the tribunal, I do not know.

**Senator Ellison**—It sounds very efficient.

**Mr Humphreys**—As of March 2005, we have managed to run 44 cases that involve the use of concurrent evidence involving experts from fields including psychiatry, neurology and orthopaedics. We also collected data on 82 cases, which were selected as being suitable but did not go on because they settled beforehand. We are still in the process of obtaining qualitative data. We had some focus groups on 7 and 8 April involving some practitioners. We are doing a telephone survey at the moment of the experts who participated in it to try to get their views back.

Anecdotally, we have found that members of the tribunal find it of much assistance in coming to a conclusion as to which evidence they would prefer to accept as compared to the others where there are diametrically opposed views. We have found that, in relation to some areas, and I will use the term ‘nuts and bolts’ areas, orthopaedic surgeons and some other people are reasonably able to come to a joint opinion. There are some areas where they remain diametrically opposed, such as some of them I will call the softer sciences that are not as readily capable of being the subject of what I will call independent and objective evidence. In some of the psychiatry areas, the practitioners are unable to come to a view. Some practitioners think it is very good. Some practitioners do not like it at all. There is a whole range of views. We are still completing the study. There is a lot of interest in it from other courts and tribunals.

**Senator KIRK**—I can imagine.

**Mr Humphreys**—I hope that on the next occasion I am here I am able to present you with the completed evaluation.

**Senator KIRK**—That is what I was going to ask you next. Is there going to be a formalised evaluation? Is there going to be a report prepared?

**Mr Humphreys**—There will be. In terms of the social security procedures, in September 2004 there was a meeting of our practice and procedure committee. We talked about how it should proceed. Deputy President Dean Jarvis of Adelaide is heading the subgroup which is having a look at that. It is being assisted by our policy and research section. The steering group has met on three occasions and we have settled the list of evaluation criteria and we have developed a list of people we are going to need to consult with. It is ongoing. We have not completed it yet. It is a work in progress.

**Senator KIRK**—And the survey?

**Mr Humphreys**—There is a survey. Can I hand up some survey instruments.

**CHAIR**—Yes—but no photos, though.

**Mr Humphreys**—We let a tender with Profmark Consulting. We have been going through and sending out the survey instruments. We have sent out some 5,400. We are hoping for a return rate of 25 per cent. To date, it is about 20 per cent, but we have some more time to go. In addition, we are doing telephone surveys of agency representatives and legal practitioners who have been involved with the tribunal. We have had a good response from respondent agencies. There have been difficulties, regrettably, with private legal practitioners. They have been reluctant to spend time on the telephone. There were some comments about who they could charge it to. A letter was sent out with my name on it, along with the survey, asking people to respond, and if they had any issues they were able to ring. We have had quite a number of telephone calls. I have taken some myself and it has been absolutely marvellous speaking to people. Some people have been really happy with the service. I have had some wonderful telephone calls with 85-year-old veterans and their widows and other people like that, and they were very happy with the way things were going. So we are quite positive that we will get some good results back in.

**Senator KIRK**—What is the cost of the survey to the AAT?

**Mr Humphreys**—The total cost of the consultant is \$27,000. In addition, there are some costs that we will be absorbing. We have done some printing. There have been envelopes and reply-paid postage costs. We think there will be costs to us of another \$9,000, which will take it up to \$36,000. We have tried to minimise the cost. We actually did all of the envelope stuffing. It took us a week, and I had some great assistance from my policy and research people, my assistant registrar and some other people. We stuffed all the envelopes and sent them out.

**Senator KIRK**—Is this consultant going to compile the results?

**Mr Humphreys**—He will be compiling the results and giving us a report.

**Senator KIRK**—When is that due?

**Mr Humphreys**—We are hoping to have it by the end of June.

**Senator KIRK**—So we can ask you about it next time?

**Mr Humphreys**—No doubt.

**Senator KIRK**—Once you have received the report, is it the case that you are then going to try and implement some of the survey results, depending on what the recommendations may or may not be?

**Mr Humphreys**—We will certainly be considering that. I cannot give you—

**Senator KIRK**—It is too early to say?

**Mr Humphreys**—It is far too early to say. We do not know what it is going to say and therefore it is a hypothetical.

**Senator KIRK**—True, but you must have had some intention to make use of the information if you are conducting a survey.

**Mr Humphreys**—Indeed. Responsiveness to client views is within our organisational plan. I am sure there will be positive things coming out of this and things we can do quite easily to make the place much easier to use by both respondents and applicants.

**Senator KIRK**—Thank you—I look forward to it.

**CHAIR**—Thank you very much, Mr Humphreys, for your very comprehensive presentation this afternoon.

[5.39 pm]

### Family Court of Australia

**CHAIR**—Welcome.

**Senator MASON**—Mr Foster, I asked a question on notice to the Attorney-General. It was answered by Senator Ellison, and it relates to personal leave. In the reply you mention that a total of 7,688 personal leave days were taken by court employees for the calendar year January-December 2004 and for the same period the average number of personal leave days per full-time equivalent employee was 11.22 days. I was going back through the records and I noted that in financial year 2001-02 the leave per full-time employee was 13.7 days, so it has come down over 20 per cent, which is great news. I was wondering: is that good luck or good management? What have you been doing to do that?

**Mr Foster**—Thank you, Senator. It is nice to see you again at Senate estimates.

**CHAIR**—It is just a brief visit, I promise, Mr Foster.

**Mr Foster**—I was anticipating this question, I must admit. The 11.22 has been adjusted down to 11.1 days. Personal leave included compensation leave, so we have taken that out, which has made it 11.1. As per the court certified agreement which was effective from 1 January this year, there was a requirement for personal leave. Anyone who had more than six days personal leave had to produce a medical certificate.

**Senator MASON**—Any more than six.

**Mr Foster**—Any more than six days over a 12-month period had to produce a medical certificate. Because of that structure under the certified agreement, the use of sick or personal leave has come down significantly. As at right now, the average is 7.9 days. It is being managed on a monthly basis and it has come down significantly. I think it is a mixture of sound management but also we have changed in an architectural sense some of the arrangements in registries. We have removed some of the barriers for people. We have now got sit down areas where clients can come in and sit across a desk or a table and talk to someone. Since we have done that the temperature in our registries has come down quite significantly.

**Senator MASON**—You mean the emotional temperature.

**Mr Foster**—The emotional temperature has come down. There is less abuse of staff. It is a tough environment to work in, let us face it.

**Senator MASON**—If you do not mind me interrupting, stressful environments such as Centrelink, for example, and the Family Court, if you look back at 2001-02, had fairly similar statistics. They were even higher in Centrelink but they are quite stressful environments.

**Mr Foster**—In answer to your question, what we have done is a combination of good management practice and agreement through the certified agreement that we will monitor personal leave much more closely, which is now happening. Already the results are showing. We have also changed the client service areas in most registries, certainly the principal ones, into much friendlier, more open environments. It has taken the emotional temperature out. Finally, it is probably a bit of good luck as well. The signs are really encouraging that personal leave usage has come right down in a fairly short period of time.

**Senator MASON**—That is quite a dramatic improvement. You said 7.9.

**Mr Foster**—It is now down to 7.9.

**Senator MASON**—Do you collect data about unscheduled absences?

**Mr Foster**—I brought with me a whole range of material which I can table, if you like. It is a collection of data. I could probably work through it with you, but it might take up a fair bit of time, or I can table it. It is extensive. It shows almost every bit of sick leave across registries, personal leave, carers leave, what sort of leave it is.

**Senator MASON**—Do you pick up things like the reason for the personal leave, the dates of the absence, the days of the week that people took off, the age of the employee or their gender, the length of service they have had, the work unit and so forth?

**Mr Foster**—We certainly can but we do not do it as a matter of course. Obviously, we collect the days of the week so if someone was continually having a Monday and a Friday off, for example, their supervisor would pick that up and probably talk to the person about it. They might say, 'I've noticed that you're having a number of Mondays and Fridays off. Is there any reason for this?' We have got processes in place where it is much more carefully managed but in a sensitive way. The CPSU are quite comfortable with this. They signed off on the certified agreement. It makes good management practice to do it, and we are getting the results.

**Senator MASON**—I have not yet asked the Australian Public Service Commission about the report from the Audit Office that was released in 2003, *Absence management in the*

*Australian Public Service*. It would be great as an administrative tool to have the indicia that I just read out recalled in all agencies and departments, because then you would get a really good understanding of why people are taking time off. Nonetheless, there has been a marked improvement.

**Mr Foster**—A significant improvement.

**Senator KIRK**—I noticed in the budget statements that the Family Court is receiving \$8 million over four years to improve security, and this is the vast amount of money that is being allocated for this purpose. I also noticed that the 2004-05 budget statements indicated that the Family Court would be able to absorb any additional costs required for security. I wondered why this has changed.

**Mr Foster**—The genesis of this is a security risk management audit which was done by Security Risk Management Australia in 2003, which was commissioned by the Attorney-General's Department. The courts paid a share of the cost of that report. It identified a whole range of issues in relation to security, and an NPP went up for this current financial year. The Family Court's allocation in that was \$8.3 million over four years, which was to be funded internally. The reality is that the court could not fund it internally. We started negotiations with the department about that earlier this financial year, and they have been ongoing and continuous. We have been back and looked at what we might be able to fund internally and how we might change the original NPP to make it more acceptable.

The outcome of those discussions with the department and the government has been pleasing. In fact, in the current budget we have been funded to the tune of in excess of \$8 million over four years to implement court security. We basically got everything we asked for. We did put in \$850,000 in capital money to assist and we changed some of the training arrangements to keep the figure manageable. We do have quite a lot of experience in court security. We currently spend in excess of \$2 million per annum on court security and we have already installed, through the courts' own resources, airport style screening in a number of major registries around the country. But this money will fill the gap. It provides for those registries where there is no screening and also provides security for circuits of the court.

**Senator KIRK**—Is the intention to introduce airport style security in the registries that do not currently have it? Is that what this money may be used for?

**Mr Foster**—This money is for Brisbane, Adelaide, Darwin—we already have it there, but the Family Court has paid for that security out of its own resources, so this is getting that money back—Wollongong and Cairns. They are the major registries where we do not have airport screening security.

**Senator KIRK**—Is it primarily airport screening security that is being introduced or are there other measures as well?

**Mr Foster**—It is in the major areas I have just mentioned, but in the country areas where we go on circuit it is more the wands that you see waved over people. We cannot justify that level of security in places we only visit on an irregular basis.

**Senator KIRK**—You have determined standards for security. Were they determined by the Family Court independently or was advice given to you by the department as to the type of security that would be adequate?

**Mr Foster**—The type of security that we use has basically been worked through in consultation with the other courts and through the national law courts building management committee. We intend to use that committee as and from 1 July to roll out these new implementations as well. That will ensure some standardisation of equipment. In those places where there is not a national law courts building management committee, such as Cairns and Wollongong, where basically it is just us and the Federal Magistrates Court, we will obviously draw on that experience and knowledge and make decisions accordingly so that there is some consistency in the equipment that we use.

**Senator KIRK**—Is it fair to say that the Family Court has the most expensive security devices in place compared to the federal courts and the tribunals?

**Mr Foster**—It is based on how much floor space you have in each building. Because the Family Court has greater office space and other space in the buildings, its share of the cost is higher. That is the formula that we work on. That is the only reason that our share is probably higher than some of the other courts.

**Senator KIRK**—It is more expensive because of the floor space rather than the fact that it is, say, more extensive?

**Mr Foster**—That is right. With the Family Court and the Federal Magistrates Court, they provide the greatest number of clients because they are both quite high-volume courts. In terms of client usage, we would be the biggest as well. The costings are done on floor space.

**Senator KIRK**—To what extent are the security measures that you have described necessary because of the risk of violence in the Family Court? Is that a factor that has weighed into your decision as to the type of security that will be necessary?

**Mr Foster**—Not necessarily the type of security. There is a history of security and violence in the Family Court going back a long way, and I do not need to regurgitate the events of Parramatta in the eighties. But that was when the court obviously took its security obligations extremely seriously. Talking with Senator Mason, I explained to him how we changed the structure of the registries and made them much more client friendly areas. One of the requirements of the staff for that to happen was to provide screening at the front doors, and that is what we are doing. If we change the way we deliver services to clients at the registries, at the same time we are providing screening security at the front door.

**Senator KIRK**—Will the family relationship centres that have been spoken about have similar security concerns to the Family Court, given that they will be performing compulsory mediations? Is it your view that similar security arrangements will need to be implemented in those centres?

**Mr Foster**—I think that is probably a question that should be asked of somebody else.

**Senator KIRK**—Perhaps the minister can answer that. Minister, is it envisaged that the family relationship centres will need the same standards of security as in the Family Court and the FMS?

**Senator Ellison**—We are yet to determine the positioning of those. That is the first step. Questions of security I guess are yet to be considered. I do not think any decisions have been made yet.

**Ms Leigh**—The general issue of security in relation to the centres is an issue that we are already aware of and is being taken into account.

**Senator LUDWIG**—What are you doing about it? There is \$9 million scheduled for other courts and there is nothing here. Do they have different security risks or do they have the same risks?

**Ms Leigh**—There is nothing where, Senator?

**Senator LUDWIG**—How much is there in this instance?

**Ms Leigh**—In the family relationship centres?

**Senator LUDWIG**—Yes.

**Ms Leigh**—When I say that it has been taken into account, it has been taken into account as part of the costing. As Ms Pidgeon outlined yesterday, the particular needs of particular centres is something that will need to be worked out once we get further down the track on detail. I am not in a position to provide you with any more detail on that.

**Senator LUDWIG**—Thank you.

**Senator KIRK**—In regard to the findings of the ANAO report on client service in the Family Court and the FMS, have any steps been taken to implement those findings?

**Mr Foster**—Yes, in fact they have, and this was the subject of another committee appearance of the court. We responded in some detail to the 11 recommendations, 10 of which were relevant to the Family Court and 10 of which we have done something about. Primarily our response has been in relation to a combined registry. That sounds like quite a simple thing to do. It came out of *Every picture tells a story*—the House of Representatives inquiry—and the government's discussion paper in relation to that. We have been working very closely with the Federal Magistrates Court on a whole range of ways: one file, one fee, one form; one single registry called a family law registry; different signage; a shared intranet site; and a shared internet site for family law. We are looking at harmonisation of rules and we are looking at all of our forms and all of our letters—anything that really has an interface with the clients, both self-represented and represented clients.

We have moved a long way in that regard. We have had a number of forums with both personal litigants and the practitioners to inform ourselves about what changes they believe are required. We are using that data and our client survey data plus the various other reports that are around, including the ANAO report, to inform ourselves and change the system accordingly. I have brought along, if you are interested and if the committee would like a copy, an information kit for external stakeholders, which explains where we are up to in that process and what we are doing.

**Senator KIRK**—That would be helpful, thank you. So the changes are being introduced incrementally—is that what you are saying?

**Mr Foster**—They will be because they are so significant.

**Senator KIRK**—Have they been?

**Mr Foster**—We have only just launched the project. Both courts—the Federal Magistrates Court and the Family Court—have put people in. So we are paying resources. The Family Court have budgeted \$200,000 for the next financial year to basically set up some infrastructure. That provides for changes to our case track system and changes to the internet and intranet. It is probably a three-year project to implement from go to whoa. It is closely linked to the program of family relationship centres because that is going to have an impact on how we do our business in the future as well.

**CHAIR**—Thank you very much.

[5.56 pm]

#### Family Law Council

**Senator LUDWIG**—Mr Duggan, I am just so used to seeing you from another perspective. You have another role, it appears.

**Mr Duggan**—I just wanted to sit on this side of the table.

**CHAIR**—That is very helpful, thank you.

**Senator LUDWIG**—You are able to split your personality better than I, I suspect. In terms of the council's involvement in developing the family law reforms that have been recently announced, can you outline what role it played in terms of the council's activities? Were they asked to provide comment on or input into the process?

**Mr Duggan**—As you would be aware, various members of the council have had their own involvement. I will not deal with those, but the council has put in a number of submissions to both the House committee involving the *Every picture tells a story* report, and then of course in relation to the discussion paper that was issued by the government as a result of those reform proposals. The Attorney has agreed that the council will provide ongoing advice as the response by government is being developed on specific issues.

**Senator LUDWIG**—Has the council formed a view of the current package—the pros and cons, for example?

**Mr Duggan**—The council very much supports the thrust of the proposals in relation to providing greater resources for separating couples to deal with their issues outside the court system. It is an initiative that council very much supported and very strongly supported in that regard.

**Senator LUDWIG**—Have you done any analysis, from the council's perspective, of some of the hurdles that might have to be jumped to ensure the system works—any pitfalls that you foresee you might need to address as the council?

**Mr Duggan**—The council has a range of membership, which allows it to provide advice to government on a number of areas in relation to the reforms—certainly areas in relation to the primary dispute resolution reforms. The council has already indicated some areas that it thinks need to be given attention. They are exactly the same areas that the department is already undertaking consideration of—issues in relation to standards of people who might be in those

centres and where the centres might be located. Those sorts of issues are, as you would expect, exactly the sorts of issues that the department is considering.

**Senator LUDWIG**—Has there been any work done on how the council might be involved in the implementation of the package?

**Mr Duggan**—The council is providing the Attorney-General with some advice about possible legislative changes that might flow from the reforms. The Attorney has agreed that, as other matters are developed—for example, accreditation standards and what have you for practitioners—the council’s view will be sought in that regard. That advice is provided directly to the Attorney—it is not public advice.

**Senator LUDWIG**—I guess this is more of an open-ended question, but what do you see from the council’s perspective as one of the biggest challenges or hurdles in implementing the package of reforms that have been recently announced by the Attorney-General?

**Mr Duggan**—I think the council sees that the thrust of the reforms is effectively to change the cultural position held by many parties that the first recourse should be to some sort of adversarial process. It is a huge challenge to try and change that mindset, and so the council sees that as the biggest challenge in the whole reform package. There is this need to provide separating couples with a new point of focus—so, rather than going to lawyers, the legal profession or even the courts in the first instance, we need to actually encourage those people to use the family relationships centres and similar services as the first port of call.

**Senator LUDWIG**—The council effectively has its own web site and publishes its material. Is that likely to continue?

**Mr Duggan**—Absolutely. The council’s major reports are published in hard copy as well. Certainly letters of advice and those matters are generally published on the council’s web site. The advice that the council would give in relation to the development of matters that are cabinet-in-confidence, for example, would not be published. Other than that, the material that the council has advised government on will continue to be published.

**CHAIR**—Thank you very much, Mr Duggan.

[6.02 pm]

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

**CHAIR**—I welcome Mr Soden, Registrar and Chief Executive Officer of the Federal Court to the table. Is there much hot-tubbing down at the Federal Court?

**Mr Soden**—I was just saying as an aside at the back of the hall, ‘Will I own up to inventing the idea in the first place?’ I decided not to.

**CHAIR**—Too late; you just did.

**Mr Soden**—I must say that we called it the hot tub in its early days but we do not call it hot tub these days. In our court it was when you had more than two practitioners in the witness box at the same time in the days when you had the round witness box. Someone said, ‘It looks like a group of people in a hot tub.’ That is how it got its name.

**CHAIR**—And what do you call it now?

**Mr Soden**—I do not think it has any particular name—it is special experts procedures.

**CHAIR**—I am not even going to think about the acronym!

**Senator LUDWIG**—I have just recently attended a seminar where they used that term a number of times in a legal context. It is an interesting area. Certainly the law reform in that area is not always welcomed by the practitioners, as I understand it, but it must be all the more difficult for the registry to deal with court appointed experts.

**CHAIR**—And it brights up an otherwise pedestrian day!

**Senator LUDWIG**—Only lawyers would come up with that name. How many new matters have there been this year? We normally ask a number of questions about the new matters, those matters that have been filed in the registry, your workload and your current number of judges available to do work. Are you able to update us with that material?

**Mr Soden**—I think in the past the information we have handed up has been the migration information.

**Senator LUDWIG**—Yes.

**Mr Soden**—I have come prepared with some information that shows on the one graph, with the approval of the Federal Magistrates Court, the total workload between us and them of new applications. I have that as a hand-up.

**Senator LUDWIG**—That would be helpful. So that is in relation to migration matters?

**Mr Soden**—Yes.

**Senator LUDWIG**—I am expanding my horizons and I am now going to look at more general work as well. I apologise for that.

**Mr Soden**—We have some figures that Mr Kellow can give to you.

**Senator LUDWIG**—The area I was interested in, and I am happy for you to take it on notice, was the disposition rate and those sorts of matters that come up on a more general basis. Your target was more than 4,000, from the PBS 2004-05 at page 291. How many were disposed of in less than 18 months? I think the target was about 85 per cent.

**Mr Soden**—Yes. Just before we come to the details, in the PBS document I think we have indicated that, as at a particular date, we were running at 92.5 per cent in less than 18 months.

**Senator LUDWIG**—That rings a bell.

**Mr Soden**—Mr Kellow can give you the numbers that make up that 92.5 per cent.

**Mr Kellow**—As an opening I might say that, as the committee would be aware, over the last six months or slightly longer the Federal Court has been implementing a new case management system which is now in place. One of the consequences is that it collects data in a slightly different way. Whereas before we used to effectively count files, we now count what are called ‘causes of action’, which do not equate as a one-on-one. So the figures I will be giving are slightly higher than the figures that we used to do when we were just counting files. That is because a particular matter may have more than one cause of action.

In terms of lodgments, in the current financial year to 29 April we have received 3,724 causes of action, of which 1,136 are appeals or related actions, so matters related to appeals.

Our finalisations, again to 29 April, are 3,462, of which 3,138 are matters that were completed within 18 months of their commencement. That figure includes 891 appeals. In terms of the appeals and related actions, 875 of those were completed within 18 months of filing.

In terms of the current workload or pending matters, we have 4,056 current causes of action, of which 681 are appeals and related actions. Overall, there are 1,503 causes of action over 18 months old. Within that, only 32 are appeals; that is, only 32 appeals or related actions are more than 18 months old. Most of the appeals are disposed of quite quickly, and a fair proportion—more than a quarter—of the matters that are over 18 months are native title matters that we inherited in 1998.

**Senator LUDWIG**—Are there indicative wait times, particularly from application to trial and then from trial to judgment? Is that what you use as the target?

**Mr Soden**—The 18 months time frame is the external target. We do not have internal targets within the 18 months; but, in relation to judgments, we have published a time frame of three months as the time within which judgments ought to be delivered.

**Senator LUDWIG**—So you have got the statistics for application to judgment?

**Mr Soden**—Application to judgment, or disposition, is the 18 months time frame.

**Senator LUDWIG**—I see. Are there any outside that?

**Mr Soden**—There is one exception. We originally fixed a time frame of three years for native title. That was thought by the stakeholders to be too short. That was amended subsequently to, I think, three years after the completion of the mediation process. There was an amendment to the time frame. That is the only qualification, and that is why we exclude native title matters out of the calculation of the matters dealt with within the 18 months period.

**Senator LUDWIG**—I am happy to exclude those as well, in that sense that you have given us. Are there any old applications that have not been finalised outside the 18 months?

**Mr Kellow**—There are. As I mentioned before, there are 32 appeals and related actions over 18 months old. If you take that away from the previous figure I gave you, there are about 1,470 causes of action which are more than 18 months old.

**Senator LUDWIG**—Which area are they predominantly in?

**Mr Kellow**—Predominantly in native title. The figures I have do not exclude that.

**Senator LUDWIG**—I was hoping to be able to exclude the native title area to understand the figures in the sense that I have asked. Perhaps you could take that on notice.

**Mr Soden**—We do not have that with us, but we can extract that.

**Senator LUDWIG**—That would be helpful. There was \$4.49 million in additional funding to implement the Dawson amendments to the Trade Practices Act. With regard to the costs of implementing that, is that the full cost, or is the Federal Court going to contribute? How is that money then going to be utilised? Will that meet the expectations that will arise as a consequence of the Dawson amendment court actions?

**Mr Soden**—As far as the Competition Tribunal costs would be concerned, it is intended to enable the Competition Tribunal to work full time rather than part time, supported by the resources of the Federal Court. In effect, it is the cost of the judge and the judge's associated costs together with the costs of 5½ additional officers to assist the tribunal, two of whom would either be economists or financial analysts.

**Senator LUDWIG**—I see. That is envisaged to run full time, is it? Is that with one judge? What about sabbaticals, leave and all of those issues?

**Mr Soden**—There are some other judges who are deputy presidents of the tribunal and they will continue to assist on the tribunal, but it is intended that Justice Goldberg would be working full time on the tribunal as its president.

**Senator LUDWIG**—Is the workload expected to be able to be completed by one judge?

**Mr Soden**—That is his assessment. We provided the information on the costs of the resources that the tribunal thought it would need. It was not really a matter for us to calculate precisely what might be needed.

**Senator LUDWIG**—I understand that.

**Mr Soden**—I would like to say that it might be a bit early to tell until they actually undertake the work. Some of those cases can be notoriously long and difficult, and who can tell what might arise?

**Senator LUDWIG**—That is certainly the frame of reference I was applying to it in asking the question, but I do understand that it is early days yet. In most of these things, we put it down now and come back and revisit it in the future and see how it works out. Have you been provided with any additional money for court security?

**Mr Soden**—No, we have not been provided with any additional money, but we have contributed an amount towards the costs associated with our proportion of the share in a number of places. That is \$400,000 per annum.

**Senator LUDWIG**—What exactly does that mean? Will you provide an X-ray machine, weapons searching or additional personnel?

**Mr Soden**—Yes. It will be our proportion of the share of the facilities mentioned by Mr Foster in those places that we also share, so from memory it will include primarily Brisbane and Adelaide. It also includes Sydney, which is our major accommodation and we share that with the state of New South Wales. There is an arrangement there that is all in place. Melbourne already has its facilities and we have contributed to those, so it is primarily Brisbane and Adelaide.

**Senator LUDWIG**—Was that out of your existing budget?

**Mr Soden**—We are funding that out of our existing budget.

**Senator LUDWIG**—Ms Leigh, do I ask you why the Federal Court did not receive part of the \$9 million disbursement for court security?

**Ms Leigh**—As I mentioned yesterday, some of the costs of security were absorbed by the courts and tribunals and then other money was provided in the budget.

**Senator LUDWIG**—Is how that is broken up a Treasury decision or an AGD decision? Who decides whether the Magistrates Court or the Federal Court contribute?

**Ms Leigh**—It was based on advice from the courts about their ability to provide that funding.

**Senator LUDWIG**—Did the Federal Court indicate that they had excess money and could not contribute to court security? Is that right, Mr Soden?

**Mr Govey**—The other thing that could be said is that, at the end of the day, the decision about the appropriation of additional money for the courts is a budget decision made by the cabinet.

**Senator LUDWIG**—Yes, Mr Govey; I thought that would be the appropriate response, but I got an opening!

**CHAIR**—You know what we are like with those, though, Senator Ludwig!

**Senator LUDWIG**—I still have not heard from Mr Soden as to whether or not the Federal Court had additional funding and could contribute to court security.

**Mr Soden**—No, you did not hear me say that.

**Senator LUDWIG**—No, I have not. Have you or did you?

**CHAIR**—He said no.

**Mr Soden**—No, we found the money—

**Senator LUDWIG**—I know you found the money.

**Mr Soden**—We contributed from within.

**Senator LUDWIG**—Did you indicate prior to that that you had additional money available to contribute to your own court security costs?

**Mr Soden**—I should answer this by saying that we have never been provided with any additional funding earmarked for security. Our security needs clearly have not been as great a priority as those of some of the other courts. In the calculation of the earlier amount of \$15 million, our proportion was to be \$1 million per annum or just on \$4 million. We indicated that that was impossible for us to find. However, when a re-analysis of the requirements indicated in the consultant's report made it clear that not everything needed to be done, our costs shifted from \$1 million to \$400,000 per annum. We had already indicated that we were willing to make a capital contribution which would be a one-off, and we calculated that we could probably find the \$400,000 per annum in the next year and the out years as a contribution to the security costs.

**Senator LUDWIG**—Thank you, Mr Soden. That is probably a diplomatic answer for you, Ms Leigh. At the last estimates we talked about the computer system—the case management system. Is that now up and running and finalised?

**Mr Soden**—It is up and running. We will not say it is finalised. It is up and running across the country, with every registry operational. It is going through a process of enhancement, keeping in mind that we use the Casetrack system of the Family Court.

**Senator LUDWIG**—Yes.

**Mr Soden**—It is working. It is a very robust system. We have got it in and everyone is using it, but we are going through a process of enhancement as there are things we have noticed we need to modify. For example, we have a number of cases where there are many parties, sometimes hundreds of parties, unlike the Family Court, which usually has just one or two parties involved. So we have had to go through modifications to enable the input of one piece of data, such as a hearing date associated with a whole lot of cases, to be automatically undertaken by the system. So that is a good example of the sorts of enhancements that we are going through to reduce the amount of keying-in time that it presently takes some of the staff. It is gradually improving. The staff are gradually using it more and more, getting more accustomed to it. I will not say that the rumblings have disappeared, but it is in and it is working and we are relying on it as the base upon which we can build the future.

**Senator LUDWIG**—So it is envisaged that more work will be done on the system—in other words, have you signed off on the software, the trialling and the implementation provided by the computer companies?

**Mr Soden**—That is all done. The budget for the implementation is done. In our years we are budgeting for enhancements for the future, but the project for implementation is done and it was done within budget.

**Senator LUDWIG**—Is the system likely to be reviewed at some point, or is that being done on an ongoing basis?

**Mr Soden**—That is ongoing. By way of example, we have set up an internal user group and a steering committee. The user group will identify enhancements; the steering committee will work out the priorities for those enhancements.

**Senator LUDWIG**—We will come back to that in due course. Who is using it at the moment—the Federal Court?

**Mr Soden**—The Family Court, the Federal Court and the Federal Magistrates Court. I think if you asked the High Court that question they would indicate that they are heading down the same track.

**Senator LUDWIG**—I am not sure I was going to ask them that. I think that was the last time we were at it. They were looking at it, I think, at that stage, weren't they?

**Mr Soden**—I am not sure they have made a decision. As I said before, it would be a good thing for the Commonwealth courts to all be using the same system.

**Senator LUDWIG**—It would seem sensible to me.

[6.21 pm]

#### **Federal Magistrates Court**

**CHAIR**—Welcome, Mr Mathieson and Mr Scammell.

**Senator KIRK**—Last year the FMS received \$34.2 million over four years to employ eight new magistrates. Have those magistrates taken up their positions?

**Mr Mathieson**—Yes, they have. They took up their positions before the end of the last calendar year.

**Senator KIRK**—I understand that part of the reason for appointing the new magistrates was to deal with migration matters. Part of the rationale was that, following the passage of the Migration Litigation Reform Bill, there would be increased migration work for the FMS. Given that that legislation has not been enacted yet, what have the magistrates been working on?

**Mr Mathieson**—Migration matters. As you would be aware, the Federal Magistrates Court has had now for a number of years concurrent jurisdiction with the Federal Court in migration matters. The Federal Magistrates Court and the Federal Court have liaised closely in relation to capacity to deal with that work. With the additional resources available with the appointment of new magistrates, obviously the Federal Magistrates Court had a greater capacity. There was a large workload in the Federal Court and much of that work was transferred to the Federal Magistrates Court. At the same time the community realised the capacity of the federal magistrates to deal with matters and commenced to file directly. So there has been no shortage of work for the new appointees to deal with.

**Senator KIRK**—So they have been dealing with new matters. Have they managed to clear any of the backlog in migration matters?

**Mr Mathieson**—Only in the last few months have they started to make some sort of indentation in the backlog. On my calculations, at the end of the fiscal year 2003-04 there was a backlog within the Federal Magistrates Court of about 1,900 migration cases. In the following year—that is, 2004-05—there were 2,067 cases received either by transfers or direct filings in the court. That figure is also a projection for the last two months of that year. I am projecting that in the full fiscal year 2004-05 there will be a clearance of 2,300-odd cases. So we have made inroads to the extent of about 220 cases, but that should increase over the coming months and years.

**Senator KIRK**—Are you able to provide the committee with a breakdown of what you have just said to us?

**Mr Mathieson**—Yes. I can take that on notice.

**Senator KIRK**—It would be helpful if that could be tabled. We have been talking to some of the other courts and tribunals about security. I understand that the FMS has received no additional funding for court security.

**Mr Mathieson**—That is so.

**Senator KIRK**—Have you implemented any new security measures in the past year?

**Mr Mathieson**—The Federal Magistrates Court is in a unique position so far as the other courts are concerned in that it does not have to provide its own registry services. Those are provided for in family law matters by the Family Court and in general federal law by the Federal Court. That includes, in effect, the co-location of the federal magistrates, the provision of courtrooms and so on. With that flows the security arrangements that are in place for the other courts.

The only place where that is not true is to a very small extent in the Brisbane Commonwealth law courts building. The court will be required to make a contribution to the ongoing cost of security there. That is, on best estimate, about \$5,000 in the current fiscal year

and ongoing. It will need to also make some contribution in respect of the Adelaide building. That is still under negotiation. We are not aware of the extent of that. However—and I will perhaps adopt Mr Soden's response to a similar question—when the position became apparent, with the very small contribution that was required, it was accepted that the court could find those small amounts.

**Senator KIRK**—I have a number of questions here which perhaps I can put on notice for you. I asked this question earlier: what has the court done to implement the findings of the ANAO report on client service in the Family Court and the FMS?

**Mr Mathieson**—As Mr Foster mentioned, 11 recommendations were made in that report. The Federal Magistrates Court accepted 10 of those 11. It had a different view in respect of one recommendation, which related to ongoing methods of evaluation or processes of evaluation of its PDR—that is, primary dispute resolution. Mr Scammell, who is with me, gave evidence before the public accounts committee in that respect, and I will not attempt to repeat that here. However, what he did indicate in his evidence was that at that time a separate evaluation had been undertaken by a consulting arm of the University of Queensland. That evaluation indicated that the arrangements were well accepted by the clientele and that the court did not see that there was a need to introduce the evaluation methodology that the ANAO was suggesting.

In any case, as Mr Foster has said, things have moved on somewhat. With the development of the combined registries, which the Family Court and the Federal Magistrates Court are working together to achieve, it will be a totally new environment. Services will be delivered in different ways. Different methodologies will be needed to look at how value for money in respect of all services can be demonstrated.

**Senator KIRK**—Finally, I understand that two additional magistrates were appointed in Sydney to deal with family law matters. Is that correct?

**Mr Mathieson**—Funding has been provided in the current budget for that to take place. No appointments have as yet been made.

**Senator KIRK**—What is the process for selection? Is there an advertised process?

**Mr Mathieson**—I think that is more a matter for the department.

**Mr Govey**—I was just going to come in and say much the same thing. That will be a matter for the Attorney to decide. We will no doubt be asked to provide advice on that as well.

**Senator KIRK**—So you have not been asked to provide advice on that as yet?

**Mr Govey**—There have been some discussions, because of course we were aware that this was coming in the lead-up to the budget, but nothing formal has been done at this point.

**Senator KIRK**—I will put the rest of my questions on notice. Thank you.

**CHAIR**—Thank you very much for appearing here today, Mr Mathieson and Mr Scammell.

**Proceedings suspended from 6.31 pm to 7.32 pm**

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**Federal Police Disciplinary Tribunal**

**CHAIR**—I understand we have a witness who needs to flee the jurisdiction, as it were, on an early flight. So I think we will work slightly out of the agreed order and begin with Ms Hedge and the Federal Police Disciplinary Tribunal.

**Mr Jordana**—I have a small correction to make to some information which was provided yesterday. Would you like me to do that now?

**CHAIR**—After Ms Hedge—knowing how difficult it is to get a flight out of Canberra.

**Senator LUDWIG**—Does the tribunal operate part time? Whereabouts does it meet?

**Ms Hedge**—It is totally part time. Only when work comes into the tribunal do we get it going. All its officers and its presidential members are officers and judges of the Federal Court.

**Senator LUDWIG**—So they work from within the Federal Court in that sense.

**Ms Hedge**—That is correct.

**Senator LUDWIG**—And when it is convened, it is convened as the disciplinary tribunal and they use the offices or the location of the Federal Court to meet?

**Ms Hedge**—Yes. If a matter is forwarded by the commissioner to the tribunal, a hearing is set up by either the president or a part-time member who is just paid when he works. I should say the part-time member we used to have was paid when he worked.

**Senator LUDWIG**—As far as I can determine from the annual report, there have not been any matters referred to the tribunal. When was the last matter referred?

**Ms Hedge**—In 1999.

**Senator LUDWIG**—So there has been none since then?

**Ms Hedge**—That is correct.

**Senator LUDWIG**—Would the referral have come from the Australian Federal Police, the Australian Crime Commission—as it is now called—or Customs?

**Ms Hedge**—It comes from the commissioner of the Australian Federal Police, or it used to, and that is the mechanism set up under the Complaints Act.

**Senator LUDWIG**—So there have not been any since 1999?

**Ms Hedge**—That is correct.

**Senator LUDWIG**—In terms of the work of the tribunal, you understand, I think, that there is a new process that is going to come into place. Was the tribunal consulted about that? That is the new integrity commission.

**Ms Hedge**—The Fisher review team did come to see the president of the tribunal and I think they also consulted with the deputy president.

**Senator LUDWIG**—Do you work full time or part time for the tribunal? I am trying to understand the role that you have.

**Ms Hedge**—I am an officer of the Federal Court. I am a deputy registrar.

**Senator LUDWIG**—That is what I thought.

**Ms Hedge**—I also happen to have an appointment as the registrar of this tribunal. Other officers of the Federal Court have appointments as deputy registrars of the tribunal. When and if any work comes in we fit it into our normal workload.

**Senator LUDWIG**—Does that come with any extra remuneration?

**Ms Hedge**—No, there is no additional remuneration for the officers of the tribunal or for the presidential members, who are judges of the court.

**Senator LUDWIG**—Since 1999, has the AFP commissioner liaised with the tribunal or through the registrar for the tribunal? Has there been any contact in that broad sense?

**Ms Hedge**—Apart from the Fisher review, I will usually ring them every year to find out if there are likely to be any matters and if we need to try and budget for anything. Apart from that, there is not usually any particular contact.

**Senator LUDWIG**—The funding is currently provided for the tribunal. Have you been informed about whether or when the tribunal will cease operation?

**Ms Hedge**—No, I have not been informed when it will cease operation. I understand the Fisher review is still under consideration. We have minimised the tribunal funding. Basically the only expense is about an hour of my time a year and the publishing of the annual report that I understand we are obliged to do under the Complaints Act.

**Senator LUDWIG**—Were you consulted in relation to the proposed changes to the operation of the tribunal?

**Ms Hedge**—In respect of the abolition of the tribunal?

**Senator LUDWIG**—Yes, I guess. That is a change.

**Ms Hedge**—As I understand it, it was the consultation that the Fisher review had with the president and the deputy president.

**Senator LUDWIG**—So that was the only contact?

**Ms Hedge**—As far as I am aware.

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

**CHAIR**—Thank you.

**Ms Hedge**—Thank you for dealing with me first up.

**Senator LUDWIG**—I suspect this might be the last time we see you.

**Ms Hedge**—Yes. It is probably the one and only time.

**CHAIR**—It is not related to your performance, Ms Hedge, if I might say, notwithstanding the fact that Senator Ludwig did not clarify that.

[7.37 pm]

#### **High Court of Australia**

**Senator KIRK**—I notice that the High Court will be receiving an additional \$4.8 million over four years to improve its record management system. Can you tell us how the money

will be spent? I notice it is for record management, public information and timeliness of case preparation. Is there anything else?

**Mr Doogan**—Yes, I can. Essentially it falls into two categories: firstly, increase in workload; and, secondly, provision of funding for positions within the court that have never been funded. For example, from when the court first moved to Canberra in 1980, there has never been any funding for information technology. So the funding represents additional resources for the registry, some additional judicial support and some funding in the administrative area in relation to archives, which is another area that the court has previously not been funded for but for which we have responsibilities under the archives legislation.

**Senator KIRK**—So the info technology money goes towards the record management system. Is that correct?

**Mr Doogan**—No. It essentially goes towards the information technology officers in the court and—you mentioned public information as well—to fund the public information officer for the court.

**Senator KIRK**—And the timeliness of case preparation, is that also going to be funding individual—

**Mr Doogan**—Yes. That is the registry.

**Senator KIRK**—What exactly is the public information service? Is that some kind of education program? How does that work?

**Mr Doogan**—It is one position. It is a public information officer. The primary role is to work with the judges and undertake a role of condensing the judgments into a shorter form for public dissemination when judgments are handed down. So the aim is predominantly to improve the accuracy of reporting of High Court judgments and decisions.

**Senator KIRK**—So has that role been done by somebody in the past? Has there been a process of condensing judgments in the past? If so, who has that been done by?

**Mr Doogan**—Yes, that has been done by the public information officer for the last three years, but there was never any funding.

**Senator KIRK**—Okay, I've got you now. How are you going to improve the timeliness of case preparations? What is that individual involved in?

**Mr Doogan**—Essentially that revolves around the number of registry staff. To put it into context and spread it over, say, a 10-year span, summarising the situation, in the years 1994-95 through to and including 2003-04, the total number of matters filed in the court has increased by 117 per cent. Looking at a specific part of that workload, the special leave applications, which in fact as you know from past discussions is the bulk number within the different types of workload, has gone up 118 per cent. Similarly, the number of full court matters heard over the period has risen by 41 per cent, the number of full court matters decided has gone up 32 per cent and the number of matters that have had to be heard before a single judge has gone up 166 per cent. That is over the last 10 years in terms of workload, but during that same period the staff numbers have actually declined by nine per cent. It is a matter of coping with that workload. The timeliness issue is that the number of registrars, for

example, have not increased over that period of time. Hence there is a limit to how much case preparation work they are able to do.

**Senator KIRK**—So are you saying there is now going to be an additional registrar with this additional funding?

**Mr Doogan**—Yes.

**Senator KIRK**—No doubt you probably either have it with you or you can take it on notice, but I am after information on such things as how long it is taking for various stages such as the making of the special leave application through to the hearing, the granting of special leave to a hearing, applications in the original jurisdiction through to a hearing, hearing to judgment and so on. Do you keep those types of figures?

**Mr Doogan**—Yes, we do. Can I direct you to the annual report for the court. You will see a series of tables commencing with table 23 and going on from there. Table 23 is to be found at page 110 of the annual report.

**Senator KIRK**—I do not have it right in front of me, but perhaps you could just give me an overview of what it says and I can check it afterwards.

**Mr Doogan**—Sorry, Senator?

**Senator KIRK**—Unfortunately we do not have your annual report in front of us—

**CHAIR**—I am sure we actually do have it in the Main Committee room, Senator Kirk. I am confident of that, as Mark is so efficient.

**Senator KIRK**—He is very efficient. Thank you.

**Mr Doogan**—If you look, for example, at table 23, you will see that the table commences at the point where the litigant files a matter at the registry and moves all the way through to the hearing of the matter and the various periods—filing to ready for hearing, ready for hearing to hearing, hearing to decision. It is all tabulated there, leading to a total elapsed time from filing to decision.

**Senator KIRK**—Thank you; that is very helpful. We have asked a number of the other courts and tribunals today about court security. I understand that the High Court is getting \$240,000 over four years plus \$160,000 in capital for this purpose. It is a similar situation to some of the other courts and tribunals. We were told in 2004-05 that those costs would be absorbed by the court, and now again it appears to have changed. Perhaps you could outline for us how that came about.

**Mr Doogan**—We are in exactly the same situation as the other courts that have appeared here today, in that the court cooperated with the other courts and the department. There was a review undertaken a few years ago that led to recommendations on security matters. I should say that, so far as the High Court is concerned, we follow on the coat-tails, in effect, of the other courts around Australia, with the exception of the High Court building here in Canberra. So with respect to the money in this year's budget, the capital item represents the purchase of X-ray equipment, airport type security, wands and so on, and the recurrent funding represents the increase that will occur in the level of security within the Canberra building. But for all other areas around the country it is mixed in with buildings that are shared with other courts.

**Senator KIRK**—What sort of security will be paid for by that recurrent funding?

**Mr Doogan**—That represents additional funds paid to the security company that has the contract for security in relation to operation of equipment.

**Senator KIRK**—Have there been any security incidents in the last year in the High Court?

**Mr Doogan**—Yes, there have been. We took out a workplace restraining order against one person, which prevents that person from coming within a certain distance of the court building unless accompanied by a solicitor and on legitimate business at the court. The reason for that is experience over the last few years with this particular person, which has resulted in damage to the building, threats to the judges and so on.

**Senator KIRK**—Has that been the sole incident in the past 12 months?

**Mr Doogan**—Yes.

**Senator KIRK**—Is it the security firm that you employ which deals with this person or such people when they come to the court?

**Mr Doogan**—Yes, it is. But I also have certain powers under various pieces of legislation relating to persons within the precincts of the court. In that capacity I attended the Magistrates Court here in Canberra to take out the workplace order.

**Senator LUDWIG**—The computer system that you are currently operating: at previous estimates hearings I have asked whether you have been reviewing that and looking at other systems. I am led to believe that you are now doing that. Can you provide an update regarding where you are at with the current case management system.

**Mr Doogan**—The current case management system is a Lotus Notes based system which currently meets our needs. What I have referred to on previous occasions is that, as and when that system no longer meets the needs of the court, we will work with the Federal Court and the Family Court and will probably—that is as best I can put it because there is no definite intention at this stage—move towards Casetrack, with one exception, of course: there will be no hot-tubbing.

**Senator LUDWIG**—No. I was not game to go there. So it is a matter for future determination.

**Mr Doogan**—Yes. At the present time, the system that we have meets our needs. What we are examining at the present time is a move that would allow use of the system by practitioners externally. For example, barristers would be able to look at the system from their chambers and determine what documents have been filed and what the state of play is from filing through to ready for hearing.

**Senator LUDWIG**—Thank you. In terms of a number of questions in the past surrounding self-represented litigants, I was wondering if you could tell us how the court is now dealing with that.

**Mr Doogan**—The issue of self-represented litigants continues to occupy a lot of the time of the court. Looking at last year, for example, they accounted for 48 per cent in the year to 30 June 2004.

**Senator LUDWIG**—Is that of the total casework?

**Mr Doogan**—No, that is of special leaves filed. That is the bulk workload. To put that in context, in 1995-96 they represented 20 per cent of the litigants before the court. In the year to date through to the end of April, they have risen to 57 per cent. So they continue to be a pressure on the court. It affects both the registry staff and the judges. The concern with the litigants in person is that various studies and so on would suggest that, apart from anything else, they may be a threat—to not only themselves but also the staff and the courts.

**Senator LUDWIG**—It is one of the issues we have spoken about in the past, and it certainly concerns the committee because of the nature of the issues. Usually it is the last place that people have to go and they are seeking special leave, and if it is denied then they have no other court to exhaust.

**Mr Doogan**—That is right. I have a recent journal article which the committee might find of interest. It was published in the *Judicial Officers Bulletin* and it is titled ‘The Vexatious Litigant’, written by Dr Grant Lester, who is a consultant psychiatrist to the Victorian Institute of Forensic Mental Health. This particular journal article has been distributed widely among the registry staff, and I have to say that, in talking to other courts, it is a very accurate description of the self-represented litigant.

**Senator LUDWIG**—Thank you, that would be helpful. If the rise in self-represented litigants continues at this rate, there will be very little room for others to seek special leave applications. Are the majority of those in one area or are they spread across more broadly?

**Mr Doogan**—They are spread across the full spectrum—virtually every area.

**Senator LUDWIG**—In the early stages they seem to have congregated in the migration area.

**Mr Doogan**—Yes. I think they were somewhat of a hiccup, compared with more recent times, but they do cover all areas—ranging from personal injury claims to taxation matters and so on.

**Senator LUDWIG**—Is there any explanation that you are aware of for that rise: barristers are too dear or something?

**Mr Doogan**—No, it is not that. To be brutally frank about it, it is that mostly their cases have no merit. You will recall that last year we talked about the changes we proposed to make to the rules of court. They have now come into effect since 1 January and the disposition rate to date—and we are talking only from 1 January—is very high in terms of having been totally unsuccessful and having no merit. This becomes more apparent now because under the new rules the litigants do not serve the other side. Instead they present a written case for examination in the first instance. If that case discloses any merit then the rules provide for the other side to be served and the usual processes to flow. But there have been a great many that have been disposed of in the first several months which reinforce past findings that they largely have no merit.

**Senator LUDWIG**—How many do not get past the first gate?

**Mr Doogan**—I cannot answer that yet.

**Senator LUDWIG**—We might come back to that next time.

**Mr Doogan**—On the next occasion, I think, because we actually propose to do a review during the midyear recess in July to look back and track the effect of the changes to the rules.

**Senator LUDWIG**—That is having a look at how the rules operated and to see what the effect has been.

**Mr Doogan**—Exactly.

**Senator LUDWIG**—We might wait till then.

**CHAIR**—Thank you very much, Mr Doogan, Ms Rogers and Mr Howard.

Mr Jordana, did you want to make that correction now?

**Mr Jordana**—Thank you. Yesterday Mr Rothery, in response to a line of questioning that Senator Ludwig was posing about the computer network vulnerability assessment project, provided some information which was not entirely accurate. I would like to correct it for the record if I could. Mr Rothery said that for round 1 of the computer network vulnerability assessment project there had been four applications and three successful applicants in round 1 and one of those was the Tasmanian electricity consortia. In reality there were indeed four applications in round 1 but there were only two successful bids, not three, and the Australian electricity consortia is a bid in fact that is in the second round, not in the first round. Those bids are currently being considered. I apologise for that mistake and wanted to correct the record.

**CHAIR**—Thank you for providing a clarification. Did you want to pursue anything from that, Senator Ludwig?

**Senator LUDWIG**—No, other than to thank you for correcting the record. That is most helpful.

[7.58 pm]

### **Human Rights and Equal Opportunity Commission**

**CHAIR**—I welcome the officers from HREOC. Thank you for your patience.

**Senator LUDWIG**—There were a number of questions on notice relating to the One Nation investigation I think HREOC was undertaking at the time. Has that been completed?

**Ms Clifford**—The president finalised that matter just this month.

**Senator LUDWIG**—Has it been reported yet?

**Ms Clifford**—It was a complaint of alleged unlawful discrimination, so it is now a matter for the complainant to decide whether they go to pursue the matter in the courts. At this stage we have had no notice that they have done so.

**Senator LUDWIG**—Are you able to say what the outcome of that was?

**Ms Clifford**—The matter was terminated as being unable to be conciliated.

**Senator LUDWIG**—Was there any finding or recommendation from the commission?

**Ms Clifford**—Under the complaints process of the alleged unlawful discrimination acts, there is no determination or recommendation from the commission.

**Senator LUDWIG**—In the sense that it is just a complaint that is investigated and then there is an outcome, is that published in any way? Is it in your annual report? How is that dealt with?

**Ms Clifford**—Not on an individual basis, just the overall statistics.

**Senator LUDWIG**—This was also a matter we spoke of yesterday with the Attorney-General's Department. There has not been a funding increase since the cuts in 2000-01. How is the current health of HREOC in terms of its financial position?

**Ms Temby**—As senators will see from our PBS, we have sought permission and are budgeting for a deficit—an operating loss—in this financial year. We have already taken steps to bring the operating loss back to a stable financial situation. We have done that by making across the board cuts to most of the commission's programs.

**Senator LUDWIG**—What is the forecast operating loss?

**Ms Temby**—We are hoping to get it down to about \$500,000, but we are not sure. We are not quite there yet.

**Senator LUDWIG**—What is it at the moment?

**Ms Temby**—Projected, which was last November as is shown in your papers, is about \$950,000. We sought approval to budget for that loss and, of course, then we were going to take steps to see what we could do about it. Through a whole range of steps, we hope to have brought it back to somewhere between \$500,000 and \$650,000.

**Senator LUDWIG**—What happens with that then? Forgive me if I am not too sure. How is that carried forward if you then report an operating loss of somewhere in the vicinity of half a million dollars?

**Ms Temby**—We must bring our underlying expenditure back as much as we can as soon as possible.

**Senator LUDWIG**—Does that accumulate for the following financial year?

**Ms Temby**—We use our cash reserves. That is my understanding. We have not run out of cash. We have an underlying loss in that our expenses are now greater than our revenue. We still have some cash in the bank to pay our bills so we are not exactly bankrupt, but it is obviously time to take steps to bring the commission's expenditure back if not to a profit then to a healthy balance.

**Senator LUDWIG**—Is that loss carried forward into the next year?

**Ms Temby**—We would use our cash reserves to balance our books into next year.

**Senator LUDWIG**—So a line would then be drawn next financial year at an operating loss of \$500,000 and you would then use your cash reserves to balance the books and then have an opportunity of again ensuring that you can operate within your budget.

**Ms Temby**—Yes, I think so.

**Senator LUDWIG**—Is that how it works?

**Ms Temby**—I find it immensely complicated, I have to say.

**Mr Richards**—It is done on a year-by-year basis, so we do not—

**Senator LUDWIG**—The loss is not carried forward.

**Mr Richards**—No, the loss is not carried forward in the operating statement; the cumulative operating result is reflected in the balance sheet. The operating statement is a statement for the financial year and, at the end of that year, you start again. We are funding the loss for this year through cash reserves that are held in the account. We have sufficient cash reserves to meet our current cash requirements.

**Senator LUDWIG**—I was not suggesting that you were going to run out of money. It is a statement about the general problem that besets you now that you are operating under a loss and there was no additional money in the budget. Did you ask for additional money to cover the operating loss?

**Ms Temby**—Yes, we did.

**Senator LUDWIG**—That obviously was not forthcoming.

**Ms Temby**—That, as you know, was replied to yesterday by, I believe, by Mr Cornall.

**Senator LUDWIG**—Yes. What areas are you looking at to cut back or reduce? I know you are going to pay it out of your cash reserves this year, but I take it you are going to look to next year to work out what you can do to continue to find savings.

**Ms Temby**—The budget has not been completely finalised as yet. But obviously we are looking at every budget line to see where we can make cuts. We have decided in the broad that we will cut about eight staff from the commission as well as project expenditure and expenditure from our public affairs public education program.

**Senator LUDWIG**—Where will the staff be reduced from? Is the Disability Rights Unit one area? Which project might you consider?

**Ms Temby**—At the moment we have made cuts to the library, Indigenous social justice, legal and complaints. We have taken funding from corporate services and from public affairs public education. But all budget lines have been examined and I think it is true to say that money has been shaved from almost everywhere. You mentioned the disability unit, but that comes from the project funding of each of the units rather than the staffing in each of the units.

**Senator LUDWIG**—So is the Disability Rights Unit one area which might be affected?

**Ms Temby**—The Disability Rights Unit have not lost permanent staff, but they will lose funding from what we call project funding, which is the funding that they use to conduct inquiries, for public consultations and to publish brochures—if you like, the discretionary area of the funding, basically the public education funding in each of the units.

**Senator LUDWIG**—What about the workload for 2004-05? Is that increasing more generally for the commission and its work or is it decreasing?

**Ms Temby**—The work is as much as we can do. The workload is not decreasing; it has gone up. It looks as if the trend will be up somewhat in complaints, probably for age complaints.

**Senator LUDWIG**—I was coming to whether complaints had risen as well.

**Ms Temby**—On the whole we will do what we can do within budget.

**Senator LUDWIG**—Will staff be lost in the Indigenous social justice area?

**Ms Temby**—At the moment, although that is a matter for negotiation, it is likely that two staff will be lost from that area.

**Senator LUDWIG**—The current position of having three commissioners dealing with five roles does not look like it is going to change, does it? Is that the current position?

**Ms Temby**—I think that is a matter for the minister.

**Senator LUDWIG**—I suspect it is a matter for you, Minister. What we have seem to have heard is that HREOC is in a difficult position. They have three commissioners doing the roles that five commissioners did in the past and having difficulty, obviously, with being able to meet the work commitments. The consequences are staff cutbacks, project cutbacks and potentially the loss of staff from the Indigenous social justice area. They are now going to fund that out of the cash reserves and in the following year it looks like they are going to pare back their workload.

**Senator Ellison**—I think Mr Govey might be able to help us here.

**Mr Govey**—As you would be aware, the government had indicated previously that it wanted to proceed with the restructure of the commission to reduce the number of permanent commissioners from five to three, and there has not been any change in that plan as far as announcements are concerned.

**Senator LUDWIG**—What about their current financial position?

**Mr Govey**—Obviously it is open to the government to reconsider that each year in terms of the budget for that particular year. But, as has been made clear, for this year the budget has been set and there are no plans to change that budget allocation.

**Senator LUDWIG**—So it does not present you, Minister, with any concerns about an operating loss of \$500,000 and the subsequent indication that some of those programs, some of those projects, are going to suffer? There are going to be potentially two staff lost from the Indigenous social justice area. You then have six other staff—if my maths is right—that might be lost from the system.

**Senator Ellison**—I think Mr Govey has made very clear what the government decision has been in relation to the budget. Across the board there have been efficiencies, if you like.

**Senator LUDWIG**—There certainly have not been cutbacks or losses across the board.

**Senator Ellison**—There certainly were cutbacks across the board in 1996, 1997 and 1998.

**Senator LUDWIG**—I mean in this budget.

**Senator Ellison**—I will take it on notice and take it up with the Attorney-General and get back to you with anything further that I can say other than what we have put today.

**Senator LUDWIG**—Thank you. Ms Temby, in terms of how you deal with the position, have you got more of a general view about how you are going to proceed in the next budget? Are you satisfied with the way the government has provided you with no increased funding?

**Ms Temby**—With small agencies such as ours, the efficiency dividend year upon year is less than our underlying rising prices—the costs of salaries and rent. That is true for every agency that you have spoken to here today one way or another. I personally think smaller agencies do have a very difficult time, a very difficult role. However, again as other agencies have said to you today, we are allocated funding by government and we have to live within it. That is what the commission has been doing, even though, since the substantial cutbacks you mentioned, we have by and large not had to make these kinds of adjustments. But, in order to meet inevitable rising costs, the commission has to, after the last five or six years, make the kinds of cuts which set it up again for the future to enable us to operate.

**Senator LUDWIG**—Crunch time has arrived.

**Ms Temby**—Crunch time has arrived and crunch time will arrive in the next couple of years as well.

**Senator LUDWIG**—So you do not see any silver lining to this?

**Ms Temby**—I cannot foretell the future. I am getting through this year at the moment. Again I do not think it is any secret that the reality of funding within a small agency with the increased allocation and with increased costs is such that every couple of years, to fund pay rises, to fund rent rises, there have to be cuts to staffing and to other allocations.

**Senator LUDWIG**—So you do not see an end to this process?

**Ms Temby**—The next budget is the next budget. As with the other agencies you have spoken with here today, we will put our case.

**Senator LUDWIG**—Effectively what you have said is that you will not be able to meet your mandate after these cuts, and the cuts, because of the agency's size and the way the indexation works, are going to continue. Unless something else happens it is going to be a never-ending cycle. That seems to be what you are saying to me.

**Ms Temby**—I am hoping that this allocation will set us up for certainly the next couple of years, but of course we will be making representations in the usual way and having discussions with the government again through the budget cycle.

**Senator LUDWIG**—So what you are effectively saying is that you are tightening your belt severely in the hope that it will see you through for the next couple of years, but you are going to be in the same position sometime in the not too distant future again, given the nature of indexation.

**Ms Temby**—I think that is inevitable and again I do not think we are alone in this situation.

**Senator LUDWIG**—On the disability discrimination access to premises standard: the draft disability discrimination standards were circulated I think last year. Has the AGD had an opportunity of looking at the web site and understood where the notes are from HREOC in relation to this issue?

**Ms Lynch**—Mr Minogue located the document you are talking about yesterday and has had discussions with some people in the commission. I do not know whether Commissioner Ozdowski is able to respond, but we have located the document. From what Mr Minogue said,

it was something that might have precipitated the current work that is going on regarding access to building standards.

**Senator LUDWIG**—What is the status of HREOC's advisory notes on access to premises that are on the web site?

**Dr Ozdowski**—The advisory notes were put on the web site for the first time in 1997. They have been revised from time to time. They also informed our work on access standards which have been developed over the last few years. They are a living document which has assisted builders and other people. They will continue to exist until the Australian Building Codes Board finalises their standards.

**Senator LUDWIG**—Are you satisfied with the process so far?

**Dr Ozdowski**—We are very satisfied so far. We were involved all the time, we were able to assist the committee's experts and our concerns were taken into consideration. I have also written to the Attorney-General asking that a range of issues be considered during the final decision-making process. So, yes, we are satisfied with it. I believe that when we get the standards they will further advance equal opportunities for all people with disabilities.

**Senator LUDWIG**—Is it fair to say that the notes represent your views of a benchmark for access to premises?

**Dr Ozdowski**—That is correct.

**Senator LUDWIG**—The next stage is that we are waiting for the—

**Ms Lynch**—The Australian Building Codes Board.

**Senator LUDWIG**—to provide a view about access to premises. Is that where we are now at?

**Dr Ozdowski**—Yes. Basically, all negotiations have finished. There is still a level of disagreement, and this will have to be settled at a political level.

**Senator LUDWIG**—Do you have a view about the blanket exception for buildings of two or three storeys from the requirement to have lifts?

**Dr Ozdowski**—Yes. It is one of the outstanding issues which is being negotiated. From our point of view we would like to have all public buildings providing proper access for people who have difficulties with access. But we understand that there are significant cost problems associated with this, especially when you are dealing with small buildings. We need to wait for the final outcomes in this area. But whatever the outcomes are, we will still have the Disability Discrimination Act in operation, so if there are injustices, they will be able to be tested under that act.

**Senator LUDWIG**—Has HREOC done any costings regarding how much it would cost industry to meet the advisory standards?

**Dr Ozdowski**—No, we have not, but other bodies have done this. Senator, if you wish, we can check whether we have any information about that.

**Senator LUDWIG**—That would be helpful, thank you. Last week or the week before you called for a judicial review of the Rau and Ms Solon matter. Do you stand by that view?

**Dr Ozdowski**—From my experience, my preference is for an open inquiry with some judicial powers. I was expressing this from the time when the Palmer inquiry was established. I believe that it will be difficult to get access to some information if you do not have proper powers, because privacy legislation, for example, may prohibit some information from being disclosed. However, the government has decided that this inquiry will go ahead, so let us wait and see what the inquiry will bring out.

**Senator LUDWIG**—More generally, in terms of your view of human rights protection in Australia today, particularly as it is tied to this issue, do you have a view about how it is progressing?

**Dr Ozdowski**—Australia is, generally speaking, a country with a very good human rights record, and it is a country with a very strong civil society which plays a very active role in the protection of human rights in Australia. However, over the last two years I have been involved with the problem of immigration detention. I provided the parliament with a report on children in immigration detention last year, and I continue to hold the views which I expressed in the report—namely that the mandatory detention system we have got now is breaching a range of human rights.

**Senator LUDWIG**—Thank you.

**CHAIR**—Thank you very much, and thank you for your patience.

[8.21 pm]

#### **Office of Film and Literature Classification**

**CHAIR**—Welcome, Mr Clark.

**Senator Ellison**—Madam Chair, I was going to say that this is a spot normally reserved for Senator Harradine, who is, unfortunately, not with us due to ill health.

**CHAIR**—We do miss Senator Harradine, I agree.

**Senator Ellison**—I am sure Mr Clark will too.

**CHAIR**—I have a feeling that we may now more than make up for his absence.

**Senator Ellison**—I think so. I have got that funny feeling. I just thought there was some aspect of nostalgia that we do not have Senator Harradine here tonight.

**CHAIR**—Indeed, particularly if we had renamed ‘special expert procedures’ ‘sexpros’, as I was keen to do earlier this evening.

**Senator KIRK**—In 2004-05 there was additional funding of \$0.3 million that I understand was to reflect the workload increase due to Operation Auxin.

**Mr Clark**—It was \$270,000 because of the additional workloads that are coming out of Operation Auxin.

**Senator KIRK**—What workload increase did you experience as a consequence of that operation?

**Mr Clark**—We had a significant increase in the number of applications. A lot of those applications were subsequently withdrawn, but Mr Hunt does have the specific figures in terms of the decisions that were made by the classification board in relation to the operation.

**Mr Hunt**—We initially received just over 1,000—I think it was 1,004—applications. As Mr Clark said, a significant number were withdrawn for a number of technical reasons. At the end of the day, the board made 333 classification decisions and issued a further 299 evidentiary certificates.

**Senator KIRK**—Was the \$270,000 funding that you received enough, or more than enough, to finance those increases in applications?

**Mr Clark**—That was sufficient to meet the increase in classifications.

**Senator KIRK**—How many films, computer games and videos were considered by the office in this last financial year?

**Mr Hunt**—In the 2003-04 financial year?

**Senator KIRK**—Yes.

**Mr Hunt**—Do you want a total breakdown of all decisions by the board? Would you like them broken into films and games?

**Senator KIRK**—You might be able to take them on notice. I wonder if also used you can give us the figures from 2004-05 until the current date.

**Mr Hunt**—Yes, Senator.

**Senator KIRK**—That would be helpful; thank you. Will the information that you give us set out the numbers that were refused classification as well as those that were approved?

**Mr Clark**—Yes, it does.

**Mr Hunt**—Those figures are in our annual report, including the numbers refused.

**Senator KIRK**—Have you recently introduced a new classification scheme for computer games? Is that a new introduction?

**Mr Clark**—There is not a new scheme. The recent legislative amendment amalgamated the markings and classifications for computer games and films so that they will appear the same. The markings and classifications will be the film classifications that have been used up until now. Essentially, the biggest difference is that G8 will be called PG, and it continues to be that there is not an R classification for computer games.

**Senator KIRK**—How is that different scheme for computer games working?

**Mr Clark**—That scheme commences on Thursday of this week.

**Senator KIRK**—So you will be able to tell me when we speak next time.

**Mr Clark**—We certainly will, and we are looking forward to that.

**Senator KIRK**—I have some questions about the Classification Review Board in relation to appointments. How many new appointments have been made in this financial year?

**Mr Clark**—Two new appointments and one reappointment have been made.

**Senator KIRK**—What is the process for appointment of members to the Classification Review Board?

**Mr Clark**—The Office of Film and Literature Classification does not in fact conduct the process. That is conducted by the department, so Mr Govey may wish to provide an answer to that.

**Mr Anderson**—My recollection of the process that was followed for the recent appointments was that it was notified on the web sites of both the department and the Office of Film and Literature Classification that there was to be a process. Some people put in applications as a result of that. The committee comprised a representative from the Attorney-General's Department; a representative from the ACT government, as it happened, on behalf of the state and territory classification ministers; the convener of the Classification Review Board; and a member of the Attorney's office. A shortlisting process was followed, interviews were carried out in addition to some experiential testing and then recommendations were made to the Attorney. The Attorney then also consulted with state and territory classification ministers before the appointments were made.

**Senator KIRK**—Did you mention that any of the existing members of the board were members of the committee?

**Mr Anderson**—The convener of the board was a member of the committee.

**Senator KIRK**—How long does that process take from the time it is advertised on the web site through to the appointment of the new members?

**Mr Anderson**—We interviewed in late November or early December last year. I believe they had been on the web site in around October. I could take that on notice to check the exact dates. The appointments were made comparatively recently; obviously there is that need for considerable consultation between the different jurisdictions.

**Senator KIRK**—In the advertising, are there particular criteria that are listed that would make an applicant worthy of appointment? I am thinking about whether there are various skills, past experience or work skills that might be listed.

**Mr Anderson**—The act itself gives some direction as to what is required. Obviously, there is a need for members of the board to be able to operate in a group to review material and to be able to engage in discussions with other group members. Certainly, demonstrated community involvement is something that is required. To the extent that is possible, it is desirable to have a range of demographic and geographic coverage. So, based upon the applicants of course, it would be desirable to have coverage from as many different areas of Australia—from people with children, people without children, people who are mature adults and people who are younger; that sort of thing.

**Senator KIRK**—Are the positions advertised as part time or full time?

**Mr Anderson**—The positions were not strictly advertised in the sense there were not press advertisements, although the positions were placed on the web sites. The positions were not notified as being part time or full time because the review board only gets together when there is an application to the review board. It is fairly rare. I think there are around 10 applications a year to the review board concerning films, and a few concerning games. So there are relatively infrequent occasions when the board needs to convene to consider an application.

**Senator KIRK**—How is remuneration paid to the board members?

**Mr Anderson**—There is an annual stipend that is paid.

**Senator KIRK**—Does that vary according to the number of meetings they may need to have?

**Mr Anderson**—I do not believe so. It varies; the convener receives a slightly higher stipend.

**Senator KIRK**—But I imagine allowances are paid for travel and the like.

**Mr Anderson**—That is correct.

**Senator KIRK**—I was interested to learn of the number of matters that the review board considered and the number in which classification was either refused or approved. Could you take that on notice and provide us with that information?

**Mr Clark**—That information is in the annual report.

**CHAIR**—Do you have any questions, Senator McGauran?

**Senator McGAURAN**—First of all, I want to ask you about the movie *Irreversible*, which you classified R. I would like to run through a few things. Do you think the violent rape and murder scene was demeaning to the victim, Mr Clark?

**Mr Clark**—The board, in looking at the film, decided that the scene was certainly very disturbing.

**Senator McGAURAN**—Demeaning to the victim?

**Mr Clark**—A portrayal of this type is demeaning to the victim but, in a narrative context—

**Senator McGAURAN**—No, that is all I wanted—in the narrow context.

**Mr Clark**—Yes.

**Senator McGAURAN**—According to the classification code, demeaning refers to ‘depiction directly or indirectly sexual in nature, which debase or appear to debase the person or character depicted’—so, it was for the victim. Is that how you took it?

**Mr Clark**—The board does not use the word ‘demeaning’ in its board report in relation to this film, as I recall. The actual fictional portrayal in the film could be considered demeaning, I agree with you there. But the actual film, as it is made, does not demean the victim because it is a fictional narrative that is being portrayed on film.

**Senator McGAURAN**—So, have you changed your mind? Is it demeaning to the victim?

**Mr Clark**—In the fictional sense that that is what it is, one could say that. But the board report does not talk about demeaning.

**Senator McGAURAN**—But it is to be taken in as part of the—

**Mr Clark**—It says it is high in impact—

**Senator McGAURAN**—But it is not part of your judgment, the demeaning factor?

**Mr Clark**—If you were talking about a real event such as this, yes—

**Senator McGAURAN**—Like a documentary?

**Mr Clark**—But we are talking about a fictional event, not a documentary. In that context, it is not.

**Senator McGAURAN**—So, if it is a documentary, therefore filming real—it is demeaning.

**Mr Clark**—It could be.

**Senator McGAURAN**—It could be demeaning. But, because it is two actors, indeed, it is not demeaning. Is that what you are saying?

**Mr Clark**—That is correct.

**Senator McGAURAN**—So, I take it you believe that that rape-murder scene is not demeaning.

**Mr Clark**—In the context of this film, the board did not find that the scene was a demeaning portrayal, because it is a fictional portrayal in the context of a film which has high impact.

**Senator McGAURAN**—Most of the films, if not all, are fictional, aren't they?

**Mr Clark**—The majority of public exhibition are fictional. There are occasional—

**Senator McGAURAN**—So your judgments are made on fiction—

**CHAIR**—Senator, if you could let Mr Clark at least finish his answers, I think it would be helpful to proceedings.

**Senator McGAURAN**—Okay.

**Mr Clark**—Senator, there are occasional documentaries which are features. There are occasionally films which would be refused classification which may have demeaning content in the view of the board. So a film which in the view of the board is demeaning is most likely to be refused classification.

**Senator McGAURAN**—All right. I will take it that you did not think that that particular scene was demeaning to the victim.

**Mr Clark**—The board did not.

**Senator McGAURAN**—The board.

**Senator Ellison**—I think it is clear that Mr Clark can only speak for the board. It is the board that does the classification, as I understand it, not Mr Clark.

**CHAIR**—Thank you, Minister.

**Senator McGAURAN**—Okay. He is the chief censor though. The buck stops at your desk, doesn't it, Mr Clark?

**Mr Clark**—I carry responsibility of the OFLC and the classification board as chairman of the board—

**Senator McGAURAN**—Do you have a casting vote?

**Mr Clark**—At the end of the day, the board votes—

**Senator McGAURAN**—Do you have a casting vote?

**Mr Clark**—and, after that, I do have a casting vote.

**Senator McGAURAN**—Well, that makes you the real focus. How tight was this vote?

**Mr Clark**—It was not a casting vote situation. It was certainly a split decision by the board—

**Senator McGAURAN**—But you do not want to be too light about—

**Mr Clark**—Sorry, it was a unanimous decision.

**Senator McGAURAN**—shifting it onto the board: ‘The board makes all these decisions.’ You are the chief censor, you are the public face and you are the chairman with the casting vote. If you do not in your position—you certainly get paid more than the others, I suspect—carry some authority and responsibility, I would be surprised.

**Mr Clark**—The board is a board of statutory appointees who are expected to be independent in their decision making. The board cannot be directed by the chair as to how they should vote. The board will vote according to their view on the matter that is before them. Sometimes they vote unanimously, sometimes there will be a split decision. Rarely is there a situation where there is a casting vote.

**Senator McGAURAN**—All right. I will not go down that track. I was not meaning to. We will keep it tight, Madam Chair. Did you think that in that particular scene—I must not fall into the trap of continually repeating it—the victim was exploited?

**Mr Clark**—I find it difficult, because it is a fictional story that is being told. It is represented in a very violent manner.

**Senator McGAURAN**—Why I focus on this scene is that if you took that scene out it could well have been an MA.

**Mr Clark**—That is the problem—

**Senator McGAURAN**—I am focusing on that scene because that is where the classification came in—on that scene. I would say that was the dominant classifier—whether it was an R, an X or RC.

**Mr Clark**—No, I believe it would still have been an R-rated film because of the murder sequence that precedes that.

**Senator McGAURAN**—All right then. I did not quite get your answer. Do you think the victim was exploited?

**Mr Clark**—Senator, it goes back to this division between what is a real event where one could say, ‘Yes, that is the case.’ In this event you have actors who are willingly being paid to act a scene in a movie—

**Senator McGAURAN**—Well, we may as well revoke the whole thing if that is the case. If that is how you are going to judge it—by whether it is a documentary or a film—we may as well get rid of this.

**CHAIR**—Senator McGauran, let me make it quite clear.

**Senator McGAURAN**—It is a joke!

**CHAIR**—In this committee we allow witnesses to complete answers to their questions, we do not interrupt them and we proceed in an orderly fashion. If you would let Mr Clark complete the answers to his questions—

**Senator McGAURAN**—Offensive answers.

**CHAIR**—You may find the answers offensive or not, as the case may be—

**Senator McGAURAN**—Why don't you put that in your report if that is your view now? Why don't you put that in your report?

**CHAIR**—Mr Clark, if you would like to complete your answer to this question, Senator McGauran will ask his next question.

**Mr Clark**—Senator, the film runs for some 98 minutes. This particular scene, as I recall, is about nine minutes in the context of that film. Yes, it is very strong in content. The board was of the view that the actual rape scene was one where the lack of detail in it, although it was still very high in the R classification, permitted it to stay within the R classification category, particularly given the broader context of the film. If you have seen the film, the film ends on a note where you have very happy, innocent people going to a party. This makes the impact of the film even stronger in some respects, but it diminishes in the length of the film. Taking the scene out of context as a fictional narrative is not helping. Overall, yes, this film is very high in impact. Yes, two scenes in particular are in the top end of R—the board recognised that—but they can be accommodated in the R classification.

**Senator McGAURAN**—I am referring to the classification code here and under R-rated it specifically lists these criteria which I am pointing out to you. Here is another one. To you think that particular scene, which was dominant in the movie, depicts cruelty?

**Mr Clark**—It depicts a very violent rape scene.

**Senator McGAURAN**—Do you think it was implied?

**Senator Ellison**—Can I say something here which may be of assistance to everyone. Senator McGauran has now struck on the way the question should be put, and that is: what does it depict? The question is, did it demean the victim? Of course it was, as Mr Clark says, a fictional movie and the question is all of depiction—what did it depict? That might make it easier for Mr Clark to answer questions if Senator McGauran puts it in that term: did it depict this sort of thing? It is a fictional film which is depicting certain things. I think that is better wording to put in a question to Mr Clark.

**Senator McGAURAN**—You cannot just isolate scenes, Mr Clark, because scenes are often taken out and clipped—indeed, recut sometimes in extreme cases—to make a classification. That is a red herring you are putting up, without question. I will move on. But you can see my point. I am trying to read the code here which says 'a high degree of exploitation' and whether the sexual violence may be implied. It certainly was implied, wasn't it, the scene? It was pretty obvious.

**Mr Clark**—Are you reading from the code? I have the code here. I think you may have the old guidelines for classification, not the code. The code says that we need to 'take account of community concerns about depictions that condone or incite violence, particularly sexual violence; and the portrayal of a person in a demeaning manner'. They are the code words. It

does not condone or incite, in my view, but it certainly is a depiction of violence, and sexual violence. Certainly I am not isolating that scene. With respect, I think you are isolating that scene and I am trying to put that scene into the context of the entire film.

**Senator McGAURAN**—You are trying to merge it into the greater film. Quite frankly, one scene can ruin a whole film's classification.

**Mr Clark**—I agree.

**Senator McGAURAN**—Good. Stop trying to spread it so thin across the whole movie. It is a paramount part of the movie. But moving on, Madam Chair, many years ago I was involved in a movie called *Salo*, which was eventually banned.

**Senator LUDWIG**—Did you appear in it?

**Senator McGAURAN**—Pardon?

**Senator LUDWIG**—You said you were involved in it.

**Senator McGAURAN**—I was involved in getting it banned.

**Senator LUDWIG**—I see.

**Senator McGAURAN**—There was a scene of a 16-year-old girl or under raped and the movie was banned. What has changed so that *Irreversible*, which has I think under any viewing a worse scene, is allowed?

**Mr Clark**—I was not involved in the decision regarding that film, Senator, and I do not have access to the board report on that film at the moment. As you have described it, a 16-year-old girl would heighten the impact of a scene such as that. I cannot give you a detailed answer, but certainly that would be part of the consideration by the board.

**Senator McGAURAN**—So the 16-year-old girl's scene is a worse scene—

**Mr Clark**—A child, under the age of 18, yes.

**Senator McGAURAN**—than what is depicted in *Irreversible*—a mature woman?

**Mr Clark**—The detail of the scene in *Irreversible* is not high; it is not a detailed scene. Yes, it is long, but it is not detailed. As I do not have knowledge of the other scene, I am unable to make a judgment on it.

**Senator Ellison**—I point out that if you had a depiction of a sexual act in that situation with a person under 18, it could well infringe the child pornography laws that we have enacted. I can get back to Senator McGauran on that if he is interested, but I think our new laws could catch a situation of that sort where a child is being abused in that fashion.

**Senator McGAURAN**—That is exactly why the movie was banned. Whatever laws exist now regarding the classification scheme also existed then.

**Senator Ellison**—I raise that to point out the current status—

**Senator McGAURAN**—You have told me what has changed since the banning of that one—that the difference regarding the rape scenes relates to the age of the person. Under those circumstances, the *Report on the review of the operation of the 2003 guidelines for the classification of films and computer games*—I forget who undertook that review—

**Mr Jordana**—The report was undertaken by a consultant named Kate Aisbett.

**Senator McGAURAN**—One of the key findings of the report was:

There is no discernible shift in the nature of permissible material within particular classification categories ...

So from the old category to the new category there has been no discernible shift.

**Mr Clark**—From the old classification guidelines to the new guidelines, the 2003 guidelines, her finding was that there has been no shift in the standards contained within the guidelines.

**Senator McGAURAN**—And you agree with that?

**Mr Clark**—Yes, Senator, I do.

**Senator McGAURAN**—Turning to another movie, *9 Songs*, in the review board's own report it is admitted that this movie has pushed all the boundaries; that it has taken the next step and broken the record. It states:

No previous movie in Australia has been classified R by the review board where it contains a prolonged, detailed scene of explicit ...

It is talking about sex, basically. So it has pushed the boundaries. To me, it has gone over the boundaries, but it has pushed the boundaries. This movie, *9 Songs*, is a first. So there has been a distinct change. When a movie like *Salo* can be banned, with lesser degree scenes than either *Irreversible* or *9 Songs*, it means that there has been a discernible shift in the interpretation of the code, and that the new code itself is different from the old one. Do you agree that *9 Songs* is a movie like no other that has been released?

**Mr Clark**—Senator, because it is a decision of the Classification Review Board, I really do not want to comment on the decision. Certainly, as I understand it, the amount of actual sex contained in the film is greater than we have seen before—not a huge amount greater, but certainly there is a greater amount of actual sex in the film than in any other film before. But that is a decision regarding interpretation of the guidelines, not a change in the standards contained in the guidelines. With respect to the guidelines for sex at the R level, the words used in these guidelines and in the old guidelines are the same.

**Senator McGAURAN**—They are the same. So you are saying there has been a change in the interpretation of the guidelines. There has been a discernible shift.

**Mr Clark**—It is for the review board to interpret the guidelines. I cannot comment on that.

**Senator McGAURAN**—What are we to make of this report that goes to the minister, no less? It says:

There is no discernible shift in the nature of permissible material within particular classification categories ...

But there has. *9 Songs* proves there has been a discernible shift. We have a first on our screens. Anyway, continuing on, if I may.

**CHAIR**—Senator McGauran, I want to alert you to the fact that the committee does have a very significant time constraint tonight. We have the entire estimates for the Australian

Customs Service to examine this evening and we are running very short of time. Could you give the committee some indication of how long you might wish to spend with the OFLC?

**Senator McGAURAN**—Barring sidetracks—

**CHAIR**—Whose—yours or ours?

**Senator McGAURAN**—Probably mine—20 minutes.

**CHAIR**—Could we review that in 10?

**Senator McGAURAN**—Yes.

**Senator Ellison**—Perhaps we can also take some questions on notice.

**CHAIR**—That would be very helpful to the committee.

**Senator Ellison**—We want to ensure that Senator McGauran gets all his questions up.

**CHAIR**—Absolutely.

**Senator McGAURAN**—I have a letter here from the Attorney-General on a certain matter. I will read you a paragraph of it. It says:

However, Board and Review Board members, as statutory appointees, endeavour to make decisions which are as objective as possible, on behalf of the community and not as personal opinions. In other words, the boards apply what they consider to be the standards of reasonable adults in the community, rather than the personal standards of members.

Take into account that Philip Ruddock has quoted that you take community views into account. In a letter to Senator Harradine, from Minister Ruddock, he says that, in the case of *9 Songs*, consumer advice was sought. Can you tell me what community opinion was sought when you reviewed the movie?

**Mr Clark**—Sorry, Senator, would you repeat the last phrase.

**Senator McGAURAN**—That community views were taken into account with regard to *9 Songs*. He says that to me. He calls it consumer but in my letter he calls it community. You know what he is getting at. In fact, it is even part of your brief. Isn't it your brief to take in community views?

**Mr Clark**—The classification board is broadly representative of the Australian community and, in making decisions, it plays out that role. In the ordering of the business of the board, often a board member may alone or with one or two others be in a position to have to make a decision on the classification of a product. In making a decision in that manner, they need to have regard to the views of the whole board. The whole board does have a range of views and they need to seek to reflect that in a decision. If they do not think they can do that, they will go back for a re-screen or another consideration of the product. When the classification board meets as a whole, they will more specifically articulate their own views in relation to their classification decision but they all have regard to and respect the views of the other members of the board. They have a vigorous discussion and then come to a decision so that, in making a decision, they are fulfilling the board's statutory function, which is to be broadly representative of the Australian community. That is why they are there.

**Senator McGAURAN**—Am I to take it from that answer that they do assert their personal opinions?

**Mr Clark**—I have described to you the two ways in which they work. One is that it is a collective view of the board and, yes, in other circumstances they will have vigorous discussion. But, as I say, they have respect for it. It is not about being representative of any particular group; they just have to have regard to broad views in the community. As you appreciate, that is not going to suit everybody. Not everybody is going to be happy with those decisions.

**Senator McGAURAN**—I see your point but Mr Ruddock would not because he says you do not take into account your personal views—but you do bring your experience and broad views to the board I am sure. But it is clear not only from Mr Ruddock's letter to Senator Harradine and to me with regard to *9 Songs* and according to your charter that you must take into account community views, whatever way you do it.

**Mr Clark**—Yes, correct.

**Senator McGAURAN**—Specifically in relation to *9 Songs*, how did you take into account community views?

**Mr Clark**—Senator, as I described to you, we are there because of the fact that the board members are widely experienced in the community. They participate in the community. They come from all over Australia from all sorts of geographic origins. In doing that, part of their function is to reflect the community. Therefore they do that in their day-to-day decision making. In testing our decisions, in saying, 'Are we consistent with the community?' we have done the community assessment panels in the past 10 months, and these are saying that the board is making decisions which are broadly consistent with community standards in terms of the focus groups done as part of that. The operational review has looked at that and there has been significant consultation there, talking with people about decisions being made by the board as to whether there has been a change in standards within the 2003 guidelines. In addition to that, the actual process for establishing the guidelines and developing the new guidelines once again involved a very extensive consultation process. So we are testing all the time. We do not just go out on one decision and say, 'Are we consistent with community views?' There is this ongoing process of research and finding out, 'Are we in the right place?' and broadly saying to us, 'Yes you are.'

**Senator McGAURAN**—Then why did you, in reflecting community views, differ from the review board?

**Mr Clark**—That is the system, and the way the system operates—

**Senator McGAURAN**—They have a different outlook from the community view.

**Mr Clark**—The review board makes a new decision, and from time to time the review board will make a decision at a higher classification level, the same level or a lower level. That is another test of the system and that is the function of the review board. It is a new decision. They use the same tools we use in the process.

**Senator McGAURAN**—They have the same community touchstone you do.

**Mr Clark**—Yes, and they use the guidelines, the same code and the same sections of the act to come up with a decision. From time to time they will come up with a different decision, and that is demonstrating that the classification system is working.

**Senator McGAURAN**—The classification system makes it quite clear that bondage is inadmissible in a movie. Did you find that there was any bondage in *9 Songs*? It is not even a point of discretion; it is out.

**Mr Clark**—The board came to a different view from the review board in relation to one scene in the—

**Senator McGAURAN**—Did you? Did your board find bondage—

**CHAIR**—Senator, Mr Clark is answering your question.

**Mr Clark**—In looking at that scene the board was of the view that this was a more of a role-play situation than a bondage situation. The board are very familiar with what a bondage situation is and were of a view that this was not the sort of activity that could be described as bondage in the sense of what they are accustomed to seeing in classifying or refusing classification to material that would seek to be an X-rated movie.

**Senator McGAURAN**—So it was role playing, not bondage?

**Mr Clark**—They are the words used in the board report in relation to this film.

**Senator McGAURAN**—The review board—the other mob—deemed it as bondage. They knew it to be.

**Mr Clark**—They did, but they also deemed it to be very mild as well in that context.

**Senator McGAURAN**—Did you read anything in the classification that it says mild bondage is all right but hard bondage is not?

**Mr Clark**—I did not describe it as mild bondage. That is the decision of the review board and I am not in a position to comment on a decision by the review board. I can only say that in coming to an X classification on the film *9 Songs* and looking at that scene, they were of the view that it was not a serious bondage scene but more of a role-play scene.

**Senator McGAURAN**—So they have used their discretion about what is a serious bondage scene and what is a mild bondage scene. Though they accept that it is bondage and you do not—

**Mr Clark**—In the guidelines it just says:

Fetishes such as body piercing, application of substances such as candle wax, ‘golden showers’, bondage, spanking or fisting are not permitted.

The board was of the view that this was not bondage.

**Senator McGAURAN**—Yes, I know. But the review board was of the view that it was. Once you accept that it is, there is no room for discretion, be it mild or hard bondage or whatever you want to call it.

**Mr Clark**—The board was of the view that it was not bondage. If it was bondage in the view of the board, it would have been refused classification.

**Senator McGAURAN**—You are all getting very muddled. You do not think it is bondage and therefore it would not be refused classification on that basis. The review board thinks it is bondage and yet gives it classification. What a right muddle. Where are they? Are they here?

**Mr Clark**—The convener can be called, but she is not here. I would be very happy to take that on notice for a response from the convener of the Classification Review Board.

**Senator McGAURAN**—Chair, why isn't there anyone here from the review board?

**CHAIR**—Would you like that taken on notice, Senator McGauran?

**Senator McGAURAN**—To whom?

**CHAIR**—To the convener of the review board.

**Senator McGAURAN**—To answer that question?

**CHAIR**—Yes.

**Senator McGAURAN**—It was a statement.

**Senator LUDWIG**—You cannot make a statement.

**CHAIR**—We actually deal in questions and answers here.

**Senator McGAURAN**—You are all muddled. All right, let her answer this: why are you all so muddled?

**CHAIR**—I do not think that is the question. The question is a specific question you were asking about *9 Songs*. That was my understanding.

**Senator McGAURAN**—All right. If she can possibly answer that, I would appreciate it.

**Senator Ellison**—We will take that on notice.

**Senator McGAURAN**—On 14 February Senator Harradine asked you:

Do you take the pornographic intent into consideration?

You answered:

If the intent is purely pornographic I am sure that the board will apply the guidelines very rigidly.

So if the intent is pornographic, you will certainly take that into account. Did you find the movie pornographic?

**Mr Clark**—Do you mean *9 Songs*?

**Senator McGAURAN**—Yes.

**Mr Clark**—If I can go to the same estimates, I replied to Senator Harradine that the guidelines do not actually use the word 'pornographic' and nor does the code. Sexually explicit intent would place the film into an X classification, which is what the board did.

**Senator McGAURAN**—I am only quoting you back. You said:

If the intent is purely pornographic I am sure that the board will apply the guidelines very rigidly.

**Mr Clark**—And then I clarified that. I said that it does not use the word 'pornographic' in any of the instruments or tools that the board uses. That word does not appear. So the board is

classifying it X in the sense that it is a special classification with sexually explicit material in it. That word is not used anywhere in the classification system.

**Senator McGAURAN**—So you do not take that into account.

**Mr Clark**—No, the X classification 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 McGAURAN**—Aren't you just playing with words? You have told us how you keep in touch with the community, and that is very good—and that, by the way, was a result of the movie *Salo*. It made many changes to the review board—although I despair that they are all unwinding now. The community, whom you are meant to refer to from time to time, know what pornographic means. They know the line, albeit that it is different for each person—there is a line and you know it when you see it.

**Senator McGAURAN**—I have not finished.

**Mr Clark**—I apologise.

**Senator McGAURAN**—It is my turn! I know you are just playing with words. You are hiding behind the fact that it is not classified, but in real life you have to take that into account, because every criticism that I have picked up—and critics are well known for their liberal views when reviewing films at the best of times—

**Senator Ellison**—If we could just get to the nub of the question.

**CHAIR**—We are very pressed for time, Senator McGauran.

**Senator McGAURAN**—In every critic's review that I pick up, they use that term. You are trying to hide behind 'sexually explicit', but go out to the community and put those words to them and they would not know what you meant. Say 'pornographic' and they are with you. Every critic calls it pornographic or question whether or not it is. I have all the critics' reviews here, from the *Age* and the *Financial Review*, claiming it is just pornographic and should not be exhibited. The *Australian* says it is pornographic—

**CHAIR**—Your actual question, Senator McGauran?

**Senator McGAURAN**—I have to give this a bit of a backdrop. The *Herald-Sun* asks is it not pornographic—

**CHAIR**—We are getting your drift. What is your actual question?

**Senator McGAURAN**—and there is a feature in the *Age*. So that is the term they use. If you want to stay in touch with the community, know what that word means and where that line is drawn. You use one term; the public identify with another, including the critics—and, may I add, the review board. The review board thought it was pornographic, 'mildly pornographic'. But if it is pornographic it should not be shown. You use the term 'sexually explicit'; we use 'pornographic'.

**Mr Clark**—If I take the common word—and I agree with you, 'porn' is the more frequently used descriptor—you are perfectly right: yes, that is the case. I am not playing with words. They are the actual words that we have to use in coming to classification decisions.

The board, if you like, formed a view that *9 Songs* should be classified X because it contains sexually explicit material which, yes, the press are commonly referring to as porn. They are not using that word but the words that are here. They are not words to hide behind but words that they are required to have regard to. That is the classification system. The Classification Review Board looked at that and considered that the amount of sex in the film could be accommodated by an R rating. The reasons for their decision on *9 Songs* are in their report. If they choose to use the word that is commonly used, there is nothing wrong with that, but it is not a word that appears in the classification system.

**Senator McGAURAN**—In short, you did not believe the movie was pornographic—

**Mr Clark**—I do not express personal views about this.

**Senator McGAURAN**—The board did not believe it was pornographic, yet they would not classify the movie. The review board thought it was pornographic, yet they classified the movie. What a muddle!

**Mr Clark**—If I apply the word ‘pornographic’ then obviously that is consistent with the board coming to an X decision. The reasons for the Classification Review Board’s decision are available. That is their justification for coming to a decision which shows the review board and the classification system working. A lot of people will disagree with that decision, but that is the decision that the review board have made. I would also add that there is a lot of material that is simulated sex which is classified R. It is not real but it is simulated sex, which is classified R—and that could also be described as pornographic.

**Senator McGAURAN**—You have to take into account, according to the classification, the prolonged nature of any offending scene or any scene at all. There are two questions here. The movie is a cheap 70 minutes long and 35 minutes of it, according to the critics, is sex. The real offending scene breaks a record, being the most prolonged of its kind. In the past you have always relied on a fleeting scene—you have used the word ‘fleeting’ quite often, or ‘not prolonged’, in any other reports you have on films. But here we have got a record: it is quite a long scene, with more than half the movie itself being one big sex scene.

What is the question? There has been no other movie with such a prolonged, intimate sex scene. Firstly, I am trying to establish that this movie is groundbreaking. And, secondly, where do you draw the line between ‘fleeting’ and ‘prolonged’, when half the movie—35 minutes—is taken up with it?

**Mr Clark**—The actual sex scenes in the film do not add up to 35 minutes. I believe that was a misreport in the press. There are two longer scenes of actual sex. There is a lot of what is, for all intents and purposes, simulated sex. There are two longer scenes of actual sex—one of approximately one minute and one of approximately two minutes—and several briefer depictions of actual sex identified in the review board’s reasons for its decision. It is not the 30 minutes described in the media, but there are those particular scenes that have been described. There is quite a lot of other simulated sexual activity but not detailed, explicit sexual activity.

**Senator McGAURAN**—But the true offending scene is not fleeting, is it? For the first time it is not.

**Mr Clark**—That would be the one of approximately one minute and one of approximately two minutes.

**CHAIR**—Senator McGauran, in light of the circumstances in which the committee finds itself, is it possible for you to put your further questions on notice, as the minister suggested?

**Senator McGAURAN**—No, but I only have two more—

**CHAIR**—I see.

**Senator McGAURAN**—providing I do not get sidetracked. Thank you for your patience. Another criterion you have to take into account is the type of audience you expect to see this movie. That is what the review board took into account too, as they said. In rejecting this movie, from your level, what type of audience did you think would be seeing this movie?

**Mr Clark**—The film is restricted to adults over the age of 18. The film would probably have a limited appeal in terms of the broader community. I would not want to make a judgment about those members of the community who may or may not choose to see the film, but I think that the amount of time it has been on exhibition would indicate that not a vast number in the community have taken the opportunity to view the film.

**Senator McGAURAN**—You cannot speak for the review board, can you.

**Mr Clark**—No.

**Senator McGAURAN**—Would your board take into account where the movie is going to be shown—in which theatres?

**Mr Clark**—The board takes that into account in coming to a decision. In my board's decision, it was X18+, which means it would not be shown in cinemas; it would only be available from the ACT and the Northern Territory.

**Senator McGAURAN**—The review board took that criterion into account too. The movie is showing in one place in Collins Street, which is pretty mainstream, and on Fitzroy Street, St Kilda—mainstream again.

**Mr Clark**—That reflects the fact that the film now has an R18+ rating and it is quite permissible for it to be shown in public exhibition cinemas. But, as I say, from the amount of time that the film has been on the screens, not a vast proportion of the Australian adult community has actually gone to see the film.

**Senator McGAURAN**—Other than that it is an R rated movie for adults over 18, if you take into account where it is showing—which theatres it is being shown in—it is being shown in mainstream theatres.

**Mr Clark**—That is correct. That is consistent with the rating.

**Senator McGAURAN**—Heaven knows what the review board was ever taking into account. If it is being shown in the mainstream theatres, they are taking nothing into account, other than the rating.

**Mr Clark**—The rating is consistent with the ratings in other jurisdictions around the world. The film has been shown in similar circumstances in many places.

**Senator McGAURAN**—Of course, for someone who does not represent the review board, you do a good job defending them. This is my last question. No, I have two more.

**CHAIR**—One.

**Senator McGAURAN**—All right—I will make it a big one.

**CHAIR**—How will I tell the difference?

**Senator McGAURAN**—Mr Clark, you released the movie *Irreversible* with the offending scene in it and you issued it on artistic merit.

**Mr Clark**—No.

**Senator McGAURAN**—You did not?

**Mr Clark**—That is one of many criteria the board applies, so it was not a decision made solely on artistic merit. That is one of the things the board must consider in coming to a decision every time it makes a decision.

**Senator McGAURAN**—I put it to you that it was the overriding one. It was mutually exclusive to all the others. I was establishing in my earlier questioning about the meaning and all those other factors. They were so black and white you had to overcome them with some esoteric or subjective judgment. That was artistic merit, which has now become the overriding factor in the classification system. However, with *Nine Songs* they are a lot clearer. They admit it is pornographic—they admit this and that and everything else I have been speaking about—but it has artistic merit, which overrides all the classifications. So aren't you just cherry-picking now? There is no holistic look at the classification system. In fact, you may as well get rid of the detailed classification system because you are now just cherry-picking to the mutual exclusion of everything else, and artistic merit is coming to the forefront here. I also put it to you—and it is quite obvious—that you and the higher board run to this artistic merit excuse every time you are caught with your backs to the wall. It has become the catch-cry to diminish the existing classification. I put it to you that *Reid v Director-General of Social Services, Administrative Appeals Tribunal, 1981*, states that in exercising the discretion under the relevant section of the act:

... the decision-maker must have regard to whether, by exercising the discretion in a particular case, he will be achieving or frustrating ends or objects which are conformable with the scope and purpose of the Social Services Act 1947 ...

The act specifies the code and classification—words such as 'demeaning', 'exploitation' et cetera.

**CHAIR**—Senator McGauran—

**Senator McGAURAN**—You do not take them into account; you take artistic merit into account.

**CHAIR**—Senator McGauran, I am going to ask Mr Clark for a response and that will conclude his part of the examination.

**Senator McGAURAN**—Quite frankly, you would not hold up an Administrative Appeals Tribunal—

**Senator Ellison**—Madam Chair, we need the question, not the statement. If we can have the question, and if there are a series of them perhaps we can take them on notice—

**CHAIR**—And examine the *Hansard* and assess what the questions were.

**Senator Ellison**—and Mr Clark can have an opportunity to get back in detail to Senator McGauran.

**CHAIR**—Would the minister's suggestion be satisfactory, Senator McGauran?

**Mr Clark**—I think the simple answer is no.

**CHAIR**—Mr Clark, would you assist the committee by examining the *Hansard* and extracting the questions from Senator McGauran's statement and then responding to them?

**Mr Clark**—I will assist the committee—

**CHAIR**—Thank you very much. Senator McGauran, will the minister's suggestion assist you? Thank you. Mr Clark and Mr Hunt, we appreciate your assistance to the committee this evening.

[9.19 pm]

#### **Australian Customs Service**

**CHAIR**—Good evening and thank you very much for your patience, Mr Woodward and all of your officers.

**Senator LUDWIG**—If you recall, we were talking last time about the Customs hotline target waiting times. There may have been a misunderstanding in relation to question No. 134. We were asking whether or not there is a target time for a call to the hotline to actually get through to the operator—that is, we want to know how long it takes to get through to the operator not how long it takes to get the call resolved. In other words, what is the pick-up time for the operator? If you recall, there was another issue raised about the waiting time. That has now, at least from our checks, been resolved and so we want to congratulate you and your staff on that and thank you for that. With question No. 134, maybe it is easier to review the transcript and come back with the answer to the question.

**Mr Woodward**—We will do that.

**Senator LUDWIG**—Question No. 185 was about the A380 Airbus. There were various media reports about the size of it and the number of passengers it could carry. When Airbus came and had talks with various airports, did they also talk to Customs about how Customs will fit in with the processing of 800 passengers once they arrive at an airport?

**Mr Woodward**—I am not sure whether we actually had talks with Airbus. A question has been asked on that. We have certainly been talking to the airlines and to the airports. We are certainly aware of the intended arrival of the first—Singapore Airlines, I think—flight into Sydney in June next year, which I think has been delayed by about six weeks. We have been very intimately involved in the impact of the very significant increase in numbers carried on the A380s and what impact would have on each of our airports.

**Senator LUDWIG**—What have you decided to do about it?

**Mr Woodward**—We are in the process of doing two things. One is that, as you are aware, we are looking at the technology which will help us in the longer term. It certainly will not solve anything between now and June or July next year. The second thing we are doing is that we are in the midst of quite a significant increase in staffing at the major airports and we are having a close look at our processes and procedures and seeing if there are ways in which we can better use the staff we have, including the additional staff which we are in the process of recruiting.

**Senator LUDWIG**—You mentioned biometrics. Is there an interim report available in relation to the SmartGate system?

**Mr Woodward**—There was a report and I am not sure whether—

**Senator LUDWIG**—I have got one.

**Mr Woodward**—I think that is the report that I referred to.

**Senator LUDWIG**—There is no other technical report that is available, or anything about the outcome of the trial?

**Mr Woodward**—There is no other technical report that is available.

**Senator LUDWIG**—Have you completed the trial evaluation of the SmartGate operation?

**Mr Woodward**—We are still in the process of looking at options. The original approach envisaged gates beside the original gates—in other words, as they are now; I am not sure whether you have been through the SmartGate system. We are starting to get concerned about whether an array of additional gates will possibly cause congestion. An alternative approach which I think we will be trialling is the possibility of booths or SmartGate modules further back through the finger, with the possibility at that point of doing the basic processing but then being processed in probably about four or five seconds through a human intervention. So we have not firmly settled on an approach. There may be a third option that comes out of it, but they are the two that we are looking at the moment.

**Senator LUDWIG**—How much money have you spent to date on SmartGate?

**Mr Woodward**—I will take that on notice. The figure is \$3 million in the current financial year.

**Senator LUDWIG**—So that is not the only option that is available; there is this other option that you have indicated.

**Mr Woodward**—There may be other options that we will explore, but those are the two that we are thinking about at the moment.

**Senator LUDWIG**—Is there any detailed reporting or material on the other option?

**Mr Woodward**—Not yet, no. It is in fairly early stages.

**Senator LUDWIG**—We have asked a number of questions on vessels entering Australian waters and unloading cargo on Australian docks. It was indicated that 16 per cent of all cargo reports were not reported within the time frames established under the Customs Act and that the cargo vessels are not intercepted if they fail to report within the designated times. In response to question No. 709, the Attorney-General advised that, in 2003, nine per cent of

cargo reports were not provided to Customs until after the vessel had arrived and, in 2004, 7.8 per cent of cargo reports were not provided to Customs. Has the compliance improved since those figures were provided or have they changed? It strikes me as a stark contrast with the USA position where cargo vessels are turned away from US ports for failing to properly identify themselves, as I understand it.

**Mr Woodward**—I will pass over in a second to Ms Grant on that. There have been a number of questions which you have asked—and I think Mr McClelland might have asked as well—and we have provided a reasonable amount of information. I wonder whether there might have been a bit of confusion about reporting in relation to a vessel and reporting in relation to cargo. When we are talking about late reporting, we are talking about late reporting of cargo. The late reporting of vessels is infinitesimal. I think there was an attempt at the last Senate estimates, and some of the questions that have been asked subsequently, to somehow establish a relationship between the scheduled or impending arrival of a vessel and the reporting in relation to cargo. The fact is that our systems do not enable us to make the link that I think you were suggesting in the questions. What we are talking about is, when cargo is reported, whether it is reported 48 hours in advance, 24 hours in advance or after the vessel arrives.

An additional point that makes some of the figuring in assessments rather more difficult is that we now require a report 48 hours in advance of the first port of arrival and not just the intended destination. The other relevant point that I will mention is that over 40 per cent of the cargo reports are actually submitted 96 hours in advance. That provides some of the background. As to whether or not things are getting worse, I think one of the factors is that we now require—and have since January—reports before the first port of arrival, not the port of discharge. That would certainly have had an impact on figures. But I will pass you to Ms Grant to add to that.

**Senator LUDWIG**—If we can get all the figures on one page, we can then step through the two possible outcomes. I guess one is the first time a ship identifies itself as a ship and then the crew and then, if we step through each one of them, when the ship first is required to report itself entering Australian waters or at what point, and then what cargo it has on board, its manifest or its bill of lading.

**Mr Woodward**—We can do that separately. We could do that and cover the crew recording as well.

**Senator LUDWIG**—Then from the point it reaches the port, whether piloted or not, and then from the point where the vessel docks, and then in regard to the cargo we go up to the point of the three free days which are provided by the particular port, the stevedoring.

**Mr Woodward**—We can do that as an explanation of the system on the basis of the ship, the crew and the cargo, picking up whether it is 48 hours, covering the complexity of whether it is first port or discharge port and the figures. I think you asked for four particular ports. We can cover that as well.

**Senator LUDWIG**—In the sense of covering the issue, the records management is a separate issue as well which I will come to shortly. As I understand the system, it updates over

existing data and then there is no way of understanding what the previous data was once it is updated.

**Mr Woodward**—That is right.

**Senator LUDWIG**—It seems a bit strange to me, I have got to tell you, because you have got no historical data.

**Mr Woodward**—Once we get our new system in place, maybe it will be a bit improved.

**Senator LUDWIG**—In any event, the information about the cargo is then checked and we can go from the sea cargo examination facility to that end point of when it has been discharged; in other words, the percentage of cargo that is then monitored in that way.

**Mr Woodward**—So the point of bringing the CEFs into it as well. It is going to be a complex paper.

**Senator LUDWIG**—Otherwise what happens, to be fair to us all, is that it gets broken down and different parts are viewed in isolation. People take a view of just those figures and how it works, which is understandable, I suspect, given the complexity of the data.

**Mr Woodward**—I think we have got a pretty good understanding but, if the committee would be agreeable, if there is any doubt in our minds after we have done it, would there be a difficulty if we approached Senator Ludwig direct just to be sure?

**Mr Woodward**—I think that is up to the minister.

**CHAIR**—If the minister is agreeable, Mr Woodward, we can find a way to do that, I am sure.

**Senator Ellison**—I think we can do that.

**Senator LUDWIG**—It seems to us that one of the problems is that cargo could be on the dock for up to three days for which you do not have a bill of lading or manifest or information about what it is.

**Mr Woodward**—The point we did make in the responses we gave is that the cargo cannot shift; it will remain there. One of the advantages of the new system, which you said you will be getting on to, is that we will have progressive discharge listings, which would give us a better handle on cargo that has been discharged and which is lying on the port. Because it has not been reported until it is late, the cargo cannot be shifted out of the port. It is not a security vulnerability.

**Senator LUDWIG**—Unfortunately you lose me when you say, ‘It has not been reported until it is late.’ It might be a phrase that Customs understands but it loses me. It is unreported and late.

**Mr Woodward**—It is unreported until in the end it is reported. The fact is that it cannot be moved until a report is received. The other point we did make in the answer to the questions was the fact that the cargo is reported late has got at least two consequences. One is a very distinct possibility that we will take an interest in it and that it will find its way into our CEF procedures. The second is that, to the extent that cargo is reported late, it will run the risk of incurring additional charges beyond that three-day period, so in the end it will cost the

importer money for leaving it in a box on the wharf. So there is an incentive to report it and get it off the wharf.

**Senator LUDWIG**—That is if it is benign; but how do you tell whether it is a security risk? If it is benign cargo then I am sure those issues come into play.

**Mr Woodward**—Given that it cannot shift—it is going to remain on the wharf—eventually it will be reported, and we will have masses of information. There is entry information, manifest information and bill of lading information that will enable us to make the assessment.

**Senator LUDWIG**—But, if it is dangerous material or someone is trying to attack the port, then it is already sitting there and you do not know what is in it.

**Mr Woodward**—In many cases—and I will get Ms Grant to correct me if I am wrong on this—we would have entry information; and, secondly, when we do get the new systems we will have progressive discharge information that will overcome the problem that you are pointing to.

**Senator LUDWIG**—I do not want to be alarmist, but if someone wanted to attack a port particularly—which is critical infrastructure, and I can think of a couple in Queensland which I will not name, but they are certainly bottlenecks in the system—cargo sitting on the dock is the perfect way of doing it. If it is unreported and the contents are unknown, then you have achieved your purpose in getting a cargo container onto a dock for whatever purpose you might intend it—whether it be to cause confusion or havoc in that area. That is the whole point of it, I guess, in that you do not know what is in it until it might be too late.

**Mr Woodward**—What we are saying is that it obviously is a concern, but the concern will be very significantly reduced with the new system.

**Senator LUDWIG**—That is CMR.

**Mr Woodward**—Yes.

**Senator LUDWIG**—So the steps to improve the cargo reporting will then be part of the eventual outcome of CMR.

**Mr Woodward**—There are two remedies. One is the system itself. The second is that we will be able to impose penalties on late reported cargo—which we cannot implement until the new international trade modernisation legislation in relation to imports comes into effect. So there will be a pecuniary penalty that will be available which will further discourage that sort of practice.

**Senator LUDWIG**—Why wouldn't you insist on 100 per cent reporting to overcome that problem? It is still the same issue. If it is late and you do not know what it is, and the idea is to attack that port, then they have achieved their purpose.

**Mr Woodward**—There are a couple of things that are in our minds. One is to insist, even more than we do now, that we get the reports in a timely fashion. We have been talking to the industry about the possibility of requiring reports 96 hours out. The industry view was that we would be better off moving in the direction of the American system, which requires reports 24 hours in advance of loading on the vessel at the port of export. We are quite enthusiastic about

that as an option. There are some impediments. One is that we need to get the new legislation into effect. The second thing that we need to work through is that there are different information requirements in relation to the American system and what we will be requiring. The Americans require only 15 pieces of information, and the international standard would be looking for 27. So we need to work our way through that. But that may well be part of the remedy.

**Senator LUDWIG**—In fact, if you are importing into America, that requires Australian exporters now—

**Mr Woodward**—That is the current requirement into America, and our intention, prompted by some sectors of the industry, is to press in that same direction, but we cannot do it yet.

**Senator LUDWIG**—Have you started working on the issue?

**Mr Woodward**—We will be but we have to get the systems under way; we have to get the new international trade modernisation legislation through. An amendment may be needed to the way in which we have currently cast the legislation because it talks about the number of days or hours—I can't remember which. So there may have to be a minor recasting of the law to enable us to do that. It would be a technical, legal issue. But there is also the question of the number of data items that we would be wanting to look at—whether it is going to be 15, 27 or some other figure.

**Senator LUDWIG**—You might have an opportunity, Minister, if CMR is delayed and there is a legislative requirement. Is that the current position?

**Senator Ellison**—I put out a release today; I do not know whether you have seen it.

**Senator LUDWIG**—Yes.

**Senator Ellison**—That maintains the current July date that we were looking at. We are looking to extend the transition period, so the start of the transition period is July but it will be longer. My guess is that we will look at having a final date for cut-over in about October.

**Senator LUDWIG**—So that will be in the Christmas rush?

**Senator Ellison**—No, before the Christmas rush, because that will be the final cut-over—the transitional run from July to about October. Originally we were looking at 23 August, so we are looking at an extension of a matter of weeks, in effect. We want to avoid the Christmas rush. That is what I have been discussing with stakeholders. At our fifth ministerial roundtable not long ago they indicated they were very keen to have it in place well before that Christmas rush, which starts in about November. I believe we can do that.

**Senator LUDWIG**—The Christmas rush will not start in November, because exporters will wish to bring goods in to stock their shelves with Christmas cheer—if I can use that general expression—and with packages and presents. They will do that in September-October so that they can be on display in the shops by October. For retailers, Christmas seems to now come in October; certainly, in November goods are on display.

**Senator Ellison**—When I met with the ministerial roundtable the period that was considered to be a problem for them was November through to about February, as I recall. That is my clear recollection of what they told me.

**Senator LUDWIG**—We have certainly been told two different things, I suspect. It can be resolved by industry, not by us. This will require a legislative change. Is this the third change regarding the reporting of CMR? So we have had three goes to get it up and running?

**Senator Ellison**—You are talking about one aspect of it.

**Senator LUDWIG**—One of the most significant parts of it. This involves imports going live.

**Senator Ellison**—The cut-over for exports occurred on 6 October last year. That has been operating successfully since then. To the end of April this year, over 2.2 million transactions have been successfully processed. Certainly, we have made great progress, but it has not been without its difficulties. It is the biggest program of its kind in the Southern Hemisphere.

**Senator LUDWIG**—This committee started looking at it when the first suggested figure for the complete cost of the project was about \$35 million, if not smaller, and now it seems to be in excess of \$200 million—is that right?

**Mr Woodward**—With respect to the original figuring—and I may have mentioned this at one of the previous committee hearings—when we decided to outsource to a single supplier, we got to the point of having three potential tenderers. The three tenderers all said to us categorically, ‘You can’t just turn the previous systems into a new model; you need to re-engineer.’ As part of the tender processes we also had to standardise the assessments in such a way that we could match the bids.

At that stage, I admit that it was a guess as to how much re-engineering would cost. There was a standardisation figure of something of the order of \$25 million or \$30 million that was included in it. At that stage, we knew the systems had to be re-engineered. We did not know precisely how they would be done because we were looking for a partner that would be able to help us to do that. There was no contemplation of a connect facility. We just did not know that there would be a need for a connect facility of the kind we now have, which has cost \$55 million of that figure.

The second point is that the successful tenderer—and, frankly, I cannot remember what the other two tenderers put in—clearly indicated that it did not cover data mart or data warehousing, which is a key part of the new system. Yes, it has certainly blown out in cost and timing. I regret that for a whole series of reasons, but it is not quite as stark; there is an element of background. The \$30 million figure that you refer to was very much a stab in the dark at that time.

**Senator LUDWIG**—We had to start somewhere. I guess that we relied on Customs to inform us reasonably of what the figures would be likely to be. Most people do come to the committee and provide us with a reasonably accurate assessment of how much things will cost based on industry standards and the like.

**Mr Woodward**—As I said, there were two things. One was a standardisation figure. The second, so far as EDS was concerned, was an estimate on their part of 30,000 to 35,000 days per function point, which subsequently proved to be quite a significant underestimate.

**Senator LUDWIG**—Can you give us an ironclad guarantee that this is it, that you have reached your maximum and that you will be able to get it up and running in one more extension?

**Mr Woodward**—In terms of timing?

**Senator LUDWIG**—Yes, and cost. Will there be no more blow-out?

**Mr Woodward**—There are additional costs and there are ongoing costs.

**Senator LUDWIG**—Yes, aside from the ongoing costs.

**Mr Woodward**—There are somewhat small additional costs which would flow from whatever the period of the handover is. The third element is that we had always envisaged that there would be Customs staff and contract staff on deck until at least the end of this year and then into the next year. They have been factored into all the costings but, as far as the development costs are concerned—including the provisos that I have just mentioned to you—and the timing, there is nothing that I am aware of that would suggest that we cannot make it. What we did say at the minister's meeting was that there ought to be another meeting at the end of June where we would be looking at working with the software developers and all of the other interested parties to see whether the countdown should start. They had been looking for 90 days or roughly three months of countdown. There is nothing in the technical or business information I have had which would suggest that we cannot meet that time frame.

**Senator LUDWIG**—So there is still potential for it to be blown out if the June meeting is unsuccessful?

**Mr Woodward**—There is no indication that I have that would suggest that that would happen.

**Senator LUDWIG**—I do not mean to be critical, Mr Woodward, but I think I am. I think we have been here before, and this is the third time.

**Mr Woodward**—I cannot give you a more explicit answer than the answer I have given.

**Senator Ellison**—At the last meeting I had with industry, they were the most optimistic they had been in relation to us meeting a changed deadline. What they were seeking was not six months or nine months; they want it in place. They indicated that very strongly. That is another factor to add to the certainty of it.

**Senator LUDWIG**—I suppose they do. They have one foot in the water. I suspect they are keen to have it finalised and put in place.

**Senator Ellison**—Absolutely. And when you look at what has happened in the United States, with their exercise taking even longer and costing about \$1.2 billion, if I remember—

**Mr Woodward**—It was \$US3.2 billion.

**Senator Ellison**—It was \$US3.2 billion. You might say, ‘Well, it’s a larger country,’ but you have to remember Australia is the 14th largest economy in the world and is not shy about importing and exporting.

**Senator LUDWIG**—Thank you, Minister. In terms of answering that general question, will you be able to provide, stepping through the process, the percentages and perhaps the numbers that go with them, to give us both percentage and scale? Is that possible?

**Senator Ellison**—The percentage and scale of what, I am sorry?

**Senator LUDWIG**—When you step through the late reporting—those sorts of cargoes and ships and things like that. Sometimes we get just percentages, which can belie the nature and scope of the situation.

**Mr Woodward**—So you are looking for numbers and percentages?

**Senator LUDWIG**—Yes. Or, if you do not want to provide it in brackets, if you could at least provide it in one place where we understand what one per cent means.

**Mr Woodward**—I understand your point. I thought you were on CMR, but we are back to cargo reports.

**Senator LUDWIG**—I am conscious of the time, and the minister finalised that, I thought.

**Mr Woodward**—That is fine. We understand.

**Senator LUDWIG**—I am always accused of that, I think—jumping about.

**CHAIR**—Rarely actually, Senator Ludwig!

**Senator LUDWIG**—There you go. I have a recollection I have asked this before about CEF, cargo examination facilities, and priorities 1, 2, 3 and 4. The annual report indicates that there is an X-ray and physical examination under priority 1 and an X-ray with a view to physical examination under priority 2, so we have an idea of what that entails. As I understand it, you use a risk management system in giving them a priority. For priority 1, is the risk assessed as being dangerous cargo, potentially dangerous cargo or cargo which is potential contraband? That is the point I am not sure of.

**Mr Woodward**—It is probably a combination of all of those, but I might pass over to Roxanne Kelley, who will elaborate on that.

**Ms Kelley**—A container given priority 1 is regarded as being high risk, and there are a number of reasons for that which can cover the issues you have expressed in your question. So there can be a range of reasons why it is high priority.

**Senator LUDWIG**—Could you give us an idea of what that range of reasons might be? I have mentioned contraband and dangerous substances; what else might it include?

**Ms Kelley**—I am going to pass over to the people who are in charge of the targeting area.

**Senator LUDWIG**—I think I have met this person a number of times, at estimates and elsewhere.

**Ms Batman**—Priority 1 does cover a whole range of prohibited imports, ranging from narcotics to intellectual property matters and potentially dangerous goods, right across the spectrum. If we have a high degree of confidence that a container is worth having a good hard

look at, we will. However, it can be not just one of those indicators but across the whole range.

**Senator LUDWIG**—So would that include a situation where cargo was considered to be terrorist related?

**Ms Batman**—It could do. If we have information from security agencies or other customs services that a container potentially contains weapons or terrorist related items, that could be one of the reasons—drugs or tobacco too.

**Senator LUDWIG**—I used the words ‘dangerous substances’ or ‘dangerous goods’, but I think you have picked that up as well. Which side of the coin do dangerous goods fit on? Are they things such as fertilisers, chemicals or corrosive substances, or do you have a broader view of what that means in terms of how Customs operates?

**Ms Batman**—The priority probably goes more to our degree of confidence that this container is worth examining rather than the nature of the goods within it.

**Senator LUDWIG**—Now you have lost me.

**Ms Batman**—You seem to be—

**Senator LUDWIG**—I am stuck on the content.

**Ms Batman**—Yes. With the priority 1, the instruction is that they are generally both X-rayed and opened and examined. We would only be doing that where we had a fairly high degree of confidence that that container was of significant interest or of a higher risk. That could be because we think it may contain smuggled tobacco or it may be that we think the contents are terrorist related items. The priority 1 does not necessarily go to the content but to the degree of confidence that we have in identifying it as a high-risk container.

**Senator LUDWIG**—Are all those in priority 1 physically examined?

**Ms Kelley**—No, they are not at the moment. For the quarter from 1 September to 31 December 2004, 92 per cent of all high-priority containers were examined. The only reason they are not examined is because we have a very clear X-ray image that plainly indicates there are no concerns with the cargo in question. In these situations, the Customs officer who is analysing the X-ray image discusses the X-ray image with the intelligence officer who made the selection. The final decision about the physical examination is made after that discussion.

**Senator LUDWIG**—So they are not just shunted through; a decision is made only to X-ray.

**Ms Kelley**—All the priority 1 containers are X-rayed. Based on the analysis of the image, a decision is made as to whether an examination is required. In 92 per cent of the cases, an examination is required. If the X-ray image is extremely clear then there is a discussion between the Customs officer doing the X-ray and image analysis and the intelligence officer who selected the container. Then a decision is made that it can be returned to the wharf.

**Senator LUDWIG**—How do you determine whether there was a security risk in the container? It may not show up on the X-ray. It might be drums of something; I do not know. I do not want to sound alarmist but an X-ray is not going to—

**Ms Kelley**—Certain chemicals or whatever?

**Senator LUDWIG**—An X-ray is not going to show whether it is a security risk. It is not going to demonstrate whether it has got plastic explosives. It is not going to demonstrate necessarily that it has got those types of things in it, is it?

**Ms Kelley**—No. So if the X-ray image is not clear and we are not able to make a decision based on that, and it is a priority 1, then we examine it. We will open it.

**Senator LUDWIG**—It gets a bit circular. If the X-ray image is clear you might be able to determine, perhaps, what is inside but not that it might pose a risk.

**Mr Woodward**—I think you are assuming something in that. I am sure you are not, but it could be implied that the sole purpose we are looking at is for security related matters. If we were looking at the container for, let us say, tobacco reasons, there could well be a very clear indication from the X-ray that would say—

**Senator LUDWIG**—That it is not tobacco. My question was more about the percentage you do not look at.

**Mr Woodward**—If it were a security related container—and to be honest there are not a lot of security related containers identified—and if there were any doubt and it was a security issue then of course you would open it. The intelligence expert would say that. So what you are raising simply would not occur.

**Senator LUDWIG**—I think that might satisfy me in that sense. Why would you then rate it as priority 1 if you then do not do a physical examination?

**Mr Woodward**—We have a whole series of priority ratings. We try to limit the number of priority 1s because there is an expectation that each one will be X-rayed and will be examined.

**Senator LUDWIG**—Do you then reclassify it?

**Mr Woodward**—The classification is a means of prioritising the containers that we look at. That is the essence of it. If, having gone through the processes which Roxanne has mentioned, the view is taken by both of the officers that there is no need, we have got another part of our interest, which is to speed up the flow of cargo. If we think there is nothing of interest in it then we move the cargo on and focus on other items which might be category 2, which have a greater prospect of revealing something of interest. There have, in fact, been very significant finds in category 2.

**Senator LUDWIG**—That is helpful.

**Senator KIRK**—In the 2005-06 budget I notice that the ACS was allocated \$4.6 million over five years to establish a post in Jakarta. Would you be able to inform the committee what the post is going to be doing there, in particular, in combating piracy in the region?

**Mr Woodward**—I will just step back as to why the post was created. I had had a feeling for some time that we had been remiss in not having someone in Jakarta. We have regular talks with Indonesia. We have more frequent talks with Indonesia than with any other country. There is the obvious relevance geographically and functionally between the two services. We established a post for a numbers of reasons: firstly, to enable us to develop a far closer relationship than we have been able to obtain in the past with Indonesian customs on a day-to-

day basis, not just meeting once a year; secondly, to find through that a means of better information exchange, better intelligence exchange, better exchange in relation to techniques, technologies and the capacities of our two services; and, thirdly, to foster exchanges in information in relation to commercial aspects, which could for example be a particular hold-up in relation to exports to Indonesia—and this has happened. It might be that a Customs person on the spot is able to facilitate that. It will certainly help the Indonesians in getting information from Australia. Piracy was not a critical feature in our minds in setting up the post.

**Senator KIRK**—Is there just one individual running the post in Jakarta? How many people are there?

**Mr Woodward**—The person recently arrived at the post. He was there when the minister opened the post. It would have been about a month ago. He came back and is back there again participating in talks which I had last week in Bandung with the Indonesians. He is there and he is working.

**Senator KIRK**—You say that the post is not set up solely or even primarily to deal with piracy. What is being done in relation to piracy in the region from the ACS's point of view?

**Mr Woodward**—I am not sure that Customs is the repository of expertise on piracy in the Malaccas. I am really not sure who is. Maybe one of the other agencies is.

**Senator KIRK**—I was looking at the role of the ASEAN Regional Forum and a statement that they put out in relation to cooperation against piracy and other threats to our security.

**Mr Woodward**—We are certainly aware that they are extremely concerned, and that was mentioned to us. But Australian Customs does not have a responsibility in relation to piracy in that part of the world.

**Senator LUDWIG**—On the PBS at page 111 at table 2.6, the Customs PBS was \$2.299 million and \$2.557 million under the Tradegate fee reserve line item. How much in total has been removed since that program started?

**Mr Woodward**—What was the question again? I was just getting the Tradegate fees reserve.

**Senator LUDWIG**—Sorry, I thought that might be the case.

**Mr Woodward**—You were asking about the Tradegate fees reserve—is that the item?

**Senator LUDWIG**—Yes—and how much in total has been recovered since the program started?

**Mr Woodward**—You would be talking about many years. We would need to go back and get that information. There have been arrangements with Tradegate for as long as I can remember.

**Senator LUDWIG**—What is the purpose of it?

**Mr Brocklehurst**—We collect fees, on behalf of Tradegate, for their messaging and we pass that back to them, so on every transaction there is a Tradegate fee. We collect that and pass it back. It is a collection mechanism.

**Senator LUDWIG**—Would it be a cost-recovery mechanism for operational work that you do?

**Mr Brocklehurst**—No. It is their fee that they add on to a compile entry. When a good is entered there are a range of fees, one of which is the Tradegate fee. We collect it, strip it off and pass that back to them, and the mechanism is through that account.

**Senator LUDWIG**—So it is their fee and you are the collecting agent.

**Mr Brocklehurst**—We are the collecting agency.

**Senator LUDWIG**—Is all of it being returned to Tradegate?

**Mr Brocklehurst**—My understanding is that 100 per cent of it is. I will correct that if I am wrong, but that is my understanding.

**Senator LUDWIG**—There is not an overcollection?

**Mr Brocklehurst**—No, 100 per cent of it is returned to them.

**Mr Jeffery**—Just to complicate it, Tradegate then in turn outsources to another firm and then there is a relationship between Tradegate and the other service provider.

**Senator LUDWIG**—I thought there was some money still sitting somewhere that was contested.

**Mr Woodward**—If I can use the term, that is the CADF. There is about \$2½ million to \$2¾ million in that. That is an unrelated issue. The only relationship is that Tradegate believes there is some sort of component in that and, last I heard, had initiated some form of court action. So that may have been where Tradegate came in. The clear legal advice we had is that this money is Commonwealth money that we are holding in trust, and we will be defending that action.

**Senator LUDWIG**—I think we have been there before, so if it is impending action I will not continue. We will find out what happens in the end, and they will litigate that as they may.

**Mr Jeffery**—That is the amount shown under industry related systems—\$2.8 million.

**Senator LUDWIG**—I see.

**Mr Jeffery**—It is two lines below the figure you referred to. That is what is colloquially referred to as the CADF.

**Senator LUDWIG**—Yes, it has been a little while, but I think we have been there before.

**Mr Woodward**—Yes, we have been through that.

**Senator LUDWIG**—We did ask who the beneficiaries of that trust fund were, didn't we?

**Mr Woodward**—Yes.

**Senator LUDWIG**—There will be a record in the transcript somewhere where we have had this discussion before, I suspect.

**Mr Woodward**—I think we should end that part of it there, but I would just say that we had reached agreement with the industry as to how those funds would be disbursed. That was in relation to expenditure on the new public key infrastructure arrangements under CMR,

which seemed to be equitable to us and equitable to the industry, including importers and exporters. Nonetheless, there is this action by Tradegate.

**Senator LUDWIG**—In terms of the import-processing charge restructure, is that an additional charge that has been introduced by Customs?

**Mr Woodward**—This is very complicated, but I will pass it to Mr Brocklehurst. A charge has been in since 1997—it was a budget initiative. The arrangements which applied were an attempt to recover all non-community protection and non-export related charges—imports and non-community protection items. There was a range involved. A figure was included in the legislation with a proviso for an increase of up to 50 per cent. That 50 per cent limit has been reached. The major additional costs that have been incurred since then relate to foot and mouth, as I call it—the IQI initiative—and CEF logistics. So it is not a new charge. It is a variation of a charge to pick up current requirements. I can ask Mr Brocklehurst to take you through more of the detail regarding the specifics of your question.

**Senator LUDWIG**—Thank you. I take it there is an increase in the charge?

**Mr Brocklehurst**—That is correct. As Mr Woodward mentioned, the charges have been in place since 1997 and the proposals at the moment are twofold. One is to increase air charges and sea charges and the other is to remove an existing charge, so there is a bit of restructuring of the charges going on as well as a reassessment of the level of the charge.

**Senator LUDWIG**—Was industry aware of the changes coming in in this budget?

**Mr Brocklehurst**—Yes. We had a meeting with industry representatives on 2 February. We took them through the proposals that we were putting to government for their consideration.

**Senator LUDWIG**—Who did you meet with in industry?

**Mr Brocklehurst**—There is a consultative group called the Customs National Consultative Committee, the CNCC. Participants represent a range of people involved in the import and export industries. The invitation to attend a consultation meeting was offered to all members of that committee, and quite a number of them came along to the meeting.

**Mr Woodward**—If my recollection is correct, the meeting chaired by Mr Jeffery included that group. About a month or so later, the consultative committee, which I chaired, also discussed the matter. The major parties in that consultative forum are the customs brokers and forwarders, the freight forwarders, the shipping industry, the stevedores, the Law Council, the Institute of Chartered Accountants, both sectors of the air express industry, the air transport industry—in other words, the airline operators were represented—and the two elements of the importing and exporting community. So it is a pretty widely structured group. If there was any doubt in your mind about whether or not we had properly consulted, we would be quite happy to provide to the committee copies of notes taken at those two meetings. There is no doubt that they have been properly consulted.

**Senator LUDWIG**—That would be helpful, given the nature of the industry and the size of the increase in cost recovery. In addition, the budget measures seem to indicate that the move to a different fee structure based on the value of imports was not proceeded with—is that right?

**Mr Woodward**—Yes, that is correct. The legislative proposals that are being put forward at the moment are to amend the Import Processing Charges Act 2001, which was introduced as part of the trade modernisation legislation. That act provided for a differential charge for import entries, whether they are above or below \$1,000. That part of it is being repealed and the charge will not be related to the value of the goods coming in.

**Senator LUDWIG**—Has that been put on the backburner or will that be reconsidered?

**Mr Brocklehurst**—There is no proposal at this stage to reconsider that.

**Senator LUDWIG**—Will the increase in the import-processing charge also contribute to defraying the costs of CMR?

**Mr Woodward**—It will take into account the costs of CMR. There has been some misinformation provided in some of the press articles that I have read. But I think the main element we are talking about is the depreciated value of, in effect, the capital side of CMR, which I think is about \$170 million depreciated over a 10-year period, not over a five-year period. That will be taken into account in the charge, which will be in the new legislation that will be introduced very shortly.

**Mr Brocklehurst**—That is correct. Further to that, not all of that depreciation of the CMR system is attributed to recovery through the import-processing charges. Around about 50 per cent of the depreciation is attributed to import processing because the balance of the system is used for other functions like export processing, intelligence and border protection activities, which are not cost recovered.

**Mr Woodward**—I think I mentioned to you before that there are some things that we do not cost recover. Obviously, we cannot take those into account in the charge.

**Senator LUDWIG**—That is helpful. Thank you. The other area I want to discuss is broader. It is about the rules of engagement and the similarity between what Customs do and what the Navy do.

**Mr Woodward**—We mirror each other. Our practices at the moment mirror the Navy. There will be a more formalised structure of rules of engagement which will be introduced with the arming of vessels.

**Senator LUDWIG**—The Navy's rules of engagement are effectively what Customs use. Is that how it works?

**Mr Woodward**—That is right. We have more formalised rules of engagement in relation to the *Oceanic Viking*, the Southern Ocean vessel, because, as you know, that is already armed with half-inch machine guns. We have had to have rules that mirror the Navy's in the sense of what happens if we need to discharge those weapons. But the Customs vessels will now be armed with machine guns as well and there will be a more formalised approach. The critical element is that, before those weapons can be discharged in an aggressive fashion rather than in self-defence—in other words, to stop a vessel and to fire at or into the vessel or, more particularly, to fire at or into a person—the approval of the minister would be required.

**Senator LUDWIG**—So they are not the same rules.

**Mr Woodward**—There is a different minister. That is what happens in relation to Defence. If there were a patrol boat and the commander of the patrol boat sought to fire into, as distinct from across the bows of, a vessel and was not defending itself—in other words, if it was not being fired upon—it would need the approval of the Minister for Defence. I am transposing the Minister for Defence for the Minister for Justice and Customs in relation to our Customs vessels.

**Senator LUDWIG**—Do you have the Navy's rules of engagement? How do you interpret how those operate?

**Mr Woodward**—We have worked with the military in devising the rules of origin which currently exist in relation to the *Oceanic Viking*. They have been mirrored on the Navy rules of engagement.

**Senator LUDWIG**—Are they available to the committee?

**Mr Woodward**—I would not think they would be.

**Senator LUDWIG**—I was just trying to figure out a shorter way of going through it. It seems to be, when you look at some of the issues that have arisen, that they are not the same.

**Mr Woodward**—They are classified. What we have done in the past is given an outline of the rules of engagement. I am not sure that is much more detailed than what I have just given you. In fact, I think there may even have been a question on notice either from you or from Mr McClelland.

**Senator LUDWIG**—We have been exploring this issue a couple of times because the incidences thrown up seem to indicate my view that there is a difference. If you compare the *Oceanic Viking* and Customs vessels, Customs vessels at the moment are not armed. That is not quite right either, because they may have personnel with rifles on board, but they do not have a deck mounted gun.

**Mr Woodward**—No.

**Senator LUDWIG**—It seems there is now an intention to put a deck mounted gun on board.

**Senator Ellison**—A 7.62.

**Senator LUDWIG**—What calibre is that going to be?

**Mr Woodward**—It is indeed a 7.62 mm.

**Senator LUDWIG**—Are the decks going to be strengthened, or how are they going to be fixed?

**Mr Woodward**—They will be fixed, and it is selected on the basis that there will be minimal structural requirements. As I understand it, it is essentially a bolt-on capability. There have been discussions with Austal, the manufacturer of the vessels, and it can be done reasonably simply. We may well otherwise have moved to a half-inch gun as an option, but that would have involved structural change. We regard the weapon as acceptable.

**Senator LUDWIG**—How will your rules of engagement work?

**Mr Woodward**—The critical part of the rules of engagement will be at what point can one fire into a vessel or at an individual. If self-defence is involved, in other words if the other party has taken action which is seen as providing a risk to individuals on our vessel or to others and where there is no realistic option but to fire at the individual or the vessel, that is an instantaneous reaction. You do not have time to ring the minister and say, 'I've been fired upon—what do I do?'

**Senator LUDWIG**—In that instance the rules of engagement permit return fire.

**Senator Ellison**—To defend yourself.

**Mr Woodward**—Yes, and that is what basically exists now in relation to side-arms. No-one can use a side-arm in an aggressive fashion but if there is a person on a vessel taking action which is life-threatening to an officer or to his colleagues and there is no other reasonable option—and in many cases there are options, from capsicum spray to submission in various forms—then a life-threatening situation exists and they have the ability to use the weapons. It would be the same in relation to the deck mounted weapons. If on the other hand you wanted to go beyond firing across the bows and you wanted to fire into the vessel to disable the vessel, to enable the vessel to be boarded, that would require the minister's approval.

**Senator LUDWIG**—Those are the rules that apply now. I am wondering about using a hand gun to fire across the bows of the ship.

**Mr Woodward**—You cannot use your hand gun to fire into a fishing vessel that is hundreds of metres—

**Senator Ellison**—It will apply once they have the deck mounted machine gun.

**Senator LUDWIG**—But it applies more individually for boarding and the like.

**Mr Woodward**—The rules that apply now are my instructions, and these will be more formalised and more closely aligned to the Navy's rules of engagement for comparable circumstances. So the same would apply whether it is a patrol boat or a Customs vessel.

**Senator LUDWIG**—So what about firing a warning shot across the bow?

**Mr Woodward**—We can do that now and that would still apply.

**Senator LUDWIG**—You use small arms for that.

**Mr Woodward**—We have got M16s as well, and that can happen.

**Senator Ellison**—It has been used.

**Mr Woodward**—It does not have the same impact as a machine gun, obviously.

**Senator LUDWIG**—No. So the current rule will be extended in the sense that it will then apply to the Bay class vessels once they have a deck-mounted machine gun onboard.

**Mr Woodward**—The rules will be mirrored, which is where I started.

**Senator LUDWIG**—What happens if a vessel flees into uncharted waters and you want to pull them up?

**Mr Woodward**—It would be the situation that I have mentioned to you. If we fired across their bow and they did not stop—and we and the Navy are both looking at a series of options that might be used other than firing; for example, other technology that might be available to prevent it—and it was not a life-threatening situation, we would require the approval of a minister to stop a fleeing vessel.

**Senator LUDWIG**—So you would have to get on the HF radio or the sat phone, contact the minister and ask whether you have approval to fire into the engine or something like that to disable the boat that was fleeing?

**Mr Woodward**—Yes.

**Senator Ellison**—You also have the rules of hot pursuit, of course—assuming that you found the vessel in waters where you had jurisdiction.

**Mr Woodward**—One of the advantages of having vessels that are armed, and this observation is based on a few experiences in relation to drug vessels that have sought to escape, is that if you have a vessel that has sufficient armament that the other side thinks you might fire on them then that is usually enough to stop them. That is why there has been at least one occasion where we have used either patrol boats or even a frigate to ensure that the party knew that we were serious. With this weapon I think we will have a far greater capability to deal with those who might otherwise seek to escape without actually having to use it.

**Senator LUDWIG**—How many times has approval been issued by the minister to fire at a vessel?

**Mr Woodward**—Nil.

**Senator LUDWIG**—And that is you, Minister, is it?

**Senator Ellison**—Yes. It has not been sought in my time.

**Senator LUDWIG**—There have been some reports about vessels escaping into uncharted waters. What is defined as uncharted waters? Is that past our territorial limits? Is it open ocean? I did not know that we still had uncharted waters.

**Mr Woodward**—I have to confess that I thought that was your description. If it is one that we have used, I am not sure what—

**Senator LUDWIG**—I think it is a description the Navy uses. I was hoping that Rear Admiral Crane might be able to help.

**Rear Adm. Crane**—Uncharted waters are still quite abundant, particularly in the north of Australia. They are typically represented by very large white patches on your navigation charts which have no depth soundings and no indication of any survey work having been done. It is a difficulty in many of the northern areas, predominantly further offshore—although in the Torres Strait area there are some areas that are uncharted and unreliable for surface navigation.

**Senator LUDWIG**—So that means you might want to abandon the hot pursuit or the pursuit of the vessel if it moves into uncharted waters because you might end up running the ship aground?

**Rear Adm. Crane**—Yes, the commander of the vessel that is pursuing another vessel would need to use his judgment as to what extent he was prepared to accept the risk of damaging his own vessel in executing that pursuit.

**Senator LUDWIG**—And that could happen within Australian territorial waters?

**Rear Adm. Crane**—Yes, or it could happen in a hot-pursuit arrangement as well where the pursuit commenced inside our jurisdiction. Hot pursuit might occur and indeed might need to be broken off because the vessels move into uncharted waters.

**Senator LUDWIG**—That is helpful—we did not strike ourselves back into *Treasure Island* days! I turn now to the area of how many fishing vessels have been boarded. Have there been any incidences where you have not been able to board vessels for whatever reason? For example, they might have antiboarding devices; I have heard reports in the media about those sorts of things. Is Customs now faced with an increasing incidence of that?

**Mr Woodward**—There certainly have been instances of it in relation to not just Customs but also the Navy. I think there has been, at least in recent times, one well-reported incident of a vessel with spears projecting from it and a wild dog being displayed menacingly. In the end the patrol boat did not board that vessel. We had a situation where a master, wielding a sword of some sort, had to be overcome. There have been other instances of quite aggressive behaviour. While I am not sure that I could quantify it, the impression we have is twofold. One is that fishing vessels fishing illegally in the north and north-west and around Torres Strait are far better equipped than they used to be in terms of GPS, communications capabilities and freezing and storage capabilities. The other is that they seem to be displaying a greater willingness to do whatever they can to escape with their catch. But that is an impressionistic view.

**Senator LUDWIG**—How many Customs vessels have sought to board another vessel but have not because of antiboarding devices?

**Mr Woodward**—I cannot give you that figure. There would not be a large number, but we can see if we can find that figure for you.

**Ms Grant**—There has been one occasion during 2005 on which a Customs Bay-class vessel attempted to undertake a boarding and was not able to do so because of the aggressive behaviour of the foreign fishing vessel master that they were dealing with at the time. From memory that is the one occasion this calendar year.

**Senator LUDWIG**—Thank you. I am happy for you to take that on notice, have a look at your records and get back to us.

**Mr Woodward**—We will go back a bit and see if we have got any records we can give you.

**Senator LUDWIG**—Going back to the deck-mounted weapons, they are machine guns, are they?

**Mr Woodward**—Yes.

**Senator LUDWIG**—When was the decision made to use them?

**Mr Woodward**—To use them or to mount them?

**Senator LUDWIG**—To mount them; I guess they have not been used yet.

**Mr Woodward**—It was part of this year's budget processes.

**Senator LUDWIG**—Was there a report or finding that demonstrated that they were required or needed?

**Mr Woodward**—There was a view expressed by Customs to the minister, who took it to the government, and the government accepted the minister's judgment.

**Senator LUDWIG**—Did that come from within your area, Mr Woodward, or from your area, Admiral Crane?

**Mr Woodward**—It did not come from the Navy; it came from Customs.

**Senator LUDWIG**—Forgive me if I am being naive about this, but most of these questions I ask are about things that do not just come as ideas to which the government responds in the order of \$25.2 million over four years—otherwise HREOC would be doing a lot better than they are currently. I imagine it has come about by some sort of process which demonstrated the need or the requirement for a deck-mounted machine gun.

**Mr Woodward**—There were two driving forces for it, and I personally pushed for it.

**Senator LUDWIG**—Perhaps you should join HREOC!

**Mr Woodward**—I will pass on that observation. There are two issues—actually, there are three. Greater prominence has been given to increasing evidence of aggression among fishing vessels. That is one factor but only one factor. The second is that the government took a decision which ended up establishing the JOPC, which we talked about at the February meeting. Part of that was to increase the ability to protect our oil and gas installations around Australia, including those in the Bass Strait. The major capability that could be used in a naval or maritime sense would be patrol boats, if there happened to be any larger vessels nearby, or Customs vessels.

In the exercise that was conducted recently, a patrol boat was patrolling and, in a sense, protecting the more distant oil and gas installations. There was a Customs vessel doing much the same in relation to the North West Shelf installations with nothing more than side-arms and an M16. There was another part of that plank which has just escaped me for the minute but, if I remember it, I will come back to it. It is not just in relation to fishing.

**Senator LUDWIG**—Perhaps you could take some of these questions on notice. It is really a case of trying to de-pack the \$25.2 million over the four years as to how much of it will be on hardware and training.

**Mr Woodward**—Very little of it would be in relation to hardware. The hardware is around \$1 million, give or take a bit. The largest component of it relates to staffing. Obviously, there will be training and development that will be required. The arithmetic on staffing is not easy. We have eight vessels. There will be two additional crew members required for each vessel, and you will recall that we double-crew. There is also a need for a surplus above that figure, so the simple arithmetic produces 32 extra staff. We have government agreement that that could be increased to 36. By far the greatest component of that figure is 36 additional staff,

remembering that they are high-cost staff because basically they are at sea for 21 days at a time and, in our view, they should have appropriately generous conditions that go with it.

**Senator LUDWIG**—As far as you are able to, I am happy for you to take that on notice, even if you want to put an indicative figure down as to how it is broken down.

**Mr Woodward**—We have quite precise figures. They are all based on 36 times the sets of figures, plus training and development, plus around \$1 million.

**Senator LUDWIG**—That would be helpful. That would include the cost of the weaponry and the installation?

**Mr Woodward**—It is about \$800,000 for the weapons, but we will give you some more information to fill that out a bit.

**Senator LUDWIG**—Thank you. The other area of interest is the cost of using the Fremantle class patrol boats for Coastwatch. The answer to question on notice No. 457 indicates that the daily operating price for an Australian Customs vessel undertaking activities is about \$15,000 per day. Is that still the case?

**Mr Woodward**—That figure of about \$15,000 to \$15,500 is about right. Obviously, that figure will go up when the vessels are armed.

**Senator LUDWIG**—Perhaps you could update that figure at the same time, if you would not mind. The daily operating price of a naval Fremantle class patrol boat undertaking maritime surveillance activity is equivalent to about \$65,000.

**Mr Woodward**—Yes.

**Senator LUDWIG**—The 15 Fremantle class patrol boats completed about 1,800 days of patrolling in 2003-04, which equated to a cost of about \$109 million. I am trying to work out the eight maritime vessels of Customs. What sort of patrolling do they do in that same or equivalent period of 2003-04?

**Mr Woodward**—There are eight vessels and our aim is to undertake 300 days a year patrolling, so it is in the vicinity of 2,400. Someone might have a more precise figure than that.

**Ms Grant**—During the 2003-04 year we achieved 2,459 sea days.

**Senator LUDWIG**—Do you then multiply that by the daily rate to come up with a figure of how much it costs you to keep a vessel at sea?

**Ms Grant**—I actually calculated the cost of running the National Marine Unit, so I had all the costs of what it cost us to put fuel oils into the vessel, maintain the vessel and pay the salaries of the crew. I calculated all those figures. I added on the overheads. I added on the cost of the staff we had in the central office that prepare the rosters and keep the crew at sea as well as the engineering side of the Marine Unit and came up with the total all-up cost and then was able to divide that all-up cost by the 2,400 sea days that we target to achieve each year.

**Senator LUDWIG**—So what was the all-up cost?

**Ms Grant**—The all-up cost for that particular year was around the \$36 million mark.

**Senator LUDWIG**—So the difference with using Fremantle class boats is more than four times the cost, roughly. Do not hold me to the maths on that, but it certainly looks like it is more than four times the cost. Why would you then persist in using naval vessels at four times the cost, to cover the same thing?

**Mr Woodward**—The admiral is better equipped than us to talk about Fremantles. He has actually driven them and he knows a bit about the Armadales that are going to replace them.

**Senator LUDWIG**—I am not sure I have been on one—but that is not asking for an invitation.

**Mr Woodward**—They are a more capable vessel. They are designed as a fighting warship; ours are not. They do not have quite the same distance. The Armadales will have far more in the way of legs, a far bigger crew, and will have far heavier fire power capability and some better electronic gadgets.

**Senator LUDWIG**—I am not a seagoing person; I am trying to get a sense of—

**Senator Ellison**—There is no-one else to use, anyway, apart from the fact that we have our own Customs vessels. We have used P&O in one isolated case down in the Southern Ocean. But, for the work that is done elsewhere around the coast of Australia, Navy is an obvious choice. We accept that Navy does not come cheap, and I do not think that Navy regards to themselves as—

**Senator LUDWIG**—You were going to use that word ‘cheap’ again, weren’t you?

**Senator Ellison**—no—anything but a professional and extremely competent outfit. It is just a question of combining resources. As Mr Woodward has said, with Navy we get expertise and capacity which we cannot find anywhere else.

**Senator LUDWIG**—They are warships, though, aren’t they? They are not custom designed vessels for patrolling for customs like issues.

**Rear Adm. Crane**—I think Mr Woodward hit the nail on the head. There is the level of sophistication that is available even in the Fremantles, and the higher levels, compared to the Fremantles, that will be available in the Armadale class patrol boats add to the cost. The other significant part of it is in the crew. There are 23 in a Fremantle class patrol boat versus eight in a Bay class Australian Customs vessel. So you immediately have three times the crew numbers. That all adds to the cost. The other point with the use of the Fremantles is that often they are multitasked, so that there is an opportunity when they are there on Defence tasks for us to access them.

**Senator LUDWIG**—That is helpful in understanding that. I think the bare figures without an explanation do not provide a true picture. Where is the decision made to balance the difference between employing more Customs vessels or employing Navy? Who makes the balancing decision? Do you decide on that one, Minister?

**Senator Ellison**—That is an operational decision in relation to what is required. The budgetary consideration is one for government, and that does impact on that. It is a case of new policy proposals being put forward, and part of that is the combination of sea days of Fremantle class patrol boats and others. Also with Air Force, with P3 Orions, that is the same sort of situation.

**Mr Woodward**—There is a longstanding arrangement that enables sea days to be made available. I stress that is not hard and fast. If a circumstance arose where we needed more patrol boat effort, even though we were approaching the end of the allotted days, we would get it. There is also the situation where we need greater capability than is available from patrol boats. An example of that was the *Pong Su*—in other words, a larger vessel. In that case there was a phone call between me and the Chief of the Defence Force, and we got it. It is not hard and fast in that sense.

**Senator LUDWIG**—But you still saw the need for an ocean going vessel for illegal fishing?

**Mr Woodward**—Do you mean the Southern Ocean?

**Senator LUDWIG**—Yes.

**Mr Woodward**—Well, it is a long way. I think it is about 4,000 kilometres. I don't think our Customs vessels would actually make it. They might get halfway there.

**Senator Ellison**—It is rated for the Southern Ocean in that it has ice capacity, which I do not think any Navy vessels have.

**Mr Woodward**—It is strengthened but it is not formally ice rated—in other words, it can go to a certain distance in the south and it would not go beyond that, for a whole series of reasons. The master would not allow it, and nor would the company, into what are clearly iceberg areas or areas where there would be danger to the vessel or crew.

**Senator Ellison**—But it certainly is, as with one other vessel we have used, most suitable for that unique region.

**Senator LUDWIG**—I will move to a different area—the JOPC, which we spoke about earlier. There was a response from Mr Ruddock to a question on notice, No. 664, that JOPC is not charged with enforcement of any specific legislation. A quick summary of the legislation that deals with maritime security—I do not think I have them all—include the Customs Act, the Migration Act, the Fisheries Management Act, the Environment Protection and Biodiversity Conservation Act, the Torres Strait Fisheries Act, the Crimes Act—that is for piracy—the Defence Act, the Petroleum (Submerged Lands) Act, the Maritime Transport Security Act, the Quarantine Act and the Navigation Act. I am happy for anyone to add more to the list but that is the broad area.

If JOPC does not enforce specific legislation then the framework is what I have just covered—and I think that is demonstrated when vessels and operations are sometimes multitasked, and AQIS, AFP and Customs officers perform other functions, including environmental protection work. In terms of border security, has any assessment been done or inquiries conducted by Customs to examine the consistency of these pieces of legislation, at least with respect to who is empowered to operate what, when and how, and under which pieces of acts?

**Mr Woodward**—There has been work done on this over the years between the departments and agencies in an attempt to ensure that all the pieces of legislation do fit together. I think there is a bit more work that could be done to ensure that that is the case. In our view we have a model that basically works. There are some increased powers which we

feel that we need. An example of this came up at our last meeting, where I mentioned the SUA convention. There have been discussions on this and further consideration will be given to it in about October or November this year. It will provide greater powers in relation to dealing with terrorist situations or acts involving the transport of weapons of mass destruction. Our concern at that stage related to oil and gas installations.

Assuming the convention does find its way through the international pathways, and assuming the Australian parliament legislates consistent with that, I think that will add to our total armoury. While the existing fabric of legislation is complex, in our view it is workable and works.

**Senator LUDWIG**—Does the JOPC have any plan to undertake any coordination of that maritime security arrangement and conduct a review of the legislative requirement so that it can operate within its parameters?

**Mr Woodward**—In a sense, this whole JOPC is a bit of an experiment—we spoke about it last time—with the JOPC having dual responsibility to the CDF and to me, and with ministerial links that are separate.

**Senator LUDWIG**—I did not particularly want to go there again.

**Mr Woodward**—The JOPC does not have a degree of independence in a formal legal sense as might be implicit in your question. So far as civil surveillance is concerned, with the powers that arise through the customs legislation and other legislation where there is a reference to customs, the CEO of customs and I have the ability to authorise the head of JOPC and his staff to undertake actions—and I am sure the same relates through the defence machine. So far as JOPC and its role in relation to individual exercises, perhaps I could pass to the admiral.

**Rear Adm. Crane**—There is a significant body of work within the JOPC that is looking at the existing legislation to understand and make sure that we, in the work we are doing in the offshore environment, are clear on what legislation we are using for which part of it. That is a body of work that is happening at the moment.

**Senator LUDWIG**—Will that also formalise the rules of engagement in legislation?

**Rear Adm. Crane**—That will lead to a review of the rules of engagement that currently exist—what we would call peacetime rules of engagement. I do not envisage that there would be a significant change to that which already exists, but this body of work is being undertaken to inform us in terms of the work that we are now required to conduct in the offshore environment.

**Mr Woodward**—I doubt very much whether rules of engagement would ever be put into legislation. You might want to amend the rules of engagement pretty quickly. I am not sure that we or Defence would be contemplating putting them in legislation.

**Senator LUDWIG**—Who is doing that work and where is that work being done, in terms of the legislative review?

**Rear Adm. Crane**—It is being led in the JOPC, and we are doing that in conjunction with a number of different legal bodies both within Defence and with people from Wollongong

University, for instance. There are a number of people who are able to contribute or have a view, and we are listening to them as well.

**Senator LUDWIG**—Does the JOPC have independent funding?

**Rear Adm. Crane**—At this stage the JOPC is funded from both Customs and Defence, through existing arrangements.

**Mr Woodward**—I cannot envisage an arrangement where the JOPC will have independent funding and will independently report to this committee. But I might be wrong.

**Senator LUDWIG**—So the way it is currently structured—

**Mr Woodward**—I cannot see where, in the period ahead, there would be changes in relation to funding arrangements.

**Senator LUDWIG**—Customs and Coastwatch receive information from other government agencies about potential threats on Australian waters—for example, illegal fishing vessels and the like. Forgive me if I do not get the process right, but you receive intelligence about these sorts of issues. Which agencies would that come from? Obviously there would be people reporting this type of thing, or it might come from the Navy or it might be intelligence gathered by Coastwatch itself or it might come from AQIS and other bodies. Where is that intelligence coordinated?

**Rear Adm. Crane**—It is coordinated in the Coastwatch Analysis Unit, which is a dedicated analysis unit that sits alongside the National Surveillance Centre. It is staffed by about eight people and it is very well connected, in a system sense, to the Australian intelligence community and also to many of our client agencies from whom we receive information. We also frequently get information from people on Australian fishing vessels that are operating off our coast. They will report what they have sighted. That information is also taken in, but it is managed within the analysis unit in Coastwatch.

**Senator LUDWIG**—The reason I asked that is that there was an article in the *West Australian* on 2 April 2005 about fishermen holding an illegal crew. It was reported that a Broome fisherman was allegedly forced to make a citizens arrest to detain an Indonesian fishing vessel, six nautical miles off the Australian mainland. It was apparently spotted by Coastwatch but no further action was taken against this allegedly illegal vessel until a fisherman directed AQIS to detain the vessel. Do you have any information about that?

**Rear Adm. Crane**—If that is the one I think it is, it was in relation to an Australian fishing vessel that observed a foreign fishing vessel in the area. I think there was a suggestion that some of the gear from the Australian fishing vessel had perhaps been removed and the Australian fishing vessel took action off its own back. A Customs aircraft in the area observed the incident and suggested to the Australian fishing vessel that it may not wish to pursue its current course of action. That was then reported back to Coastwatch. We did not have a surface asset immediately available in the area and we were unable to respond with a service asset at that time.

**Senator LUDWIG**—He was not directed by AQIS at all? Did AQIS have a role in this that you are aware of?

**Rear Adm. Crane**—Not to my recollection, but I may need to take some of the details and check.

**Mr Woodward**—In the normal course of things, AQIS would not have an involvement in that. It would be the Australian Fisheries Management Authority.

**Senator LUDWIG**—That is what I could not work out from the report.

**Mr Woodward**—I cannot see why AQIS would have an involvement. If it was anyone it would be AFMA, and the answer to that is that we do not know—

**Rear Adm. Crane**—Not for that specific instance, but AFMA would have been advised. Part of our standard operating procedure would have been to advise AFMA, our client, of the incident and they may well have asked for a response. But as I recall, there was no surface response asset available at that particular time.

**Senator LUDWIG**—How many reported incursions are there? I think question on notice No. 3575 indicated that there were 1,588 reported incursions from 1 January 2003 to 1 March 2004. The newspaper article points to a greater number than that. What is the current number—do you have that available?

**Rear Adm. Crane**—There is a need to be careful about what you are referring to with reported incursions. Those are often reported as sightings. If they are sightings, there is often confusion because there may be multiple sightings—that is, the same vessel is sighted by an aircraft on consecutive days. They may well sight a vessel that is operating quite legally inside an MOU, which currently exist in the north-west for traditional fishing vessels. They may have sighted a vessel that is transiting and not fishing. So we need to be careful about those numbers. I think you mentioned 1,588 in a short period of time.

**Senator LUDWIG**—Yes.

**Rear Adm. Crane**—That sounds like it is sightings information. What I can tell you is that to date this financial year in terms of apprehensions there have been 192 and in terms of administrative seizures, which is an application available to us under the Fisheries Management Act with the approval of AFMA, our client, there have been 148. That compares to 83 administrative seizures and 134 apprehensions throughout the 2003-04 financial year.

**Senator LUDWIG**—Do know how many which are sighted or suspected of being illegal fishing vessels where there is no response? So they are simply reported and you do not have the ability to respond because either they are outside your range, there is no vessel close by or there is no ability to respond due to weather or the threat of bad weather?

**Rear Adm. Crane**—I do not have that information available tonight but I can take that on notice and get back to you.

**Senator LUDWIG**—All right, if we could just get a better picture, that would be helpful. You indicated that some of these figures might not reflect the true position. Could you then take that on notice so that we can get the true position reflecting both incursions and the number of sightings, including the information that you have already provided. That would be helpful.

**Rear Adm. Crane**—Yes.

**Senator LUDWIG**—I turn now to the area of the customs duty excise collection, and alcohol and tobacco collection at duty-free shops. Are you familiar with how that operates? There has been a significant change in that.

**Mr Woodward**—Are you talking about the change in the concession arrangements?

**Senator LUDWIG**—Yes. Could you give us a quick overview of how the new system works.

**Mr Woodward**—The major changes relate to the increase in duty-free alcohol that is now available—it has been increased to 2.25 litres. Perhaps the most significant change relates to the value of goods, apart from alcohol and tobacco, which can be brought in—the major difference being that we have set a figure of \$900, which is easily measurable, and taken away the old assessment of whether or not the duty would be \$50 or more. The impact of that is that \$900 is easily measurable. If anyone brings in goods that fall within the \$900 category and it exceeds \$900 then they pay duty on the whole lot and not just on the difference between \$900 and the value of the good—for example, if someone brought in \$910 worth of goods, they would not pay duty and GST on \$10; they would pay duty and GST on the full \$910, if applicable. That is a major point of difference.

**Ms Batman**—Essentially the change has not been a large one, rather it has been in relation to the transparency of the arrangements. Previously you could have \$400 worth of goods. You could have 1.125 litres of alcohol and 250 cigarettes. In addition to that, as Mr Woodward said, there was a waving of a payment that was less than \$50.

**Senator LUDWIG**—I think I remember that. If you had something to declare and they pulled out the calculator and it came up at \$49 then they said, ‘Thanks very much,’ and you kept going.

**Ms Batman**—That is right. That \$50 waiver covered a second bottle of alcohol. Some people knew about the waiver and some people did not, so some people could take advantage of it but most people did not. This is much more transparent. Everybody can have essentially two of the large litre-plus bottles. The passenger concession has gone up to \$900, which takes account of that \$50 waiver as well.

**Senator LUDWIG**—What happens if the travelling public bring in in excess of \$900 of these goods—assuming they declare them?

**Ms Batman**—They are assessed to pay GST and duty on the full amount. For example, previously \$400 was taken off the value of the goods; they were given that concession. If it were, say, \$1,000 they would pay GST and duty on the extra \$600. In this case they would pay it on the full \$1,000.

**Senator LUDWIG**—What is the difference there?

**Ms Batman**—It depends on the value of the goods but they pay extra duty on the full value of the goods. So \$40—roughly, to take the GST component—would be the extra amount.

**Mr Woodward**—For most items that people bring in, no duty is applicable, although there are some. So the major item is GST. If you bring in \$1,000 worth of something or other, you pay 10 per cent of that and it is going to cost you \$100 in future.

**Ms Batman**—Whereas before it might have cost you \$60.

**Senator LUDWIG**—When was this brought in?

**Ms Batman**—1 February.

**Senator LUDWIG**—Have you received any complaints from the travelling public about it?

**Ms Batman**—Yes, we received quite a few complaints in the first month or so. During the initial two months we received over 100 complaints from travellers who arrived who were unaware of the changes. It is starting to decrease. More recently, passengers have become more aware of the change. We did take steps to publicise this. From early December we were giving leaflets to departing passengers, informing them of the concessions. The duty free stores were undertaking advertising as well, but it still appears that a number were caught, primarily in relation to cigarettes and alcohol rather than the other goods, as part of the concession.

**Mr Woodward**—I think the complaints need to be considered in the context of the number of passengers. If you have 10 million coming in each year, in round terms that is one million a month. If you get 100 or so complaints, it is still a fairly low percentage.

**Senator LUDWIG**—What was that figure? One hundred a month?

**Ms Batman**—I have a more accurate figure. Since the implementation on 1 February, we have received a total of 180 complaints through our complaints system and another 16 as letters to the minister.

**Senator LUDWIG**—How much revenue has been collected as a consequence of the changes? I take it people have paid additional moneys?

**Ms Batman**—For the period between January to March 2004 compared to the period January to March 2005—the concession took effect on 1 February—we collected \$116,185 in 2004 compared to \$710,423 in 2005.

**Senator LUDWIG**—So it has been a good little earner.

**Ms Batman**—There does seem to have been an increase at that stage. However, as I said before, there is not a great deal of difference in the arrangements. I think we can attribute this perhaps to the Customs officers having a clearer understanding of these arrangements and perhaps a little casualness in applying the \$50 waiver in the past. Perhaps the figures were not quite as accurate, which is one of the issues that the new concession was designed to overcome. So it is now much more clear cut.

**Senator LUDWIG**—How many people forfeit the goods? Are there statistics on that?

**Ms Batman**—I do not have figures on that, but a number of people are just abandoning the goods.

**Senator LUDWIG**—Where are they going?

**Ms Batman**—They go to the Customs store and are handled in the way of other abandoned goods: we wait the statutory period before they are mostly destroyed in this instance.

**Senator LUDWIG**—Because they are cigarettes. What happens to alcohol?

**Mr Jeffery**—Alcohol, generally, if it meets requirements, is put up for sale at Customs auctions on a regular basis.

**Senator LUDWIG**—What is the forfeiture period?

**Mr Jeffery**—I think it is a 30-day period. We will check that.

**Senator LUDWIG**—Are bottles of rum and bottles of scotch cluttering up the storerooms?

**Mr Jeffery**—We certainly have an increased number in our storerooms.

**Senator LUDWIG**—Do you have an idea of how much?

**Mr Jeffery**—We would have to check that.

**Ms Batman**—I could take that on notice and find out the number of abandoned goods.

**Senator LUDWIG**—Also, how much is earned from the auctions as a consequence of the sale of this—do you call it contraband? I do not suppose you do.

**Ms Batman**—No.

**Mr Jeffery**—Forfeited goods.

**Senator LUDWIG**—I take it that they are under lock and key somewhere.

**Mr Jeffery**—We have a number of secure storages where we keep them.

**Senator LUDWIG**—What happens to the revenue collected both through the auction and the increased—is it a compliance?

**Ms Batman**—It is consolidated revenue. The GST component goes as part of the GST collections to the states and territories.

**Mr Jeffery**—We do not get the revenue; it goes into consolidated revenue and the states and territories get the GST through the normal arrangements.

**Senator LUDWIG**—In terms of emails you send to your staff, do you send committee questions from Customs to your staff? The answers. The transcripts of questions that have been asked of Customs and the responses that have been provided by Customs in relation to committee work. Do you send that by email to your staff?

**Mr Jeffery**—We circulate the transcript to our staff as soon as it is available but I do not believe we send all the questions and answers to them. I can check that but I do not think so. Of course, many staff are involved in the preparation of the answers, so they see them that way.

**CHAIR**—That might constitute cruel and unusual punishment too.

**Senator LUDWIG**—It is not so much to do the work, because that is obviously taken here, but by way of information circulation.

**Mr Jeffery**—We put the transcript on our intranet site as soon as it is available and that is accessible and available to all staff. We have been doing that for quite some time.

**Mr Woodward**—I am not sure of how many hits there are on that.

**Mr Jeffery**—There is certainly some interest because we get some responses.

**Senator LUDWIG**—You might take that on notice: what procedures you adopt in that instance. That would be helpful.

**Mr Woodward**—I am sure Mr Jeffery is right on that. As for questions on notice and answers, I would be surprised if we do put them on the intranet. I will check on that. I need to think through whether we should. There is an enormous number of them.

**Senator LUDWIG**—I am not asking you to. My question is whether you do or whether you—

**Mr Woodward**—It is just a question of fact. I do not think we do but we will get you the answer.

**Senator LUDWIG**—Thank you, Chair, for being so patient—and the Northern Territory senator.

**CHAIR**—Thank you. That concludes consideration of budget estimates in the Attorney-General's portfolio. I remind you, Mr Jordana, that the date for return of answer to questions taken on notice is 15 July 2005. The department is always cooperative and we are very grateful for that. I thank you and your officers, and Mr Cornall, and you, Minister.

**Senator ELLISON**—Thank you, Madam Chair. I might refer you to the statistics put out by the Clerk of the Senate which reveal that the Attorney-General's Department has one of the best rates of answering questions within the time allotted.

**CHAIR**—For one of the highest rates of questions on notice, that is right. The committee will reconvene tomorrow morning at 9 am for the Department of Immigration and Multicultural and Indigenous Affairs.

**Committee adjourned at 11.15 pm**