



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

(Supplementary Budget Estimates)

MONDAY, 31 OCTOBER 2005

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Monday, 31 October 2005

Members: Senator Payne (*Chair*), Senator Crossin (*Deputy Chair*), Senators Bartlett, Kirk, Mason and Scullion

Senators in attendance: Senator Payne (*Chair*), Senator Crossin (*Deputy Chair*), Senators Allison, Brown, Heffernan, Joyce, Kirk, Ludwig, Milne, Murray, Parry and Scullion

Committee met at 9.02 am

ATTORNEY-GENERAL'S PORTFOLIO

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

Ms Jan Blomfield, Acting 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 and 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, Assistant Secretary, Dispute Management, Family Pathways 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

Mr Matt Minogue, Assistant Secretary, Human Rights Branch

Ms Joan Sheedy, Assistant Secretary, Information Law Branch

Output 1.4

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

Output 1.5

Mr James Graham, First Assistant Secretary, Office of Legislative Drafting 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
Mr Steven Marshall, Assistant Secretary, Native Title Unit

Output 1.7

Dr James Pople, First Assistant Secretary, Indigenous Justice and Legal Assistance Division
Mr John Boersig, Assistant Secretary, Indigenous Law and Justice Branch
Mr Paul Griffiths, Assistant Secretary, Legal Assistance 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, Assistant Secretary, Criminal Law Branch
Mr Chris Dennis, Director, National Law Enforcement Policy Branch
Dr Dianne Heriot, Assistant Secretary, Community Safety and Justice Branch
Ms Catherine Hawkins, Acting Assistant Secretary, International Crime Branch
Mr Geoff Main, Director, Community Safety and Justice Branch
Mr Andrew Walter, Principal Legal Officer, International Crime Branch
Mr Anthony Seebach, Principal Legal Officer, International Crime Branch

Output 2.2

Mr Keith Holland, First Assistant Secretary, Security and Critical Infrastructure Division
Ms Maggie Jackson, Special Adviser
Mr Mike Rothery, Assistant Secretary, Critical Infrastructure Protection Branch
Mr Geoff McDonald, Assistant Secretary, Security Law Branch
Ms Catherine Smith, Principal Legal Officer, Security Law Branch

Output 2.3

Mr David Templeman, Director General, Emergency Management Australia
Mr Trevor Clement, Assistant Secretary, Community Development

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
Mr Lindsay Hansch, Assistant Secretary, Melbourne 2006 Security Branch
Mr Lee Gordon, Executive Officer, Executive Services Section

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 Infrastructure and Corporate Services
Mr Kevin Kitson, Director National Criminal 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
Mr Matthew Corkhill, National Manager, Cargo Systems
Ms Gail Batman, National Director, Border Intelligence and Passengers
Mr Andrew Rice, National Manager, Trade Measures
Ms Michelle Kinnane, National Manager, IT Applications

Australian Federal Police

Mr Mick Keelty, Commissioner
Mr John Lawler, Deputy Commissioner
Mr Andrew Colvin, 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 Paul O'Sullivan, Director-General

Australian Transaction Reports and Analysis Centre

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 and Practice Management
Mr Graeme Davidson, Acting Deputy Director, Commercial and International

Ms Stela Walker, Deputy Director, Corporate Management

CrimTrac

Mr Richard Oliver, Acting Chief Executive Officer

Ms Nicole McLay, Chief Financial Officer

Mr Duncan Burns, Programme Manager, CrimTrac Police Reference System

Mr Stewart Cross, Director, Business Operations

Family Court of Australia

Mr Richard Foster, Chief Executive Officer

Ms Jennifer Cooke, Executive Director Client Services

Mr Bruce Hunter, Executive Director Corporate

Ms Angela Filippello, Principal Registrar

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive Officer

Mr Philip Kellow, Deputy Registrar

Mr Gordon Foster, Executive Director, Corporate Services

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 Rosemary Musolino, Acting 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 Susan Roberts, Acting Executive Director

Ms Karen Toohey, Acting Director, Complaint Handling

Ms Sally Moyle, Director, Sex Discrimination Unit

Mr Craig Lenehan, Deputy Director, Legal Services

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 Hugh Chevis, Acting Chief Executive Officer

Mr Erwin Winkler, Chief Financial Officer

Mr Allan Thompson, Acting Director Service Delivery

Office of Film and Literature Classification

Mr Des Clark, Director

Mr Paul Hunt, Deputy Director

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

CHAIR (Senator Payne)—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. The committee today will commence its examination of the Attorney-General's portfolio, proceeding according to the order on the circulated agenda. The committee will begin with general questions to the executive of the department. Today's hearing will be suspended for a lunch break from 1pm to 2 pm and for 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 rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. The committee has agreed to the date of 16 December 2005 for receipt of answers to questions taken on notice and additional information. The committee requests that answers be provided to the secretariat in electronic format where possible.

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 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 also remind officers that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. I note that it is my understanding that there are seven outstanding responses to questions on notice from the budget estimates round of May 2005. I also note that answers were still being received by the committee on Wednesday, Thursday and Friday of last week. That does not really assist the committee in its work in the examination of the supplementary estimates. I thank the department for their cooperation in this process but note

that the later answers are not helpful to the committee's processes. Minister, do you or Mr Cornall wish to make an opening statement?

Senator Ellison—I do not have an opening statement.

Mr Cornall—I believe there are still some outstanding questions from Customs and AFP.

Senator Ellison—We will chase those up and see if we can get them to the committee as soon as possible during the course of these proceedings.

CHAIR—Thank you very much. As the agenda indicates, we will begin with general questions in the Attorney-General's Department management and accountability area. I believe Senator Ludwig will commence asking questions in that area.

[9.06 am]

Attorney-General's Department

Senator LUDWIG—I want to start in the area of Customs. I have questions in relation to the introduction of the ICS—I think release 5 is the technical name for it. The questions go to the accountability of the department in respect of the introduction of the software. With respect to the introduction of the software, when was industry provided with the completed product and from what date, and was it fully functional, load tested and complete?

Mr Cornall—The Customs Service is an independent agency that operates under its own act and with its own budget funding. It is a major agency and in financial matters and financial reporting it accounts directly to the Department of Finance and Administration. We do not have an oversight role in respect of these detailed internal management issues, so I am unable to answer that question.

Senator LUDWIG—Minister, are you able to answer it?

Senator Ellison—I think it is best left until we deal with Customs, which is on the agenda for later in the day.

Senator LUDWIG—My view, Minister, is that it is an important issue that needs to be clarified today, as early as possible. There has been no statement from you, Minister, in relation to this issue other than in the Alan Jones transcript. I have seen a number of releases from Customs, which has been helpful in explaining part of the process, up to at least Friday. Minister, we have significant problems besetting our wharves, in both Sydney and Melbourne, to date, and that continues, as I understand it, into today. It has been going on for 19 days, since 12 October. This committee and the public deserve an explanation of what has happened. How is it going to be rectified? When is it going to be rectified?

Senator Ellison—Madam Chair, these are questions which clearly relate to Customs. As the secretary of the department has said, Customs is an independent agency. The area we are dealing with now relates to questions for the Attorney-General's Department in relation to governance and other matters. These questions should be dealt with when Customs is called. On the agenda today, Customs is listed to be called. So it is not a question of there being no opportunities for these questions to be asked. Customs is listed to appear today; all the officers will be here. Senator Ludwig is more than welcome to ask those questions at that point. This is not the point on the agenda for Customs related questions to be asked.

CHAIR—We certainly do not have officers here; that is quite clear. As I understand it, they are scheduled to appear this evening, in the period after the dinner break. That is certainly the program which was circulated last Thursday or Friday.

Senator LUDWIG—Yes, Chair. I did indicate to the committee on Friday that I would ask general questions on Customs at the beginning of proceedings today.

CHAIR—General questions?

Senator LUDWIG—General questions.

CHAIR—And you are directing those to the minister?

Senator LUDWIG—Yes. That is the appropriate place to direct general questions on this portfolio this morning.

CHAIR—I understand that. The minister has indicated his view on that matter.

Senator Ellison—Can I say that it says ‘Management and Accountability (General Questions)’ under Attorney-General’s portfolio. As the secretary has said, the Attorney-General’s Department does not have an oversighting role of Customs; it is a totally independent agency. It has its own legislation—the CEO has legislative responsibilities—and it stands quite separate and apart from the Attorney-General’s Department. It is appropriate that these questions be asked when Customs is here. I will take all those questions on notice and we can deal with them when Customs is called.

Senator LUDWIG—Chair, you might have to rule on that, because I want to persist with asking Customs questions.

CHAIR—I think you will probably get the same response from the minister, Senator Ludwig, so I do not know how productive a process it will be this morning.

Senator LUDWIG—It is disappointing, Chair. I did indicate to the secretariat that I did want questions dealing with Customs this morning, and it is appropriate in the general questions that, as we normally do, we cross the portfolio, which includes A-G’s and their agencies. Customs is an agency of AGD. It might be a separate agency, but it is an agency of AGD and Customs should be available to answer these critical questions from industry this morning. If they are not available this morning, perhaps they can be available very shortly. I can certainly ask questions in other areas, but I do want to come back to general questions.

Senator Ellison—Madam Chair, we have a published agenda and timetable. Senator Ludwig said that on Friday—the last working day before this hearing—he asked for a change in the agenda. We have officials lined up. As you would appreciate, there are very many officials. Customs is working very hard at the moment. I am not going to call them off very important tasks that they are conducting at the moment. We have a published agenda. I can tell you that, in all the years of estimates in this committee, I cannot recall any questions under this heading going to AFP, ASIO or Customs; they are general questions of the department in relation to the department’s area of responsibility. The agenda is set and we should abide by it and just get on with it. The quicker we deal with other matters, the quicker Senator Ludwig can get to Customs.

CHAIR—It is my understanding that that is generally how we have approached general questions at the beginning of even supplementary budget estimates. Senator Ludwig, the minister has indicated that he is not intending to call the officers to come to the committee in advance of their scheduled appearance time. You will understand, Senator Ludwig, that I was out of contact on Friday. I was not aware of your particular request. Nevertheless, I probably would have suggested that we stick to the advertised and circulated agenda, which we have always used. I am not sure how much further we can progress that.

Senator LUDWIG—If Customs are not here and the minister is not prepared to answer any questions in relation to it now, I guess it leaves me very little alternative, Minister. I think that is extremely disappointing.

Senator Ellison—We are just acting in accordance with established practice. As I say, this has been the practice of this committee. The published agenda is there for a very good reason—because there are many officials involved.

CHAIR—It assists both senators and officers.

Senator Ellison—I think we should stick to precedent.

Senator HEFFERNAN—I want to ask a question under 1.9.

CHAIR—We are not there yet, Senator Heffernan. In fact, we are not far at all yet—but we are working on it. I promise I will tell you when we get there. Senator Ludwig, in terms of other general questions before we get to 1.1, did you wish to pursue any further issues? Or does Senator Kirk?

Senator LUDWIG—The only thing I would like confirmed with Mr Cornall is whether Customs is within the AGD portfolio. Is it within the portfolio? I did not want to take issue with what you said but it is and has been the practice of this committee when dealing with Immigration, as we will tomorrow, and other matters to deal with broad questions first. We have done that in the past. As I and, I am sure, Mr Cornall can recall from the last estimates, I think we dealt with the Solon matter at first instance as general questions in Immigration because that is within the general portfolio. We start with general questions in that area. Customs is within ADG, is it not? Or am I in the wrong committee? Should I be somewhere else?

Mr Cornall—No. Customs is an agency within the Attorney-General's portfolio but this part of the agenda is headed 'Attorney-General's Department' and is for general questions to the department, as I understand it. I do not recall at any previous estimates that we have dealt with general questions relating to portfolio agencies in the introductory questioning of the department.

Senator LUDWIG—We will move on then. I have some general questions about family relationship centres in output 1.1.

[9.16 am]

CHAIR—So we will move on now into 1.1.

Senator LUDWIG—We can skip general questions unless someone else had general questions.

CHAIR—Not that I am aware of. Why don't you start in 1.1 and then we will come to Senator Heffernan, who I know has chairing responsibilities in another committee, so we will proceed to him as soon as we can.

Senator LUDWIG—What was the process of selecting the locations for the 65 family relationship centres recently announced to be rolled out over the next five years?

Ms Pidgeon—The department looked at a whole range of demographic and other relevant information. I can provide the committee with an outline of the data items we took into account. They range from ABS statistics for things like population, families with young children and that sort of thing to information about estimated needs from the Department of Family and Community Services. We also took into account access issues. If we only took into account demographics such as population we would end up with all of them in the large population areas, so we had to take into account accessibility, particularly in terms of regional areas. I can pass up to you an outline of that information, which might save some time.

Senator LUDWIG—How did that statistical information draw together the decision-making process?

Ms Pidgeon—We then provided recommendations to the Attorney-General, who then looked at the information that we provided and made the final decision.

Senator LUDWIG—When you say you provided information to the Attorney-General, in what sense? Did you provide the raw statistical data?

Ms Pidgeon—No. The analysis of the data was done by the Attorney-General's Department with the assistance of the Department of Family and Community Services. We came up with recommendations based on that data and then provided those to the Attorney-General.

Senator LUDWIG—What process did you use to analyse the statistical data? What was the purpose or goal in analysing the statistical data? You can obviously use numbers for a range of purposes but how did you then determine that you would use these tables or statistical data to come up with a result?

Ms Pidgeon—We had a look at the whole range of data. As I said, we took into account quite a lot of items to try to identify the highest needs areas, the main population centres, obviously, the population of young families, child support payees and payers, and those sorts of indicators. Then we had a look at how it would work in terms of accessibility to make sure that the number we had, which was 65 across Australia, could best be spread, taking into account all those things. It was done in a very iterative way. We had a number of roundtables with my staff and also people from the Department of Family and Community Services just looking at all the various pieces of data that helped us come to the final recommendations.

Senator LUDWIG—Did you use any weighting?

Ms Pidgeon—The Attorney-General's Department did not have any formal weightings. In the end we had to make sure that we covered as much of the country in as an accessible way as could possibly be done. This means that, once we looked at all the demographic information, then accessibility became important. I think accessibility was one of the most important things we had to take into account.

Senator LUDWIG—Did you weight that?

Ms Pidgeon—Not in a formal percentage sense but it had a lot of weight in terms of how we were going to cover this region or that region. That would have outweighed the fact that a region might not have had the population of families that another region had. We still needed to cover both of them.

Senator LUDWIG—Did you use any statistical analysis to determine how you could prioritise or rank by location given the inputs of population, proportion of divorced or separated people, proportion with oldest child under five years and number of blended families? This is what I am confused about. You have all of those indicia; did you then put them altogether and pick?

Ms Pidgeon—The Department of Family and Community Services did a lot of analytical work to come up with some indicators of high need. They did a lot of work with the raw statistics. For our statistics, we used their work and also population and, as I said, accessibility. So the detailed comparing of all the different sorts of data items is probably something to direct to the Department of Family and Community Services. They provided that input to us.

Senator LUDWIG—Are you able to provide the raw data tables and statistical analysis?

Ms Pidgeon—We relied on the Department of Family and Community Services for the analysis of a lot of those data items. Otherwise we just relied on ABS information which is publicly available. But we are happy to pull off their web site a range of those tables that we used.

Senator LUDWIG—How did you rank them highest to lowest and by location and come to that conclusion?

Ms Pidgeon—It was not done in one document or one meeting or so on. We sat down with the Department of Family and Community Services and their analysis of the needs that they had been working on for their whole program. At the same time, we looked at population and accessibility issues and came to conclusions on which ones to recommend. I have to say also that there were a lot of options. It was not clear cut in many cases. There was no one formula that we used. But I can provide you with the ABS statistical information we used.

Senator LUDWIG—Did you subject the view of Family and Community Services to any critical analysis to see whether or not they had got it right?

Ms Pidgeon—In our iterative processes with them we looked at a whole range of information that they had. They did not just give us a ranking, for example. The discussions would have tested that to some extent. It was all done as part of discussions rather than anything in writing.

Senator LUDWIG—I am not getting a particularly clear picture as to how you then came up with the final number per location on what I would call substantive critical analysis. It seems to be that you could get the same result by sticking pins in a map.

Ms Pidgeon—Hardly, Senator.

Senator LUDWIG—Can you disavow me of that? You are not doing it very well to date.

Ms Pidgeon—If you have a look at the data items I have handed up, those were all taken into account.

Senator LUDWIG—But to what extent, what measure and what weighting? Or were they all equal weighting?

Ms Pidgeon—Population and accessibility and then a needs analysis done by the Department of Family and Community Services were the three essential elements. The final conclusion was heavily weighted to accessibility and population but that needs analysis was also very important.

Senator LUDWIG—To what extent was it weighted to needs and accessibility?

Ms Pidgeon—We had to make sure that we—

Senator LUDWIG—No. Was it 50 per cent? 60 per cent?

Ms Pidgeon—We did not use a percentage weighting, because it is too complex for that; it would have been a very superficial way of doing it if we had just done it on a percentage weighting. We had to look at each region, and have a look at how to ensure that we had a service as accessible as possible to the population of those regions. We used ABS statistical subdivisions.

Senator LUDWIG—So there was no formula? There was no statistical analysis to come up with one? Let me assure you, there are tools available that can provide you with an analysis. They are sophisticated and complex and can take in a range of circumstances which then can provide you with verifiable outcomes.

Ms Pidgeon—The number of issues that had to be taken into account did not lend itself to pure formula.

Senator LUDWIG—Why is that?

Ms Pidgeon—Because—

Senator LUDWIG—Is their maths limited by number? I did not know that.

Ms Pidgeon—Accessibility issues—where people go to get services—is not a factor that is easily converted. However, I have to say that the statistical analysis that we were provided with, of a whole lot of needs factors, from the Department of Family and Community Services, was very useful. That did involve some in-depth analysis of a range of needs factors.

Senator LUDWIG—So how did you define a region?

Ms Pidgeon—To a large extent, we used the ABS statistical divisions and subdivisions but, also, where that did not fall into what you would normally see as a region—for example, there is a statistical subdivision that goes north and south of Brisbane—we would break that up. The Gold Coast and the Sunshine Coast effectively needed to be broken into two. We had to use some commonsense but basically we used statistical divisions and subdivisions.

Senator LUDWIG—So where the statistical divisions did not suit you, you then applied commonsense to come up with the result?

Ms Pidgeon—Only in terms of having to break them down a bit further.

Senator LUDWIG—How did you collect either the statistical data, or the commonsense for that matter, to apply it?

Ms Pidgeon—The ABS information is very detailed, and it breaks it up into—

Senator LUDWIG—It made commonsense?

Ms Pidgeon—statistical subdivisions, within divisions.

Senator LUDWIG—And they have commonsense as well, do they?

Ms Pidgeon—You would have to ask the ABS that.

Senator LUDWIG—And the list that was ultimately provided to the minister—do you have a copy of that list?

Ms Pidgeon—We provided a submission to the minister with a number of recommendations, including options within regions where there was a similar need for a centre in more than one area, and that was done as a submission to the Attorney.

Senator LUDWIG—Is that submission available?

Ms Pidgeon—A submission to the Attorney, which is effectively policy advice, is normally something that would not be available.

CHAIR—It was a good try, though, Senator Ludwig.

Senator LUDWIG—You never know your luck! So the list was an options list? How many did it include then?

Ms Pidgeon—Sorry?

Senator LUDWIG—Was it an options list?

Ms Pidgeon—It was an advice that addressed each region. In some regions there were no real options. In others, we thought there were some options, and they were put to the Attorney.

Senator LUDWIG—And so it included more than, what? How many locations? More than 65 in total?

Ms Pidgeon—Yes.

Senator LUDWIG—And then that had to be whittled down by the Attorney to 65?

Ms Pidgeon—Yes.

Senator LUDWIG—And so then the Attorney-General provided you with a response?

Ms Pidgeon—Yes.

Senator LUDWIG—Is that list available?

Ms Pidgeon—I think that is—

Senator LUDWIG—Or is that the 65?

Ms Pidgeon—still part of a policy process, I think.

Senator LUDWIG—Or is it is still being—

Ms Pidgeon—The actual locations have been announced.

Senator LUDWIG—I know the actual locations have been announced. What I am curious about is whether, when the Attorney-General provided you with the response, the department then, to put it politely, argued about whether or not that was the final list, or whether it should be changed, or whether there was any further change to the list before it was made public?

Ms Pidgeon—I think this is really getting into our policy advice.

Senator LUDWIG—So that, yes, it did change?

CHAIR—I think that is not what Ms Pidgeon said, Senator Ludwig.

Ms Pidgeon—I think it is not a question I should be getting into.

CHAIR—Does that complete questions on the family relationships centres?

Senator LUDWIG—No; not yet, unfortunately. Where there is an outcome where there is no FRC in a federal electorate—for instance, that of Chifley, which ranks first in the number of child support recipients, second in the number of single parent families and fourth in the number of families, but there is one in both Warringah and Bennelong, which rank much lower on all the criteria that I just mentioned, can you help me to understand why—

Ms Pidgeon—The answer is that we did not do any analysis according to electorate. I think it is quite clear that all our analysis was on statistical subdivisions and that that electorate—I checked when there was some media coverage of that after the announcements—falls into a couple of statistical subdivisions, both of which have family relationship centres. So family relationship centres are covering that electorate, as I understand it. But we did not do any analysis by electorate.

Senator LUDWIG—Did you use SDs, SLAs or CCDs?

Ms Pidgeon—Mostly they were statistical subdivisions, but it depended. We did go up to statistical division if there was a large enough area. But statistical subdivision was our main tool.

Senator LUDWIG—In the Northern Territory there is one in Darwin but not in Alice Springs.

Ms Pidgeon—That is right. Darwin will be given funds to cover Alice Springs as well.

Senator LUDWIG—It is a long way away, isn't it?

Ms Pidgeon—Yes. But, if you have a look at all of the needs analyses, their need is not as high as that of other areas which did get a centre.

Senator LUDWIG—That is based on your statistical analysis of those areas.

Ms Pidgeon—Yes. And the data items that you have in front of you.

Senator LUDWIG—How did you aggregate them? How did you bring them together?

Ms Pidgeon—As I think I have explained already—

Senator LUDWIG—I am not clear on it—let me say that. I am not clear as to how you took a range of indicia, which you have provided, and then apportioned—let me understand your statements to date—no weighting in terms of statistical analysis other than what needs analysis the department gave you in some areas, what the ABS said in terms of some of the

gross numbers, and your commonsense as to whether it should be north or south of a particular river.

Ms Pidgeon—No, you misunderstood my statement about commonsense. In terms of what we called a region, that was my answer to that question.

Senator LUDWIG—But that has a bearing on how you then place a family community centre in one area.

CHAIR—Senator Ludwig, please let Ms Pidgeon finish her answers before you respond.

Senator LUDWIG—Sorry, chair.

Ms Pidgeon—That is what I was going on to say. I have already said that considerable weighting was given to population and accessibility and the data analysis of needs which came from family and community services. Those three then had to be put together, and that was done with the assistance of Family and Community Services but essentially in the department looking at all the regions that we had to cover.

Senator LUDWIG—Of the SDs, was there any spatial analysis done?

Ms Pidgeon—As I said, we had to have a look at a whole range of information, but the SSDs were our essential core. We did not really go down below that, except where we had to break them up for a regional definition reason.

Senator LUDWIG—And then you applied commonsense?

Ms Pidgeon—The only one I can think of where we did do that was north of Brisbane and south of Brisbane, and it is commonsense to not try to cover that with one family relationship centre.

Senator LUDWIG—If Senator Heffernan had questions in 1.1—

CHAIR—Senator Heffernan does have questions in 1.1. I think they are probably not for Ms Pidgeon, though.

Senator HEFFERNAN—I have some questions with regard to what is probably described as the thorny question of a federal judicial commission. I am unaware of who the appropriate people are.

CHAIR—Ms Leigh has come to the table.

Senator HEFFERNAN—Are you aware there is a proposal for a private member's bill in this parliament to establish a federal judicial commission?

Ms Leigh—Yes.

Senator HEFFERNAN—What would be the structures that would describe the complement of the federal judicial jurisdiction? What are the various courts that are involved?

Ms Leigh—Which are the federal courts?

Senator HEFFERNAN—Which are the various bodies which constitute the federal judiciary?

Ms Leigh—The High Court, the Federal Court, the Family Court and the Federal Magistrates Court.

Senator HEFFERNAN—How many members are there in those courts?

Ms Leigh—Approximately 100.

Senator HEFFERNAN—I am told that it might be closer to 150. Would that be right?

Ms Leigh—That probably is right. There are about 50 in the Family Court, about 50 in the Federal Court, seven of course on the High Court, and 33 in the Federal Magistrates Court.

Senator HEFFERNAN—Has the department done any research on re-establishment of a federal judicial commission, with regard to the fact that there is a private member's bill proposed?

Ms Leigh—Specifically in relation to that, the Attorney took the view that, because there was consideration under way by the government in relation to a protocol, it was not appropriate to look further at that private member's bill.

Senator HEFFERNAN—So the government has not requested a study or feasibility?

Ms Leigh—We have been giving the Attorney advice in relation to the general issue, not specifically arising from that bill.

Senator HEFFERNAN—I do not know what that means. That is bureaucratic speak. What does that really mean?

Ms Leigh—The general issue of complaints against the judiciary is a matter that the government has had under consideration since before that private member's bill was raised.

Senator HEFFERNAN—What advice have you given the government?

Ms Leigh—We have been providing advice to the Attorney on what the options might be in terms of handling complaints against the judiciary.

Senator HEFFERNAN—Have you looked at the workings and the establishment of the Judicial Commission of New South Wales?

Ms Leigh—In the course of giving the Attorney that advice, we looked at all of the current models.

Senator HEFFERNAN—So you have looked at the reasons and the logic behind the establishment of the New South Wales Judicial Commission?

Ms Leigh—Yes.

Senator HEFFERNAN—Have you done any costings?

Ms Leigh—Not detailed costings, because we were looking at all of the general options.

Senator HEFFERNAN—But you have done some costings?

Ms Leigh—Costings, no, but just awareness of the cost implications of the different options comparatively speaking.

Senator HEFFERNAN—So you have done some costings?

Ms Leigh—No, not detailed figures.

Senator HEFFERNAN—You have done some work on costings?

Ms Leigh—Costings is probably the wrong description. Of course, in advising the Attorney on options, we are mindful of comparative cost implications, but in very general terms.

Senator HEFFERNAN—It is very hard to get a yes or no answer, isn't it? Professor Craven from Western Australia, whom I have spoken to, is seriously opposed to the proposition of a federal judicial commission, warning that it could be used for frivolous and mischievous purposes or for witch-hunts and things. Have you looked at those sorts of issues? New South Wales has a judicial commission. I think my near neighbour Terry Sheahan put that up some years ago. He got a fair bit of flack, I have to say, when he proposed it, but it has worked well. The sun still comes up in New South Wales.

Senator LUDWIG—Albeit an hour earlier.

Senator HEFFERNAN—It is an hour earlier now, I am advised. Have you looked at the upside and the downside of what would happen if you established a judicial commission—what would be the pluses and minuses?

Ms Leigh—Of course, in advising the Attorney on the options, we always endeavour to advise him about the pros and cons of all the various options.

Senator HEFFERNAN—Are there any things that you have learnt in terms of warning signs from what has happened in New South Wales with their judicial commission? Is there anything that you can see that has gone particularly awry there?

Ms Leigh—I am not sure I can get into too much detail in my discussion with you without transgressing by providing to you policy advice that we have been providing to the Attorney.

Senator HEFFERNAN—I could put this as a question: what would be some of issues that would be appropriate if there were a judicial commission? You can answer that if you like, but I will answer it for you if you do not. What would be some of issues that might be put, that could come up, in terms of perhaps inappropriate behaviour?

Ms Leigh—That would depend on what jurisdiction the judicial commission were given.

Senator HEFFERNAN—Yes. I guess it would, wouldn't it? For instance, if there were a problem with someone who was an alcoholic, would that be an issue?

Ms Leigh—As I said, it really depends on what jurisdiction a judicial commission were given. It is difficult to answer these hypothetical questions.

Senator HEFFERNAN—I am talking about a person in the federal jurisdiction who happens to be an alcoholic. How would you deal with that?

Ms Leigh—Currently?

Senator HEFFERNAN—Yes.

Ms Leigh—It would depend how the issue arose. Each of the courts have their own procedures for dealing with complaints about—

Senator HEFFERNAN—What are they?

Ms Leigh—Each court has its own separate procedures. I can give you a brief outline of those. Some of the courts have been called to appear here later and could outline their procedures themselves.

Senator HEFFERNAN—Is one of the options to report the issue to the chief justice in the jurisdiction?

Ms Leigh—Of course, Senator. Yes.

Senator HEFFERNAN—What power does the chief justice have to do anything about it?

Ms Leigh—The chief justice would take it very seriously. Exactly how each chief justice would handle it is another matter, but I am sure that they would raise it with the judge concerned.

Senator HEFFERNAN—Yes, but they have no power to do anything about it in any way other than counsel the person concerned.

Ms Leigh—They would certainly wish to do that. No, they do not have any power of dismissal, if that is what you mean. I know that the courts have been recently introducing some health measures for their judges to encourage them to have health checks and to make those available to them, so I imagine that is something that a chief justice would draw to the attention of a judge in those circumstances.

Senator HEFFERNAN—So with regard to slow judgments, I am advised that litigants are reluctant at times to complain about slow judgments because of the concern that, if the judgment is not written, it might affect the judgment. How would a person who was delayed in the Family Court, for instance, over an extraordinary amount of time deal with that?

Ms Leigh—They might raise it directly with the court. They may have their lawyer, if they are represented, raise it with the court. They may go to the relevant law society and ask the law society to raise it with the court. They may write to their local constituent. They may write to the Attorney-General.

Senator HEFFERNAN—There is no appropriate body though, is there?

Ms Leigh—All of those mechanisms would—

Senator HEFFERNAN—They are not bodies. The doings of the federal judiciary is hardly an issue for the law society.

Ms Leigh—The reason I mention the law society is that that is the way that some of these issues are raised and it allows people to have them raised generally rather than raising them directly. You suggested that some people were reluctant to do that.

Senator HEFFERNAN—I just want to use an example here with no names and no pack drill. I have here a memorandum from a strike force commander in a police agency to a commissioner of police. It is dated 1998. It reads:

The attached report relates to...who has emerged prominently during my investigations to date...it paints a disturbing picture of a senior member of the legal profession who may or may not have committed criminal offences but who is certainly in my view open to compromise.

In the circumstances, I feel that I have no alternative but to seek your permission to carry out a sustained surveillance operation against this target.

I am of the view that such an investigation would serve a dual purpose. Primarily, it may provide evidence of criminal offences...Secondly, it may yield evidence of inappropriate behaviour which (whether or not it constitutes a criminal offence) would leave...open to compromise and ought be reported to the appropriate legal body.

What would that appropriate legal body be?

Ms Leigh—I guess it would depend on which court we were talking about as to which jurisdiction that court came under.

Senator HEFFERNAN—It would be fair to say that, if there was a federal judicial commission, it would fit neatly into that, wouldn't it?

Ms Leigh—As I indicated, that depends on the role and jurisdiction that is given to such a commission.

Senator HEFFERNAN—That is not a very good answer.

Senator Ellison—Perhaps I can be of assistance here. There is a question of policy of whether there should be a judicial commission. Senator Heffernan's line of questioning indicates the area that he is pursuing and that deals with judicial behaviour. On the question of policy, can I take it on notice and refer it to the Attorney-General as to how a judicial commission might be an appropriate body? I can see what Senator Heffernan is saying: it is not criminal but it is inappropriate behaviour. How do you deal with it? You cannot charge the person, but there is inappropriate behaviour. Where do you go? I think the Attorney General's Department has taken it as far as they can as officials giving evidence in a hearing of this sort. I can put that line of questions to the Attorney-General on notice: what sort of inappropriate behaviour could be contemplated by a federal judicial commission; and would it be matters which are not criminal but are regarded as inappropriate? Slow judgments have been mentioned by Senator Heffernan and an alcohol problem. That might be of assistance, and I will refer it to the Attorney-General.

Senator HEFFERNAN—Thank you very much, Minister.

CHAIR—Thank you, Minister, I think that would be helpful. I was going to say that I think Ms Leigh, to the extent that that policy issue is progressed in any way, has assisted Senator Heffernan as much as she is able in terms of responding to your questions to this point.

Senator HEFFERNAN—Thank you very much and thank you to the minister for that advice. Would another issue—which is also pretty tricky—be where someone gave advice and then sat on their own advice? I could give another example of how difficult these issues are. I am firmly convinced there is no methodology to deal with them under the present arrangements. I have a quote from a New South Wales Police running sheet. The person—a solicitor—being interviewed by the police says that he was given a commission to provide legal advice on a court matter by his own admission. He then advised that the case was substantially more complicated than he had been led to believe. He subsequently sought the assistance of a judge to draft a submission to the lawyers in a certain city. The lawyer being interviewed by the police advised that this report was rejected initially but, after the mutual modification, was accepted and the judicial process concluded. According to this person the final report did not differ a great deal from the original one he had submitted with the

assistance of the judge. The prosecution were successful and this person was well paid for his services. Prior to terminating the interview he indicated that he would not want it known that a judge was involved and gave certain advice in the matter concerning this issue as there could be a conflict of interest when the matter came before his court.

What would you do with that if you got hold of it if you were a policeman?

Ms Leigh—I assume a police officer would raise it with his or her own superiors.

Senator HEFFERNAN—What would they do with it?

Ms Leigh—It would be appropriately referred to the Attorney-General.

Senator HEFFERNAN—You would not refer it to the chief justice in the jurisdiction.

Ms Leigh—Both, if it had not been referred.

Senator HEFFERNAN—What would they do with it?

Ms Leigh—I imagine that the police would raise it with the Attorney being their minister, but the minister would certainly raise it with the chief.

Senator HEFFERNAN—What would they do with it?

Ms Leigh—That is again where it becomes difficult to answer because we are talking in hypothetical—

Senator HEFFERNAN—They have no powers to do anything with it. The difficulty with that particular issue is that if advice is given from the bench that both parties were advised but in reality one party was not advised but were intimidated to the point where they let it go through to the keeper, which is probably what happened, doesn't that show a weakness in our system?

CHAIR—I do not think you can ask Ms Leigh to express an opinion of that nature, Senator Heffernan.

Senator HEFFERNAN—No. That is fair enough. That might be biting a bit too hard.

CHAIR—She is making her best endeavours in the light of a very hypothetical exchange.

Senator HEFFERNAN—I can assure you that it is not hypothetical, but it is probably inappropriate.

CHAIR—The propositions are. I understand that the matter to which you refer is not; the propositions that you are advancing in terms of seeking Ms Leigh's responses are, however, and it does not make it easy for her. The minister has indicated that he will take up the larger of the policy issues with the Attorney-General to seek advice on notice.

Senator Ellison—I add to that by including: what powers does the Chief Justice have? Are there guidelines for dealing with complaints? Are the guidelines enforceable? Have any complaints been upheld or acted on? That might be of assistance to Senator Heffernan, having regard to the federal level.

Senator HEFFERNAN—Thank you. I understand that Senator Kirk might have carriage of this matter in the Senate. I wanted to open up an interesting debate on the 'fors and againsts' regarding a judicial commission.

CHAIR—We are continuing with questions on output 1.1

Senator LUDWIG—I want to clarify where we are with FRC. I do not know whether we need to bring Ms Pidgeon back to the table but my recollection was that she was going to provide broad data and a statistical table regarding the determination of the outcome, and that I would have to seek those from Family and Community Services regarding their needs. If they are available through AGD, that would be helpful. If not, I can put them on notice to Family and Community Services.

Mr Cornall—Senator, I think you should do both. We will provide you with the information that Ms Pidgeon is able to provide. She indicated that there was some level of information that is best asked for from Family and Community Services.

Senator LUDWIG—That was my recollection. Thank you.

Senator KIRK—I understand that the Family Court has plans to provide a new registry in Newcastle. Is that correct?

Ms Leigh—Not a new registry. It is a buildings issue.

Senator KIRK—What does that mean?

Ms Leigh—It is a question of physical buildings.

Senator KIRK—So there is not going to be a new registrar; a registry will be established?

Ms Leigh—You might want to direct that question to them, but that is not something that I am aware of. There already is a registry in Newcastle. I am not aware that the present registrar is departing, but I would not necessarily be aware of detail at that level.

Senator KIRK—You say that a new building will be established. Will there be courts located in this building?

Ms Leigh—Perhaps I should say that it is a different building from the current building.

Senator KIRK—So the current building will no longer be used?

Ms Leigh—That is right. They are working on leasing a different building.

Senator LUDWIG—Whereabouts is that?

Ms Leigh—In Newcastle.

Senator LUDWIG—Do you have a lease already secured, and a location?

Ms Leigh—The Family Court is responsible for its own administration. It is responsible for all of these building issues. I believe they are appearing before you later. It might be better to ask those questions when Family Court officers are present.

Senator LUDWIG—Yes. We were trying to establish which ones we should ask the Family Court and which ones we should ask you. So decisions on the administration of the court are made by the registrar. What decisions does the minister make in respect of the location or any of those questions, or are they all made by the registrar?

Ms Leigh—I am not sure whether it is the registrar. The CEO of the court, Richard Foster, would have overall responsibility and would be able to answer those questions for you. The court is already located there. There is already a judge and federal magistrates there. It is

simply a matter of the physical building—the assessment by the Family Court that their needs in terms of a physical building were not being met and they have therefore been working for some time on securing different accommodation. The same judges, staff and federal magistrates will all be accommodated in that different building.

Senator LUDWIG—We might come back to this matter when the CEO appears before us. In that way we can deal with both the AGD response and the Family Court response at the same time. That would be simpler, rather than having you speak on behalf of the CEO.

Ms Leigh—That would be helpful, thank you.

Senator LUDWIG—It would be helpful for him, too, I suspect.

Senator KIRK—You mentioned that there is already a judge there, based in Newcastle. Is there any proposal to increase the members of the judiciary there?

Ms Leigh—They have been increased in recent years. Because of the federal Magistrates Court's establishment, there are now two federal magistrates there as well as the judge. So there are now three members of the federal judiciary in Newcastle.

Senator KIRK—And there is no proposal at this stage to increase the representation of the judiciary?

Ms Leigh—There has been no announcement by the government of any increase.

Senator KIRK—Madam Chair, that is all we have in 1.1

[9.56 am]

CHAIR—That concludes output 1.1. I understand Senator Stott Despoja is unable to attend this morning. She will put questions on notice to the portfolio in the output areas in which she is interested. We will now move to output 1.2.

Senator LUDWIG—The ANAO conducted a review of the outsourcing of legal services—I think this is possibly one of my favourite areas—which showed, in my words, some management problems or issues. The ANAO report on outsourced legal services in June this year made the following findings: that expenditure on outsourced legal services blew out by 23 per cent between 1999-2000 and 2003-04; that in one case the cheapest outsourced lawyer cost 69 per cent more than in-house lawyers; and that a number of breaches of the Attorney-General's guidelines on legal services spending have occurred in agencies, unbeknownst to the Office of Legal Services Coordination. How do you monitor those sorts of findings and outcomes, and what do you do about it? Or do you simply report it back to the relevant agencies concerned?

Mr Anderson—In respect of the particular findings in the report—if that is your question?

Senator LUDWIG—Yes.

Mr Anderson—Agencies are not identified by name in respect of those findings. That is the manner in which the audit was carried out. So we are not able to go back to any particular agency about particular findings in the report itself. We do, though, have a general process of seeking to monitor what agencies are doing in respect of the application of the legal services directions. We have a range of interactions with agencies. If we detect something, we will investigate that and engage in a dialogue with that specific agency. Following the release of

the report itself, we have conducted discussion groups with a range of agencies to go over the main themes and what we think agencies need to be doing to ensure that they are complying with the legal services directions.

Senator LUDWIG—So how do you find the cheapest outsourced lawyer costs 69 per cent more and deal with that department? Did you ask the ANAO to identify the department?

Mr Anderson—The ANAO has declined to disclose to us the details of the individual departments because, when they carried out the audit, they dealt with agencies on a confidential basis.

Senator LUDWIG—So you were as curious as I was and you asked the ANAO which department that was?

Mr Anderson—We asked the ANAO generally whether they would be able to disclose to us the information that lies behind their particular recommendations and findings, and they said that they could not.

Senator LUDWIG—Did you put a general question to all the departments to see if you could track them down?

Mr Anderson—We have not done that, no.

Senator LUDWIG—Shall I do it for you?

Mr Anderson—We certainly thought that the focus should be on looking at the issues in the report more generally rather than that specific question.

Senator LUDWIG—I guess it comes back to the old proverb: if you look after the little things, sometimes the big things will go away. You have a 23 per cent blow-out in two particular years—2003-04 being the most recent. Isn't that a concern to you, and what are you doing about it?

Mr Anderson—My understanding is that the findings of the report said that, certainly, expenditure has increased over the five years of the audit itself but, when you adjust that expenditure in real terms, you actually find it only went up by 11.7 per cent. I know they do say it is a figure of 23 per cent at one point where they are talking about the overall rise in expenditure. But they certainly concluded that there has not been a blow-out as such of legal expenditure and that, while the legal expenditure has risen by just over 11 per cent over the five years, there are a number of underlying reasons for that—such as increased legal activity in relation to national security and international engagement, royal commissions and things of that nature.

Senator LUDWIG—So everything is fine.

Mr Anderson—I do not think any regulator would simply say that everything is fine and you can relax. We continue to be concerned about agencies' understanding of the legal services directions and about the manner in which they comply. For that reason, we continue to have a reasonably active process of going out and engaging with agencies—providing guidance to them, monitoring breaches and investigating those. We are also, of course, still reviewing the legal services directions themselves to see whether there are particular issues raised in this report that should be implemented in the review of the directions. The ANAO is

still looking at one of the recommendations—I think it is recommendation No. 10—about best practice guidelines for recording legal services expenditure. We will be working with them to carry that recommendation forward and will then be seeking to, as necessary, reflect that in the revised legal services directions.

Senator LUDWIG—The ANAO report says that the quality of Public Service management of legal costs has been variable and a number of agencies require significant improvements in these areas. What do you proactively do about it other than review? Is there a process where you can take them to task to work with them to overcome that? I understand that you cannot identify which ones in your statements, but where there are broad statements like that, doesn't it indicate that there are a significant number of agencies where the quality of the Public Service management of legal costs is variable? In other words, is this an indication that you are not doing your job?

Mr Cornall—Could I interpose here. It is not our responsibility to oversee the management of legal costs in every Commonwealth department or agency. The chief executive officer or the secretary of the department has responsibility for managing all of the financial affairs of the agency or the department, and that includes their legal costs or their legal administration just as much as their IT costs, their human resource costs and every other cost that they incur in the course of managing the department.

The responsibilities that we have include issuing legal services directions, which set a framework for the legal services provision for the Commonwealth, and monitoring breaches of those guidelines when they come to our attention, and assisting legal officers employed in departments and agencies to do their job within the legal services directions. If we were to have an overall responsibility for, in effect, monitoring or regulating the use of legal services throughout Commonwealth agencies and departments, we would require considerably more funding and resources than we presently have. We are not expected to undertake that task and we are not resourced to do it.

Senator LUDWIG—If that is the answer, where the ANAO report says that the agencies: ... did not have sufficient systems in place to monitor their workload and expenditure, to enable them to recognise and respond to change—

Is this a broad failing in this whole policy area by this government where it simply allows CEOs to run their own legal outsourcing, with a monitor in place, but a report that is critical of how they monitor their outputs and their costs? It seems to me there is more than simply a monitoring role for someone. If you do not want to take responsibility then someone should, but that is another question.

CHAIR—I am assuming it is a question you are directing to the minister, Senator Ludwig.

Senator LUDWIG—I do not mind who answers. It just seems to be—

CHAIR—It is not really an appropriate question for the officials.

Senator LUDWIG—I am happy for the minister to reflect upon it and answer it. I am sure I have asked this of Mr Cornall before and he has responded the same way. He has been consistent. There is an area here where an ANAO report has consistently said that there are, I think, significant problems. I am sure Mr Cornall would agree that I have asked a range of

questions in this area over the last couple of years highlighting what could only be described, by me, as a disaster in the way CEOs or agencies have managed their legal outsourcing. Yet all we seem to have is a monitoring of this disaster. There does not seem to be a process in place to fix it.

Mr Cornall—In respect of ANAO cross-portfolio reviews of this nature, one of the expectations is that the review will indicate ways in which agencies collectively can work better in this area or address particular problems. I would expect that the heads of each of the agencies would look at that report and monitor their own processes and seek to improve them. That would be a normal expectation of an ANAO report of this nature.

Mr Anderson—Also, I think it is worth noting that there are a very large number of government agencies of varying size. The bulk of legal expenditure within the government is actually in a very small number of departments. Obviously, it is particularly important that those departments that have a larger spend have appropriate management systems in place. It is much harder for small agencies that might only be infrequent purchasers to have in place standing management arrangements for a type of expenditure that they very rarely incur. As the Secretary has pointed out, our experience in talking to agencies is that they do take being audited by the ANAO very seriously. A number of agencies, as detailed in the report, have put in place changes over the time period of the audit. We are now working with the smaller agencies in particular, the infrequent purchasers, and providing them with more information and guidance seeking to assist them with improving their management practices.

Senator LUDWIG—I guess I will persist until someone eventually does do something about this. It is accepted that you play a monitoring role and you highlight these things. If AGD or other departments say, ‘We need a hand,’ you will provide assistance to get their processes up to speed. But, in terms of the ANAO report, if individual departments and CEOs ignore it, do not read it, do not think it applies to them, then things will continue on the way they are because there is no single agency responsible for ensuring that those outcomes are in fact brought to the notice of individual CEOs and departments to check against their performance.

Mr Anderson—From memory there are 16 agencies who participated in depth in the audit and then some 40 or so that were surveyed. My understanding is that the CEOs of all of those agencies would have received direct communications from the Auditor-General, both throughout and at the conclusion of the audits. So, while the report itself does not disclose individual agencies and issues that individual agencies might have, my understanding is that the ANAO would have made it very clear to those particular agencies in the course of the audit if there were things that the ANAO thought that they should address. In a number of areas of expenditure, not just legal services, that is the way the government deals with the responsibilities and obligations of chief executive officers. It has regular reviews by the Auditor-General and, if there are issues that the Auditor-General has concerns about, then they raise them with the CEO of the particular agency.

Senator LUDWIG—So at least for the short term, I shouldn’t expect to see these problems arise again?

Mr Anderson—We will continue to do what we are currently doing, Senator. If we think anything more is required within our role, then we will do that as well in terms of seeking to assist agencies and to deal with any breaches that we detect.

Senator LUDWIG—Mr Cornall, are you prepared to give me a commitment that I will not be asking these questions and hearing the same answers and seeing the same failings again in the next 12 months? I am willing to wait.

CHAIR—It is whether you will be asking the questions, Senator Ludwig.

Senator LUDWIG—That is always a difficulty too, granted—me or someone else like me.

CHAIR—I might ask you for the same, which you would not be prepared to give.

Senator LUDWIG—The difficulty is that there is a significant amount of money expended in outsourced legal expenditure in this area. We also have in-house legal and there is a significant amount of money also spent by departments in this area. It beggars belief that there is no overall check done to ensure that the departments do in fact meet at least a base requirement to ensure that they do monitor their costs. I accept that you say it is the individual departments; but over the last couple of years the individual departments do not seem to have heeded anybody's advice in this area. I am sure AGD have. That is the final question I will ask you in this area: what response does the AGD have? But it seems to defy belief that over last three years I have asked the same question and have received the same responses.

Mr Cornall—I think Mr Anderson has indicated that there are a number of factors that have contributed to the increase in legal costs over the last few years. I refer in particular to the two royal commissions, when there were not any royal commissions in the previous period of this government. They have both been significant royal commissions which have added considerably to legal costs. To do any valid comparison you would need to take those out. What I find interesting is the particular interest in legal costs as opposed to IT costs, human resource costs, consultant costs of other descriptions or accounting costs. All of these matters are responsibilities of chief executive officers, so how they respond to these matters is really a matter for them under the government's current financial management structures.

Senator LUDWIG—Minister, would you make public the agencies that exceed their budgets? If not the current ones, a register should be set up. It is a bit like Consumer Affairs does it—it is done in a range of areas. It should be made a bit more transparent so that we know there is transparency in how the legal spend is outsourced.

Senator Ellison—It really is a matter for each portfolio and for the responsible ministers. The question of whether or not expenditure is excessive in any agency is a matter for the agency head or departmental head and the minister concerned. We are not acting as policemen in this regard. The ANAO report showed that most agencies had in place satisfactory arrangements for internal and external legal services. While AGD can have a role to play in this, it is not one of a policeman; it is one of assistance. For us to be saying to people that they have exceeded their expenditure is a very different role.

Senator LUDWIG—Minister, that is the point I am making. I do not really accept this, let's face it, but—

Senator Ellison—You want AGD to be a central policeman and tell them what they can and cannot do.

Senator LUDWIG—Not quite. I think the fallback might be that they do provide public accountability—and they can do that. They can require departments to do so; you can put in place procedures to ensure that there is public accountability and that they do make those figures available—if not in a gross form, at least to ensure that there is some external accountability, that they do have an external review, albeit by estimates, of their performance. This would allow others to ask more detailed questions within the portfolio areas, rather than having to place general questions on notice to all of the government departments. That is the initiative that I am saying is worth looking at. What is your response?

Senator Ellison—I will take it on notice and refer it to the Attorney-General. It is his area of responsibility. For my part, I do not see the Attorney-General's Department acting as a policeman or auditor as such. Each departmental agency makes its own decisions. It is much like they do with IT and other outsourcing services. Certainly, the AGD could offer assistance, especially in constructing appropriate panels, for instance, for advice. Officials can answer this better than I, but no doubt other departments have come to A-G's and asked for advice about who you would seek to engage on certain issues, because obviously some law firms have specialised practices. I will take it on notice and take it up with the Attorney-General.

Senator LUDWIG—Thank you, Minister.

CHAIR—There being no further questions on output 1.2, I thank officers for their assistance. We will move to 1.3, Legal services and policy advice on information law and human rights. Senator Crossin indicated that she had questions in this area.

[10.14 am]

Senator CROSSIN—Can someone explain to us what the rationale is behind rolling together the human rights law and the information law areas?

Mr Cornall—The department is responsible for a broad range of policy responsibilities. In terms of the structure that we have and the SES officers to manage that structure, we cannot necessarily have simply one division per policy area, because we do not have the resources to do that and they do not justify that amount of attention. Previously, the information law division was in what you might call the national security and criminal justice side of the portfolio, and that did not seem to fit very well, so we moved it across to the civil justice side of the portfolio, under the same deputy secretary as all the other civil justice areas. It was put together this way because they do have some complementary features, but also in structural terms it simply made sense in terms of best utilisation of our resources.

Senator CROSSIN—Has this been accomplished, do you think?

Mr Cornall—Yes, I believe it has.

Senator CROSSIN—So why was it moved from outcome 1.1? Are there different outcomes now?

CHAIR—I think we are talking about outputs, not outcomes.

Senator CROSSIN—Are there different outputs then?

Mr Cornall—It was simply an allocation of responsibilities within a group and divisional structure that made some sense in terms of allocation of resources.

Senator CROSSIN—So what has happened to the outputs? Have they been picked up by this new amalgamation?

Mr Cornall—They have simply been shifted to different—

Senator CROSSIN—They have just been shifted across?

Mr Cornall—Shifted across, yes.

Senator CROSSIN—So they have not changed or diminished in any way?

Mr Cornall—No.

Senator CROSSIN—Have any programs been cut or suffered funding cuts as a result of the merger?

Ms Lynch—No. The division does not have any administered funds or programs, in that sense, that we run. We are largely a policy division.

Senator CROSSIN—Have staff been cut?

Ms Lynch—No. What happened was that the staff who were working in human rights in the civil justice division transferred over to this division and the staff in privacy and copyright transferred over, so it was simply that the existing branches moved together.

Senator CROSSIN—So the existing outputs have simply moved as well? There is not any review taking place to amalgamate outputs or refine them or anything like that?

Ms Lynch—No.

Mr Cornall—I should say that we are required to review our outputs upon a two- or a three-yearly basis, I think. We are undertaking a broad review of outputs with regard to that responsibility, but none of that affected the arrangements for human rights and information law.

Senator CROSSIN—What are the review measures that are actually in place to assess the performance of the outputs?

Mr Cornall—We report against our outputs in our annual report, and the measures are set out in our annual report. All we are doing at the present time is a normal process of assessing that those outputs and the performance measures that we are using are valid and helpful.

Senator CROSSIN—So now, with the two sections coming together, how will that report occur? You do not believe there will be any change in that?

Mr Cornall—No. They will be reported in our annual report as they were before, but in this new division.

Senator CROSSIN—What are the particular issues regarding the European Commission adequacy rating for the Privacy Act that Australia found too restrictive? It is on page 76 of the annual report you just handed down.

Ms Lynch—Negotiations with the European Commission are continuing on the adequacy rating for the privacy legislation. An officer of the department met with the commission, most

recently in September. The commission has engaged a consultant to provide a report on the Privacy Act. The consultant sent out a number of questionnaires to people in June 2005. We understand that the European Commission has indicated we will receive a copy of that consultant's report in due course but negotiations are continuing.

Senator CROSSIN—What leads you to make this statement in the annual report about concerns of the privacy protection being 'too restrictive'? That is on page 77.

Ms Sheedy—The case study that you are referring to is pointing out the reason why Australia has become involved in the development of the APEC privacy principles. One of the reasons that Australia did become involved in this work was the difficulty in obtaining adequacy for our Privacy Act under the European system. We are not alone in that. There are a lot of countries that are having that same difficulty. So it was decided that there was a need to actually develop privacy principles for our region, the APEC region. We have been working on that. Simultaneously, we are still attempting to get adequacy for the Privacy Act under the European Commission.

Senator CROSSIN—Is there a time line for that?

Ms Sheedy—In getting adequacy under the European system? No.

Senator CROSSIN—A time line in terms of this subgroup.

Ms Sheedy—The APEC privacy work? Yes. The main privacy principles themselves have been adopted by the ministerial council under APEC and we are now working on the implementation principles for that. We are hoping that that will come to fruition either in 2006 or in 2007. 2007 would be a nice time to do it because that is when Australia is hosting APEC.

Senator CROSSIN—Where are we currently at regarding the engagement with the EC on the progress of any adequacy rating? What is occurring there? Are you waiting for this subcommittee to report?

Ms Sheedy—They are two separate exercises altogether. The subgroup work is in APEC. With the European Commission we are, as Ms Lynch said earlier, continuing to work with the European Commission to seek adequacy. There are two areas in which we are seeking adequacy. One is for the Privacy Act itself. The other is for the passenger data, the PNR data, for Customs. At the moment the European Commission are working on the PNR data and have said that they will continue to work on that before they then come back to the general adequacy for our Privacy Act. So, in a sense, they are fast-tracking—insofar as the European Commission fast-tracks anything—the PNR data and then they will come back to the general Privacy Act.

Senator CROSSIN—That is the area that you mention on page 76. So there is no time line for that? You say:

While these matters have not advanced as quickly as anticipated, the outlook for achieving an adequacy rating remains positive.

Ms Sheedy—That is right. We are continuing to engage. As long as we are engaging, we are positively hoping that we will get an outcome.

Senator CROSSIN—So you cannot tell us when you expect to finalise that.

Ms Sheedy—No. It is a very complex system within the European Commission. You have to go through a number of committees. There is an article 29 committee, which is made up of the European data protection commissioners. There is an article 31 committee, which is of the commission. Then you have the commission itself. Then you have the European parliament. We have been through the article 29 committee for general adequacy. They have come back to us with some suggestions. This was done a couple of years ago. We have taken such steps as the government thought were appropriate to amend the Privacy Act. That has been done. All of that has gone back to the commission. The commission then, as Ms Lynch mentioned, engaged a consultant to look at our laws again. That consultant has reported to the commission but we have not yet seen a copy of that. When I met with the commission officials recently they undertook to send a copy to us but they have not yet done so. Then it will have to go back to the article 29 committee again.

Senator CROSSIN—What are the proposals to access the passenger name record data—I think you call it the PNR data—from airlines entering Australia?

Ms Sheedy—The proposal is to seek an adequacy rating under the European directive to allow airlines that fly out of the European Union to process this information to Customs. In terms of the technicalities of how that works, I think the question should be directed to the Customs officials when they appear this afternoon or tonight. We are working on the privacy aspects of it to assist them but the technicalities of how it is all done is a Customs issue.

Senator CROSSIN—Are there any interim measures in place while this is being negotiated with the EC?

Ms Sheedy—Yes, there are, but, again, technically Customs would be able to explain that.

Senator CROSSIN—So it is in the purview of Customs really.

Senator KIRK—On page 76—

CHAIR—Are you still on 1.3?

Senator KIRK—Yes.

CHAIR—Senator Parry has a question, if I may go to Senator Parry.

Senator KIRK—Please do.

CHAIR—It is gratifying to see he has chosen to attend his first estimates at Legal and Constitutional. Then we will come back to you, Senator Kirk.

Senator PARRY—On page 62 of the annual report there is reference to the increase in the minimum service provision for fees paid to private solicitors. It has all jurisdictions except Tasmania; Tasmania is being phased in. That was obviously at the time of writing the report. How is Tasmania looking in relation to the phase-in process?

Mr Govey—I am afraid that this in the legal aid area and the output has now changed. I do not have the number on me but that one appears later in our program. It is not the responsibility of either Ms Lynch or Ms Sheedy.

Senator PARRY—I am sorry; I have it under 1.3.

Mr Govey—That was obviously correct for the majority of last year, so I apologise for that confusion.

CHAIR—Mr Govey, do you want that in 1.6?

Mr Govey—I am sure that the relevant person is here, so if it was more convenient we could deal with the question now.

CHAIR—No, it is easier to stay in the outputs. We will keep going, but could you perhaps provide the secretariat with advice as to where you want that pursued?

Mr Govey—Output 1.7 is correct.

CHAIR—Thank you.

Senator KIRK—I have a few questions in relation to page 76 of the annual report. Under the heading ‘Freedom of Information’ there is an indication that the FOI memoranda are being rewritten. Has that been completed and released?

Ms Lynch—We anticipate having the rewrite of memo 19, which is on general principles, out by the end of the year. Similarly, the memorandum on exemptions should be completed by the end of the year. We are in the process of recruiting to get extra resources in to enable us to move on the remaining FOI memoranda more quickly.

Senator KIRK—What was the second one that you mentioned?

Ms Lynch—The one on exemptions.

Ms Sheedy—That is actually updated each year.

Senator KIRK—You mentioned that you are recruiting people.

Ms Lynch—We are in the process of putting some more resources into the area to enable us to move on those memoranda more quickly.

Senator KIRK—Are you recruiting from outside or is this just some shift of resources within the department?

Ms Lynch—We are endeavouring to perhaps bring somebody in from outside. We have also advertised some temporary acting within the branch to enable us to put more resources into this. So it is flexible. We have one campaign running within the department plus we are talking to somebody outside about the possibility of doing it as well.

Senator KIRK—So it is quite a labour-intensive and time-intensive process.

Ms Lynch—It is very labour intensive and time intensive, yes.

Senator KIRK—You are saying that that should be completed by the end of this year?

Ms Lynch—We are saying memo 19, which is the general principles and which is quite a sizeable document, plus the exemptions one should be completed by the end of the year. The remaining ones will not be completed by then but we are putting more resources into it.

Senator KIRK—When is it envisaged that they will be published on the web site?

Ms Lynch—We are envisaging that memorandum 19 and the one on exemptions will be up on the web site by the end of the year.

CHAIR—Is there anything further on output 1.3?

Senator CROSSIN—In relation to page 79 of your annual report regarding the discussion paper on the statutory cap on royalties payable for broadcast sound recordings, how many submissions have been received?

Ms Daniels—I think we got about 14 or 15.

Senator CROSSIN—Are you able to advise us of where they are from or who has given them?

Ms Daniels—The submissions that are non-confidential are up on our web site. The main ones came from the record industry on the one side and broadcasters on the other.

Senator CROSSIN—Has any follow-up consultation work been done on this?

Ms Daniels—We have had some meetings with various stakeholders during the year and the issue is under consideration by the government now.

Senator CROSSIN—What do you mean by ‘meetings with various stakeholders’? What have you done? Have you met all of the people who sent in a submission?

Ms Daniels—No. We have met with people who have requested to meet with us. That has principally been the Australian Record Industry Association in relation to that issue.

Senator CROSSIN—So that is the only meeting you have had?

Ms Daniels—I would have to go back and check. There might have been some other meetings as well, but they are the main one that comes to mind.

Senator CROSSIN—So there have been no meetings or workshops more broadly within the industry?

Ms Daniels—There have been no workshops. It is a fairly isolated issue as to whether a particular cap in the Copyright Act should be repealed and left to decision by the Copyright Tribunal or should remain in there for radio broadcasters.

Senator CROSSIN—Has the policy review been finalised?

Ms Daniels—No. There has been no decision by government as yet. It is still under consideration.

Senator CROSSIN—Okay. We will put that on our list for next time.

Senator LUDWIG—On that area, to date you have not gone to the types of industry—say, community broadcasters or any of those—to see how it might impact upon them, as I understand your statements?

Ms Daniels—We have not met separately with community broadcasters, no. If they had requested a meeting with us, we would have followed up.

Senator LUDWIG—So you have only acted upon requests for meetings?

Ms Daniels—That is right.

Senator LUDWIG—Have you done a general letter or newsletter, or written to various interested stakeholders in this area, signalling that you are conducting a review?

Ms Daniels—Yes. When we put the discussion paper out, we also publish three or four times a year what is called copyright *e-News*. We advertise the paper and put the relevant web site address on that *e-News*. That goes out to all our copyright stakeholders.

Senator LUDWIG—That includes community broadcasters?

Ms Daniels—It would include community broadcasters.

Senator LUDWIG—Is there a timeline for finalising this?

Ms Daniels—It is really up to the Attorney and the government as to when a decision will be made on this issue.

Senator LUDWIG—So you do not have a timeline?

Ms Daniels—I do not have a timeline, no.

Senator LUDWIG—When did it start?

Ms Daniels—We issued the discussion paper in February this year.

Senator LUDWIG—When will the current round of submissions that you have received to date be finalised, or will that be ongoing? I am trying to understand how the process is going to go from here. You have obviously got some consultation. Have you had some consultation to date with industry stakeholders?

Ms Daniels—Yes, we have had consultation, and from the department's point of view we feel we know the issues that government needs to make a decision on, so we will not be seeking further consultation. But if groups would like to meet with us further, we are willing to do so.

Senator LUDWIG—So when will you prepare a brief and forward it to the minister's office?

Ms Daniels—There have been a number of briefs prepared on this issue for the Attorney.

Senator LUDWIG—When does the consultative process end?

Ms Daniels—From the department's point of view, unless an industry comes to us, the consultation process is no longer.

Senator LUDWIG—Have we got a response back from the A-G? The chair is not going to let me ask for the departmental advice that you provided to the A-G—

CHAIR—Correct.

Senator LUDWIG—although I am minded to try. I do not think I am going to get very far. What I am trying to understand is: are we still in the process where you are being required to develop further papers to the A-G, or are we in the process of the next iterative step? I know you do not know that there is no end point, but at some point the A-G will make a decision, I assume. It may be that there will be no decision, but a decision will be made.

Mr Cornall—I think Ms Daniels has said that the matter is now before government and government has to make up its mind what it wants to do about it.

Senator LUDWIG—All right. It is at least helpful that we are at that point. So we are now waiting for a response from the A-G as to where to go next?

Mr Cornall—It is a government issue.

Senator LUDWIG—Is there any publicly available policy paper?

Ms Daniels—No. There is the discussion paper, which airs all the issues.

Senator LUDWIG—Are there plans for a policy paper to be made public about this process, the A-G's views, the government's views?

Ms Daniels—No. I would imagine there would be a press release after government makes a decision on this issue.

CHAIR—Is there anything further in 1.3?

Senator CROSSIN—I would like to go back to the implementation stages of the APEC privacy principles. Where are we currently at with the implementation of the privacy principles?

Ms Sheedy—There is a draft document that has been circulated amongst the economies working in the subgroup. I think the next meeting of the subgroup is later this year or early next year, and it is expected that the economies will come back with their thoughts and things on that. But at the same time there is a move to try and engage the various data commissioners within the region to be involved in this process at this stage, because the implementation is obviously of concern to them—about how complaints can be handled across jurisdictions et cetera.

Senator CROSSIN—So where has the draft paper gone? Has it been circulated widely?

Ms Sheedy—I believe it has been circulated just within the economies at this stage. I could take on notice whether or not it is up on the APEC web site yet.

Senator CROSSIN—Is it on the A-G's web site at all?

Ms Sheedy—No. It would be up on the APEC web site, if it is anywhere. It is an APEC process.

Senator CROSSIN—What sort of time frame is there in terms of finalising the development of the principles?

Ms Sheedy—As I said earlier, we are hoping that they will be finalised next year or, failing that, in 2007, when Australia is hosting APEC. The actual principles themselves have already been endorsed by the ministerial council, so they are final in that sense. It is the implementation principles that are now being worked on.

Senator CROSSIN—What other nations are we working with regionally to implement the privacy principles?

Ms Sheedy—All of the major players in APEC have been involved in this. Canada, the US, Hong Kong, Taiwan, New Zealand and Japan have been the main players, but everybody else has been involved from time to time.

Senator CROSSIN—Will that then lead to the international implementation of these principles or is that further work that will need to be done?

Ms Sheedy—That will be further work.

Senator CROSSIN—What is happening in that regard?

Ms Sheedy—That will depend on the nature of the implementation principles that are developed. There will then be further work done on how that can be set in place. The idea is not to have something that is as prescriptive and directive as the European directive, which is the reason why we headed down this path of working in APEC.

Senator CROSSIN—Do the APEC principles need to be ticked off first before they go to the broader international community or can they be done concurrently?

Ms Sheedy—They will be ticked off within APEC first.

Senator CROSSIN—So one leads to the other—is that right?

Ms Sheedy—That is right.

Senator CROSSIN—Page 80 of your annual report refers to the review of the copyright digital agenda reforms. When is that likely to be completed?

Ms Lynch—That is an ongoing process. We are expecting to finish it by the end of the year but there are a number of issues that arise in the digital agenda review that relate to other work being done, so it is a complicated area. Ms Daniels could give you more detail, but by the end of the year is the timeline we are working to.

Senator CROSSIN—Ms Daniels, do you want to give us some more detail?

Ms Daniels—As part of the implementation of the US-Australia Free Trade Agreement copyright obligations last year, there were some aspects of the digital agenda issues that were effectively superseded or overtaken in part. There is also what is called the government's review of possible new exceptions to the Copyright Act, known as the fair use review, that impacts fairly directly on some of the digital agenda reform issues. The plan is that the decisions in relation to both the fair use review and the digital agenda review will coincide.

Senator CROSSIN—How much has been expended so far on this review?

Ms Daniels—In what regard, Senator?

Senator CROSSIN—We are talking here about monetary expenditure.

Ms Daniels—Are you referring to the review done by Phillips Fox back in 2003?

Senator LUDWIG—You did the Phillips Fox review regarding the digital reform agenda, and that seems to have been overtaken, effectively, because—please correct me if I am wrong—there is now some inconsistency between that and the current fair use review since the FTA. In other words, you are not going to follow the digital reform agenda and its outcomes because they have been overtaken by the fair use review. I think that is a reasonably fair statement to make. You can correct me if I am wrong. As a consequence, we have that money expended, and now the money has been expended on the fair use review.

Ms Daniels—In relation to the digital agenda review, firstly, the US-Australia Free Trade Agreement amendments did not fully overtake the Phillips Fox recommendations—only in some areas. Secondly, the Phillips Fox report did not look at all aspects of the digital agenda amendments. For example, they did not look at the impact of the digital agenda on people with an intellectual disability. The department is looking at the impact of those provisions on

that area, by way of example. So the Phillips Fox report was not a complete answer to reviewing the digital agenda reforms. The US-Australia Free Trade Agreement amendments did not fully overtake all of those reforms. So there are still some live issues under the digital agenda review that we are looking at.

Senator LUDWIG—You indicated that they will be coalesced into one, in terms of the fair use review, and you will then bring those forward together.

Ms Daniels—Effectively.

Senator LUDWIG—So we agree in part that those have been overtaken, but not fully—

Ms Daniels—Yes, there is not an answer to all of them.

Senator LUDWIG—and you are then going to coalesce them and bring them forward. At what time will you bring those forward?

Ms Daniels—Hopefully in the next few months.

Senator LUDWIG—Christmas?

Ms Daniels—Hopefully. It is really a matter for the Attorney.

Senator LUDWIG—Have they been finalised from the department's point of view and are now before the Attorney-General?

Ms Daniels—No, they are not with the Attorney. We are still finalising them in the department now.

Senator LUDWIG—When are they likely to be handed up to the Attorney-General?

Ms Daniels—In the coming week, Senator.

Senator LUDWIG—And that ties off all of those three issues—the FTA outcomes, the fair use outcomes and the remaining Phillips Fox outcomes?

Ms Daniels—Two of the three, Senator. The FTA outcomes we have another year to implement; they are what are known as technological protection measure obligations, and, as you may be aware, the House of Representatives—

Senator LUDWIG—That is why I was asking the question. I was curious: if they were going to be finalised too, then I thought that would be a bit early!

Ms Daniels—Yes, it would a bit early. They are really for next year. So, in that sense, the technological protection measure provisions are quarantined from this aspect.

Senator LUDWIG—So they are not going to be dealt with in this review; they will be dealt with—

Ms Daniels—After that process is complete and the departmental review process is complete; yes. That is really a 2006 issue.

Senator LUDWIG—I would like to return to Senator Crossin's question about costs. I wonder if you could direct your answers to her on that.

Ms Daniels—There is no cost in relation to the fair use review—that has been done within branch resources. We have not had a consultancy to assist with the fair use review in any way. I could provide the committee, as I think we have done in the past, with what the department

paid Phillips Fox for its consultancy in 2003 and 2004. There are no other figures, other than that, I think, that would be useful.

Senator CROSSIN—Have they been provided to the committee previously?

Ms Daniels—They have, yes.

Senator LUDWIG—So there have been no additional costs incurred since that time?

Ms Daniels—No.

Senator CROSSIN—What are the remaining Australia-US Free Trade Agreement obligations regarding the technological protection measures to be implemented?

Ms Daniels—It is basically an obligation to look at some provisions that went into the Copyright Act as part of the Digital Agenda Review in 2001. The US free trade agreement has effectively broadened the obligations in relation to technological protection measures, so the department is looking at how we have to amend those provisions to fit within our international obligations.

Senator CROSSIN—So where is the progress in implementing those measures? What is the timeline for that sort of work? When do you expect it to be completed?

Ms Daniels—The amendments have to be in place by 1 January 2007, so in the department we are working through those parts of the requirements that need to be amended in the Copyright Act. At the same time, the House of Representatives Legal and Constitutional Affairs Committee is looking at what possible additional exceptions Australia could introduce to meet some of those requirements under the free trade agreement, and they are due to report in February.

Senator CROSSIN—Has the recent decision in Sony versus Stevens—the ‘PlayStation modchip case’ I have got here—prompted any further review of the copyright reforms?

Ms Daniels—That decision affected the present provisions as they relate to technological protection measures, and the US free trade agreement has basically meant that we have to look at revising those provisions anyhow. So that is a decision on the present law up to when we have to change it.

Senator CROSSIN—Does that take into account the decision of the Sony versus Stevens case?

Ms Daniels—That will be a matter that the government will consider as part of that process in the coming months, and I would imagine that the issue would be raised before the House of Representatives Legal and Constitutional Affairs Committee.

Senator CROSSIN—So is there an expectation that you might wait for that committee to report before some of this work is finalised?

Ms Daniels—I think we will have to wait for that committee to report; yes.

Senator CROSSIN—Can you please provide an update on how the draft text of the convention on the rights of people with disabilities is progressing—that is probably a different area, is it?

Ms Lynch—There is a chair's text that has now been produced by the UN. That has now been released by the Chair of the Ad Hoc Committee to the convention, and that will be the subject of negotiations during January 2006. The department and Family and Community Services have been consulting relevant stakeholders within Australia on that draft text.

Senator CROSSIN—So the Chair's Draft has been released?

Ms Lynch—The Chair's Draft has been released and it is on the UN web site.

Senator CROSSIN—What happens now? Your department picks that up, in conjunction with FaCS, and undertakes national consultations?

Ms Lynch—We are undertaking consultations with government and non-government human disability, human rights, legal and business sectors with a view to informing Australia's position for the next round of negotiations in January 2006.

Senator CROSSIN—That would include peak—

Ms Lynch—It includes peak disability organisations as well.

Senator CROSSIN—Okay. What is the time line for the expected completion of the text?

Ms Lynch—Negotiations are in January 2006. Mr Minogue may have a date for when the UN expects to complete the negotiations.

Mr Minogue—There is no expected date in a formal sense; it is in the UN processes. But the chair of the UN ad hoc committee that is looking after this process is very keen to progress the negotiations of the text to a final position as quickly as he and the committee can. There is an expectation of a seventh session of the committee in January of next year and possibly another one in August. The way the chair has approached the task, and the sort of exhortations he has been putting to countries, has been to move beyond the position of what you would like in a perfect world to what is acceptable. The history has been one of quite disparate views and countries putting very strong views about what they would want in a perfect world, so he is saying, 'We have done that. What is acceptable?' and that is the way it is being negotiated through. In short form, the chair is looking for significant progress in what is acceptable in the text in the next two sessions next year; but as to when it might actually be resolved, we do not know.

I might add to a comment that Ms Lynch made. Senator, you asked about consultations with the peak bodies of the disability sector. That is definitely true; that is ongoing. The Attorney-General has approved a grant of \$50,000 to be paid to the Australian Federation of Disability Organisations to undertake national consultations. That was approved very recently. That follows on from the earlier grant of \$50,000 that the Attorney approved for the disability sector to undertake negotiations. That is going to be beneficial to the disability sector to discharge that consultation responsibility and also, because we are in October now and the next session is January, the time line is quite compacted to get some views coming in as to what Australia's position should be.

CHAIR—When you said the 'chair' you were talking about the UN chair?

Mr Minogue—Yes.

CHAIR—Who is coordinating all of that here on behalf of us? Is it someone in your department?

Mr Minogue—That is right. In terms of Australia's participation, there are aspects of the disability convention that fall within the Attorney-General's portfolio, and our primary interest is the administration of the Disability Discrimination Act. But disability policy more generally is a responsibility for the Department of Family and Community Services. It is shared between ourselves and FACS.

Senator CROSSIN—Has the government issued a response to the text at all, or are you waiting until these national consultations are finished?

Mr Minogue—We have not issued a response, and we probably would not issue a response in that sense—

Senator CROSSIN—A paper or a discussion outline?

Mr Minogue—We certainly will be consulting with the disability sector, state and territory governments and others and we will be informing Australia's position. In terms of the latest chair's text, it is probably not timely to try to express a view on individual articles. We really are waiting to see what the disability sector and others have to say about them. In terms of getting that information in and processing it, a negotiating position will be developed.

Senator CROSSIN—When you send out a letter to state and territory governments or to peak organisations, what do you say: 'Here is the draft text of the convention on the rights of the people. Give us your thoughts'? You do not give them any guidance as to what the government might be looking for? Perhaps you might be able to give the committee a copy of correspondence that you send out to people.

Mr Minogue—Yes, we can provide you copies of correspondence. There are template letters for different types of organisations, but we can give you those.

Senator CROSSIN—Thanks. That is all I have got on 1.3.

CHAIR—That concludes 1.3. We will move to output 1.4, which is legal services and policy advice on international law—

Senator CROSSIN—Senator Ludwig has one other question from 1.3.

Senator LUDWIG—It relates to the residential tenancy database. The working party was to finalise the residential tenancy database report in August 2005. Has that been done?

Ms Sheedy—The draft report is due to be considered at the SCAG meeting this week on 3 and 4 November.

Senator LUDWIG—So the time frame was met and the papers developed and it is going before SCAG.

Ms Sheedy—The paper has been developed and will be considered at the SCAG meeting this week.

Senator LUDWIG—I think that is it. You have taken away all my other questions.

CHAIR—Excellent answer, Ms Sheedy.

Senator LUDWIG—I will have to wait for SCAG. That is really the answer, isn't it?

Ms Sheedy—I think so, Senator.

CHAIR—I assume, colleagues, that we can then move on to 1.4.

Senator LUDWIG—Yes. I will start. This is one of those areas I have asked a number of questions on in the past. In terms of staff and staff arrangements in the Office of International Law, has there been additional staff hired in this area since budget?

Ms Leon—Additional staff have come to the Office of International Law in the current financial year principally under three measures, which have been in the papers. One concerns the negotiation of legal arrangements to support the government's offshore maritime security initiatives. Another concerns additional staff to negotiate free trade agreements. The third concerns the contribution to the regional counter-terrorism effort.

Senator LUDWIG—Are you able to say how many in each area, whether they are ongoing or non-ongoing employees and what level they are employed at in the three areas you have outlined? If you do not have those available, I am happy for you to take them on notice.

Ms Leon—I can give you the detail on notice.

Senator LUDWIG—Could you also give the total cost? That is the usual thing I also ask about this juncture as well.

Ms Leon—Yes. The total costs are, of course, in the budget papers. But I am happy to provide that to you.

Senator LUDWIG—Are they separated out?

Ms Leon—The free trade agreements are separated into outputs. That material is in the budget papers. So are the offshore maritime security and counter-terrorism aspects, but I am happy to provide it if that will assist you.

Senator LUDWIG—It will, or a reference to that area. Where are we up to with the optional protocol against torture?

Mr Minogue—There really has not been any movement since the last position. The government still has concerns about the optional protocol.

Senator LUDWIG—So there has been no further advance? I think we asked this last time and the time before that as well.

Mr Minogue—No.

Senator LUDWIG—So no papers or additional hand-up to the AG?

Mr Minogue—No, not that I can recall.

Senator LUDWIG—In respect of the trafficking in persons, there is a convention or protocol that is attached to that that we have signed. Have we ratified it as yet?

Mr Minogue—The OP to the Convention on the Rights of the Child?

Senator LUDWIG—No, it is not CROC. I will have to go back to my notes. I may put it on notice then.

Mr Minogue—No, there is nothing that springs to mind from my area, other than the OP to CROC.

Senator LUDWIG—Is the amended text of the convention relating to child welfare an area for you?

Mr Minogue—Yes, the optional protocol to the Convention on the Rights of the Child, yes.

Senator LUDWIG—Where are we with that? Has that been finalised?

Mr Minogue—No, it has not been finalised but it has moved quite a bit since you may have last asked the question. The protocol and the national interest analysis has been tabled. There is a JSCOT hearing into the matter, which I think is on 7 November. I could confirm that.

Senator LUDWIG—No, I will be able to find that out. They are seized of the issue, and you will be presenting to them.

Mr Minogue—Yes.

Senator LUDWIG—Who does that relate to? Is that broken down by countries or simply the optional protocol?

Mr Minogue—The optional protocol. I do not think it is broken down by countries in that sense. It imposes obligations on Australia to criminalise the various matters dealing with children—the sale and slavery of children.

Senator LUDWIG—There is another one. I think I asked about the Lebanese authorities.

Ms Lynch—Child abduction.

Senator LUDWIG—Yes, child protection.

Mr Cornall—The notes I have say that the Australian government ratified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, on 14 September 2005.

Senator LUDWIG—Thank you. Who deals with the area of child welfare?

Ms Lynch—That is the Family Law Branch. Are you talking about the Lebanese?

Senator LUDWIG—Yes.

Ms Lynch—I think the Family Law Branch deals with that one.

CHAIR—And Mr Duggan is right there.

Mr Duggan—Senator, what was the question? I do apologise; I was just coming through the door.

Senator LUDWIG—Sorry, sometimes I get things out of order. My apologies. There are texts in regard to the Lebanese authorities in relation to child protection issues. My question relates to whether or not there are other texts being negotiated with other countries as well and whether they have been finalised. Has the Lebanese one been finalised and is it being used as a template in other areas?

Mr Duggan—The Lebanese one, as you are probably aware, followed the Egyptian one. We are using a similar template for the two. The Lebanese agreement is being finalised effectively with the Lebanese government. We are going through a process of consultation at

the moment with interested parties about the text of that document, with a view to doing a national interest statement on it.

Senator LUDWIG—So you will do a national interest analysis and that will go before JSCOT as well?

Mr Duggan—That is right.

Senator LUDWIG—Will that be finalised? In other words, how will you bring it into being? Will it be ratified between the two countries?

Mr Duggan—That is the intention.

Senator LUDWIG—Will it go through a process of being signed, then a national interest analysis, then JSCOT and then ratification, or is there a process that you are going to adopt?

Mr Duggan—At the moment we are intending to do the national interest assessment and then it will be a matter for the Attorney what happens after that with the document.

Senator LUDWIG—So it is within the ability of the Attorney to sign that—it is an agreement between Lebanon and Australia.

Mr Duggan—As I understand it, that is right.

Senator LUDWIG—Which other countries are you currently negotiating with? Is Egypt finalised?

Mr Duggan—Egypt is finalised. That document is actually in force. We had thought there may have been a case this year under that document. That has not proved to be the case but it is in operation. At this stage there is no active negotiation with any other country, although we are keeping it on advisement. The issue of interaction between Muslim countries, particularly, and things like the Hague convention is a vexed one, as you know, and we are keeping it under advisement with a view to perhaps considering other countries as well.

Senator LUDWIG—Have other countries contacted Australia to consider whether or not it would be in their interests to also adopt a similar agreement? I have asked questions about Australia and overseas; now we will reverse it.

Mr Duggan—I will take that on notice to be certain. There have been some indications from one or two countries but I am not certain how far we would take those. I would prefer to take that question on notice, if I could.

Senator LUDWIG—That would be helpful; thank you very much. The next area will not be in the family area.

CHAIR—It is still 1.4?

Senator LUDWIG—It is about the extended continental shelf limits, to put a tag on it. Where are we with that? Can you provide some short background?

Mr Campbell—I think the annual report refers to this as being worked on for some period of 10 years. The reason is that it required a whole range of ship survey work before, I suppose you could say, the legal and diplomatic work started. I will go back a bit further. There are two parts to the continental shelf. Australia is entitled to a continental shelf to at least 200 nautical miles from the coastline. Beyond that it is entitled to areas of continental shelf that

actually physically form part of its geographic continental shelf. It is required under article 76 of the Law of the Sea Convention to put those additional areas of so-called extended continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf. We believe it is required to make that submission within 10 years of becoming a party to the convention. That submission was lodged with the commission within that 10-year limit in November last year.

Senator LUDWIG—When was the 10 years up?

Mr Campbell—November last year.

Senator LUDWIG—So you have just snuck in in time.

Mr Campbell—Many of other countries have not snuck in in time.

Senator LUDWIG—What happens to them?

Mr Campbell—The states parties to the Convention on the Law of the Sea took a decision to extend the limit by some six years, I think, but we, for a number of reasons, decided that we should stay within the original limit and get it in within that time, partly because we had all the specialist staff in place, particularly in Geoscience Australia, to do that. So the submission was lodged. The commission has considered the submission on three occasions—April, June and September this year. The Australian delegation was present at two of those meetings, in April and September. There are likely to be two or three more meetings of the commission next year to consider Australia's submission and they are endeavouring to give their recommendations on Australia's outer limit early in 2007.

Senator LUDWIG—Is your submission available to the committee?

Mr Campbell—The whole submission itself is confidential to the government and to the subcommittee of the commission that is actually looking at it. It is not even available to the whole commission. But there is a very detailed executive summary, which we can make available to the committee.

Senator LUDWIG—That would be helpful. Does that indicate which direction the seabed lies from Australia—that is, the outer limits?

Mr Campbell—It has maps showing all of the additional areas that we are seeking to confirm. There are 10 of them.

Senator LUDWIG—Does it also indicate whether or not they are in dispute?

Mr Campbell—For any area that we have put before the commission on the limits of the continental shelf, we already have a maritime delimitation agreement in place or have negotiated but are about to enter into force, such as that with New Zealand, or else the country with which we are likely to have a further negotiation of it has agreed that the commission can look at it. There is one particular area between Heard Island and the Kerguelen Islands. There is an additional area where the French have said that they are happy for the commission to consider that area. It will be subject to a delimitation later on.

Senator LUDWIG—So it is a determination that will be made by the subcommittee?

Mr Campbell—The subcommittee will give its view of the areas of additional continental shelf we are entitled to. And then, if there is any area that overlaps with the claim of another

country, it will be between Australia and that other country to actually negotiate where the boundary of that area is.

Senator LUDWIG—Of those, there is one—

Mr Campbell—There is one in relation to the French islands of Kerguelen and the Heard and McDonald Islands. Australia, in its submission, included areas off the Australian Antarctic Territory, but the commission is not considering those for the time being, partly for reasons relating to the sensitivities surrounding the Antarctic Treaty. But ultimately, in that particular area, there will be negotiations with New Zealand, France and Norway, delimiting those areas.

Senator LUDWIG—So, of those extensions you have indicated that you have put into the subcommission, there is only the one area of overlap that requires negotiation?

Mr Campbell—There will be an overlap in the Australian Antarctic Territory, but the commission—

Senator LUDWIG—Save for that?

Mr Campbell—Save for that, I believe it is only France, in respect of the area between Kerguelen and Heard and McDonald Islands, and perhaps, depending on where claims are made, in an additional area between Norfolk Island and New Caledonia.

Senator LUDWIG—And that would be New Caledonia—

Mr Campbell—France.

Senator LUDWIG—and France, the other party.

Mr Campbell—That is right.

Senator LUDWIG—What does that mean for the current legal status of the seabed? Does it mean it is settled or in doubt? How would you describe it?

Mr Campbell—The Australian, or the government's, view on that is that the continental shelf is as it is defined in the Seas and Submerged Lands Act, which picks up the definition in the United Nations Convention on the Law of the Sea. Our view is that that includes the areas of extended continental shelf, albeit they are still subject to receipt of the views of the commission. And, once we receive the views of the commission, we will see what the commission has to say and then look at proclaiming the outer limits under the Seas and Submerged Lands Act.

Senator LUDWIG—Do the current rights over those areas remain unchanged?

Mr Campbell—We assert rights over those areas at the present time.

Senator LUDWIG—Does the analysis that you are going to provide to the committee include a summary of the rights that you assert over the continental seabed?

Mr Campbell—I do believe that the executive summary includes that—but, if not, we can provide something on those rights. Essentially, it is exploration and exploitation of the resources of the continental shelf, including oil and gas resources, and sedentary species of fish.

Senator LUDWIG—That would be helpful just to make it a little bit more complete, so it is understandable. Have any other delegations on this issue been made to the subcommission by foreign nations?

Mr Campbell—Four countries have made submissions to the commission—this is in relation to areas adjacent to those countries.

Senator LUDWIG—Yes.

Mr Campbell—The first one was the Russian Federation. The second one was Brazil, then came Australia, and the fourth one is Ireland, which made a submission for part of its area. The commission is at the present time dealing with three of those—being the Brazilian submission, our submission and the Irish submission.

Senator LUDWIG—Has the subcommission asked for additional information from Australia?

Mr Campbell—Yes, that is a process that has gone through. We have received several requests for further information and clarification.

Senator LUDWIG—Are you able to say what the nature of those requests are?

Mr Campbell—I would prefer not to go into them in detail, because we are still in dialogue with the commission—

Senator LUDWIG—That is why I prefaced my—

Mr Campbell—They essentially involve issues about further technical information relating to connection of various areas with mainland Australia. Also, we put the submission in a particular technical format and they have asked us to assist them by providing that information so that it can be used in a different format. There are also some questions—and likely to be more questions—about our interpretation of various parts of article 76 of the convention and how we applied that.

Senator LUDWIG—Perhaps you can reflect on whether or not you can provide on notice a summary or short statement about what they are, if you are able to do so. If not, we will accept that as well, unfortunately.

Mr Campbell—I will see what we can do. We are at the stage of discussing this material with the subcommission and there is an element of confidentiality there between us and the subcommission.

Senator LUDWIG—All right. I will not be too disappointed if you say no.

Senator CROSSIN—On the United Nations Committee on the Rights of the Child, have you completed Australia's appearance before that committee?

Ms Leon—Yes, we have.

Senator CROSSIN—Can you tell me what the substance of your appearance on this matter was?

Ms Leon—Yes. We appeared before the committee in Geneva on 13 September this year. The committee was considering Australia's combined second and third reports under the convention. We spent the day before the committee answering a series of questions. These

crossed over a wide range of issues, including the implementation of the convention in Australia's federal system; Indigenous child health, education and welfare; the changes that have occurred to immigration detention recently; the impact of counterterrorism legislation; a number of juvenile justice issues; the operations of the Human Rights and Equal Opportunity Commission; issues for children with disabilities; and health services.

The committee congratulated Australia at the end of the hearing on the special place that children hold in Australian society and on the legislative and policy developments that have been undertaken in Australia since the committee last considered our implementation of the convention. They made particular reference to developments in family law, family and community policy, children in immigration detention, Indigenous affairs, and child pornography and trafficking. The committee also thanked Australia for the thoroughness of its report and the additional information provided to the committee before the appearance, as well as the openness of dialogue at the hearing.

The committee has since released its concluding observations on 30 September 2005, and these are available on the UN web site. A number of positive developments were noted in those recommendations, as well as other recommendations for continued work by Australia. Those observations are now being considered and follow-up action will be taken as appropriate in relevant portfolio areas.

Senator CROSSIN—What sort of matters did the recommendations go to?

Ms Leon—The main recommendations related to Indigenous disadvantage, children in immigration detention, corporal punishment, antiterrorism laws, and the trafficking of women and children.

Senator CROSSIN—Thank you. I have questions on 1.6 and 1.7

CHAIR—Are there any further questions on 1.4?

Senator LUDWIG—I have a last question in that area, which I did not ask before. I recollected it from the people-trafficking issue. Has the department done any work dealing with the issue of child marriages, marriages of people under 16? Sorry, Mr Duggan; I should have asked you that before.

Mr Duggan—That is fine. A marriage of this sort is not recognised as valid, of course, in Australia. We are not doing any particular work in relation to that that I am aware of. Did you have a particular issue that you wanted to raise?

Senator LUDWIG—It is only that issue: whether or not you are doing any particular work in that area. I appreciate that child marriages are not recognised, but there may be arrangements for bringing people who are under 16 out to Australia for the purposes of entering into marriage at 16 or thereabouts. In other words, people bring them in allegedly at a younger age and then at some point arrange to have them married. The convention would forbid that practice, I take it, and there are laws in Australia which would also address that.

Mr Duggan—I suspect the answers to the questions you are asking are more matters for DIMIA or the Department of Foreign Affairs and Trade than for us. Certainly the Marriage Act would not recognise such a marriage. That is the position the Australian government

holds and has held for some time. As far as I am aware, we are not doing any particular work in relation to those issues. Obviously we have that under advisement on a regular basis.

Senator LUDWIG—I will leave it at that. I will ask the questions in other output areas.

[11.22 am]

CHAIR—We have now finished output 1.4. We now move to output 1.6 and note that output 1.5 was not called. Output 1.6 is ‘Legal services and policy advice on native title’.

Senator CROSSIN—Mr Anderson, can I take you to the Attorney-General’s press release of 17 October, which mentions the review of the native title arrangements. What is the ambit of the native title review announced on that day?

Mr Anderson—The review announced on the 17th is a review of the claims resolution process for native title claims. It is looking at the Federal Court and the Native Title Tribunal and how they work together, with a view to ensuring that their processes are best directed at facilitating delivering effective outcomes for the parties. Obviously, when the native title system was first designed, it was only the Native Title Tribunal. As a result of the decision of the High Court in the Brandy case, the court was then introduced into the native title process. So it is really just taking stock of how those two bodies interact, making sure that the powers of the court and the flexibility of the tribunal can be best combined to serve the varying needs of the parties.

Senator CROSSIN—So it will solely cover the interaction between the Federal Court and the NNTT—is that right?

Mr Anderson—That is correct. But as part of that process it will also be looking at how they interact with the parties themselves in claims.

Senator CROSSIN—So it is not looking at all into the operation of the legislation?

Mr Anderson—No, it is not. There is a separate process going on with respect to technical amendments to the legislation.

Senator CROSSIN—What is that process?

Mr Anderson—When the Attorney made his announcement on 7 September he listed the six different elements of reform to the native title system, one of which is the claims resolution review, which was further announced on 17 October when the consultants were appointed. As for the technical amendments, we say ‘technical’ but what we really mean is amendments that do not go to the fundamental balance of rights and interests between the parties in the native title system. It seeks to address any anomalies that might exist within the legislation, unintended impediments in the way of the operation of the act; but it is not looking at rolling back fundamental aspects of native title. There may well be things that come out of the claims resolution review process which would be better considered as part of the consideration of technical amendments and, in that case, they will be referred to that process.

Senator CROSSIN—I will just deal with one review before I go onto the technical amendments one. Are there any elements of the communicate that was put out following

discussions of joint state and territory native title ministers that will not be canvassed in the review?

Mr Anderson—In the claims resolution review?

Senator CROSSIN—Yes.

Mr Anderson—The communique touches on a number of elements that will be picked up in the other parts of the package of reform. For example, the communique also talks about prescribed bodies corporate and native title representative bodies and those are, in themselves, both separate elements of the package of reform.

Senator CROSSIN—Are they in the technical amendments review area?

Mr Anderson—No. The prescribed bodies corporate are being looked at as another one of the six elements, so it is a separate process. The effectiveness of native title representative bodies is, again, another of those six elements.

Senator CROSSIN—So all of the issues in that communique will be picked up somewhere in those six areas. Is that correct?

Mr Anderson—Yes. Another one is transparency. That is another one of the six elements and is also picked up in the communique. That really relates to government behaviour within the native title system.

Senator CROSSIN—Have you actually got six independent reviews happening at once in relation to different parts of the act?

Mr Anderson—We have six different processes happening in relation to different parts of the native title system. They are not necessarily about the act itself; they are about how the system works in terms of the interconnection of the different parts of the system, some of which relate to the act and some of which relate to behaviour, resourcing and capacity. But, yes, there are six different processes. Only one of them has an independent review as such with independent external consultants. The others are being dealt with by departmental processes.

Senator CROSSIN—Which section of the review has the external consultants?

Mr Anderson—The claims resolution review, which is the process looking at the Federal Court and the tribunal.

Senator CROSSIN—Have any of these reviews written to or communicated with the federal parliament's joint native title committee?

Mr Anderson—No, but I can say that the chair of that committee has written to the Attorney about the interaction between the parliamentary joint committee and the review processes.

Senator CROSSIN—Will the review processes look at previous reports of that committee?

Mr Anderson—Previous reports of the committee are certainly factored into the process of considering how the system operates. In the same way as for current inquiries of the

parliamentary joint committee, the *Hansard* transcripts of those public hearings also feed into the process of considering reforms.

Senator CROSSIN—So none of the reviews will actually examine the operation of the Native Title Act itself. Is that correct?

Mr Anderson—None of them will consider the operation of the Native Title Act in itself. They all consider how the act and the other components of the system work and whether they deliver the quickest and most effective outcomes for all the parties.

Senator CROSSIN—Is there any intent to review the operation of the act?

Mr Anderson—There is no intention to go beyond those six elements.

Senator CROSSIN—When is each of the six elements due to be finalised and the process finished?

Mr Anderson—A number of the elements are starting consultation processes at the moment. There will be some discussion papers issued, things like that. That will occur between now and Christmas and then again in the new year. The claims resolution review process has an end date of March 2006 report to the Attorney. It is intended, to the extent that legislative amendments do come out of this, that they will all come together in the one bill, so it would be likely that some time after March 2006 that the processes would all be pulled together as one. There will be exposure legislation released as part of the technical amendment process prior to then, and that will hopefully be before Christmas, but that will only be dealing with that aspect. They will all be pulled together after March.

Senator CROSSIN—Who have you been consulting with in relation to each of these six aspects?

Mr Anderson—There are slightly different audiences for the different elements, although of course there is some overlap. Typically, it will be consulting with state and territory governments—they are very significant players in native title, being the primary respondent in all claims—and consulting with the native title representative bodies, particularly in relation to the prescribed bodies corporate. We are consulting with a number of prescribed bodies corporate around Australia. We are consulting with industry peak bodies such as the Minerals Council, the Farmers Federation, the seafood industry and several other peak industry bodies. We run a consultative forum in native title and we will be using that as well, as part of the platform for having discussion with a range of stakeholders. That also includes parties such as the court, the tribunal and the social justice commissioner. We meet separately with the social justice commissioner as well. In addition, there is a call for public submissions on various elements.

Senator CROSSIN—How is that call being made—through public advertisements?

Mr Anderson—It is being made through press releases and also through publication on the departmental web site. We will also be asking the tribunal and IATSIS if they would be prepared to run further information in publications that they produce.

Senator CROSSIN—You mentioned discussion papers and things of that nature. What exactly is planned?

Mr Anderson—There will be an exposure document with respect to the technical amendments. We had initially envisaged that there would be an exposure draft but, as we do not think we will get the draft bill itself completed in the time frame originally envisaged, we will put out a separate document which will go through the different amendments and give the scope of them. That will be one. There will be a document which is intended to be a guide to people wanting to make submissions to the claims resolution review process—that is a Federal Court and tribunal process. That document will be produced and sent out to a number of stakeholders as well as being made publicly available through the web site.

One of the elements is a review of the respondent funding guidelines. That is not an element that this output deals with—that is output 1.7—but they will have a consultative process. You might ask them about that in the following output. The native title representative body review process is being run by the Office of Indigenous Policy Coordination, which is part of Immigration. I am not aware of what processes they are planning in detail. That is best taken up with them subsequently by this committee. In relation to the prescribed bodies corporate process, we have two different papers. One is intended for prescribed bodies corporate and the other is intended for native title representative bodies and others. There might be further papers that we produce for those different audiences as part of that process. They are really a set of questions rather than an issues paper. People are not being required to answer the questions; it is just a bit of a focusing guide.

Senator CROSSIN—Are you able to provide the committee with a list of all those who have been consulted and when? And are you holding meetings or just simply writing to them?

Mr Anderson—We can certainly provide a list. At this stage we have not consulted many people because the announcements were only made in September, but we can certainly provide details. We are writing out, and we are also ringing to make sure that we are getting through to people.

Senator CROSSIN—I would like to know who has been consulted and when and I would like a list of all bodies consulted, including any dates of meetings you may have had or intend to have.

Mr Anderson—I note that at this stage it is difficult to provide the details of dates when we are still negotiating with some bodies as to exactly when we are going to meet with them, but I can certainly indicate the meetings we have had to date and any specific dates we have organised for other meetings. We have been in Alice Springs, and we are going to be in Perth, Cairns, Thursday Island, Broome and that sort of thing. We can indicate all of those dates.

Senator CROSSIN—There was a consultation process outlined on 7 September about the proposed technical amendments to the bill. Are you saying that there perhaps will not be an exposure draft of the bill but perhaps an exposure draft discussion paper?

Mr Anderson—There will still be an exposure draft to the bill but it might not be ready in the time frame that was originally envisaged. What is going to be produced in the first instance is an exposure document—something which, while it will not look like a bill, will at least state what each of the possible amendments that are currently being considered are and which will call for any further suggestions from parties.

Senator CROSSIN—Do we have an intended date for the introduction of the final amendment bill?

Mr Anderson—As I indicated before, it is likely that everything would be pulled together after March 2006, which is when the claims resolution review process has to report to the Attorney. It would make sense that, if there are going to be amendments, it all happen in the one bill. That is why I think that it will be after March for the actual introduction of the bill.

Senator CROSSIN—To get this clear: where relevant organisations or bodies might have an interest in all six of the areas, the consultation in all six of those areas will occur all at once?

Mr Anderson—Where possible, we are trying to ensure that we only have to put someone through one consultation process. So, at the moment, we have started going out and talking to representative bodies, for example. We will talk to them about technical amendments. We will also talk to them about prescribed bodies corporate.

Senator CROSSIN—So it is a bit hard for me—I am trying to get a handle on who would be consulted and where. Let us say it is the National Farmers Federation. You would not go back to them six times; you will do it once, will you, with a whole swag of information?

Mr Anderson—We will try and make the consultation as easy on the consultees as possible, but there might be some situations where it is required for people to be consulted more than once. One example of that is the fact that you do have independent consultants for the claims resolution review, so they will be conducting their own consultations. But we are liaising with them to ensure that we do not, for example, lob up on someone's doorstep and say, 'We'd like to talk to you—and then we'd like to talk to you again tomorrow about something else.' At least we are trying to make sure that we have a smooth process that is not too onerous.

Senator CROSSIN—If this is all pulled together in, as you say, March next year, is it your understanding that from that there will be an exposure draft circulated once it has all been pulled together and worked on?

Mr Anderson—There will be an exposure draft with respect to the technical amendments. That should be this year. In terms of the final format of the bill, at this stage I cannot give any indication of that because it will depend in part what comes out of the whole process, but I can note that the Attorney has given a commitment that there will be a lot of consultation throughout the process.

Senator CROSSIN—But you are unsure as to whether the bundle of changes to the native title bill may well be there for exposure and comment, other than the technical amendments?

Mr Anderson—It is not so much that I am unsure; it is simply that we have not got a decision on that. We have not put anything on that to the government. So I simply cannot give any advice on that.

Senator CROSSIN—Is there an intention to suggest that an exposure draft be made available?

Mr Anderson—I note that the Attorney has said that there will be consultation throughout the process. I cannot forecast what the government's decision is going to be on that.

Senator CROSSIN—I notice page 84 of the A-G's annual report states:

We have also liaised with OIPC on possible amendments to the *Native Title (Prescribed Bodies Corporate) Regulations 1999*.

I think it is unclear as to whether this is part of the native title review. Is it?

Mr Anderson—We have actually been working with the Office of Indigenous Policy Coordination and the Office of the Registrar of Aboriginal Corporations for some time in relation to prescribed bodies corporate. It is something that was already under way. It will, however, feed into the review of the effectiveness of prescribed bodies corporate. It may well be that there are amendments to legislation or regulations that are particularly recommended as a result of that review. I note there is legislation that was introduced into parliament before this package of reforms was introduced which will also have an impact on prescribed bodies corporate. That is the Corporations (Aboriginal and Torres Strait Islander) Bill, the CATSI Bill, introduced by Minister Vanstone. Similarly, although that was announced before this package of reforms was announced, if there are things that come out of the review of the effectiveness of prescribed bodies corporate that suggest the need for amendment of that legislation then that can be taken forward in that process as well.

Senator CROSSIN—So when did you first start discussing possible amendments with OIPC?

Mr Anderson—We started discussing prescribed bodies corporate with OIPC several years ago. I would have to take the exact date on notice, but we have been talking about prescribed bodies corporate for some years. A lot of that was in the lead up to the introduction of the CATSI Bill that I just mentioned, because currently the prescribed bodies—

Senator CROSSIN—Is that the corporations bill?

Mr Anderson—Yes, that is right, Senator. Discussions were originally started with a view to examining the overall legislative framework for regulation of prescribed bodies corporate, but it has since become part of the reforms overall for the native title system, and that is a broader review than simply looking at the governance framework.

Senator CROSSIN—Are these changes linked to the native title review?

Mr Anderson—One of the six elements of the native title reform is a review of the effectiveness of prescribed bodies corporate, so there is a linkage there. We are specifically looking at prescribed bodies corporate and, at the same time, the government has also already put forward some measures with respect to their governance, in the proposed amendments for the Corporations (Aboriginal and Torres Strait Islander) Bill.

Senator CROSSIN—You don't think that this pre-empts the review that you are conducting?

Mr Anderson—No, I do not think so, Senator. It is worth noting that the corporations bill itself is about the regime that applies to over 1,000 different aboriginal corporations. Thirty-nine of those are prescribed bodies corporate, so it is a much bigger thing than simply prescribed bodies corporate. What it does say in that bill is that it provides a number of carve-outs for prescribed bodies corporate, so that they can actually be free of the regulation

regimes that have been proposed for much larger Aboriginal corporations. So there is actually a lot of flexibility in that process and I do not think it actually pre-empts the review.

Senator CROSSIN—Page 87 of the annual report refers to the Prime Minister's speech at the National Reconciliation Planning Workshop in May of this year, placing Indigenous lands and economic development on the national agenda, and says:

The Attorney-General and the Minister for Immigration and Multicultural and Indigenous Affairs have been asked to provide advice on making the existing arrangements deliver better housing and economic opportunities for Indigenous Australians.

That is what you have in your report. Can I ask who asked for this advice?

Mr Anderson—The Prime Minister asked the Attorney and the minister.

Senator CROSSIN—For that advice?

Mr Anderson—That advice.

Senator CROSSIN—Is it linked in any way, or has it any relationship to, the native title review? Or is it mainly in relation to land rights?

Mr Anderson—It does have an indirect link to the native title reforms, in that with native title there are a number of ways in which Indigenous parties, for example, can have economic outcomes. One is through agreement making, and obviously the reforms are aimed at increasing the system's ability to deliver on effective agreements for all the parties. Secondly, once native title has been determined, the body that manages it is the prescribed body corporate. So if we can improve the effectiveness of the prescribed bodies corporate, that will improve their ability to deliver economic outcomes for, and engage with economic development for, the traditional owners that they are representing. But that is only an indirect link. It is certainly something that we are aware of, but there are other economic development issues as well and there are other housing issues. You mentioned the land rights act, and that is just one example. Native title is only one of a large number of different regimes for dealing with Indigenous land. Indigenous claims to land obviously have got statutory regimes in most states and territories, in addition to the Aboriginal land rights act. So we are looking at all of those as well.

Senator CROSSIN—I do not have any further questions on native title in output 1.6.

CHAIR—There being no further questions on 1.6, I thank the officers for their attendance.

[11.44 am]

CHAIR—We will move to output 1.7, Legal services and policy advice on Indigenous law and justice and legal assistance, and the administration of related government programs. I return to the question that Senator Parry had relating to the annual report. He has been required to attend another meeting. He referred to page 62 of the annual report, which states:

The fees paid to private solicitors providing legal aid services for family and veterans' law matters have been brought up ... in all jurisdictions except Tasmania. The fee increase in that State is being phased in.

He would appreciate some information on the phasing-in process.

Dr Popple—That is being phased in at the request of the Tasmanian Attorney-General over the period of the new legal aid agreement, which expires on 31 December 2008. I understand that the Tasmanian government was keen to keep its fees for all types, civil and criminal, Commonwealth funded and state funded, at similar levels. Before agreeing to that phase-in, the Commonwealth Attorney-General received an assurance from the Tasmanian Attorney-General that, following some consultation that the Tasmanian legal aid commission had had with the Tasmanian profession, they would be able to purchase services from suitably qualified practitioners at those phased-in amounts.

CHAIR—Thank you, Dr Popple. If Senator Parry wishes to pursue that further, I am sure he will take it up on notice.

Senator LUDWIG—At the moment we have finalised the agreement; it is all up and running. Tasmania is now on board. Is anyone else still outstanding?

Dr Popple—Are you talking about mainstream legal aid?

Senator LUDWIG—Yes.

Dr Popple—No, all the agreements have been entered into. The most recent one was signed in April this year.

Senator LUDWIG—So they are now for a four-year term. You then do an annual review?

Dr Popple—We have several reviews during each year. There is a reporting regime for each legal aid commission and we also visit each commission, or they visit us, three times a year.

Senator LUDWIG—Have any of those visits been undertaken?

Dr Popple—Several of them have.

Senator LUDWIG—Which states have been visited?

Dr Popple—We have visited all of them since the new agreements have been put in place.

Senator LUDWIG—Do you then produce an issues paper or an outline of any issues that have arisen since those visits?

Dr Popple—We don't. Certainly, if issues arose from those that we thought the Attorney should be aware of, we would raise those with him, but we have not yet struck any of those issues.

Senator LUDWIG—So what is the purpose of the visit?

Dr Popple—It is for us to make sure, from the Commonwealth's point of view, that the legal aid money is being spent as the Commonwealth would like it to—in other words, that the agreements are being followed and there are no issues that arise in the course of that that we should be cognisant of.

Senator LUDWIG—Do you then do a report card? Do you produce a report to say that, as far as you are concerned—that is, A-G's—you are satisfied that the states are spending their money according to the agreement, post visit?

Dr Popple—We certainly report to the Attorney-General if we have any concerns, and none have arisen thus far. These are not so much audits as conversations that we have with the legal aid commissions. We talk to them about issues that—

Senator LUDWIG—They are not goodwill visits, are they? Don't tell me they are goodwill visits.

Dr Popple—Not at all, Senator. We are working with them to make sure that, for example, the new initiatives that were part of the new agreements and other matters are progressing as we hoped they would. We talk to them about reporting requirements and any issues they might be having about the new reporting system. It is that sort of discussion. As I said, on an exceptional basis, if something were to arise that were to cause us concern, we would raise that with the Attorney.

Senator LUDWIG—As far as you are aware, to date, everything is going along well?

Dr Popple—That is right.

Senator CROSSIN—Can I ask some follow-up questions about the Aboriginal and Torres Strait Islander tender process for the legal service. I understand when you were last asked questions about this it had finished in Western Australia and Victoria. What is now happening in the other states?

Dr Popple—Since last time, we have also tendered out in Queensland, so that is now under the new arrangements, and we are currently in the process of evaluating the tenders for the Northern Territory and South Australia.

Senator CROSSIN—What are the new arrangements in Queensland?

Dr Popple—Following the end of that process and from 1 July 2005 we now have two service providers, one in what is called the northern zone and one in the southern zone.

Senator CROSSIN—Who are they?

Dr Popple—In the northern zone it is Aboriginal and Torres Strait Islander Community Legal Services (Townsville and Surrounding Districts) Ltd. In the southern zone it is the Aboriginal and Torres Strait Islanders Corporation (QEA) for Legal Services.

Senator CROSSIN—I understand you were hoping to finish the South Australia and Northern Territory tenders by August but that that time line has not been met. Is that right?

Dr Popple—No, Senator. The tenders were released on time. They were released on 2 August.

Senator CROSSIN—So that was the release date for the tender process, not the finish of it.

Dr Popple—Yes. They closed on 2 September and, as I said, we are evaluating those tenders.

Senator CROSSIN—What is the final cost now for this process—or what cost are we at as of today, for example?

Dr Popple—This was raised the last time we were here. We do not have a cost for the process because most of the cost has been in departmental time. We have made use of probity

advisers and some financial analysis advice, which has been outsourced. I could take on notice the cost of that process, but most of the cost has been the time of departmental officers in the Indigenous Law and Justice Branch.

Senator CROSSIN—Do you have a breakdown of what the total appropriation for the ATSI legal services is?

Dr Popple—I do. Would you like it for this current financial year?

Senator CROSSIN—Yes.

Dr Popple—For all legal services?

Senator CROSSIN—Yes. What I am leading to is that I want a breakdown of what amount has been allocated to WA, Victoria and Queensland. I am assuming you cannot give me South Australia and NT because you have not finalised that tender process. I am happy for you to take it on notice if that is easier.

Dr Popple—I can give it to you now, I think. These figures are all for budget year 2005-06. For Victoria it is \$2.7 million; for Queensland it is \$12.6 million; for South Australia it will be \$3.7 million; for WA it is \$8.2 million; for Tasmania it is \$1.3 million; for Northern Territory, \$6.3 million; and for New South Wales it will be \$12 million.

Senator CROSSIN—Are you likely to be in a situation where there will be no tenders awarded in any state or territory?

Dr Popple—We have not come to that situation yet. Do you mean awarded after the process or not going to tender in a particular state or territory?

Senator CROSSIN—Both.

Dr Popple—Certainly the government's position is that it will go out to tender in all states and territories. We have not thus far had a situation where we were not in a position to announce a successful tender.

Senator CROSSIN—The FBT supplementation is \$2.4 million in total. Is that correct?

Dr Popple—That is right.

Senator CROSSIN—What is the breakdown per state?

Dr Popple—I could take that on notice. Those numbers are included in the numbers I just gave you. I do not have a breakdown of the components of that, but I could take that on notice if you would like.

Senator CROSSIN—If a tender service actually provides more services, how is that measured?

Mr Boersig—There are targets set in relation to all of the contracts, and the reporting regime attached to that would indicate to us whether they are meeting those targets or whether in fact they exceed them.

Senator CROSSIN—So that would be your standard measurement?

Mr Boersig—It would be, yes.

Senator CROSSIN—What about the efficiency from the results of these services?

Mr Boersig—We are using both quantitative and qualitative analysis. As I have indicated, the quantitative results will have targets met or not. We are also asking for qualitative reports, so they should indicate to us how they feel they are addressing the needs of Indigenous people.

Senator CROSSIN—What sorts of measures are you looking at—number of people they have represented, number of clients they have assisted, number of people jailed or not jailed?

Mr Boersig—There is a whole range of criteria that includes age, sex, nature of the offence, recidivism and type of offence. We have specific targets in relation to each area, so we look generally at crime, civil and family law targets.

Senator CROSSIN—Can you give me an indication of what a target might be in the crime area?

Mr Boersig—The target in relation to any particular area will be negotiated with that particular state. Off the top of my head I could not give you what the target was, for example, in Queensland. I would have to take that on notice. It differs in each state.

Senator CROSSIN—Can you actually provide me with that? I would be interested to know what exactly you are measuring—whether it is the number of clients through the door, representations in court, brochures handed out, telephone calls answered. What is it made up of, or is it all of the above?

Mr Boersig—Generally all of the above. For example, in relation to the survey of clients, that is one of the criteria we are looking at. That is, client satisfaction is a key criterion.

Senator CROSSIN—I will ask you about a couple of issues in the Northern Territory. The juvenile diversionary scheme was due to finish on 30 June this year. I understand that a further one-year funding of \$770,000 has been provided. Is that correct?

Mr Cornall—It is correct that the scheme is continuing until 30 June 2006. Its continuation beyond that date is a matter that will have to be considered in the budget process. I am sorry; I am thinking of the interpreter service.

Senator CROSSIN—I will get to the interpreter service in a moment. As I understand it, the juvenile diversionary program has been given another year's funding for 2005-06 of \$770,000. Can you verify that for me?

Dr Heriot—That is unexpended funds. It is not new money.

Senator CROSSIN—The original agreement finished on 30 June 2005. That was \$20 million, wasn't it, originally?

Dr Heriot—The original agreement concluded in 2004. There was a 12-month extension to June 2005. Of the total period, the Northern Territory government retained from the juvenile diversion program unexpended funds of \$770,000. The Commonwealth had agreed to that being carried over to continue the community youth development units. So it is not new money; it is a carryover.

Senator CROSSIN—So as far as the Commonwealth is concerned, it has finished funding that program. There will be no more new funds. Is that correct?

Dr Heriot—When the extension agreement was signed by both governments, it was on the basis that the Northern Territory would develop new options for juvenile diversion, and that would be the Commonwealth's last investment in that element of the program.

Senator CROSSIN—Do you know if that has been done?

Dr Heriot—I understand from colleagues in the Northern Territory that the government has been investigating new options for juvenile justice more broadly. I understand that the Youth Justice Bill, which outlines those arrangements, has been passed by parliament but is not yet in force. I think those questions would need to be specifically directed to the NT government.

Senator CROSSIN—Has any thought been given to the place of a scheme, such as the juvenile diversionary scheme, in assisting with the petrol sniffing problem, particularly in Central Australia? Has your department done any work on the link between the two or been asked to do any work on the link between the two?

Mr Boersig—A committee has been established. The health department has been very active in basing the committee in Alice Springs to look at this issue. The department is involved with a number of agencies to look at the development of these types of opportunities in the Northern Territory in relation to petrol sniffing.

Senator CROSSIN—Is AG's involved in that committee with the health department?

Mr Boersig—Not the health committee, initially. There is a subsequent working group that has now been established, based here in Canberra, and we are involved in that.

Senator CROSSIN—And this working group has a link to this committee, does it?

Mr Boersig—It does. Health is on both committees—in fact, there are a number of agencies on both committees, as I understand it.

Senator CROSSIN—So what is this working group set up to do?

Mr Boersig—The working group is looking more specifically at—well, it arose in relation to petrol sniffing, but it is looking more broadly at substance abuse in Central Australia and in other remote and regional areas.

Senator CROSSIN—What, about substance abuse, is it looking at?

Mr Boersig—It is looking at drawing together a whole-of-government response. That is, it is recognising that, for example, petrol sniffing draws on a number of social and economic issues, and it is trying to harness the full weight of the Australian government and the Territory government to address the issue.

Senator CROSSIN—So the Territory government is represented on this working group?

Mr Boersig—Not the one in Canberra; I am not sure about the working group that is based in Central Australia.

Senator CROSSIN—Can you provide me with a list of agencies who are represented on this working group and tell me whether it has any terms of reference?

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

Senator CROSSIN—Do you know if your department is, in being represented on this working group, specifically looking at the link between petrol sniffing and juvenile diversionary programs?

Mr Boersig—One of the areas we would be looking at in terms of a holistic response would be those types of issues that you are raising, yes.

Senator CROSSIN—So I am assuming there has been no commitment to fund this program further till, say, some of this work has been done? Or is it not linked in any way?

Mr Boersig—The department has an investment already in Central Australia. There is at least one program I can recall that relates to juvenile diversion.

Senator CROSSIN—And what is that?

Mr Boersig—I believe it is at Amata, but I would have to take that on notice.

Senator CROSSIN—From memory, though, is this a program that you are funding directly with the community through, say, an SRA, or is it money that is channelled through the Northern Territory government?

Mr Boersig—No, it is certainly directly from the Commonwealth. I am not sure whether or not it is linked to an SRA, but I could check that.

Senator CROSSIN—So it is money directly from the Commonwealth to the community?

Mr Boersig—It would be program funding, yes.

Senator CROSSIN—To do what, specifically?

Mr Boersig—I do know it is working with youth who are at risk, but for the actual detail I would have to take that on notice for that particular program.

Senator CROSSIN—All right. So that is the only diversionary program you know of that is currently being directly funded?

Mr Boersig—The one at Amata, yes. There are night patrols and so forth that the department funds. But in relation to youth, no, that is the only one I am aware of.

Senator CROSSIN—Can I ask you, the same group of people, questions about the interpreter service?

Dr Popple—Yes, Senator.

Senator CROSSIN—Okay. The interpreter service—there is \$1.1 million in the budget to continue this service. Is that correct?

Dr Popple—That is right.

Senator CROSSIN—It is \$900,000 for the program and \$179,000 to administer that; is that right?

Dr Popple—That is correct, yes.

Senator CROSSIN—What was the previous cost of administering this program?

Dr Popple—I do not know that. In fact, I think we discussed that at the last hearing, when we undertook to give you the detail of the break-up of the current cost, which we did. But the

previous cost was in a different part of the department and I do not know that we have quantified that.

Senator CROSSIN—Can you take that on notice and look at that for me?

Dr Popple—We can certainly do that, yes.

Senator CROSSIN—It is only funded until June of next year. Is that correct?

Dr Popple—That is correct.

Senator CROSSIN—So is there any evaluation occurring in relation to this service?

Dr Popple—Yes. This was announced at the time that the extension was made in the last budget, as part of the budget kit that Senator Vanstone released. The extension was really to enable the broader consideration by government and other relevant forums of the ongoing provision of Indigenous interpreter services in the Northern Territory and nationally. So government is considering the future of that interpreter service and possibly a national service, but in the budget context for the next financial year.

Senator CROSSIN—What is happening to come to that consideration?

Dr Popple—You would be aware that the budget process has already started, Senator, and there is obviously some early consideration of that, but—

Senator CROSSIN—Yes, but what I mean is: are you discussing it or doing a formal evaluation in terms of talking to stakeholders or the Territory government?

Dr Popple—There was a formal evaluation of the Northern Territory interpreter service in 2004, so we are not proposing another formal evaluation. We are considering more how this ought to happen for the future and how it ought to be funded and whether in fact it ought to be expanded beyond the Northern Territory.

Senator CROSSIN—What sort of research do you do to inform that decision?

Dr Popple—As I said, we had quite a detailed evaluation of the Northern Territory service. We have to consider issues of demographics—in other words, what other states and territories have similar needs as the Northern Territory does for interpreting services for Indigenous people. Those are the things that we are considering.

Senator CROSSIN—I suppose we wait and see if it is in next year's budget. Is that what you are trying to tell me?

Dr Popple—That is right.

Senator CROSSIN—I want to also ask you about the progress of the bilateral agreement. This probably really sits with OIPC. Has AG's been involved in the progress of that bilateral agreement? I understand that agencies have been contacted or will liaise with OIPC. What is AG's doing about its bit to progress that bilateral agreement?

Dr Popple—The Office of Indigenous Policy Coordination is responsible for the bilateral negotiations with all the states and territories. We are involved in the sense that some of our programs and some of the things that we do are the subject of discussion in those bilaterals. So we discuss those issues with OIPC before they discuss them with the relevant states and territories.

Senator CROSSIN—In rereading the *Hansard* from the June estimates, I thought that you had yet to be contacted by OIPC to be involved in progressing that bilateral agreement.

Dr Popple—I think that was in relation to specific meetings, but certainly we have been involved on a daily basis with OIPC about a raft of issues and many of those issues will be the subject of those negotiations with the states and territories.

Mr Boersig—I could add that in fact the bilateral has proceeded. Since that time, we have been involved in a working group in relation to community safety, which we attended in Darwin. A report is expected shortly for that and that should form part of a schedule to the bilateral agreement.

Senator CROSSIN—Do regular meetings of agency secretaries occur? Who attends on behalf of AG's?

Dr Popple—Mr Cornall, our secretary.

Senator CROSSIN—Thank you. I do not have anything else on this area.

[12.07 pm]

CHAIR—That completes outcome 1. We will now move to outcome 2, commencing with output 2.1. Again, Senator Stott Despoja has a number of questions on this outcome which she will place on notice. I ask the officers to come to the table.

Senator LUDWIG—For some time now, I have been promising Ms Blackburn a copy of the mutual assistance in criminal matters manual. I have finally remembered to bring a copy.

CHAIR—Lucky Ms Blackburn.

Senator LUDWIG—So I have been more than 30 days overdue.

CHAIR—The secretariat will get a copy for Ms Blackburn.

Senator LUDWIG—My apologies, Ms Blackburn. I know you do not yet have a copy of that manual before you, but this question goes more to the substance than the actual issue itself. In terms of mutual assistance, I know that there is now going to be a review in 2006. Is it the intention to provide a manual for the department as part of that review?

Ms Blackburn—That is not a specific matter I had turned my mind to in looking at the review. As you indicated, the review will get under way early next year. The focus of the review will be on whether we need to make any changes to the legislation which underpins our mutual assistance regime. We do not presently use a manual. The primary purpose of a manual is usually for the staff who are doing the processing of the applications or for other people who might need to make use of it. For our own staff, we are quite comfortable at the moment that the manual is not an essential part of enabling them to effectively make MA requests or process incoming requests, as mutual assistance is an activity which is undertaken by the Attorney-General's Department as the central authority on the requests of law enforcement agencies. We have not seen a significant need to date to produce a manual for the benefit of those agencies which might be seeking to ask us to make requests on their behalf.

Senator LUDWIG—I think you indicated some time ago that the old manual is not in use, that it and has been discontinued, and there is no intention to update it as part of the review.

Ms Blackburn—No. That manual was published in 2000, as I recollect, before I came into this area. It is now extensively out of date. It has not been updated even to take account of the 2002 proceeds of crime legislation. That simply reflects that the staff of the division, who are responsible for this work, have not found the updating of the manual or the use of the manual to be a matter of importance to our processing of the requests and meeting our obligations under that legislation.

Senator LUDWIG—In terms of the 2006 review, it might be a little bit early yet, but has a time line been set as to the process that is to be adopted?

Ms Blackburn—We have some indicative timing to the extent that, as you would be aware, we are reviewing both the Extradition Act and the mutual assistance act. We are presently focusing on producing the discussion paper for the Extradition Act. In running two reviews, we are trying to construct a process where, while we have got a bit of down time on one review, we can make progress on the other. Our current proposal would be to hopefully complete the discussion paper on the Extradition Act review by the end of this calendar year and then, while that discussion paper is out for discussion, be able to make progress on producing the mutual assistance paper. At this stage, we would expect to have that available certainly in the first half of 2006.

Senator LUDWIG—That is both the extradition and the review?

Ms Blackburn—We hope to have the extradition discussion paper available by the end of this calendar year and to have the mutual assistance discussion paper available in the first half of 2006.

Senator LUDWIG—In terms of the extradition review, did you have an opportunity to examine the contribution of the Joint Standing Committee on Treaties?

Ms Blackburn—Indeed, the JSCOT report was one of the very first documents I read when coming into this position. The JSCOT report was an interesting document. The government's response to the JSCOT report indicated that we would be undertaking the review of the Extradition Act. From memory, one of the JSCOT recommendations had several specific issues that JSCOT considered ought to be addressed, and the review will address those specific matters arising from the JSCOT report.

Senator LUDWIG—In terms of the mutual assistance review process, but more particularly the manual, earlier you said that you do not refer to it or it had fallen into disuse. How has the department used that area of law? Do they refer back to the legislation itself, other interpretive guides or *Halsbury's Laws of Australia*? What sort of process do they go through if they do not use that?

Ms Blackburn—They use the legislation. It is the primary source and the requirements. Indeed, the manual is largely just an explanation of the act itself. The staff who are working in that area use the primary sources to make decisions on requests that we receive and requests that we make with regard to what action needs to be taken and the processes that need to be followed.

Senator LUDWIG—I guess it was before your time in the sense that you came in post the manual but, if there was a perceived need for the manual in 2000, why do you see there is not a perceived need for it now?

Ms Blackburn—I cannot explain the decision to produce the manual in 2000. The section that now processes these requests has approximately seven or eight staff. It is a competently managed section with competent staff in it who have not expressed any need to have this manual as an important part of undertaking their work.

Senator LUDWIG—How do you then make an assessment in terms of the Corby case or the Bali nine case regarding mutual assistance to other departments like the Australian Federal Police? If you receive information from them, how is it processed?

Ms Blackburn—I would like to answer that question without reference to the matters you specifically referred to. The normal process is that we would receive a request from a law enforcement agency in Australia as to whether it was possible to make a mutual assistance request to obtain information that the agency thinks it might need for an ongoing investigation or for a prosecution in which case we would assess whether that request would fall within the requirements of both the legislation and our treaty obligations and we would work with the agencies to formulate the request in a form which could be sent to the foreign country. For an incoming request, again, we make an assessment of whether the nature of the assistance requested is able to be provided under the act and whether consistent with the act or our treaty obligations it is appropriate to provide that assistance. If the request for assistance requires the exercise of coercive powers, such as search warrants, we would follow the procedures in the legislation for enabling those coercive powers to be exercised in Australia in response to the incoming request.

Senator LUDWIG—Do you provide any general advice to the AFP or other agencies about how they are to determine whether or not it is a mutual assistance request that should go through the AGD or one that they can then deal with? For argument's sake, let us say an Interpol inquiry or a Customs inquiry to an overseas agency or a similar request.

Ms Blackburn—Many of the law enforcement agencies have arrangements under their own legislation for exchanging information with their counterpart agencies. AUSTRAC and ASIC are examples. Those agencies are well-equipped to make their own decisions on what they can do in accordance with their own legislation. With regard to training, yes, we do provide general training on mutual assistance and extradition. We do that quite broadly, usually as a segment in existing training courses with the DPP and the AFP. I am not sure if we have done it for other agencies, but we certainly do for the AFP. That is more in the line of a general session on what extradition is, what mutual assistance is and when and how it can be used. Obviously, our key interest in doing that is to ensure that agencies are aware of the role that the Attorney-General's Department has in those processes.

Senator LUDWIG—In determining how you would examine the mutual assistance and criminal matters legislation, sections 8(1A) and 8(1B) deal with death penalty situations. As an example—although I am happy for you to find another—there is a treaty between Australia and Indonesia that was made in 1999 by regulation, so there is the treaty itself, the regulations and sections 8(1A) and 8(1B) of the mutual assistance in criminal matters legislation. Which

piece of legislation would be the governing section for determining a request for the use of coercive powers?

Ms Blackburn—I am not sure I absolutely understand your question but section 8(1A) is for how we deal with requests for assistance for death penalty offences. Those sections would operate in every case. They are the primary legislation. Is that the question you are asking?

Senator LUDWIG—Let me use the example of a mutual request from Australia to Indonesia or Indonesia to Australia. Which section would you read in terms of death penalty situations: the treaty, the treaty regulation or section 8(1A) or section 8(1B) as the case may be.

Ms Blackburn—Sections 8(1A) and 8(1B).

Senator LUDWIG—And you say they override the regulation?

Ms Blackburn—To the extent that there is any inconsistency between them. We have had this discussion in other forums. The mutual assistance and extradition acts appear to enable the acts to be varied by the treaties, which are then done in regulations. It is an interesting question.

Senator LUDWIG—Section 7 seems to do that.

Ms Blackburn—That is correct. There is absolutely no doubt in my mind that sections 8(1A) and 8(1B) apply in all cases. All of our treaty negotiations are done with full cognisance of the fact that they are the requirements which will be applied in any request that involves an offence which carries the death penalty.

Senator LUDWIG—I did not really want to distil it into a legal discussion between the committee and the AGD but, in terms of applying the legislation, you apply it to the extent that sections 8(1A) and 8(1B) take precedence.

Ms Blackburn—I am not actually aware of any circumstance in which there has been any suggested conflict between the operation of those sections and any treaty that we have. As I said, in negotiating any treaty on mutual assistance, we are very conscious of the requirements of 8(1A) and 8(1B) and they would be part of our treaty negotiations. Is that what you are suggesting?

Senator LUDWIG—I am trying not to actually make any allegations. I am just trying to understand how the AGD in fact operate. If you read article 4(2)(d) of the treaty regulation between Australia and Indonesia there is no requirement similar to sections 8(1A) and 8(1B) contained in that treaty. There is a ‘may’—in other words, a wider discretion. So when you then read section 7 it seems to say an executive can indicate that the regulation be read instead of the legislation so that it can take precedence. I was curious as to how the AGD interprets that provision from a policy perspective, from how you then operate in terms of meeting requests under that section, when they are inconsistent.

Ms Blackburn—We do not have any confusion at all in that we apply sections 8(1A) and 8(1B) to all requests. We certainly take the view that, where you are reading a treaty that says ‘may,’ that enables us to take those requirements into account. I am sorry if I am not quite following this because it has never been suggested to us that we would not have regard to

those sections relating to the death penalty in dealing with any incoming mutual assistance request.

Senator LUDWIG—I am not actually suggesting that; I am just asking how you apply it. Minister, do you want to add something?

Senator Ellison—If Senator Ludwig has an example in the treaty with Indonesia where there is wording that is inconsistent with the act, perhaps that could be pointed to. If that is not the case, I guess we can take the questions on the basis of being generic, or even hypothetical: what would you do if there was a conflict? But if there is a conflict that Senator Ludwig perceives between the treaty that he has mentioned and the act, if he could point to it, it would assist us.

Senator LUDWIG—Yes, Minister. In fact, that is what I was doing. As I said, if you read article 4(2)(d) of the treaty, it says:

2. Assistance may be refused if:

... ..

(d) the request relates to the prosecution or punishment of a person for an offence in respect of which the death penalty may be imposed or carried out.

Whereas section 8(1A) of the act says:

A request by a foreign country for assistance under this Act must be refused if it relates to the prosecution or punishment of a person charged with, or convicted of, an offence in respect of which the death penalty may be imposed in a foreign country ...

It then goes on to give the exculpatory reasons. So the treaty indicates assistance may be refused ‘if’, whereas 8(1A) of the act states that assistance ‘must be refused if it relates to’. In other words, it is a mandatory discretion, if you read 8(1A) in that way, and the treaty regulation was made later, in 1999, post the amendments in 1996, when 8(1A) and (1B) were introduced. Hold that thought for a moment and look at the way the Henry VIII clauses—I guess that is what you would call them—operate under section 7. They use mutual assistance in criminal matters as an example. If you read the Scrutiny of Bills Committee reports—I am sure you don’t, Ms Blackburn; if you do, I will give you a gold star!

Ms Blackburn—We read all of them.

Senator LUDWIG—Unfortunately I do, too. They also provided an example of Henry VIII clauses, because this particular committee is always critical of government regarding the use of Henry VIII clauses. From memory, one of them used the Mutual Assistance in Criminal Matters Act as an example, highlighting section 7 in particular as a Henry VIII clause which would then give precedence to that section and therefore the regulation in construing how you would then interpret the Mutual Assistance in Criminal Matters Act. Have I lost you yet?

Ms Blackburn—No. What you say is a legal possibility. My colleagues from OIL are not here anymore. We approached this on the basis that, in using the language ‘may’ in a treaty, it is making it very clear that the request may be refused. In processing the request in Australia, our starting point is the primary legislation and, as a matter of our continuing practice in this area, we would apply 8(1A) and 8(1B) to the request if it related to the death penalty. There is

just no doubt from our perspective, in putting those two together, that you apply 8(1A) and 8(1B).

Senator LUDWIG—So you say section 7 is not a Henry VIII clause and does not give the regulation precedence?

Ms Blackburn—No, I did not say that. I said—

Senator LUDWIG—No, there is a new question there.

Ms Blackburn—your legal analysis is correct. I am saying that in our practice of putting the two activities together there is no doubt at all that we apply 8(1A) and 8(1B) and the use of the treaty language is in fact facilitative of enabling us to use 8(1A) and 8(1B) in that way.

Senator LUDWIG—The treaty is being made into a regulation, so it is Australian law, effectively.

Ms Blackburn—But it is not inconsistent with the act, so we would apply the provisions in the act.

Senator LUDWIG—To the extent that one says ‘must’ and one says ‘may’, I am not sure how you say that they are not inconsistent. One provides a discretion and one provides a mandatory—

Ms Blackburn—Section 8(1A) is not a totally mandatory provision.

Senator LUDWIG—No, there are exculpatory provisions which the Attorney-General can exercise.

Ms Blackburn—Section 8(1A) on its face allows the exercise of the discretion to provide the assistance where the special circumstances of the case require that to be done.

Senator LUDWIG—And that is to the extent that that leg is exculpatory, but only if it is exculpatory. So it is not a ‘may’, it is a ‘must’, unless there are those circumstances which exist for the use of exculpatory submissions.

Ms Blackburn—I think the misunderstanding there is that the legislation does not limit that to exculpatory circumstances. The wording of section 8(1A) is:

... unless the Attorney-General is of the opinion, having regard to the special circumstances of the case, that the assistance requested should be granted.

Section 8(1A) is not limited to exculpatory circumstances. It is limited to special circumstances.

Senator Ellison—Which are not defined.

Senator LUDWIG—In terms of the special circumstances, do you then say that that allows the ‘may’ in the treaty to be not inconsistent with 8(1A)?

Ms Blackburn—The treaty provision says the request may be refused, and, similarly, 8(1A) says it can be granted in special circumstances. They are not fundamentally inconsistent.

Senator LUDWIG—So under both there is a ‘may’, in your view?

Ms Blackburn—Section 8(1A) allows assistance to be granted in special circumstances. It is a discretion expressed in two different ways. There are implications or inferences you can draw from a discretion expressed in the positive or the negative but, essentially, under the treaty you have got a discretion to refuse, and under the act you have got a discretion to grant.

Senator LUDWIG—And how are the special circumstances defined?

Ms Blackburn—The special circumstances are not defined in the legislation.

Senator LUDWIG—Does the AGD provide a submission to the Attorney-General on how he should exercise the special discretion or is that left to the A-G to determine?

Ms Blackburn—The department would always provide a submission if there were a request requiring a decision, in which we would provide relevant information to the minister or the Attorney.

Senator LUDWIG—So how would you define special circumstances in those situations?

Ms Blackburn—To date, the special circumstances which have been brought to bear in considering these requests have been, firstly, where an undertaking has been given in relation to the imposition or carrying out of the death penalty—so, if the request is made for a death penalty offence and an undertaking is given, then the assistance can be granted, in reliance upon that provision—and, secondly, where the evidence or the information to be provided would be or could potentially be exculpatory. Then the assistance would be provided or a decision could be made to grant the assistance.

Senator LUDWIG—So you still do not think a manual is needed for AGD.

Ms Blackburn—No, I do not.

Senator LUDWIG—The result is that you apply 8(1A) or 8(1B), as the case may be, in those terms.

Ms Blackburn—That is the way they have been applied to date.

Senator LUDWIG—Let us turn to a different matter, which may be in this area—I am trying to move on but I am having a little difficulty. The treaties are then made and will move past Indonesia. Is it a template that you use for other countries for mutual assistance? Is it done in similar terms?

Ms Blackburn—We would always start any treaty negotiation with a model or a template which reflects the requirements that we would like to see in any treaty. Normal treaty process would have exchange of models between the two negotiating countries. That usually then leads to the production of what is called a harmonised text, where we square-bracket those parts of the two models that do not mesh together. Then the treaty negotiations usually proceed on the basis of talking about the square-bracketed parts, either from the other country's model—a discussion on whether we can or cannot accept a provision—and for those provisions which we want to put in that the other country does not routinely include. That is the whole point of a treaty negotiation. Each concluded treaty will have some variations in it to meet specific needs of the treaty partner. But, yes, the starting point would be a model.

Senator LUDWIG—Has that model been altered or have any treaties been negotiated since 1999 to reflect 8(1A) or 8(1B)?

Ms Blackburn—Can I take that on notice? I cannot give you details of the treaties that have been negotiated since 1999. I am happy to take that on notice and provide details of those treaties.

Senator LUDWIG—As I understand your statement, you say that in terms of how the treaties deal with mutual assistance which provides a discretion, it is not inconsistent with 8(1A) and 8(1B) to the extent that 8(1A) provides an ability for the A-G to take into consideration special circumstances. Therefore there is a ‘may’. There is discretion there and it should not be read as a ‘must’. In terms of the treaty, particularly the Indonesian one, but I suspect others that you have made, the ‘may’ is also read in that way, but it is narrowed by the application of policy by AGD to 8(1A)—or 8(1B) as the case may be?

Ms Blackburn—To the extent that 8(1A) refers to special circumstance. You have to read the language there. It says that it must be refused ‘unless’ there are special circumstances. So any lawful exercise of that power is going to require the identification and articulation of the circumstance which is special, thus justifying the exercise of that power. The treaties use the language ‘may’ to make it very clear that the request can be refused. In our treaty negotiations, one of the primary issues that we always have to negotiate with treaty partners who have the death penalty is a very clear understanding of how it is possible for Australia as an abolitionist country to do business with countries that are death penalty countries.

Senator LUDWIG—But in terms of the treaty, it is ‘may’, which is a discretion. It is not narrowed in that sense by special circumstances. How do you read ‘special circumstances’ into the regulation—or do you say you apply that by policy?

Ms Blackburn—No, we say that you read the requirement in the regulation and you read the requirement in the act. They can apply consistently. We just apply the 8(1A) requirement, because it is not inconsistent.

Senator LUDWIG—Unless special circumstances narrow the discretion. Then it would be different, wouldn’t it? You have two ‘mays’ effectively, and you have special circumstances hinging off 8(1A), which is narrower than the earlier ‘may’, so you have circumscribed the discretion that is available under the treaty or the treaty regulation—

Ms Blackburn—That is correct

Senator LUDWIG—by the addition of the words ‘special circumstances’. It is not a broad discretion as in the treaty regulation.

Ms Blackburn—It depends on how you approach it. There is nothing in the word ‘may’ that says you have to grant it. By definition, the wording in the treaty is there to make very clear indication that we ‘may’. It is a very clear signal to most negotiating partners that there are circumstances in which we ‘will’. Indeed, the negotiations in many treaties are about ensuring that that provision is in there, because it is very clear that there are circumstances in which Australia, because of its abolitionist status, does not assist.

Senator LUDWIG—When you then do the treaty regulation, why wouldn't you include the 'may' with the limited special circumstances, to accord with 8(1A)—to avoid the confusion, even if it is only in my mind?

Ms Blackburn—That is perhaps the point. We do not suffer any confusion on how to apply these provisions. We regard them as able to operate quite consistently with the treaty. Treaty language is often a reflection of the need for both parties to have certain things on the record and sometimes for both parties not to clearly necessarily articulate all of the detail of those matters. That is a normal treaty negotiating process. Part of the negotiations is to make it very clear that both parties do understand exactly what will be the practical outcome of the application of the treaty. My experience is not extensive but, while we have been working in this area, our position on death penalty issues is a fundamental starting point for our conversations with many countries in this region.

Senator Ellison—Ms Blackburn raises a very good point. Generally treaty language is much more general than our domestic legislation, and that includes both the act and regulation. It is fair to say that when you look at the treaties Australia enters into the language used is of a much more general nature than in domestic legislation. That is the case not only with Australia but with countries with whom we enter into agreements.

Ms Blackburn—Perhaps I could make a final point on that. There are quite a few different judicial processes in the countries you may be doing business with and I see the main value of the section 7 provision is that it allows us to modify the operation of procedures, where that is necessary, to enable the process to take place. That primarily deals with the difference between civil law legal regimes and common law legal regimes. To me, that is the primary value of section 7. It allows us by treaty to modify those processes where it is necessary to do that.

Senator LUDWIG—I am curious as to the extent you do that between civil law countries and common law countries. At the point of charge, how do you equate that to a civil law country? We could pick another civil law country, but I am familiar with parts of the Indonesian law. They have an investigation which is prior to what we would call a charge, where they prepare a dossier which is then used by the prosecutor before charges are laid—that is as I poorly understand their process. How does that then equate to the wording of sections 8(1A) and 8(1B) and really capture the concept of a common law country's idea of a charge situation? In other words, if you were arrested and then charged and the steps between that process are quite narrow and short?

Ms Blackburn—The concepts are different, as you articulate them. In its current form, and even as part of the review, the Mutual Assistance in Criminal Matters Act has to accommodate being able to do business with civil law countries. That is essential. The language of the act is presently framed in a way that enables us to use that concept in both a civil law country and a common law country.

Senator LUDWIG—The area of police-to-police assistance was not accepted as an area for review. Why wasn't that area accepted for review?

Senator Ellison—The government is of a view that the current guidelines, which have been in place now for sometime and were in place even before the previous government, are

appropriate and that there is no need to change them. For that reason, it was not included in the review. The government remains of that view.

Senator LUDWIG—So it is outside of the ability of parliament to examine the area of police-to-police assistance. It is a matter for the AFP to operate on an operational basis.

Senator Ellison—Police-to-police assistance is not included in the review of extradition and mutual assistance which Ms Blackburn has been talking about, and that is of course a review by the department. When you say that it is not available for review by the parliament, as you know you moved an amendment during the debate on the serious drugs offences legislation to include that provision and it was defeated.

Through the normal processes of estimates questions and questions on notice the activity of the AFP is subject to parliamentary scrutiny. It is also subject to scrutiny by the Ombudsman's oversight in relation to any inappropriate behaviour, but I think your question was more about parliamentary oversight. Those are the avenues which can be employed to have a look at that.

Senator LUDWIG—In terms of the mutual assistance review and the extradition, has the AGD looked at whether the area of police-to-police cooperation internationally would warrant a review as well?

Ms Blackburn—The Attorney-General's Department is not responsible for any aspects of police-to-police assistance and I have not undertaken any activities in relation to that.

Senator LUDWIG—Thank you. I was just ruling it out which, as Mr Cornall knows, I am sometimes apt to do. I might come back to the police-to-police cooperation when the AFP are here.

Senator Ellison—Would this be a good time to break for lunch?

CHAIR—No, probably not, Minister.

Senator LUDWIG—I will turn to a happier subject like anti money laundering. We might deal with that before lunch.

CHAIR—Happier for whom?

Senator LUDWIG—I just thought I would cheer the place up. Can anyone explain why the AML/CTF legislation is still missing, why we have not seen the legislation which was promised on, from memory, 8 December 2003?

Ms Blackburn—To the extent that the minister is thinking about that, we have been in consultation within the government and with industry for some extensive period of time. That has all fed into the development of the bill. The exposure draft bill which has been announced will be released before the end of this calendar year, drafting resources permitting.

Senator LUDWIG—I thought it was November? You are not going to make it December now, are you?

Ms Blackburn—I do not control the allocation of drafting resources.

Senator LUDWIG—I was going to come to the Office of Parliamentary Counsel at some point. They are on at about four o'clock.

Senator Ellison—You can ask them the question then. They will know more about it than we do. When it was announced, our procedure was stated as to a process and at that stage there was no time limit put on when an exposure bill would be released. Earlier this year I might have mentioned that July would be a desirable prospect but, in relation to the work done on the anti money laundering project, a great deal of work was done last year in both a systems working group and a ministerial advisory group. The systems working group acknowledges the systems that are in use by the various sectors and the ministerial advisory group deals with all those sectors including lawyers, accountants, jewellers and real estate agents which hitherto have not been as much a part of the reporting process as the financial sector.

Last year we had the election. That stopped work on that. The systems committee might have carried on working. After the government got back to business after the election, we continued with the process. A decision was made that we should take it in two tranches. That is not dissimilar to some overseas jurisdictions, as I understand it. That was something which was warmly greeted by all industry sectors. That was to deal with the financial sector first and then deal with the lawyers, accountants, jewellers and real estate agents in the second tranche. But the one thing we did say in relation to the first tranche is that it will be activities based—that is, anyone who is involved in a financial transaction. So if anyone who is in the second tranche is involved in activities which are included in the first tranche then to the extent that they are they will be governed. To use Ms Blackburn's famous phrase, 'If it walks like a duck and looks like a duck, it should be duck regulated.'

Senator LUDWIG—I am not sure I have heard that phrase.

Senator Ellison—It is a very famous quote that should really be included in the annual report of AGD.

Senator CROSSIN—It hasn't been on the *Hansard*.

Senator Ellison—I think it describes it very well and it was very well understood by industry when we put it to them. Can I say there has been a communique from the body that I have been dealing with supporting the very process and supporting the release of an exposure draft. As to when we can get that out, sure, we would like it by the end of November but it does depend on demands made of the draftsman, the Parliamentary Counsel.

Senator LUDWIG—Why does it have such a low priority from this government?

Senator Ellison—Madam Chair, Senator Ludwig should remember that this is a reformist government with many important reforms on the table which are being attended to—

Senator LUDWIG—It is the slowest reformist government I have ever seen.

Senator Ellison—This is accorded a priority which is well above many other pieces of legislation. As you well know, we have some other matters which are on the agenda which are very important and we are dealing with them all.

Senator LUDWIG—When was the first draft completed?

Senator Ellison—I would have to take that on notice.

Senator LUDWIG—Was it in July?

Senator Ellison—Ms Blackburn reminds me that we had a semblance of a draft but, when we decided to change the implementation, that necessitated relooking at that and so that had to be revisited. We also had some further input from industry at the time and it was thought better to hear what industry had to say and to put to them more specific suggestions, if you like. Those were the roundtables that I had. We went through each of the recommendations and had some relatively specific proposals that we put to them so that we could get to a position where we basically have principles agreed. I think it is fair to say that we are now in a position to proceed with a very constructive period of consultation with an exposure draft and that will be very soon.

Senator LUDWIG—But the only date you can provide is before Christmas.

Senator Ellison—No, I am not saying before Christmas; I am aiming for the end of November if we can, but there are drafting considerations.

Senator LUDWIG—So when was the first draft prepared?

Ms Blackburn—I am not sure that it is really possible to answer that question. The preparation of this bill has been iterative process over at least the last 18 months. We in the department have provided instructions to the Office of Parliamentary Counsel, which has prepared a draft, on which we then provided further instructions, with which they have modified the draft, for which we have provided further instructions. In going back to answer a question of when did we get the first copy from OPC, I do not know that that is really relevant information. The first draft which will be made available for consultation will be the exposure draft, which has been announced.

Senator Ellison—I think it is fair to call them working drafts that were being considered. It was not just a question of having one session with industry and walking away and drafting a proposal; it was an ongoing process. In between all that you had the election. So I think a better term to use is a working draft. It has been a work in progress.

Senator LUDWIG—So when is the second tranche due? If the first tranche for the exposure bill is due in November—

Senator Ellison—We have said that once the exposure draft comes out there will be a period for consultation. I am going to be discussing it with the financial sector. We will look at around about four months, I think, but that is open to discussion. We will discuss that with the financial sector because we have Christmas in between all that, so we will take that into consideration. We then have the exposure draft period. We will be looking at drafting a final bill and introduction by the end of the first half of next year, and of course that will go through the usual processes. Following the implementation of the first tranche of reforms we will then consider the second tranche.

Senator LUDWIG—So there is no date set for the second tranche?

Senator Ellison—It is following on from the first. I have just given you an outline, as I see it, of progressing from here to the middle of next year, roughly. None of that is set in concrete. We are talking to industry and the financial sector in particular, of course, and we do not know how long the committee process will take when it is sent off to a committee.

Senator LUDWIG—I am sure you will manage to confine us; I have no doubt in my mind. I am curious as to why would you then bring forward schedules 3, 6 and 9 in the antiterrorism bill with a sense of urgency dealing with terrorist financing and, more broadly, wire transfers and cash dealers, which, it seems to me, would have been dealt with in the draft legislation that you have just outlined. Why have they been split?

Senator Ellison—There was certainly more urgency, if you like, in relation to the situation we are in with the security environment but also they were more discrete areas which did not have quite the impact on the financial sector that others did. For instance, I do not think cash couriers or alternative remittance dealers really have such a big impact on the financial sector as, say, the customer due diligence process. You also have to remember that we discussed all of these at the roundtable. I should say ‘roundtables’; there were more than one.

Senator LUDWIG—I do not think I get an invite, but I am welcome to come along.

Senator Ellison—It is between government and the private sector. I think the communiques we have put out from them have been very constructive and have indicated the support that industry had for it. With those particular areas, there was not much angst, if I can put it that way, in relation to the private sector. That coupled with the security environment and the urgent need to address them was why they could be dealt with somewhat differently.

Senator LUDWIG—So is industry aware of schedules 3, 6 and 9? Have you discussed those with them? Are they happy for them to be proceeded with under the antiterrorism bill?

Ms Blackburn—I cannot answer that question with respect to the specific schedules. The comment I was going to make is that there has been some concern, I understand, raised by industry that, if you put them, through the antiterrorism bill, into the existing FTR Act and then do something different or additional in the new AML/CTF legislation, that obviously causes problems. I think there has been some misunderstanding that any issue which is dealt with in the new terrorism legislation would be an amendment to the existing FTR Act. When the new ALM/CTF legislation comes in, it will transfer those requirements across to the new bill, so we will not actually end up having two sets of regulations running. I know that that has been a concern that has been raised.

Senator LUDWIG—Effectively you will have two different compliance regimes. First of all, you will have a compliance regime that will deal with wire transfers and bearer negotiable instruments. You will have requirements for industry to deal with the collection of financing. You now require at least those. You will ask industry subsequently to meet other requirements and then, as I understand it, draw them across to that. So you will require industry to make adjustment—I do not know whether it is significant or not significant. You will require industry to deal with the antiterrorism bills which deal with financing of terrorists now and then you will subsequently, at least by 2006, deal with the further ones that are not dealt with now.

Ms Blackburn—Yes, that is correct.

Senator LUDWIG—Did you consult with industry specifically about their time frame in respect of bringing these forward? You have effectively brought them forward. You have brought them out of the exposure draft, brought them forward, put them through COAG—as items 9 and 12—and then sought to have them included in the antiterrorism bill, and they are,

and, as I understand Mr Howard, you will seek to have them passed before Christmas. Was that time frame explained to industry?

Senator Ellison—Yes, we discussed that COAG would be addressing the financing of terrorism and that that would be—and I am trying to remember the words that I used—authority greater than us, to the extent that you would have all the leaders of government determining arrangements regarding the financing of terrorism, and that we obviously could not foresee what COAG would arrive at. But I certainly placed industry on notice that COAG would be discussing it and that COAG would no doubt make decisions on that. That was discussed with industry at the time. I do not see any problem with that, to the extent that there is no inconsistency between the way we deal with the financing of terrorism in these first few amendments and then how we deal with the exposure bill which we will bring forward very soon. I gauged from industry at that meeting an understanding that that would happen.

I cannot pre-empt what COAG is going to say. COAG had taken it upon itself to deal with that, and industry understood that. That is beyond my control and responsibility. I am not responsible for COAG and do not have any control over it. COAG, as you know, was unanimous in its view that certain aspects of terrorist financing have to be addressed. One of the things we are looking at is charitable organisations. I do not think charitable organisations—and I will check my records—were discussed with industry, nor did industry raise it with us, because charitable organisations were not part of the financial sector.

CHAIR—It is after one o'clock, which is our scheduled time to break. Can we conclude in money laundering at this point or do you want to come back to it?

Senator LUDWIG—We will need to come back, unfortunately.

CHAIR—We will reconvene after lunch.

Proceedings suspended from 1.03 pm to 2.04 pm

CHAIR—Ladies and gentlemen, we will reconvene. We are considering output 2.1 and we are going to continue in that area. Before we do, the minister wishes to provide the committee with a statement.

Senator Ellison—Before lunch, Senator Ludwig was asking about the AML and the question of the counter-terrorism bill which has been proposed as a result of COAG, and the financing of terrorism aspects of the bill. When I answered Senator Ludwig's questions, I was not aware of a letter which came in on Friday last week from the Australian Bankers Association and which was addressed to the Attorney-General, not me. That outlined some aspects of the bill dealing with schedules 3 and 9 which Senator Ludwig asked some questions on. I understand—I more than understand; I know—that a number of issues have been raised with the Attorney-General. I wanted to make sure that my comments were not seen as being in any way misleading when I said that there had not been any concerns expressed; I was not aware of that letter. It is seeking clarification of a number of issues and it has input on a range of those issues. So I just want to bring that to the committee's attention.

As I mentioned earlier, the whole question of COAG was raised at the roundtables that I co-chaired with Tony Burke from the Australian Bankers Association, and it was always put to those meetings that the question of financing of terrorism would be dealt with by COAG

and that I could not pre-empt the outcome of COAG meetings and we would have to deal with that if and when that decision was made. So we are working through these issues with the Australian Bankers Association. I do not know if the department can assist any further with where we are at on that. I understand that officials from the department will be meeting with Tony Burke from the Australian Bankers Association on Thursday of this week. I am not aware of any other correspondence that has come in from the financial sector. I say, 'I am not aware of any', because there may have been a letter that I am not aware of. But that is the current state of play.

Senator LUDWIG—Are you able to table that letter?

Senator Ellison—It is a letter to the Attorney-General. The author—

Senator LUDWIG—Perhaps you could take it on notice then.

Senator Ellison—is not me and the recipient is not me, so I would have to ask them before I could do so.

Senator LUDWIG—That is why I thought you might take it on notice.

Senator Ellison—Yes. I will take it on notice.

Senator LUDWIG—That isn't what I actually had in mind in asking the question about consultation. I was more interested in the cash dealers, the remittance dealers and those other people who will be required to be registered and who will then have obligations. And they may not yet know that they will have obligations under this legislation—for instance, the definition of 'cash dealers', as defined by AUSTRAC, is quite broad. I understand that the minister has had roundtables, and I am not privy to the outcome of those, but I suspect that in those forums there has been consultation about parts of this legislation, whether or not it dealt with these issues. More broadly, the issue I wanted to canvass was consultation of those areas that may fall outside the roundtable discussions, those people who may have obligations which they might have thought would be more likely to be dealt with through an exposure draft and then subsequently have that legislation apply post that exposure draft, in 2006, late as that might be.

Senator Ellison—In relation to the remittance dealers, I understand they are regulated already. There are various sectors, like underground bankers, for instance—some of them are very difficult to consult because they are not regulated, they are not out there—

Senator LUDWIG—I suspect you have not consulted with them recently, Minister!

Senator Ellison—In relation to this bill, I think that the best thing I can do is to take that on notice and get back to the committee; I need consultation.

Senator LUDWIG—It is an important area and it is a serious issue, because what seems to have happened, as I understand it, is that, of those measures that are now being dealt with in the anti-terrorism bill—and I am not sure whether they are schedules 3, 6 or 9 in total, but the department could confirm as to which parts have been brought forward, if it is able to, out of the existing draft of the AML/CTF legislation, and brought forward into COAG, but, of those—industry would have been expecting an exposure draft sometime this year, as the minister had announced, not to see them brought forward and dealt with prior to Christmas in finality. That is, as I understand it, what is now being proposed. Is the department able to say

which would have otherwise been dealt with in the program put forward by the minister originally?

Ms Blackburn—As I understand it, the proposed terrorism bill is not yet a public document, so I am unable to confirm specifically its contents. I can say to you that the department put forward to the government some proposed amendments which could be made to the current FTRA legislation to implement some changes to improve the level of compliance Australia presently has with the nine special recommendations on terrorism. As the bill is not in the public domain at this stage, I do not think I can really go through and say which ones have been picked up and which ones have not. From the department's perspective, the proposal was that there were a number of amendments that could be made to the existing legislation, which would improve our counter-terrorist financing regime, and which would not be matters which would cause significant difficulty for implementation ahead of the consideration and implementation of the new legislation.

Senator Ellison—Can I stress that my remarks relate to a draft bill which was made public recently, but which the government does not accept as being the actual bill.

Senator LUDWIG—I think, likewise, for us: I am just dealing with the draft bill as far as I am aware, which deals with those schedules. But the issue really is: is the department able to identify which provisions have now been at least suggested to be brought forward out of the original tranche or the first tranche?

Senator Ellison—We can't—

Senator LUDWIG—I know we get caught in that, Minister, but—

Senator Ellison—We have a difficulty with this bill, and the people who are actually dealing with the drafting of it or who are involved in that will, I think, be called for the next output, won't they? I think we can talk about all the consultation we have had, the communiques we have put out and the roundtables, where we have discussed the FATF nine—those are the counterterrorism special recommendations—but we just cannot go into the bill itself, because that is something which is being dealt with on a confidential basis between state, territory and Commonwealth governments. I think that that is about the only way that we can progress, if I can put it that way; I think that that is really the only way that we can deal with them. We certainly put out some comment in relation to the special recommendations, and we could run through those, if that would be of assistance.

Senator LUDWIG—It would be, in the sense that there is at least one issue that, in terms of the report by FATF, there are zero out of nine special recommendations that we are compliant with fully.

Senator Ellison—It is partially—

Senator LUDWIG—Well, there are—

Senator Ellison—But anyway, we can go through—

Senator LUDWIG—There is none that we comply with—zero out of nine. We can agree on that.

Ms Blackburn—The Financial Action Task Force on Money Laundering is quite a unique world. Australia is largely compliant with five of the nine recommendations. To be deemed largely compliant is an acknowledgement of almost having reached the bar. In the methodology that is used to do this assessment, it means that you have complied with all of the essential criteria bar one. Largely compliant does mean exactly what it says—that is, that we are largely compliant with all of the requirements but there is still one small thing. If you look at the report on special recommendations 2 and 3, which relate to criminalising terrorist financing and freezing and confiscating terrorist assets, you will see that Australia is rated as largely compliant because we do have in place very broad ranging terrorist financing offences and we do have effective freezing and confiscation regimes. However, the FATF does not believe that the way the offences are presently framed will cover the financing of an individual terrorist. We had expressed a different view on that conclusion. Nonetheless, the FATF has concluded that the offences are not clearly extended to the full extent which is required by special recommendation 2. FATF's conclusion on the range of our offences on SR2 also affected its conclusion on SR3. We are largely compliant on criminalising the financing of terrorism but with one small area that the FATF believes we have not effectively extended that criminalisation. With regard to those which are partially compliant or non-compliant, again, the language is quite accurate in that there is more than one of the essential criteria in the FATF methodology which Australia's laws or practices do not presently comply with in the assessment of the FATF evaluation team.

Senator LUDWIG—But none are fully compliant in terms of the FATF language.

Ms Blackburn—That is correct.

Senator LUDWIG—I guess the following question gets us into the same problem again, but we will try. Of those special recommendations which are then going to be dealt with under the anti-terrorism bill, can you say how many of those nine will that make fully compliant? We can reverse it to ask: in the AGD's view, of the recommendations in the anti-terrorism bill, which will it make compliant with the zero to nine recommendations?

Ms Blackburn—When we put forward the proposal, from the department's perspective, we were hoping—and I use the term 'hopeful' because, in the end, it is a matter for the FTAF to conclude; we simply assert sometimes—it would improve our level of compliance with SR2 and SR3, which is the one I was just speaking about on criminalising terrorist financing, and also with SR9, which you might recall was added to the special recommendations only about 12 months ago and extended the border control requirements to bare and negotiable instruments. I think they were the key ones that we were focusing on at the time of developing the proposals.

Senator LUDWIG—What about SR7?

Ms Blackburn—As you would appreciate, we are fully non-compliant with SR7, and that is because there are a range of matters that need to be addressed there. Some of those will need to be addressed in the new AML/CTF legislation, which is being drafted. There is a possibility in the FTR Act to take some action earlier, but any proposal in the new terrorism legislation to amend the FTR Act means that whatever we put in place is still subject to the same limitations of the FTR Act structure. As you would see from the FTAF

recommendations, it is some of the very fundamental limitations in that act itself which are relevant to determining our level of full compliance with the FATF recommendations.

Senator LUDWIG—So assuming post the antiterrorism bill that there are potentially only three SRs that you will then be fully compliant with, or assert that you are fully compliant with, the remaining six will be—I will not use the term ‘not compliant’ because that is not appropriate either—not fully complied with. Is that your understanding of how it would operate?

Ms Blackburn—Part of the difficulty with some of the FATF evaluation is that it has a cascading effect. So if you look at the findings on SR2, which is the one about criminalisation of terrorist financing, our rating on SR3 is similarly downgraded because of the finding on SR2. Similarly, with SR5, which is about international cooperation, this report found that our international cooperation arrangements were excellent and fully compliant for money laundering, but they are only largely compliant, again, as a cascading effect, from the finding on the terrorist offence.

Senator LUDWIG—So my proposition is probably right: you will only be compliant with either two or three of the nine, as a consequence of the passage of the anti money laundering legislation? That would be 9, potentially 3 and 2, and perhaps 5, which could bring it to four out of the nine?

Senator Ellison—Although we still do not have a final version of the bill.

Senator LUDWIG—No.

Senator Ellison—The premiers and the Prime Minister are still talking about that.

Senator LUDWIG—From the information we have at hand; I guess that is all that we can work from.

Senator Ellison—You would appreciate that we cannot make any estimation.

Senator LUDWIG—It has been quite some time in terms of meeting the special recommendations under terrorism, save for the one introduced in 2004. When is it expected that you will be compliant, from AGD’s perspective, with all of the special recommendations on terrorist financing?

Ms Blackburn—That is a hard question to answer, Senator, because, as you know, we are in the process of developing an exposure draft bill. Leaving aside what might or might not be in the terrorism bill, there will then be further proposals which will be part of the AML/CTF legislation, which has a public consultation process on an exposure draft to go through. The minister has previously indicated his desire to have that bill introduced into the parliament next year. As you might also be aware, industry has made representations about the time from the point of the passage of the law until when it is implemented. That is a matter on which there is continuing discussion between government and industry as to what transitional period you have. I do not think I can really put a timeline on it at the moment. In addition, as the minister mentioned earlier, we are looking at coverage of other sectors in a second tranche. So the first bill we are talking about is only dealing with the financial services sector. The FATF recommendations, as you know, cover a broader range of sectors and they would not be looked at until we get to the second tranche.

Senator Ellison—It is fair to say that with security the job is never finished. As I have always said, it is a work in progress, and you cannot simply say that because you are compliant that is it; you rule a line through it and give up or finish the job. I do not think that with security the job is ever finished because there is always something evolving that you have to meet. To say that we will be compliant or that we will have in place all the measures that we would want is really very hopeful indeed, because there is always something that remains to be done. There is always something that has to be addressed. I think you have to be careful when you are looking at simply saying, ‘You’re compliant, you’ve done the job.’ Even if we were compliant, I would not say that that was the end of it. I would say that it was still an ongoing job.

Senator LUDWIG—Minister, that would be a wonderful position to be in—to be saying that we are compliant with FATF plus the nine special recommendations. But we are far from that. I think that is the complaint that I am now making. Of the remaining 40, dealing with the 40 FATF recommendations, we are fully compliant with only 12—in other words, compliant with a small ‘c’. Will the remaining 28 non-compliant areas be dealt with in the first or second tranche?

Ms Blackburn—They will of necessity need to be dealt with in both. As I mentioned earlier, many of the recommendations require the rules to be applied across a variety of sectors. We have indicated that the sectors would be dealt with in two tranches. I would like to add to that. There are only five countries that have been assessed against the new 40 plus the nine. There are only five countries that have been assessed. I mentioned earlier that it is quite legitimate in FATF parlance to put ‘largely compliant’ and ‘compliant’ together. I say that because any of the FATF activities about following up and progress reporting apply to those which are only rated partially compliant and non-compliant. To that extent, my recollection is that Australia is compliant or largely compliant with 25 of the recommendations. In that context, in relation to the five countries which have been evaluated to date, one of the things which have become evident to FATF is that almost all countries will have significant areas of non-compliance with the new recommendations and the new requirements. That has been the case with four of the five countries which have been evaluated to date. There are significant areas of non-compliance with the new requirements in those countries.

Senator LUDWIG—What concerns me is that we are not aiming for the lowest common denominator. When you read the report by the AGD which seems to indicate that there are significant pressures on getting time to deal with legislation, that certainly worries me. I must say that, if you look at the annual report at page 106, under ‘Challenges’, it says:

These demands are expected to continue to increase. Several high-profile matters—including mutual assistance requests on behalf of the Australian Securities and Investments Commission, and in the Schapelle Corby trial—have impacted upon resource capacity and progress of casework.

Managing two on-site evaluations of Australia’s anti-money laundering and foreign bribery measures has required resourcing and extensive whole-of government coordination.

It goes on:

The Division has a very active, self-nominated Working Smarter Team ...

But then in the final paragraph, it says:

The Division will be faced with two new major tasks in 2005–06 ...

You can compare that with the left-hand side of the page. Under the headings ‘Evaluations’ and ‘Part 1D Crimes Act, Forensic Procedures’, it says:

This review was planned for 2004–05 but, due to competing priorities, it was not conducted in the reporting period. It is now planned for 2005–06.

It seems that work is busy. What I am concerned about is that you are falling behind. It seems that the opportunity to meet some of these requirements was available to the department earlier. I think the minister announced on 8 December 2003 the need to deal with the FATF requirements. They were certainly well known at that time. We are now drawing to the close of 2005. It will obviously be 2006 before we finalise at least the first tranche. There is no known date for the second tranche. There are some which will be dealt with in terms of special recommendations 1-9 dealing with terrorist financing. But not all of those will be dealt with before Christmas. There are still some outstanding. You have not been able to say when the remaining ones will be dealt with—whether they will be dealt with in the first or second tranche. If they are going to be dealt with in the second tranche, we do not have a date. If they are to be dealt with in the first tranche, it will be mid-2006 by the time we deal with them—some three years later. You can get special dispensation for 9, which was added in 2004, but the rest have been around for some time. I do not think it is an answer to say that the rest of the world also has this challenge. This is Australia’s position. Australia has been a leader on this group. It has been a leader in anti-money-laundering—and that is slipping, quite frankly, by the look of this.

Ms Blackburn—I will leave the minister to comment on other matters but, in terms of resourcing, within the Criminal Justice Division I have had a team averaging 10 but with up to 12 staff working on the development of this legislation and the consultation arrangements since before ministerial acceptance in 2003. There are a number of competing priorities in the division. We quite often comment that we only have about 10 No. 1 priorities! This has been one of our No. 1 priorities throughout that period, and it has been fully resourced.

Senator Ellison—On where we stand: we enacted the Suppression of the Financing of Terrorism Act in 2002, and we made it an offence for a person to collect or provide funds where the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act. We also required cash dealers to report transactions which they had reasonable grounds to suspect were preparatory to or relevant to a prosecution for a financing of terrorism offence. We extended Australian agencies’ capacity to share financial intelligence with foreign countries and foreign law enforcement. We implemented the UN Security Council resolutions requiring states to freeze terrorist assets. All of that was done very quickly after 11 September 2001. As well as that, we co-chair the Asia-Pacific Group on Money Laundering. We have AUSTRAC, which continues to provide assistance in the world, particularly in the region in which we live. There is great work being done by AUSTRAC. I saw it in Indonesia recently, advancing their financial intelligence unit. So we do not only look to our own domestic requirements but we look to exporting sound anti-money-laundering measures, be it in the Pacific or South-East Asia. So I think Australia can still hold its head high in relation to what it is doing in the fight against money laundering. Every now and then you get misrepresentations in relation to our position. I think that it was fair to say

that FATF, in its evaluation, said that Australia had done much. In fact—and I do not have the words here, but I will provide them to the committee—it actually had a very positive comment about Australia's measures against money laundering.

There was also some question about why we did not have so many prosecutions for money laundering. I want to cover off on that. By virtue of our proceeds of crime legislation, law enforcement and the DPP have opted to go down the path of forfeiture of proceeds of crime. It is much more effective than money-laundering charges, which would normally result in a concurrent penalty anyway. You go to all that time and effort and all the courts give you is a concurrent penalty, whereas in relation to proceeds of crime, you can still get your conviction but you get the proceeds of crime being surrendered as well, which is much more effective in the fight against crime. You can get the penalty and the money as well.

In relation to money laundering, there have been some charges. Where it is a stand-alone charge, that is a path which can be embarked upon. But, where you have multiple other charges, tacking on that money-laundering charge is simply a lot of extra work for no extra gain in the penalty stakes. It is better to go down the proceeds of crime path. That is really something that I have been advised of in relation to the enforcement in this area. It is something that we could perhaps look at in relation to penalties, which the judiciary might not like—making it a requirement that you do not necessarily get concurrent penalties.

When you look at things with further scrutiny, Australia does have a robust system. AUSTRAC is regarded as one of the world's best anti-money-laundering agencies. We have much work to do—that has never been denied or underestimated—but we are not about to wear sackcloth and ashes for our position. We believe that we are a country which has taken a strong stand against money-laundering and that is recognised internationally. We will continue to work with industry. We cannot do it without industry. Industry has asked us to embark upon a certain path which we think is sensible, and we will do that. That is to adopt it in two tranches.

Senator LUDWIG—Is the Australian Commission for Law Enforcement Integrity legislation still due for introduction before the end of this year? I think it was originally flagged as one of those bills that was going to be dealt with.

Senator Ellison—We provided budget appropriation for the bill over four years in the 2005-06 budget. There is further drafting to be done. It is unlikely the bill will be introduced in the current sittings. We had to engage in detailed consultation with relevant bodies at Commonwealth, state and territory levels. I took that to the intergovernmental committee on the Australian Crime Commission, and we have had discussions with the states and territories. As you would understand, this governs, among other bodies, the Australian Crime Commission, which has state and territory police commissioners on its board.

We have come to broad agreement that the bill will cover, in its purview, the staff of the Australian Crime Commission and those who have been seconded from state and territory jurisdictions. Where you have a joint task force, however, and the person has not been seconded, that person would be subject to their home jurisdiction. You could appreciate that, for instance, in New South Wales they have the Police Integrity Commission, and Victoria and others have their own bodies for police discipline and serious matters of police misbehaviour.

The intention of the government is that the Australian Commission for Law Enforcement Integrity should be operational in 2006. The recruitment of the integrity commission and staff will be a priority early in 2006, and we hope to have the bill introduced in the first half of next year so that we can progress it.

Senator LUDWIG—So it is likely not to be established until the second half of next year.

Senator Ellison—I think it would be great to have it in the first half, but I think it is more realistic to say the second half. Certainly we would like to make it earlier than later. It depends on what support we get for the bill, I guess.

Senator LUDWIG—Will there be an exposure draft?

Senator Ellison—No. We will draft a bill and it will go through the normal processes.

Senator LUDWIG—I have some questions on that particularly, but we will obviously be able to come back in February to follow up with those questions.

Senator Ellison—Yes, we will be in a much better position to answer those in February.

Senator LUDWIG—I might put some questions on notice and follow those up in February.

Senator Ellison—Madam Chair, I mentioned positive statements from FATF findings in relation to money laundering offences. FATF said that Australia has a comprehensive money-laundering offence. Offences are well drafted and very flexible, presenting the most appealing set of options for a successful prosecution possible. In relation to confiscation and provisional measures, it said that Australia has extensive and effective confiscation schemes involving criminal and civil confiscation. It said that AUSTRAC is an effective FIU in good organisational shape and that Australia has a comprehensive system for providing mutual legal assistance and cooperating fully with other jurisdictions. It also stated that Australia has comprehensive measures to facilitate a wide range of international cooperation. So, throughout the FATF evaluation, there really are positive comments made in relation to the initiatives we have embarked upon.

Senator LUDWIG—What did they say about the 100-point credit check that is currently being utilised? They did not seem to be particularly in favour of that.

Senator Ellison—The credit check?

Senator LUDWIG—The 100-point people check that banks use and the like. Are the AGD doing any work in looking at that area?

Ms Blackburn—The findings on our compliance with recommendations 5 to 8, which are the requirements for customer due diligence, indicate that there is some work to be done on changing our arrangements for identification of customers to meet the FATF standard.

Senator LUDWIG—Is that in the first tranche or the second tranche?

Ms Blackburn—The exposure draft bill will include provisions for undertaking customer due diligence for the financial sector.

Senator Ellison—I might just add that it should be read in the context of the document verification which has been undertaken by all governments, which has been raised at the

Australian Police Ministers Council and which the Attorney-General's Department is working on. The 100-point test is reliant largely on the integrity of documents, which is a theme that we got back from industry. If you have a drivers licence and passport and those documents are robust documents with e-chips and the like or even DNA, then the requirement to produce those documents enhances any other verification or identity scheme that rests upon it. So they are your pillars or foundation and increasing integrity of your documents is something we are working on in tandem.

CHAIR—As there are no more questions on 2.1, we will move to 2.2, national leadership and coordination of legal and policy advice on national security and counter-terrorism laws and critical infrastructure protection.

Senator LUDWIG—Would this be where I talk about assistance to the government of, say, Cambodia for programs dealing with counter-terrorism? Is it only Cambodia or are there other countries you are providing assistance to?

Mr Holland—It is Cambodia that we have provided assistance to. We have provided some to Vietnam and also some to the Philippines.

Senator LUDWIG—What did it comprise? Is there a monetary value? What elements did you provide?

Mr Holland—In relation to Cambodia we assisted that country to comply with its obligations under the suite of UN counter-terrorism laws and also in relation to UN Security Council resolutions 1373 and 1267. So we have had two officers over the course of this year who have travelled to Cambodia on a number of occasions to help them actually draft their legislation, which they have completed, and have a series of sessions for the members of the parliament, which I understand a large number of the members of the Cambodian parliament attended, to take them through the legislation line by line. My recollection is that that legislation has been passed.

In the case of the Philippines, I understand there was also some assistance required from us in looking at draft legislation that they have put together. In the continuing program with Indonesia, we have been involved in assistance both in terms of legislation and in terms of the legal issues working group that was an initiative that came out of the Bali initiative at the beginning of last year, I think. The minister may recall; he was the joint leader of the Australian delegation to that. That legal issues working group has worked over the past two years to identify areas where other nations who attended those working group sessions could learn from the experience of the others in terms of complying with their obligations, as mentioned earlier, and also in drafting model provisions in relation to mutual assistance and extradition which countries might be able to rely on. That is an ongoing program that will be over the course of four years. We received some funding for that in the last budget and we now have the full complement of staff on board, working down that route.

Mr Cornall—I would just add that the Cambodian legislation is regarded as a possible precedent for other countries in our region who do not have similar legislation. It could be readily adapted by other countries without the same level of effort that it took to get the original legislation in place in Cambodia.

Senator LUDWIG—That was the next question: are there any plans to extend it to other regions in the South-East Asia Pacific rim?

Mr Holland—Other countries?

Senator LUDWIG—Other jurisdictions.

Mr Holland—I think the region is fairly broadly identified, and so, through a process of our legal issues working group and through the process of our posts in the region—we have gone out to posts seeking their advice on countries who might be interested in receiving similar assistance—we would do what we could to assist those countries who sought our advice. Obviously we would have to prioritise that, given the limited resources that we have.

Senator LUDWIG—GovCERT is not represented on the federal government program to disseminate crucial security information to businesses. AusCERT left the program around the same time, citing resource issues. Is there a problem there? Why would AusCERT leave and GovCERT not be there?

Mr Rothery—I think the group that you are referring to is the IT Security Expert Advisory Group.

Senator LUDWIG—Yes.

Mr Rothery—That is a voluntary group that exists as part of the Trusted Information Sharing Network. The administration of that group is provided by the Department of Communications, IT and the Arts. I understand that AusCERT advised us that they were not going to renominate for membership of that expert advisory group when its original term expired—because of operational issues, other demands on their time. GovCERT is a label for a desk officer within the Critical Infrastructure Protection Branch. That officer does participate and does attend those IT Security Expert Advisory Group meetings. So, in effect, the GovCERT desk, which is an officer from the CIP Branch—in fact it is a seconded officer from the Defence Signals Directorate who is currently carrying out that role—does attend those meetings. AusCERT declined to put their name forward for nomination.

Senator LUDWIG—What reason did they give for leaving?

Mr Rothery—The reason given to officers of the CIP branch was that it was other demands on their time that made them unavailable.

Senator LUDWIG—It seems to me that their role would be critical in terms of infrastructure protection. Why aren't they there?

Mr Rothery—At the end of the day, I cannot answer the question about what motivates AusCERT. AusCERT is a not-for-profit organisation. It is run out of the University of Queensland, and we do not control its operational priorities. Its work is predominantly in identifying emerging threats in terms of new malicious code, viruses and trojans and so forth and looking at tracking denial-of-service attacks. It has less expertise in terms of vulnerability identification—by that I mean, finding the faults in the commercially available software such as the sort of software that drives web sites or that you use on your desktop personal computer. That sort of work is not AusCERT's main focus. Its main focus is in tracking actual attacks and viruses and watching them propagate so as to give their customers warning in advance of them being infected. The work of the IT Security Expert Advisory Group is much

more related to vulnerability analysis than to tracking incidents. Therefore, whilst AusCERT did make a contribution and we appreciated its involvement for the year it was involved, I do not see it as a serious criticism of the work of the group that AusCERT is no longer involved.

Senator LUDWIG—I have some more questions on that, but I will leave those to another time.

[2.52 pm]

CHAIR—That concludes output 2.2. I thank the officers very much. We will now move to output 2.3. Is there anyone here from Emergency Management Australia?

Mr Cornall—Mr David Templeman had agreed to give a paper at a conference.

CHAIR—I understand that.

Mr Cornall—He is off doing that. He told us he will be here about five o'clock.

CHAIR—We had asked him to send someone else from EMA so that we could proceed.

Mr Cornall—I was unaware of that. As you know, I had been out of Australia until yesterday.

CHAIR—I did not know that. We only found out earlier today that he was not going to be here until 5 o'clock. We asked him to send someone else from EMA, and I thought that that was going to happen.

Mr Cornall—If you want to proceed now, I think we can.

CHAIR—Do we have someone from EMA? Mr Jordana, you are not going to claim to be from EMA.

Mr Jordana—We do have one representative here now; another is on her way. For the purposes of the committee, they may find the involvement of the head of the organisation more productive, but we do have people here who may be able to cover some of the issues. The people we have here are not responsible for all of the issues in EMA, so it may be best to wait for David Templeman to arrive.

CHAIR—I will consult with my colleagues. I am advised that the committee was not advised until this morning that Mr Templeman was not available until five o'clock this afternoon, which does not help the committee with its processes, I might say. We would like to begin questions in relation to output 2.3. Senator Ludwig has indicated that we will see how we go. If the process is adequate then we will deal with it in that way.

Senator CROSSIN—We are just going to ask you a few questions and put the rest on notice, so you have got off lightly today. Can you provide us with an update of what continuing work you are doing in the tsunami affected regions of Indonesia?

Mr Clement—I would like to take that on notice, if I may. I have just taken over the tsunami area. I can give you a little bit of information of where they are up to now but, on that particular question, I do not have the detail with me.

Senator CROSSIN—Whatever you can tell us now will be fine.

Mr Clement—The Australian tsunami warning system program does have a number of key federal government players—the Bureau of Meteorology, Geoscience Australia, the

Attorney-General's Department, the Department of Foreign Affairs and Trade and AusAID as part of that and the Department of the Prime Minister and Cabinet. There was a meeting in the last two days of last week bringing together the major players looking at establishing a recommendation to go to the Australian Emergency Management Committee for the creation of a tsunami focused working group underneath the AEMC which would have core membership from the key agencies and invited experts to deal with specific issues. That is pretty well where it is at the moment. Staff work on that is being done at the moment and will be coming forward to the AEMC for consideration.

With regard to engagement of the Pacific tsunami warning system and the Indian Ocean tsunami system, the major elements involved have representation on both groups, so there is an Australia wide response that picks up issues and they are complementary systems.

Senator CROSSIN—Is this an ongoing commitment, does it have an end date or is each program different?

Mr Clement—The funding for the project is finite and is over a number of years but I would have to take on notice the exact details of the funding arrangement, if I may.

Senator CROSSIN—If you could, and if you could tell us exactly when it is due to finish its funding. What sort of work, if any, is being done with, say, the United States regarding their recent hurricanes? Does it link in with that work as well?

Mr Cornall—With regard to Hurricane Katrina, EMA did send a team of people to the United States, who were there for two purposes. One was to observe and learn from what was happening in the United States but, more importantly, it was to offer assistance from Australia in the response to Hurricane Katrina. The United States authorities felt that they had the matter sufficiently under control and did not require that assistance, so the EMA led team came back to Australia.

Senator CROSSIN—How long were they there for?

Mr Cornall—They were there for a few days; I cannot tell you the exact number. They were there for a week or 10 days. I can confirm the exact number of days in an answer on notice, if you would like.

Senator CROSSIN—So they did not want our assistance?

Mr Cornall—That is how it worked out but it may well be that, in the situation they were in, they were having enough complications managing their own emergency response without having to accommodate people from other countries as well.

Senator CROSSIN—That is all I have. You are going to take that question on notice, so I have no other formal questions on output 2.3.

Mr Cornall—If I could come back to your question, I have just checked the briefing notes and they say that the offer of the Australian team comprised 30 people who brought together specific expertise from different Australian jurisdictions. The assessment team was deployed for a period of two weeks.

CHAIR—Thank you, Mr Cornall.

[3.01 pm]

CHAIR—We will now progress to output 2.4.

Senator CROSSIN—I want to follow up with some answers about the security hotline that you gave us following the May hearings. A question was asked about how many hoax calls had been received by the hotline. I take it from that that you do not treat any calls as hoax calls. Is that right?

Mr Tyrie—I think it is true to say that we do not treat any calls as hoax calls when they are made. Certainly, they may be disclosed as hoax calls after some investigation.

Senator CROSSIN—In your response you talked about calls being passed on and classified. Aside from the calls classified as information calls by the national security hotline, what other classifications of calls do you make?

Mr Tyrie—There are three general classifications. There are the information calls, which are the predominant number. The next classification we would describe as ‘comfort calls’ or ‘general assurance calls’. Then there are calls seeking information, to which the operator gives the caller that information if they are able to or takes it and passes it on to another agency.

Senator CROSSIN—Do you have those broken down by numbers?

Mr Tyrie—I can give you the numbers as at 27 October. There were around 60,500 calls altogether. Around 31,000 of them were information calls providing information that may relate to suspicious activity. There were another 25,000 with comments on the national security campaign. Other types of calls were seeking information and about 4,500 of those calls were seeking information on the national security campaign.

Senator CROSSIN—Are all of the calls, emails or letters that are received by the national security hotline passed on to the relevant police agencies?

Mr Tyrie—Only those passing on information, not the ones seeking information from us. I am sorry, can I amend the date given to 14 October, not 27 October.

Senator CROSSIN—In your answer to one of the questions, No. 66, you stated that the national security hotline has received 24,000 phone communications—this was as of 14 June, so I understand that the figures are out of date—that have been classified as information calls. So you do not pass on any information calls to the relevant police agency?

Mr Tyrie—It is the information calls that we do pass on to the relevant authority. That number is now 31,000.

Senator CROSSIN—So even if it is a call, a letter or an email, they all go to the relevant police authority?

Mr Tyrie—If it relates to information with regard to suspicious activity.

Senator CROSSIN—So not all of them go?

Mr Tyrie—Not all of the 60,000 calls would be passed on. I said that there were about 60,500 calls altogether—

Senator CROSSIN—Yes.

Mr Tyrie—of which 31,000 were information calls.

Senator CROSSIN—All of the 31,000 go to the relevant agencies?

Mr Tyrie—Yes, they do.

Senator CROSSIN—You do not have a pre-screening arrangement, before you pass any of them on?

Mr Tyrie—No, we do not analyse them at all.

Senator CROSSIN—They simply all go?

Mr Tyrie—Yes.

Senator CROSSIN—Okay. Do the agencies that you forward these calls onto have dedicated personnel to process them? What happens after they leave you?

Mr Tyrie—They go to the Australian Security and Intelligence Organisation, the relevant police force of the jurisdiction which is relevant to the call, and to the AFP, and the three organisations coordinate their activity between them.

Senator CROSSIN—Do you get a report back on what happens?

Mr Tyrie—No, we do not.

Senator CROSSIN—In the answer to the question on notice that Senator Ludwig asked that I keep referring to, which is No. 66, the table shows the breakdown of the communications by year and the method by which they were received. Are you now telling me that, in terms of information calls, in 2004 there were 6,418 but to date this year there have already been 31,000?

Mr Tyrie—No. Altogether, since 27 December 2002, when the hotline came into being, there have been 60,500 calls.

Senator CROSSIN—I see. So what is the breakdown of information calls then for this year? I am assuming that as of 24 May there were only 1,600 of those?

Mr Tyrie—I do not have that.

Senator CROSSIN—It is the answer to question on notice No. 66.

Mr Tyrie—As at 24 May, 2005, there were 1,600 telephone calls, 232 emails and 112 letters.

Senator CROSSIN—Yes.

Mr Tyrie—Sorry, are you asking how many calls there have been since that time?

Senator CROSSIN—Yes. What are the latest figures?

Mr Tyrie—I cannot give you the exact answer from that time to the present date.

Senator CROSSIN—You have given me 60,500 and 31,000, but they are since the hotline existed, since 2002. We have those previous figures. We want to know what it is as of today, basically.

Mr Tyrie—I will have to provide you with an update. I can take that on notice. Just so that I understand: you want to know how many further calls have been made since 24 May?

Senator CROSSIN—Yes. So, can you explain to me why there is a drop of 6,418 phone calls in 2004 to only 1,600 phone calls as of May 2005? What do you put it down to, this drop of nearly 5,000 phone calls?

Mr Cornell—Our public affairs people tell us that the phone calls respond either to specific incidents that attract a lot of media attention or—more likely—to the government's advertising in relation to the hotline and increasing public awareness of the hotline, and that that can affect the number of calls coming in.

Senator CROSSIN—You have not done an analysis of what the change in calls might be about, or the nature of the calls?

Mr Tyrie—Since that date we have had an increase in telephone calls; I just cannot give you the number at the present time in relation to the incidents in London and in Bali. There has certainly been a significant increase over that number of 1,600. I cannot give you that detail right now. I will take it on notice and I will provide it to the committee as quickly as I can.

Senator CROSSIN—Going to question on notice No. 114, which I think you have also provided me with an answer to—

Mr Tyrie—I think that I might have the answer here with Ms Moss.

Ms Moss—I have the monthly totals for 2005 for June, July, August, September and October, if you would like me to give you the call numbers per month.

Senator CROSSIN—Yes, that would be fine.

Ms Moss—This is total calls, not just information calls. Is that what you are after, Senator?

Senator CROSSIN—We want a breakdown of all of them.

Ms Moss—Okay. I can certainly table the page, if that would help.

CHAIR—Thank you, Ms Moss. That would be helpful. The secretariat will make a copy for the assistance of committee members.

Senator CROSSIN—Can I highlight some figures. I understand that during the period 2003-04 481 calls were received on the hotline, and that increased drastically in the period July 2004 to May 2006, with 1,454 calls being received on the hotline. That information is contained in the answer to question No. 114. Was there any additional funding allocated during that period of time or any additional staff allocated to deal with the increase in the number of calls coming in?

Mr Tyrie—No, there was no increase. The funding has remained the same, and the staffing has remained constant.

Senator CROSSIN—So there was no additional staff and no additional funding?

Mr Tyrie—Yes.

Senator CROSSIN—In some instances you may have had three times the amount of calls coming in at that time?

Mr Tyrie—Very often, as I mentioned earlier, when there is an incident of the nature of the London bombings or the recent Bali bombings, there is a significant increase in the number of

calls. When the government is running its information campaign, that can lead to an increase in the number of calls. Otherwise there may be a drop-off in the number that are received.

Senator CROSSIN—Do you keep any information on the workload of calls per staff member?

Mr Tyrie—Not specifically, no.

Senator CROSSIN—Would you have any idea how many calls—

Mr Tyrie—Are answered by each individual?

Senator CROSSIN—Yes. Would you have any idea how many calls on average each person would take, when you are reporting an increase of 1,454 calls in a two-month period?

Mr Tyrie—No, we do not have that detail.

Senator CROSSIN—You don't keep it?

Mr Tyrie—No, we don't keep it.

Senator CROSSIN—Why don't you keep it?

Mr Tyrie—So far we see no reason for it. The performance is that the hotline is there 24 hours a day, staffed by competent individuals to respond to the number of calls. We cannot tell whether there will be one call or 100. They are there to respond to the call. We have it in place that they are answered immediately, that callers do not have to wait. One caller could take up to 45 or 50 minutes; other calls take a short amount of time. There are a number of reasons why it is impractical to keep that as a measure.

Senator CROSSIN—How many staff are we talking about—per shift, I am assuming?

Ms Moss—Per shift, it would vary. Normally we would have approximately six staff per shift. If required, if the volume of calls is higher, we bring in extra people.

Senator CROSSIN—So you do bring in extra staff. I just asked if you brought in additional staff or additional funding during those periods of time and you said no.

Ms Moss—These people are on our books anyway. It is just a question of the volume of calls per shift. If the call volume is higher, we bring in additional people who are already on our books.

Senator CROSSIN—So they are casuals?

Ms Moss—Yes.

Mr Cornall—The number of people on the hotline, because of the nature of the work being, firstly, shiftwork and, secondly, subject to a fluid demand, we have them on AWAs which enable us to call them in at short notice and pay them on a shift basis rather than having them as permanent ongoing staff.

Senator CROSSIN—There is no casual rate in the award?

Mr Cornall—This is all done on an AWA basis.

Senator CROSSIN—My question was: is there no casual rate in the award?

Mr Cornall—We don't have an award. We have a certified agreement.

Senator CROSSIN—Is there a casual rate in the certified agreement which obviously sits on top of the award? Is there no casual rate in the certified agreement?

Mr Cornall—I will ask our human resources manager to assist me on that, because basically we have either staff who are employed on a permanent ongoing basis or staff on AWAs—short-term contracts.

Senator CROSSIN—Short-term contracts or are they paid as casuals?

Ms Blomfield—Within the certified agreement there is a casual classification and that does have a penalty component.

Senator CROSSIN—What is the casual rate?

Ms Blomfield—An additional 15 per cent.

Senator CROSSIN—In the certified agreement?

Ms Blomfield—Yes. It is the equivalent of the old award.

Senator CROSSIN—Why would your people be put on an AWA as opposed to being covered by the certified agreement and given just a letter of appointment with an end date?

Ms Blomfield—The certified agreement does not cater for shiftwork for casuals. They are covered by the certified agreement for everything except for the shiftwork component.

Senator CROSSIN—When do their AWAs expire?

Ms Blomfield—2007.

Senator CROSSIN—Are there plans to amend the certified agreement to have that provision in it in case, under the government's new WorkChoices, none of them want to sign an AWA?

Ms Blomfield—The certified agreement is due for renewal in 2007. That is an area that we could look at at that time but we have not really done the advance planning in relation to the certified agreement for 2007.

Senator CROSSIN—Given that, under the new regime when it becomes law, people will have a choice between a certified agreement or an AWA, wouldn't you see it as responsible to have your certified agreement reflect that clause and those conditions?

Ms Blomfield—It will be conditional upon the government policy at the time.

Senator CROSSIN—The government policy is that they want people to have a choice in their workplace. Wouldn't your certified agreement need to reflect what is in the AWA so people have a real choice in their entitlements and what they sign up to?

Ms Blomfield—It is an area that can be looked at in terms of including the shiftworker component in the certified agreement.

Senator CROSSIN—So you currently do not keep a log of how many calls a person might take on a shift and whether that would be causing any occupational health and safety problems, duress or stress for particular staff members?

Ms Moss—We do not keep a number of calls taken per person. We keep a record of the number of calls taken by day. There is a shift supervisor watching over every person as they

take calls. If they were seeing signs of stress or other indicators, they would be taken off and rested. Of course, they take all the requisite rest breaks, depending on the length of the shift they are on. We have, as required, provided counselling and extra advice. We have quite a good occupational health and work-life balance routine that we work with our shift operators.

Senator CROSSIN—But you currently cannot tell me what the average number of calls per person would be.

Ms Moss—No, we do not keep those records. As has been indicated, it would vary considerably as to the length of time spent on each call. Our aim is not like that of a normal call centre—that is, to get through the most number of calls per person. The aim is to extract the most information possible.

Mr Cornall—Senator, we could provide an average number of calls on the basis that you could take the number of calls per shift and divide by the number of operators. If that assisted you, we could do that.

Senator CROSSIN—That might not be a true reflection, might it? One person might get stuck on the phone for two hours while someone else is trying to deal with 200 calls in that time. I am surprised you would not keep a log of how many calls on average each person would deal with.

CHAIR—You might be surprised, Senator Crossin, but the officers have answered your question.

Senator CROSSIN—I have found you get surprised by a lot of the answers you get at estimates over the years.

CHAIR—I get surprised by a lot of the questions!

Senator CROSSIN—We will put the rest of our questions on notice or I am advised that we are going to run out of time for the rest of the day.

CHAIR—So that is the conclusion of questions in 2.4?

Senator CROSSIN—Yes.

CHAIR—I thank the officers very much.

[3.20 pm]

Office of Parliamentary Counsel

CHAIR—I welcome officers from the Office of Parliamentary Counsel, particularly Mr Quiggin. Mr Quiggin, I think you are attending your first meeting of the Legal and Constitutional Legislation Committee estimates.

Mr Quiggin—I am as First Parliamentary Counsel.

CHAIR—I hope you find it a relatively painless experience.

Senator LUDWIG—I will start. Today we have heard about one bill, about the integrity commission. It has had a couple of iterations. It might be dealt with next year. We have the IR bill, which I think is being tabled sometime this week. I am not sure about that, but certainly it is a bill that you would be drafting. We have had one draft of the terrorism bill released early by the Chief Minister, and I suspect there are more iterations of that that you are currently

working on, although I will not go to the detail. We also have the financial action task force response by this government. We can call it the anti-money laundering/CTF legislation, which you have been drafting—the first tranche. And there are a few more that I could probably turn my mind to that you have been dealing with in the last six months or so. Have you required any additional staffing?

Mr Quiggin—In the last budget we received additional funding over our previous funding level. That additional funding has enabled us to employ a small number of additional drafters. The major difficulty we find with drafting is obtaining trained drafters. There is not a supply of trained drafters readily available. Therefore expanding the office is something that is a relatively long-term project, and we are currently working on that.

Senator LUDWIG—How many additional staff?

Mr Quiggin—The funding over four years, in addition to the staff that we had employed—probably about two teams over the four years. Each team is two or three drafters.

Senator LUDWIG—Are you on time and on budget as of today? Are you producing the drafts that you are required to produce within budget and on time?

Mr Quiggin—When you say producing the drafts that we are required to produce, each sitting the Parliamentary Business Committee sets a program which allocates priorities to bills. We work through that priority list in order, doing the category T bills first, then doing the As and then the Bs. We never do all of the bills that are on the program. I think it is fair to say that this sitting we will perhaps do fewer of the category A bills than we have in other sittings. In relation to being on budget, I would expect that in the current financial year OPC will be within budget.

Senator LUDWIG—Which are the category A bills?

Mr Quiggin—I am not sure of your question.

Senator LUDWIG—What are they called? Am I allowed to ask that question?

Mr Cornall—The names of the bills?

Senator LUDWIG—Yes.

Senator Ellison—It might be good to have a look at that, because it is a subcommittee of cabinet, and I am not sure that I am—

Senator LUDWIG—That is why I prefaced my remark with a question about whether I was allowed to ask that question. I was not sure.

Senator Ellison—I think it might be wise to check that.

Senator LUDWIG—Can you check that in the interim?

Senator Ellison—We will see if we can deal with that in the interim. Can you ask some other questions?

Senator LUDWIG—How many of the category A list have you not completed or are unlikely to complete before the end of this year?

Mr Quiggin—I will take on notice exactly how many we are unlikely to complete. In our annual report each year, we provide a table which shows the number within each category of

bills, the number of those that are introduced, the number of those for which we do not receive instructions and the number that we were not able to complete due to time restrictions.

Senator LUDWIG—Where is your annual report?

Mr Quiggin—I understand that it will be tabled tomorrow.

Senator LUDWIG—Yes. That is the challenge that I have. I thought that you normally have that tabled, but I do not have the annual report.

Mr Quiggin—We do not table it directly; it is done through the Attorney-General's department, but I understand it will be tabled tomorrow.

Senator LUDWIG—You will miss our questions in relation to your annual report as a consequence. I will put them on notice. I suspect that this problem may happen with a number of other agencies. You can take that on notice, unless it is clear in your annual report, in which case you can just advise the committee that it is on page X of the annual report as sought from questions today.

Mr Quiggin—Sorry. What was the question you wish me to take on notice?

Senator LUDWIG—Those in category A, those in category B, those that have not been completed in category A, those for which you got drafting instructions and then time might have been pressing, those from category B for which you did get drafting instructions but, because of the priorities of A, you then did not do, those in category B for which you did not receive further drafting instructions. That would be a subcategory of A as well, I suspect, where there would be or could have been bills in category A that you then did not get further drafting instructions on.

Mr Quiggin—Yes.

Senator LUDWIG—There may not be any in that category A. That would then be all the iterations. Are there any other likely scenarios? You fell off the perch?

Mr Quiggin—I do not think there are any other likely scenarios.

Senator LUDWIG—You indicated that you had not completed as many in category A this year as you would have in earlier years. Is that because you failed to get drafting instructions on some of those, or was it because of the work pressures that were around that you only did so many of category A?

Mr Quiggin—It is more because of the pressures from other legislation.

Senator LUDWIG—Who prioritises the category A legislation?

Mr Quiggin—The Parliamentary Business Committee of cabinet puts each of the bills into the four categories. Within each category, if there needs to be a prioritisation, that is basically done by our office in consultation with PM&C or, for a lot of bills, it is worked on the basis that the first bill to get instructions is likely to be the first on which work is started.

Senator LUDWIG—So it is usually a first come, first served basis unless a priority has been communicated to you from PM&C.

Mr Quiggin—Roughly, yes.

Senator LUDWIG—Are you able to say when the WorkChoices legislation was first referred to you for drafting?

Senator Ellison—Was your question: when were instructions given for drafting?

Senator LUDWIG—Yes. When were they first referred for drafting? I think that question is permissible. I am not asking about policy. This is a drafting section that gets instructions on drafting.

Mr Quiggin—We received the first instructions on 11 July and that was for a part of that bill.

Senator LUDWIG—Does that come from the minister or PM&C?

Mr Quiggin—The instructions?

Senator LUDWIG—Yes.

Mr Quiggin—They come from the relevant department, which in that case was the Department of Employment and Workplace Relations.

Senator LUDWIG—Do they impose a deadline? I am trying to understand the iterative process that operates. I can imagine that there would be the initial drafting instructions, then questions would come back as parts are finalised and parts would be sent back for checking. Then there would be further instructions about those and there might also be new instructions for new parts. I know it is an iterative process. I am not trying to unpack all of the iterative process, I am just trying to look at the milestones that your section would normally be expected to meet.

Mr Quiggin—For particular bills there may be externally imposed deadlines. For example, most category T bills are normally required either at the end of the second week or the fourth week of sittings, and for other bills the government may indicate a date on which they would like particular bills to be introduced. We would obviously work to try and achieve that date.

Senator LUDWIG—Was the WorkChoices legislation queued? In other words, when you received the instructions, how were they dealt with amongst the other priorities?

Mr Quiggin—No, it was indicated to us that that was an important piece of legislation.

Senator LUDWIG—It was a category A.

Mr Quiggin—No, it was a category T. There are four categories.

Senator LUDWIG—What are those categories?

Mr Quiggin—The first category is category T, which is time critical and is normally for bills that are to be introduced and passed in the one sitting. The other three are categories A, B and C.

Senator LUDWIG—What does A mean?

Mr Quiggin—It is for introduction this sitting and for passage the next sitting. It is the highest of the three priorities: A, B and C.

Senator LUDWIG—What is B?

Mr Quiggin—B is the second priority—

Senator LUDWIG—Or whenever you get to it.

Mr Quiggin—or the third priority and C is the fourth priority.

Senator LUDWIG—You would not want to have the C category. In your annual report, do you indicate whether they are T, A, B or C?

Mr Quiggin—We have tables which show the numbers of T, A, B and C broken down by the number on the original program, the number introduced, the number for which no instructions were received and the number which could not be completed despite time and instructions. We do that on a sittings-by-sittings basis.

Senator LUDWIG—What did the integrity commission get?

Senator Ellison—I think we have previously gone into when we received drafting instructions, the various categories and the number in a particular category. We have not previously gone into which bills attract which particular category. That is really part of the deliberation of the Parliamentary Business Committee—the PBC—which is a cabinet subcommittee. That question goes to the substance of the determination of that committee. I think what we attach to a particular bill is cabinet-in-confidence.

Mr Quiggin—Can I clarify. In relation to category A, B, C and T breakdown—

Senator LUDWIG—You could probably just check with the minister's office about it. As you answer, I am sure Mr Cornall will follow that up to make sure that nobody is overstepping the mark. I am sure that is your role, Mr Cornall—amongst others, I should say. In terms of consultants, do you get outside people to come in and help the Office of Parliamentary Counsel?

Mr Quiggin—We have a small number of people who previously were senior staff members of OPC who we retain on consultancies. At the moment, we have two of those, both of whom are former Second Parliamentary Counsels, one of whom retired early this year and, after a month or so, I was able to lure back. But we do not use any other outside consultants.

Senator LUDWIG—You could not get Ms Penfold back then?

Mr Quiggin—I understand she is otherwise engaged.

Senator LUDWIG—I had heard that. The consultancies are just for persons; they are not businesses or external consultants who come in? They are people-only contracts?

Mr Quiggin—They are contracts with companies, but for the services of particular individuals.

Senator LUDWIG—Individual directors of those companies then.

Mr Quiggin—Yes, individual—

Senator LUDWIG—Personal service companies would be one way of expressing it.

Mr Quiggin—That is my understanding.

Senator LUDWIG—What about external scrutiny? Do you recall that the digital reform agenda was outsourced for a draft? I think that is right, isn't it, Mr Cornall?

Mr Govey—I think that was just the policy advice. I am pretty sure they did not do any drafting of legislation.

Senator LUDWIG—I cannot recall.

Mr Cornall—I do not think so. Obviously we will correct that if that is not the case, but I am reasonably confident it was just policy advice.

Senator LUDWIG—I will rephrase the question. Do you outsource any legislative drafting?

Mr Quiggin—Not other than to the two consultants who actually physically work in OPC.

Senator LUDWIG—In terms of workload—I think we were talking about this a bit earlier—and timeliness, have you missed any time lines that have been required or set of you in drafting legislation in this last period? In other words, have you been unable to perform to the required standard or time lines that have been set and needed then to provide an explanation as to why you did not meet those time lines?

Mr Quiggin—No, I have not been required to provide any explanations.

Senator LUDWIG—Have you met all the time lines?

Mr Quiggin—As I explained, there is a program set at the start of each sittings, and within that there are not specified time lines for particular bills. So, to that extent, there are not time lines to meet as such.

Senator LUDWIG—It seems like a perfect job, doesn't it?

Mr Quiggin—Except there is also a never-ending supply.

Senator LUDWIG—Yes, but no time line to meet. So all that happens then is that you do not meet all the category As, I guess. Is that the outcome?

Mr Quiggin—The outcome is that not all the category A bills, for example, will be drafted. I attend the parliamentary business committee meetings, and I am sure if they were not satisfied with our performance I would be advised of that.

Senator LUDWIG—I think I can ask this: have all the time-critical bills been drafted? This is without referring to particular bills. Have you met the requirements to draft those—that is, the T, A, B and C bills?

Mr Quiggin—Not all category T bills have been introduced as yet.

Senator LUDWIG—What about the As? I am just trying to understand. You have not met all the As, Ts or Bs. And I guess the Cs are on the never-never.

Mr Quiggin—We would not usually draft all of the As, Bs and Cs that are on the program in a sittings.

Senator LUDWIG—But you would normally draft all the Ts?

Mr Quiggin—We would normally draft nearly all of the Ts, yes.

Senator LUDWIG—But you have not in this instance?

Mr Quiggin—We have drafted nearly all of them.

Senator LUDWIG—Why is that? Why haven't you met all the Ts?

Mr Quiggin—One reason that some T bills have not been completed is if the bill is too large to have been completed within the time.

Senator LUDWIG—Work pressures? You do not have sufficient staff to draft the—

Mr Quiggin—No, if the bill is too large—

Senator LUDWIG—It fits in a room.

Mr Quiggin—Sorry?

Senator LUDWIG—It fits on the table.

Mr Quiggin—Generally we would have one team working on a particular bill unless it was a particularly large one, and the elapsed time it takes to draft a bill will often vary, depending on the particular bill. Regularly, some of the T bills would not be completed by the normal T cut-off. Often, that would be because the bill itself was too large or unable to be completed in that period.

Senator LUDWIG—So if you had more staff or more team members you may have been able to do it in the time available?

Mr Quiggin—In some cases; in others the policy would still be being developed as we are preparing the bill.

Senator LUDWIG—In the number of bills that you have got to draft that are in the T category, which ones that you have not completed are in the first category that we mentioned or the second category—that is, those where more team members may have been able to complete it on time or where there is an absence of additional advice or drafting instructions?

Senator Ellison—We cannot identify those—

Senator LUDWIG—I was not asking for the name of the bill.

Senator Ellison—What are you saying?

Senator LUDWIG—This was not a different way of getting the name of the bill. I knew I could not get the name of the bill—although I have one. In terms of number, how many bills have got a drafting instruction, they are a T bill and they have not been completed, so they are in the category of not being completed? In respect of these bills, one of the reasons relates to absence of drafting instructions, clarification or something along those lines, and the other reason relates to insufficient team members. Of those two reasons, which one relates to the number of T bills that you have not done? I am asking: for how many of those T bills that were not finished was the reason either a lack of drafting instructions or insufficient work teams available to complete the work? The answer would then not be the name of the bill; it would be that there were, say, three bills that were not finalised because of work, or one bill because of drafting.

Mr Quiggin—It shows up in our annual report. The second category, which is insufficient teams, is generally reflected by the category shown in the annual report as 'unable to be completed despite receiving timing instructions'. So for the previous sittings—

Senator LUDWIG—You can provide that number.

Mr Quiggin—that would be available in our annual report. We would normally measure that at the end of each sittings as opposed to through the sittings.

Senator LUDWIG—Are you able to answer the question that I put to you regarding the present time?

Mr Quiggin—For these sittings, at this time I would need to take that on notice.

Senator LUDWIG—All right.

CHAIR—Are there any further questions for the Office of Parliamentary Counsel?

Mr Cornall—Before we leave this item, I understand that the government's legislative program of A bills is published on a government web site, and we are seeking to print that off now to show Senator Ludwig. But it is only the A bills that are published.

CHAIR—I thank the officers. We will move on to AUSTRAC.

Senator LUDWIG—In terms of programming, I have consulted my staff and they told me that the Office of the Privacy Commissioner will not be questioned by us.

CHAIR—No, I have already indicated to Ms Curtis, Mr Pilgrim and their officers that they are not required and apologised for them being called unnecessarily.

Senator LUDWIG—In terms of the Administrative Appeals Tribunal, the Family Court of Australia and the Family Law Council, I am reliably informed that they were not called by me.

CHAIR—I think that is correct. They were called by other senators.

Senator LUDWIG—I do not want to make the obvious point—

CHAIR—I would never make any assumptions about who is in the building and who is not in the building, but we are checking, in relation to the senators who made those requests, whether they are attending.

Senator LUDWIG—If they are available, we can program them in at their convenience, if they did want to call them.

CHAIR—I understand that. We are checking. But, to confirm: we will go to AUSTRAC now and then to CrimTrac. Then, in relation to your question, Senator Ludwig, we will continue with the Australian Crime Commission, the DPP and so on. Subject to the presence or not of other members of the Senate, we will deal with the AAT, the Family Court and the Family Law Council if those senators wish to pursue those. We will find that out as soon as possible. I will not detain officers any longer than is necessary.

Senator LUDWIG—Thank you. I was just interested in the timing.

CHAIR—I do not want to delay the officers unnecessarily. One interstate agency has already had to return without being called by members of the committee after being requested to appear. I do not think it is a very good way to do business.

Mr Cornall—In this small break, I wonder if I can mention one matter that is troubling Mr Duggan.

CHAIR—He looks quite calm from here!

Mr Cornall—Senator Ludwig asked him a number of questions about marriages of under-16-year-olds, and he specifically answered those questions. One of the questions was: are we doing anything about that issue? Mr Duggan said, ‘No, we are not.’ But we are part of an interdepartmental committee about forced marriages generally, and there is work going on in relation to that.

CHAIR—It is an IDC, did you say?

Mr Cornall—Yes. Mr Duggan just wanted to make sure that he was specifically referring to marriages of people under 16. I think that is what your questions were all about. But there is some work being done in relation to forced marriages of people above that age.

CHAIR—And under that age, I assume.

Mr Cornall—Of any age, yes.

Senator LUDWIG—I meant to get back to you about that but I did not find a point. Now you have raised it. There was some work that was going to be undertaken by AGD in respect of forced marriages and some work that might also go to under-16s and that area in the criminal law area as a consequence of the passage of the trafficking in persons bill.

Mr Cornall—That is right.

Senator LUDWIG—I would have to go back and look at the transcript, but I wanted to confirm that, whatever commitments were made, there was still ongoing work done by AGD in that area. I think Mr Duggan is nodding his head.

Mr Cornall—There is an IDC which first met in August and is scheduled to meet again in November. We are a party to that IDC, along with DIMIA, Prime Minister and Cabinet, the Department of Foreign Affairs and Trade, the AFP and Family and Community Services.

Senator LUDWIG—That is right. It is coming flooding back. The answer was given at the time of passage of the legislation that it would impact upon the Marriage Act and other areas and it would not be appropriate to then seek to have amendments dealt with in the passage of the trafficking in persons legislation where other legislation might be appropriately looked at and, as a consequence, you were going to set up a committee to look at that further. So I appreciate that. Thank you.

[3.49 pm]

Australian Transaction Reports and Analysis Centre

CHAIR—Welcome, Mr Jensen and Mr Mazzitelli.

Senator LUDWIG—Good afternoon. There was a report back in January—and you may not have seen it but you may not need to see it—which said:

... PayPal and e-gold face extra regulation as part of a legislative package designed to stop terrorists and criminals laundering cash through offshore bank accounts.

That was the headlining paragraph. But does AUSTRAC have an estimate of the amount of money that flows through PayPal out of Australia or within Australia, as the case may be? Or do you only monitor certain transactions?

Mr Jensen—We only monitor the transactions that are actually provided to us and PayPal, since previous discussions, are a cash dealer under the legislation.

Senator LUDWIG—Do they forward you all their transactions or just their suspicious transactions and the ones over \$10,000?

Mr Jensen—Because of the way they operate, it is generally only the suspicious transactions.

Senator LUDWIG—So do they send you those of \$10,000 and above?

Mr Jensen—They do not generally deal in cash, so therefore would not be reporting those transactions to us.

Senator LUDWIG—Is there a number as to how many they report to you? Do you keep those statistics?

Mr Jensen—Those statistics would be available. I do not have those with me at this point in time.

Senator LUDWIG—Would you mind taking that on notice? Thank you. I think there is general concern about the use of the internet and transactions involving the internet but, in terms of AUSTRAC's role, has AUSTRAC undertaken any work or steps in monitoring or looking at the internet as a place where transactions are taken which may be avenues for money laundering or more generally for fraud or security areas? In other words, do you have a program in place to look at this area?

Mr Jensen—We have done some limited work with regard to payment systems that may be used across the internet and we will be doing more work on that. It is part of an ongoing strategic approach to be looking at alternative systems that may be eluding or are not caught by the current legislation, so that sort of work is done by our strategic unit.

Senator LUDWIG—What sort of work? Is it strategic work or is it policy initiative development?

Mr Jensen—It would be strategic in the sense of having a look at the range of alternative systems that could be available. If we find something that we believe should be caught by the legislation then we would refer that through to the Attorney-General's Department, which has policy responsibility.

Senator LUDWIG—In terms of the cash dealers—I will rephrase that because I will get caught by the same problem as earlier. Has AUSTRAC been advised of the likely increase in work requirements that might come from the COAG agreement dealing with items 9 and 12, which were terrorist financing and AML or money laundering CTF work? Has there been a requirement for AUSTRAC to look at additional funding or additional requirements that might come your way—in other words, has the government been in negotiation with AUSTRAC about potential work in the future that you may be required to do?

Mr Jensen—We have been in discussions with the Attorney-General's Department as best we can. Until the legislation is in place or the bill is tabled, it is difficult to determine what will be in it and therefore the consequences of that bill. We are mindful of the fact that there may well be further work required and we are looking at aspects of that.

Senator LUDWIG—Did you do an analysis of the FATF summary of recommendations and the full report and how it impacts upon AUSTRAC?

Mr Jensen—We have done an analysis of the report and where we fit within that particular report. In terms of the report, the financial intelligence unit side of it was compliant with the relevant recommendation 26. In terms of other recommendations, where there was largely compliant, partially compliant or noncompliant, as you are aware, the anti-money-laundering reform process is being undertaken and there will be a bill to review some of those provisions. Some of the things that we would be looking at in terms of the 40 plus nine recommendations will be in those bills.

Senator LUDWIG—In terms of the Paris report as it impacts upon your organisation, have you determined which parts of that report directly relate to the operations of AUSTRAC now?

Mr Jensen—The requirements of AUSTRAC at the moment are under the Financial Transaction Reports Act, and we meet those requirements. The 40 plus nine recommendations will ultimately require legislation to put them into effect within Australia. When that happens, yes, there will be further work for AUSTRAC. It will depend on what decisions are made by the government in terms of what, within the FTR Act or the AML bill, would require us to do a higher level of work.

Senator LUDWIG—What I was trying to get at—we might have to go via the circuitous route—were the requirements contained in the FATF report that AUSTRAC can meet without legislative change. To begin with, are there any? In other words, have shortfalls been identified in AUSTRAC's current monitoring regime; and, if so, what are you doing about it?

Mr Jensen—We cannot put the cart before the horse; we have to wait until the bill is enacted, ultimately, to determine what we will be required to do. Some parts of what the Financial Action Task Force have said may not be considered by the government to be relevant, or we may be doing enough that an amendment would not be required. At the moment, we are meeting the level of requirements that the legislation enables us to at this point in time.

Senator LUDWIG—All right. We will have to wait for the horse, then, I guess! Did AUSTRAC asked to be included on Taskforce Gordian?

Mr Jensen—As I said at the last estimates, we were not included in the task force, but we provide—

Senator LUDWIG—I know what you are saying, but that was not the question I asked.

Mr Jensen—I will answer your question, Senator, if I can just process through that.

Senator LUDWIG—Remind us where we got to last time.

Mr Jensen—At that point, we were providing support to the task force. Since that time, the task force has progressed to a point where AUSTRAC's intelligence was deemed to be necessary to the process, and we have joined the task force. I have two members of staff who are currently on the task force.

Senator LUDWIG—When did that occur?

Mr Jensen—I cannot be exact—we could provide you with the exact date—but it was within the last two months.

Senator LUDWIG—Who was that invitation from?

Mr Jensen—From the Australian Crime Commission.

Senator LUDWIG—Going back to my original question: did AUSTRAC ask, originally, to be included on Taskforce Gordian?

Mr Jensen—No, we did not ask to be included on the task force.

Senator LUDWIG—And why not?

Mr Jensen—Because we provide a supporting role, as I mentioned previously, in a reactive way and in a proactive way. So we can actually provide the task force with data that is required or that we find is likely to be of use to the task force. We have formalised the situation so that our members are now working full-time with that task force.

Senator LUDWIG—I will go back to the money laundering again, because I will just have another go, if you do not mind, Chair.

CHAIR—Sorry, Senator Ludwig?

Senator LUDWIG—I was just going to have another go at the cart before the horse. We will see how we go.

CHAIR—Cart and horse, Senator? From which stable? I needed to get in a Melbourne Cup reference!

Senator LUDWIG—If you look at the recommendations in that FATF report, and I am sure you have got them fully in your minds, some of them—we could look at 15 or 25, but let us take recommendation 23 as an example—suggest that you have only completed two audits of banks, and that the only other financial institutions you have audited that have money with them are dealers. That gives you an example of what I am talking about in terms of meeting the 40 plus nine. I understand that there are legislative requirements, but they also make comment about the current AUSTRAC operations. You will require legislation to meet the 40 plus nine, and we can assess you against your performance about that legislation, but also embodied in their report seems to be an assessment of your current operation. That is where I wanted to know whether or not you had made an analysis of that, and whether you agree with the FATF findings, but more particularly some of the comment they have made in that area, because it seems to be critical of AUSTRAC. In this instance, looking at recommendation 23 of the FATF report, it says—and I take it to be a criticism—you have only completed two audits of banks. It seems to be a suggestion that you should have done more in this area and they would have been far more satisfied had you done more in this area.

Mr Jensen—I think the whole of our program needs to be taken in context, and I do not believe that the mutual evaluators accepted the arguments that we were putting forward. We have an ongoing program of education and compliance with the financial sector and with other sectors as well. We continue to work with them in what we call ‘desk audit’ situations, where we are constantly looking at the data that is flowing in and looking at any activity outside of what we would call the norm. We are also speaking with them in a range of forums

and visiting the organisations, so we are constantly having a look at the financial sector. We have worked with them over a period of 16 years and know them reasonably well. We know what they are doing and what they are not doing.

What we did a couple of years ago was to start to look at high-risk cash dealers, such as remittance dealers. Our approach to the remittance dealers was to firstly find them, and then educate them and ensure that they were reporting to us. This is where we had some line of not agreeing on the situation. We go out to, for example, the remittance dealers, and we talk with them about what they need to do and how they need to go about doing it; we look at their activities and we determine whether or not they are a cash dealer under the definition in the legislation, and then we ensure that we get the transaction reports or, if they have got accounts, that they identify their customers.

The mutual evaluation team were critical because we had not taken court action against organisations that were not complying with the legislation. We had taken a strategic approach of making sure we got the information, rather than necessarily going to court, and of being very successful in having people back-capture the data, and report the relevant transactions to us. So I guess there was a line where there was not agreement between us and them, but it was their report, not ours.

Senator LUDWIG—Yes, because they also, at recommendation 23, found that the supervisory scheme was ineffective and AUSTRAC did not use the full range of powers that it had under the FTR act. It was limited in what it could share with other regulatory bodies and there were very few formal inspection visits—which I went to. Do you agree with that? It is quite damning of AUSTRAC, in that sense.

Mr Jensen—It is. I do not necessarily agree with all of it but it is about the approach taken here in Australia and the approach taken by AUSTRAC to ensure that we get all the relevant information. When you look at that and then look at the work that is being done on the financial intelligence unit side of it, which is extremely successful, you see it is successful because we are getting the information that we necessarily have to. There are not a lot of court actions being taken. We have not necessarily needed to use all of those powers because we have got compliance by people agreeing to work with us, rather than not agreeing and us having to take them through the courts to get compliance.

Senator LUDWIG—But FATF did not agree with you there. What are you then going to do? Are you going to ignore their advice and continue with the current regime or are you going to put in different procedures or processes as a consequence of their recommendation or their statements? That is what you are effectively saying to me—that you do not agree with them so you are going to ignore them.

Mr Jensen—I would not say we would ignore them. We would take their advice on board in our current environment and we would look more deeply into what we are doing but, ultimately, what we are doing now works and we would probably continue largely on the way we are going.

Senator LUDWIG—So ultimately you are going to ignore them.

Mr Jensen—No. I would not say we would ignore them. We would look at what they have to say and take it into consideration.

Senator LUDWIG—What will you then do? Is there any process involved in changing the current procedures?

Mr Jensen—We may consider that. With regard to the actions that we have taken in the past, in the future we may need to be a little more stringent in terms of those parties. We may make a decision to proceed through the courts, if appropriate.

Senator LUDWIG—That is why I went back and asked you, effectively, that earlier question of whether you had had an analysis done of the report and whether there was any remedial action you may need to take as a consequence of the report.

Mr Jensen—At this point in time, we are not looking to take legal proceedings, which is what the report was looking for, basically. That may come up in the future but the report has only just come out in the last month.

Senator LUDWIG—I am sure we have both read it. So at this point in time you are not intending to take any notice of the report in these areas.

Mr Jensen—No. We will take notice of the report. We will not change the way we are going just at the moment but in the future we will certainly take into consideration what they have said.

Senator LUDWIG—But you are not going to investigate any ways that you might be able to accommodate or deal with the FATF recommendations to improve your overall monitoring process in accordance with their view of your failings.

Mr Jensen—I think a range of those activities that you are talking about may be altered through amending legislation or the anti-money-laundering bill in the future. We are in a position at the moment where there will be further legislation to bring Australia up to the current FATF standards, bearing in mind that we were, up until the change in the standards, compliant with them. So we have operated under the previous system up until the present time. If the legislation requires AUSTRAC to do things in a different way then we will. If it does not require us to do them in a different way we certainly will have a look at what the recommendations say and we will take those into consideration.

Senator LUDWIG—In terms of the laundering of money, particularly through the black market peso exchange model—I am sure you are more familiar with that than I am—underinvoicing or overinvoicing is one way of laundering money. As an FIU, do you have the capacity to access the Customs cargo management re-engineering or the Customs cargo computer system to monitor this type of laundering?

Mr Jensen—We have some limited access to Customs information. However, our position generally is that we would look at our data and provide that to Customs for Customs to do that work. It is not our investigative role to do it but we would take it to a degree where we would work together with them to have a look at that.

Senator LUDWIG—Have you done any of that work in the last year or so?

Mr Jensen—I cannot be specific, but on notice we could provide you with some specificity. But we do work closely with Customs on a range of activities, and those activities relate to both the commercial and border control activities.

Senator LUDWIG—But you are unsure of whether they relate to the model that I just explained?

Mr Jensen—I cannot say for certain. I would be surprised if it does not.

Senator LUDWIG—I am happy for you to take it on notice. If you can clarify that, that would be helpful. I want to turn to shell banks. That was another matter that was raised in the FATF report. Do you find specific intelligence on that passed on to the government—whether or not they exist and are being utilised? Is that part of your monitoring role?

Mr Jensen—It is a difficult thing to determine whether an overseas bank is a shell bank or a fully operating bank. Certainly we have all the information that comes in from overseas in terms of the international funds transfer instructions and that information going out. I do not believe that we have done anything specifically in attempting to identify shell banks. However, we do rely on international banking recording information, if you like. There is a set of international codes that relate to all banks, so it would not be impossible for us to do that in terms of shell banks.

Senator LUDWIG—But you do not do it at the moment?

Mr Jensen—I do not believe that we are doing anything specific at the moment.

Senator LUDWIG—I should let you take that on notice. If you could clarify that, that would be helpful. I might put the remainder of my questions on notice if that is all right, Chair and AUSTRAC. There are some more general questions that I am sure Mr Jensen could deal with on notice.

CHAIR—Thank you, and thank you, Mr Jensen and Mr Mazzitelli. We will move to CrimTrac. In relation to the program, I have already advised that, although the Office of the Federal Privacy Commissioner was called, the senator who called them is not able to attend and they are not required. Unfortunately, that is also the case for the Administrative Appeals Tribunal, the Family Court and the Family Law Council. Of those agencies, several bring officers from interstate to attend estimates. Some have been waiting for some hours and are now not required. They have been advised, either by me or by the committee secretary, that that is the case, but I think it is a matter to which the committee will turn its mind in due course—to consider how to avoid wasting the time of officers in that way and to try to ensure that it does not happen again. Again, the committee extends its apologies to those officers.

[4.12 pm]

CrimTrac

Senator LUDWIG—I want to begin by asking about the major upgrade of the NAFIS operating system mentioned on page 15 of the annual report. I appreciate that you have finalised the annual report and we have it available. Could you indicate all the additional functionality that NAFIS is intended to introduce.

Mr Oliver—I may be somewhat limited in what I can tell you at this time. Unfortunately, the program manager for NAFIS, Mr Robert Gough, went overseas to an Interpol meeting yesterday. He is the only member of my staff not here.

Senator LUDWIG—I struck gold, did I?

Mr Oliver—As it transpires, this is the 14th working day in my acting role in CrimTrac. So we will do what we can but the information that you require we may end up providing on notice.

Senator LUDWIG—The \$4.9 million provided to upgrade the operating system: are you able to provide a breakdown of those figures and how much has been expended so far?

Mr Oliver—We would prefer to take that on notice at this stage.

Senator LUDWIG—Is it on budget so far?

Ms McLay—Yes, it is on budget.

Senator LUDWIG—Where is CrimTrac sourcing the hardware for this upgrade—or is it a software upgrade?

Ms McLay—It is primarily a software upgrade but it includes some hardware replacement as well.

Senator LUDWIG—Has a tender process been adopted to obtain that?

Ms McLay—There will not be a separate tender run for the equipment.

Senator LUDWIG—How do you seek to engage consultants, IT specialists or hardware specialists?

Ms McLay—The upgrade, including the equipment, is being delivered under a fixed price contract with the AFIS service deliverer, Sagem.

Senator LUDWIG—Could you explain that a little more. What do you call a fixed price contract? What was the price?

Ms McLay—The price is the \$4.9 million that you have quoted, to deliver the upgrade, which is being jointly managed under a contract between Sagem and CrimTrac.

Senator LUDWIG—How was Sagem identified as the contractor?

Ms McLay—They are the current support providers and system providers of the current NAFIS.

Senator LUDWIG—Why wasn't that put out to competitive tender? Why didn't you test the market in this area when you were going to spend \$4.9 million on an upgrade?

Mr Oliver—Sagem has been responsible for the software on NAFIS all the way through the development stage and through to the operational platform for NAFIS. It was considered sensible and efficient to continue with Sagem in terms of providing the software for NAFIS. There is an extraordinarily large amount of corporate knowledge and experience in terms of both the NAFIS team and the people from Sagem who support that software. I do not think that CrimTrac considered that it was either sensible or efficient to in any way go to the market in terms of the software. In terms of the hardware that is going to be provided to refine the platform on which NAFIS sits, it is part of the same package that Sagem will support the software with.

Senator LUDWIG—What concerns me is that there is no market testing to ensure that you are getting value for money for the expenditure of \$4.9 million with a company with which you already have what is I am sure a reasonable relationship. How do you know you are

getting value for money if you do not put it out to either a competitive tender or even a closed tender arrangement to ensure that you are getting value for money and it is the best available in the marketplace? I understand that you might have a continuing relationship with Sagem, but that does not prevent you from utilising a tender process, does it?

Ms McLay—Do you mean for an upgrade, Senator?

Senator LUDWIG—For whatever you are going to spend \$4.9 million on.

Ms McLay—Which is the upgrade of the current AFI system as opposed to a replacement system.

Senator LUDWIG—No, even for an upgrade of the current system, when you are going to expend the moneys that we have highlighted. Maybe you would not, but I might consider putting that out to a tender process to ensure that I am still getting value for money. I am wondering why you did not.

Mr Cornell—I think there is a significant difference between proposing to upgrade a system that has been created by one organisation and acquiring a new system altogether. I think what the agency is saying is that the amount of knowledge of the Sagem people in their own system was such that you would not be able to get a competitive tender for the upgrade of that system.

Mr Oliver—To add to that, I think Sagem are recognised as world leaders in terms of automated fingerprint technology. It is an upgrade. The \$4.9 million is for a full package of both equipment and software. It is a build on what we currently have and what is considered extraordinarily successful from a world perspective. It was for those reasons that it was considered practical and cost efficient to continue using Sagem for this platform.

Senator LUDWIG—That is probably closer to the answer I might like to hear. Who owns the copyright in terms of the software—Sagem or CrimTrac?

Ms McLay—The IP is owned by Sagem, and we have purchased licences to utilise that software from them.

Senator LUDWIG—So you are locked in with Sagem for eternity, by the sounds of this.

Ms McLay—Unless we went to tender for a replacement AFIS.

Senator LUDWIG—Do the computer program and the hardware have a life expectancy?

Ms McLay—The licence agreement?

Senator LUDWIG—That too, but more the hardware. How long do you expect to be utilising this system for?

Ms McLay—The hardware itself—the majority of the equipment—is generally under a warranty period of three years. In terms of the licence agreement for the software, I would have to take that on notice.

Senator LUDWIG—So you are locked in for at least the next three years with Sagem.

Ms McLay—Correct. That would be the efficient use of the contract.

Senator LUDWIG—What happens after that? You would have to start from scratch if you wanted something different because you do not have either the licence or the IP and then the hardware is out of date.

Mr Oliver—CrimTrac at that stage would reassess its options. If it were considered appropriate to go to market in terms of a possible new system for automated fingerprinting technology, we would do so. If it were considered more cost efficient and we could demonstrate a sound business case for progressing the arrangement with Sagem, we may well consider doing that.

Ms McLay—As I say, I would like to take the term of the licences on notice.

Senator LUDWIG—That would be helpful. It means, effectively, that because you do not own the IP—you only own the hardware—it is pretty useless if you try to terminate the contract with Sagem.

Ms McLay—It would not be in our best interest.

Senator LUDWIG—So you are locked in with Sagem for the foreseeable future.

Ms McLay—Correct.

Senator LUDWIG—Who made that decision?

Mr Cornall—The decision to engage Sagem for this contract was made in about 2000 or late 1999.

Senator LUDWIG—I might have just missed that.

Mr Cornall—I just cannot recall the process that we went through at that stage. We could take it on notice and go back to that if you wanted us to.

Senator LUDWIG—I guess what I am highlighting is that it seems to be that, for good or bad, you are now locked in with Sagem.

Mr Cornall—This is the same with every significant software construction project for specific purposes. Once you make that decision, you really are locked in to that supplier for an indefinite period until you decide to scrap that system and start again.

Senator LUDWIG—We will leave it at that, then. In the minimum nationwide person profile project, what information will be available on the MNPP?

Mr Burns—The information on the MNPP is the information the police have identified is necessary to share amongst themselves—that is, to allow operational police to deal with persons of interest. It includes a photograph, details about warnings, warrants, et cetera but the actual fine detail is not in the public domain.

Senator LUDWIG—So the additional information will be what? Photographs? I am just trying to get a hands-on example of what—

Mr Burns—The purpose of the system is to allow police to identify if someone is a threat to themselves, a threat to police or a threat to public safety. Any warnings, information on court warrants and parole conditions are on the system.

Senator LUDWIG—Is all that information available now or will there be more information available soon?

Mr Burns—At the moment we have a pilot system between New South Wales, Victoria and CrimTrac. New South Wales and Victoria are providing the original information and, subject to further rollouts, the other jurisdictions will join later on.

Senator LUDWIG—Do you have a time line for that?

Mr Burns—At this stage, we are waiting for the APMC to consider the business case we put forward and to make a decision on that.

Senator LUDWIG—Can you explain what the business case is for?

Mr Burns—The business case identified the work required in all jurisdictions for them to be able to provide the information within MNPP to CrimTrac and modify their systems to take the information and provide it through their systems to their coppers.

Senator LUDWIG—When will a decision be made on that?

Mr Oliver—At the recent Australasian Police Ministers Council meeting a resolution was taken that further work be done in terms of funding options for MNPP. The police ministers asked that the item be taken offline, discussed at some length with the senior officers group and brought back to the next APMC with some sort of resolution as to how collectively funding options can be progressed.

Senator LUDWIG—How long has this being going on for? It is in a trial process now—this is the MNPP.

Mr Burns—The project was conceived and approved by the board of management in May 2002 and the actual pilot system went operational on 10 March this year.

Senator LUDWIG—It has been quite a time in development.

Mr Burns—It is a significant change in the business practices of police. It is a very complicated information set. It has taken a long time to work that through.

Senator LUDWIG—And the time line for completion is still unknown because what you are doing is getting a business case to develop it further at this point in time—is that right?

Mr Burns—The business case included an indication from all jurisdictions that, subject to funding, it would take approximately three years to complete the project to all jurisdictions. The system development work needs to fit in with their own system development cycles.

Senator LUDWIG—Subject to funding, is there a funding model that has been proposed and accepted by the various states and federal government?

Mr Oliver—There are a number of funding options that have been proposed, all of which are being considered by the various jurisdictions following the police ministers council meeting and in the lead-up to the next one.

Senator Ellison—At the last police ministers council, I think it is fair to say that there was a difference between the different jurisdictions. It was not the states versus the Commonwealth as you normally get; it was a few states against each other, the view being that Victoria and New South Wales were getting the main benefit from this because they were getting the pilot. Some of the smaller states were saying, 'I think there should be some reflection in the costing in that.' There was some discussion and a difference of opinion even

amongst the states so that is why it has gone away to be worked out. But I think that funding model will, unfortunately, cause some delay—or the discussion of it.

Senator LUDWIG—Minister, I thought you were going to offer to step in and fund it!

Senator Ellison—Yes, sure. The Commonwealth has already contributed \$11 million to the pilot, and we have already agreed that we will commit \$5.58 million to it from the reserves. The Commonwealth has been very generous in all of this. We have not received the main benefit of it either; it has been New South Wales and Victoria that have received the benefit.

Senator LUDWIG—What is the likely total cost?

Mr Oliver—The total cost is estimated at about \$32.6 million, at this stage.

Senator LUDWIG—I see your problem, Minister.

Senator Ellison—Exactly, and the state and territories do not want to pay for it.

Senator LUDWIG—Or the Commonwealth for that matter.

Senator Ellison—We have already committed \$5.58 million out of the reserves and contributed \$11 million to the pilot. If you include that, we reckon our contribution is over \$16½ million and we are yet to see some money coming from the states and territories.

Senator LUDWIG—I am sure you will be able to sit around the table and persuade them.

Senator Ellison—I just want you to realise where the issue lies because that is what it is all about. We want to see it in place as soon as possible.

Senator LUDWIG—The CPRS is currently deployed in New South Wales and Victoria and the 90-day trials have elapsed. Is that right?

Mr Burns—The minimum nationwide person profile piece of CPRS is still operational, in a pilot sense. It has about 1,400 users. The majority are in New South Wales and Victoria and a limited number of users are in all other jurisdictions.

Senator LUDWIG—What about the roll out of ANCOR?

Mr Burns—The National Child Offender Register?

Senator LUDWIG—Yes.

Mr Burns—That has been available since last year. At this stage, all jurisdictions with legislation have full access to the system.

Senator LUDWIG—Are there any jurisdictions which do not have legislation in place?

Mr Burns—There are three jurisdictions presently not using ANCOR—they are, the Australian Capital Territory, Tasmania and South Australia.

Senator LUDWIG—What is the hiccup there?

Mr Burns—It is just a question of them finishing their legislation.

Senator LUDWIG—Is ANCOR on time and on budget?

Mr Burns—The current allocated money will allow us to complete the build of ANCOR 2.2, which is scheduled to commence in January next year and be completed in July next year. That is for a firm price model, so it will come in on budget.

Senator LUDWIG—What is the total?

Mr Burns—The last piece of development was \$997,558.

Senator LUDWIG—Is that the original budgeted amount?

Mr Burns—No, that is the last piece. The original budgeted amount was \$3.140 million.

Senator LUDWIG—How much is expected to be spent?

Mr Burns—The total at the end will be \$4,326,558.

Senator LUDWIG—Where will the additional million come from?

Ms McLay—From tax-retained surpluses.

Senator LUDWIG—How much does CrimTrac currently have in retained surpluses?

Ms McLay—To 30 June of the financial year just ended, we have accumulated \$12.8 million in reserves.

Senator LUDWIG—So you are going to expend approximately a further \$1 million to ensure that ANCOR is up and running?

Ms McLay—Correct.

Senator LUDWIG—Will there be handheld biometric devices as part of NAFIS?

Mr Cross—The software upgrade for NAFIS will allow the hand-held biometric devices to interface with the centralised NAFIS system.

Senator LUDWIG—How will they work?

Mr Cross—I do not have that detail available. I would have to take that on notice.

Senator LUDWIG—And then the number of devices that you will buy.

Mr Cross—That will be determined by jurisdiction—as to how many devices they will wish to deploy.

Senator LUDWIG—Why is that functionality required?

Mr Cross—It allows the interfacing through to our centralised system, to extract the information and match it.

Senator LUDWIG—Why hand-held devices?

Mr Cross—It allows portability out in the field for policing.

Senator LUDWIG—To take—

Mr Cross—To capture the biometric image as opposed to doing it in a police station with a static device.

Senator LUDWIG—Is there an operational need for that?

Mr Cross—From a jurisdictional perspective, they have assessed that need.

Senator LUDWIG—In terms of assessing need requirements, was a document prepared to inform you about what you would require to spend the \$4.9 million on?

Mr Cross—The business requirement is really a jurisdictional matter. This comes down to their operations and how they wish to get the information. From a CrimTrac perspective, we are trying to facilitate that exchange of information.

Senator LUDWIG—That is what I do not seem to be able to understand. Who is driving this? CrimTrac? The Commonwealth? Who says this is a requirement that we need in the field to capture biometric data via a hand-held device?

Mr Oliver—CrimTrac's role is to service the jurisdictions as best we are able. In consultation with the jurisdictions, at board of management level and the level of the strategic issues group that examines matters before they go to the board of management, these matters are considered. There are senior members of each of the policing services on both groups. A business assessment is made by those board members as to the sort of functionality that they want in relation to these systems. It is very much a matter of CrimTrac working with the jurisdictions to try to service policing requirements.

Senator LUDWIG—How do you avoid a wish list?

Mr Oliver—On the board of management of CrimTrac there are commissioners, a Commonwealth representative, an independent IT representative and an independent financial representative. All of these are experienced, long serving officers of either police jurisdictions or their industries. They very rigorously look at business cases in terms of the requirements that are requested of CrimTrac. It is an assessment that is made by a range of very qualified, independent people.

Senator LUDWIG—I have to say that it seems a good idea, but how do you know that it is a good idea—that it is practical, that it works, that it has sufficient protection and that it is going to be used in the field and not just be part of a wish list that the board thinks might be an additional functionality that is helpful? It is how you verify that. Surely, if you are going to spend your money on it, you should be able to demonstrate, first, need; second, use; and third, that it is secure.

Mr Oliver—I think that collectively the commissioners of the various jurisdictions that participate in the CrimTrac board very closely assess the requirements for their police officers in the field. At the end of the day, if there is a collective view that a biometrics capability is sensible and efficient in terms of policing and providing the very best service that they can to their relevant states, that will be examined as part of the business case.

Senator LUDWIG—Do you see the business case?

Mr Oliver—I have been there 14 days, so I would not profess in any way to make a judgment on that.

Ms McLay—It is normal practice, of course, that our business cases are developed at officer level with extensive consultation between jurisdictions and then submitted, through our CEO, to the board of management. So our CEO also plays a role in scrutinising the final business case.

Senator LUDWIG—So is there a business case for this?

Ms McLay—Yes, there was.

Senator LUDWIG—Is that available for the committee?

Mr Oliver—I would not see it as appropriate to release the business case without having consulted with the board of management. I will certainly do that if you would like.

Senator Ellison—We will take it on notice and see what we can do.

Senator LUDWIG—The question really is: while it might be a wonderful invention that you can use, if you are going to spend \$4.9 million and it is a functionality, then is it just icing on the cake or is it a real requirement? That is what I am trying to ascertain. Unfortunately I do not seem to be able to have that answered in a practical way. What about the security of the biometric data that is stored on this handheld device? Does it identify the individual? What sort of biometric information is held and where does it go to?

Mr Oliver—We will have to take that on notice, I am sorry. We will provide an answer to that.

Senator LUDWIG—So you do not know what biometric data is stored on a handheld device?

Mr Oliver—I do not, no. And it would be better, I think, to provide you with an accurate answer once we have gone back to our business case and examined precisely what information is provided and the security level provided.

Senator LUDWIG—While you are doing that you might want to have a look at the cost of the handheld devices; how the information is going to be secured; how it is going to be exchanged and kept on databases; when it is in the field, how it is going to be secured to ensure that there is not accidental disclosure of that information; whether or not it includes names; and whether or not those issues have been investigated and it has been determined that the devices are practical and safe and provide secure information that cannot be accidentally downloaded or passed on to other people outside of the required use or policing service.

Mr Oliver—We will take that on notice and provide an answer.

Senator LUDWIG—Thank you. Has the LiveScan hardware been rolled out?

Mr Cross—Yes. Again it is a jurisdictional matter as to how many devices, but LiveScan is in most jurisdictions.

Senator LUDWIG—I think there were 16 to be installed in Queensland and eight in WA over the next 12-month period. Have they been rolled out?

Mr Cross—I have no further information that would update on that.

Senator LUDWIG—Perhaps you could take that on notice. It might be better, Chair, that I put some of these questions on notice, because I think I am going to run into the same problem again, notwithstanding—

CHAIR—That the officers are very helpful.

Senator LUDWIG—Yes.

CHAIR—All right. Thank you, Senator Ludwig. Will you do that with the remainder of your questions for CrimTrac?

Senator LUDWIG—Yes. It just might be easier. I suspect we are going to get the same answers in part. Some of these are quite detailed questions that I have. I understand the officer is new in the job. Certainly within 12 months, or at least by February, he will be well able to answer them, but at this point in time I understand the challenges that are faced by both of us.

Senator Ellison—Okay. We will take those questions on notice, Madam Chair.

CHAIR—That concludes our need for these officers. Thank you very much, Mr Oliver, and thank you to your officers.

[4.44 pm]

Australian Crime Commission

CHAIR—Based on the advice I gave earlier in relation to the program, we will not be seeing the Privacy Commissioner, the AAT, the Family Court or the Family Law Council. We will go straight to the Australian Crime Commission.

Senator LUDWIG—The submission made to the Parliamentary Joint Committee on the Australian Crime Commission is a public submission, so I can deal with it here. But if at any time we stray into an area which we cannot, I am sure I can rely on you to stop. There were a number of suggestions for the use of the examination powers that were contained in that submission by the AGD. Did they come from AGD or did they come from you? I have not seen that before in a submission to a parliamentary committee.

Maybe it is because of the style of the parliamentary committee, but usually when I have sat on the Senate Legal and Constitutional References and Legislation Committees and others, the submission by AGD has also gone to ‘floating’ contempt powers and the like in a submission to the ACC. Was that part of an ongoing dialogue between the AGD and the ACC or is it a matter that you, Mr Jordana, decided to float in a submission to the ACC? The normal way I would have expected it to occur is through discussions with the ACC and then a decision by the minister about whether or not you would pursue, by legislative fiat, contempt or some other such powers as part of a cabinet brief.

Mr Jordana—I am not familiar with past practice, so I cannot comment on what the precedent was or was not. Certainly, we have a very close, ongoing dialogue with the ACC. Some of the issues that were raised in our submission to the parliamentary committee were issues that had been part of that ongoing dialogue. As I indicated in my appearance before the committee, this is genuinely an issue on which we have no particular preset view. The government has not taken a view on it as yet, and we were genuinely interested in what the parliamentary committee’s views on that issue would be. The issues that were raised in our submission had arisen as part of an ongoing dialogue we had with the ACC.

Senator LUDWIG—Were they perceived problems that you had seen with the current structure and the way it operated in that particular area? The area I talk of, so we have some concrete areas to look at, is where in your submission you referred to powers 61 through to 79, particularly in those areas which go to significant powers and compliance issues—which would mean there are penalties and the like attached, especially for noncompliance and examination where significant penalties such as 200 penalty units and five years imprisonment are being proposed.

Mr Jordana—Sorry, what was your question?

Senator LUDWIG—They are the perceived difficulties that you see as part of the ACC and your suggestions are contained in that document. Are they the only areas you see, or are there others outside of that? It is just an unusual way to raise what I would otherwise consider matters by the AGD to the ACC which have significant penalties attached, such as those you are suggesting, and significant powers as well.

Mr Milroy—I think I can clarify the situation. The submission that you refer to was a joint submission by the Australian Crime Commission board and the Australian Crime Commission. The Secretary of the Attorney-General's Department is a member of the Australian Crime Commission board. In preparation of the joint submission, there was dialogue, which Mr Jordana alluded to, which took place over a period of time in relation to the issues that were identified by the Australian Crime Commission, operational matters. Those matters were referred to in the joint board and ACC submission and the ongoing dialogue led to the comments that the Attorney-General's Department put in their submission.

Mr Cornall—I have a comment to add, which may or may not help. Under the ACC Act, the minister was required to undertake a review of the legislation after three years, but he would be relieved from that responsibility if a parliamentary committee undertook a review before. This review is almost two reviews in one. It is a parliamentary committee review but it is also taking the place of a review that the minister would have undertaken early next year had the parliamentary committee not decided to do its own review. The review the minister had to undertake was a review of the act, whereas the review of the committee was limited by its terms of reference, which were agreed with the minister but, nonetheless, were not necessarily looking at the entirety of the whole act. We are in a slightly unusual situation with this review in that it is really undertaking or fulfilling two functions at once, and that is why it is perhaps a bit unusual when you look at other reviews.

Senator Ellison—As well as that, there is another review of the committee itself and its role, because it was felt that the committee could not conduct a review of its own role and performance. There is also another review, the intergovernmental committee on the ACC, which has referred a matter for resourcing and such for review.

Senator LUDWIG—I am pleased you mentioned it. I have a safe, and I am not sure what I can and cannot say.

Senator Ellison—I can tell you right now that it was interesting to see the difference of opinion between the state ministers in what they thought of the parliamentary joint committee. In fact, Victoria submitted that the PJC should be abolished. There were very different views on the parliamentary joint committee, which I pointed out to them was an independent committee and one which would carry out the job.

Senator LUDWIG—It is an independent committee.

Senator Ellison—That is the problem we have. The situation with the ACC is that, when we put together the legislation, these came about as a result of various amendments. That is why we have the situation that we are in.

Senator LUDWIG—It is helpful, Minister. The reason I needed an answer to questions in the transcript is that I think there is some confusion out there about why the AGD might be making submissions about certain matters that would otherwise be dealt with in confidence between the AGD and ACC. In this instance, we are combining two effective reviews. Therefore, it is not unusual in that sense for the AGD to make submissions to the committee about what powers the ACC may want or the board may see powers it may want to have examined. That does not then determine what could be the ultimate result.

Senator Ellison—If I remember correctly, the PJC will be reporting on 12 November.

Senator LUDWIG—I am still not sure whether I can even confirm that, Minister, so I am not going there. In terms of ACC staff, how many have been recruited or are on secondment from the various state police forces? We do not have your annual report yet, do we?

Mr Milroy—No. As at 30 September there were 76 staff seconded from Commonwealth, state and territory forces. In addition, there are 62 funded from partner agencies working on either ACC led task forces or joint operations.

Senator LUDWIG—What is the reason behind the recruitment and secondment of these officers?

Mr Milroy—When the organisation was first established, one of the requirements was, quite rightly, that part of the work force would consist of seconded law enforcement officers from Commonwealth, state and territory agencies. As the minister indicated, that is one of the matters that of course are the responsibility of the IGC, who are looking at the balance and mix of the in-house investigative capability of the ACC as part of the three-year review. That is one of the matters that the board has requested we respond to and assist in a submission for the IGC's consideration which will address the issue of the number of seconded officers from an investigative background that should or should not work to address the ACC's menu of work.

Senator LUDWIG—Is there a ratio that you work on, of seconded officers to existing staff?

Mr Milroy—No, we look at the total balance and mix of staff that is required to service the full menu of work. As I indicated, we are a multiskilled organisation, so we look at the diverse skills that are required and, depending on those skills, we look at the total number of specialists we require and their various skills—and that includes the seconded staff, whether they are surveillance or investigative officers—and that determines the number that we require for any given year of operation.

Senator LUDWIG—In the last financial year, how many recruitments have you effected?

Mr Milroy—I can take that on notice; it might be better to give you the exact figures. It only varies by about 10 or 15 personnel, compared with the establishment figure at 1 January 2003, so it does not vary very much. The biggest variance is in the task force personnel that come in and join the ACC and are funded by the various jurisdictions—Commonwealth, state and territory—which increase our numbers subject to ongoing operations. But for the period from 1 January 2004 to 31 January the staff increase was about 24 per cent. That gives you an indication from one year to another.

Senator LUDWIG—So there are some new recruits, on top of existing staff.

Mr Milroy—That is correct, yes.

Senator LUDWIG—Where have they been drawn from?

Mr Milroy—One of the exercises we did at the very beginning was to look at whether the balance and mix was appropriate for the menu of work in the first year of operation. It was clear that there were highs and lows in various skill areas, and progressively we have adjusted the skill base that is required to do the work and that has seen us increase in particular in the numbers of intelligence collection officers, intelligence analysts and strategic intelligence experts, and there has been a slight increase in financial investigators.

Senator LUDWIG—So they haven't all come from state police forces?

Mr Milroy—No. They are what you might call unsworn officers.

Senator LUDWIG—You normally provide that statistical information in your annual report.

Mr Milroy—Yes, we do.

Senator LUDWIG—I might complain to the Manager of Government Business in the Senate that, because he has scheduled estimates during this period, we still do not have most of the annual reports to talk to the various departments about, which does make it a little bit troublesome in these areas. We would normally not need to ask for some of the relevant information because it is contained in the annual report. I think annual reports were supposed to be in by today.

Mr Milroy—I can advise the chair and the committee that section 61 of the act indicates 'as soon as practical' after each 30 June.

Senator LUDWIG—Yes, you have a different reporting date; I know that. I was not complaining about you particularly.

Mr Milroy—The reason for the different reporting date is that it has to go to the IGC ministers. They have the draft at the present moment, and we are very confident that we will meet a similar timetable to last year.

Senator LUDWIG—May I assure you, Mr Milroy, that I am not complaining about you. I know you have a different reporting regime. I was complaining generally, about everybody else. I know that not all the annual reports of the agencies have been finalised by the 31st. It seems that this happened last year as well, Chair, but not in the same number that it has happened this year.

CHAIR—We will note that for the record. I am not sure that we can advance that greatly at the moment.

Senator LUDWIG—Only to the extent that, if it were to continue, I might seek an additional sitting evening for those annual reports that were not able to be considered as a follow-up, rather than put questions on notice. That is the direction we are heading. I am sure it is not the government's desire to obscure or not provide timely information to this committee.

Senator Ellison—You still get February estimates.

Senator LUDWIG—Yes.

Senator Ellison—We will get our reports in on time and do away with February estimates—how is that?

Mr Milroy—We would like to clarify a point in relation to staffing that you requested.

Mr Phelan—The 80 we were referring to earlier in answer to a question is the overall increase in staffing. That is largely—in fact, wholly—in terms of Public Service Act employees. I detected at the end of your question a query about whether they were sworn officers or coming from police forces. We are dealing there with the increases in public servants—that is, people employed under the Public Service Act.

Senator LUDWIG—I always make that mistake. Sorry, you are right. There are also those who might come from state police forces, not as sworn officers but who effectively leave the service and then are employed under the Public Service Act.

Mr Phelan—It is a merit test when we employ people under the Public Service Act. In terms of their backgrounds, they might come from police forces, resign and join us et cetera. The distinction we make is between them and the secondees, who are people who remain employed by their home agency. We reimburse the agencies on invoices that they make to us. So, for all intents and purposes, they remain employees of those agencies—although, under the ACC's act, they are also staff of the commission but they are not public servants.

Senator LUDWIG—I was looking more particularly at the skills mix you might be employing from. That is the nub of the question: if they are coming from state police forces, whether they are constables or officers, and whether you require that skills mix or whether, in terms of new recruits, you are employing more broadly accountants, lawyers or other skill mixes. Granted, it could be both.

Mr Milroy—I think a large number of the intelligence analysts, financial investigators and some of the other skills would come from a non police force background. We have a fairly diverse market representation across a number of the skills areas in the organisation, but we do have some officers who have a law enforcement background either here or overseas who have filled some of the positions.

Senator LUDWIG—Turning to another area, there was a report in July 2005 entitled 'Lost and stolen to tackle ID fraud'. Was that an area where the ACC was proposing to create a register?

Mr Milroy—Yes. Are we talking about the stolen or lost identity cards?

Senator LUDWIG—Yes. It says:

A REGISTER of lost and stolen documents will be created in the Australian Crime Commission as part of the drive against identity fraud ...

Mr Kitson—The ACC operates the Australian identity protection registers. These contain a good deal of data from law enforcement and regulatory agencies about lost and stolen identities. That is currently maintained, and has been for some time.

Senator LUDWIG—When was that first implemented?

Mr Kitson—There were pilot projects for that through to early 2004, I believe.

Senator LUDWIG—What does it consist of—a database with a register of lost and stolen ID cards?

Mr Kitson—Yes.

Senator LUDWIG—How does it operate? Do people ring in and say they have lost their card?

Mr Kitson—No, we rely on input from the law enforcement jurisdictions in primary part. All the people who can access ACID, the database, or have access to ALEIN, have the ability to access the identity protection registers and to cross-check that data against their own.

Senator LUDWIG—Is that a separate database or is that part of—

Mr Kitson—It is part of the main databases of the ACC.

Senator LUDWIG—Which one is that?

Mr Kitson—ACID.

Senator LUDWIG—So it is part of the ACID database?

Mr Kitson—Yes. It sits as a separate component of it but essentially it is housed within the same hardware infrastructure.

Senator LUDWIG—Was that an additional functionality that was added in 2004 or piloted then?

Mr Kitson—Yes, it is part of a raft of initiatives to combat identity crime taken at around that time.

Senator LUDWIG—Has it been assessed since then as to how effective it is?

Mr Kitson—We are constantly reviewing the effectiveness of it. Identity crime continues to feature across most crime types. The effectiveness of the data has been tested in a number of instances against a number of datasets from different jurisdictions and different agencies. It continues to show a high degree of effectiveness.

Senator LUDWIG—All the states are participating in it? Do they provide data?

Mr Kitson—We have memoranda of understanding with the majority of states. At this stage I believe there is only one that we do not have a completed MOU with.

Senator LUDWIG—Who is that?

Mr Kitson—The Northern Territory.

Senator LUDWIG—Is there a reason for that?

Mr Kitson—I think it is simply an administrative issue, which we are trying to resolve now.

Senator LUDWIG—ACID is available through the CPRS? How would the police services function?

Mr Kitson—No. Agencies have separate access to ACID.

Mr Phelan—Law enforcement agencies access ACID via what is called ALEIN, the Australian Law Enforcement Intelligence Net, an extranet. That is the way in which they access the database. It is a highly protected, secure way of delivering intelligence and uploading intelligence into ACID.

Senator LUDWIG—My understanding is that they go through ALEIN and they can then go into a range of functional aspects—they can use ACID or whatever else they want to use through that process.

Mr Phelan—Yes, and ALEIN can be a separate communication system.

CHAIR—Senator Parry has some questions in this area. Do you want to ask those now?

Senator PARRY—Yes. Just following on from Senator Ludwig's question concerning the number of seconded police officers from the various state jurisdictions, so that we have it clearly on the record, would you like to expand upon the value of police officers coming from serving jurisdictions—the value they bring to the national pool and the value they take back to their relevant jurisdictions after the period of secondment?

Mr Milroy—They are most valuable. It probably reflects very much on the composition of the board. We have all the board member agencies represented, with the exception of three agencies, as part of the secondment program. They bring to the ACC a considerable amount of expertise. They are actually selected specifically for their expertise from the various jurisdictions through a fairly detailed recruitment program. The value that they bring is across the various range of projects that we are currently undertaking. I believe it is seen by the majority of the commissioners as an area of advancement in their careers. Quite a number have left the ACC after only two years and have risen to commission officer positions. I think in the jurisdictions they see it as an area of importance to go on secondment and we see them providing a very valuable operational capability for the ACC across a wide range of skills that are reflective of the menu of work that we are currently undertaking.

Senator LUDWIG—You have announced an investigation into airport security. However, as I understand it, there are also a number of other inquiries—six and probably more after I have heard from Mr Jordana—into airport security, including the transport department inquiry and the Wheeler report, and they are all being conducted at the moment. Has the Australian Crime Commission started its investigation into the alleged criminal activities in airports?

Mr Milroy—Yes. On 27 July 2005, the Australian Crime Commission board authorised a special intelligence operation into crime at Australia's category 1 airports and board-approved category 2 airports. By approving a special intelligence operation, that also allowed us to have access to the course of powers to enhance our intelligence-gathering capability. The determination has been operating since that period of time, and we will be providing a report to the board at its meeting on 23 November this year.

As the operation is ongoing, I am not at liberty to talk about the operational outcomes, but I can indicate that there is an Australia-wide intelligence operation into a number of key areas looking at airport crime at a number of the various sectors to get a better understanding of the extent of crime in airports in Australia. We believe that will be of very significant value for proactive operations by various jurisdictions.

Senator LUDWIG—Were there any special terms of reference or inquiry provided for the special intelligence reference?

Mr Milroy—Normally to make a submission to the board there is an intelligence-collection process undertaken. That was initiated by the ACC and led to a statement in support, for the board's consideration, being submitted to the board on 27 July. The board would have received it some two weeks prior to that, so the actual submission to the board would have been prepared in June, following intelligence collection and considerable liaison with our various Commonwealth, state and territory partners to identify the need for such a determination. It was also a request from the IGC to the board for the board to consider an intelligence operation into criminal activity at Australia's category 1 airports. So it was also identified by the IGC, requesting the board to request the ACC to conduct such an intelligence operation. The board subsequently approved a special intelligence operation so that the coercive of powers could be used to value add in the intelligence process.

Senator LUDWIG—Is that the only reference that you are aware of in this area where there is use of special powers?

Mr Milroy—In relation to airports?

Senator LUDWIG—Yes.

Mr Milroy—There would be some cases that have been investigated in relation to high-risk crime groups, on a case-by-case basis. If they were actively involved in criminal activities using airports, they would have been the subject of the special powers and that would relate to Taskforce Schumacher, which has been undertaken for over 12 months, where we use the powers in a related field to what you are talking about. As it is an operational matter, I would not be able to divulge any further information.

Senator LUDWIG—With respect to this overlap between current investigations, there are, as I indicated, about six that I am aware of in terms of current investigations—if they have not been finalised—into airport security. Do you liaise with all of those during part of this, or have any of those asked for the use of special powers? Or do you provide intelligence to them?

Mr Milroy—In relation to providing intelligence, yes, we do. We disseminate intelligence to federal agencies, the Federal Police, Customs or others who we believe should receive timely intelligence in this area. We are working fairly closely with those agencies that were the subject of the Wheeler inquiry in relation to the coordinated intelligence collection process in this particular area in light of the Wheeler recommendations. We do have some of the other agencies representative in the special intelligence operation to value-add their knowledge in relation to that particular matter.

Senator LUDWIG—How do you deal with the overlap then? Are you aware of all the other investigations that are currently ongoing in the airport security area?

Mr Milroy—If there were specific operational matters being carried out by other jurisdictions, whether they are state or Commonwealth jurisdictions, through the extensive liaison arrangements that are in place—and they are aware of what we are doing in the airport crime area through their commissioners and their heads of agencies—there is fairly close

interaction undertaken. If there is a requirement to use special powers in such an operation, it would be so conducted. That has occurred but because those matters are the subject of another agency and the use of powers, it would not be appropriate for me to comment as they are current operational matters.

Senator LUDWIG—Don't you run the risk of everybody looking at the same thing? In other words, there is more than simply overlap.

Mr Milroy—A joint management group has been established in each jurisdiction, of which the ACC are members. Within each jurisdiction, it probably reflects the board in a smaller scale. In other words, in one state there would be representatives of the respective state jurisdictions, the Commonwealth agencies, Customs and the AFP, and us looking at operational matters that are currently being conducted within those jurisdictions.

In addition to that, there is the intelligence liaison arrangements that are undertaken between Kevin's directorate and the respective jurisdictions to monitor what is going on in a specific area. The agency heads on the board have communicated to their respective heads within the departments that the ACC has a role to play in this particular area of collecting intelligence. So there are a number of mechanisms in place to ensure that there is no overlap.

In relation to the agencies that are involved in airport crime, DOTARS and a number of others, there is currently a regular committee, a working group, with all relevant agencies involved in relation to the collection of intelligence and what proactive measures need to be undertaken. There is a working group at the present moment between the Federal Police, Customs and us to ensure that there is no overlapping as far as federal agencies are concerned, and that is an ongoing process. Of course, we report our findings to the board and, in that process, we consult at the Director of Intelligence's level and I also consult with the relevant heads of the respective agencies on the board as to the outcomes from the special intelligence operations. So there are a number of processes in place to ensure at senior level and at the operational head level that there is no overlapping that could occur in this process.

Senator LUDWIG—Who talks to the department of transport then?

Mr Milroy—The Director of Intelligence. The head of the special intelligence operation is now a member and she is on the coordinating committee of the respective agencies that are affected by crime and airport crime, which includes the department of transport.

Senator LUDWIG—So you have in each state Customs, DOTARS, the ACC and the AFP?

Mr Milroy—No. In each state at the present moment there is a permanent joint management group which has been established for some time to deal with crime and organised crime in general. In relation to this matter, at the Commonwealth level there is currently a central group, which includes DOTARS and senior officers of the ACC, Customs, AFP and other relevant agencies, looking at coordinating the intelligence collection and also working through the processes to develop and respond to the recommendations that came out of the Wheeler inquiry. But we, through the government initiative as to the Wheeler recommendations, are currently establishing an intelligence unit within the ACC to concentrate specifically in this area across the country and work closely with the new groups that we have established at the various airports. That is in addition to what we are currently

doing under the special intelligence operations, so the findings of the special intelligence operation will be value adding to this process in terms of increasing our knowledge and understanding as we put in place these various bodies to ensure that coordinated measures are undertaken across Australia in the various areas of risk.

Senator LUDWIG—So when will that be in place?

Mr Milroy—Our teams have been recruited at the present moment for the joint intelligence group to deal with airports, but we have a permanent group under the special intelligence operation which was recommended by the IGC. The board has currently been working since July gathering intelligence and that report and the findings will go to the board on 23 November.

Senator LUDWIG—That is the one you mentioned earlier.

Mr Milroy—That is right.

Senator LUDWIG—But I meant the new group. I think you have introduced another group.

Mr Milroy—That is right—the additional personnel flowing from the Wheeler funding. We would anticipate that recruitment has already started and those people will be on the ground in January, which will increase our capability of gathering intelligence in this specific area.

Senator LUDWIG—Who will they report to?

Mr Milroy—They will report to the Director of Intelligence.

Senator LUDWIG—Of the ACC.

Mr Milroy—Of the ACC; they will be ACC employees.

Senator LUDWIG—Have you recruited new employees for that or are they out of existing secondments or staff?

Mr Milroy—Additional.

Senator LUDWIG—Is that part of the 23 per cent increase that we were talking about earlier or is that on top of that?

Mr Milroy—That is on top of that.

Senator LUDWIG—So how many have been recruited?

Mr Milroy—We have only just commenced that process in the last two or three weeks in anticipation that the funding which was approved by the government will flow this year. Based on a program of recruitment—it normally takes some two months—we would anticipate that these people will be in place in January.

Senator LUDWIG—How many people is that in total?

Mr Milroy—Sixteen.

Senator LUDWIG—That is four locations—where?

Mr Milroy—In all states as well as a central group in Canberra. That would be in addition to the personnel that we currently have deployed in the special intelligence operation, but that

is a matter that will be submitted to the board in November. Depending on the board's view of the findings out of the special intelligence operation, we will be guided by the board's decision on the strategic direction of that particular area of concern.

Senator LUDWIG—So they will not be located at category 1 airports; they will be located at ACC offices doing intelligence—

Mr Milroy—That is right—collection. They will be proactive intelligence collectors on the ground. They will not be sitting inside offices. They will be proactively collecting intelligence based on the areas of vulnerability that have been identified. In addition to that, the senior person in charge of the team will be liaising closely with the head of the proposed joint intelligence group to be established at various airports. It is all being coordinated under one coordinated committee that is already up and running, of which we are a member.

Senator LUDWIG—That joint intelligence group—who will oversee that? Will that be the ACC? The AFP?

Mr Milroy—The AFP. All of the intelligence that is to be collected by the respective groups will all feed into ACID—that is one of requirements that flowed from the Wheeler review—which will ensure that the intelligence collected by the respective groups engaged in this area will feed into the ACC's database and value add to our current holdings. And the ACC will be required to provide a quarterly report to DOTARS and other various agencies to update them on the intelligence. But of course any intelligence that the ACC uncovers on a day-to-day basis will be referred to the relevant agency for appropriate action.

Senator LUDWIG—What was the total of the funding for the 16 officers? That was earmarked out of the Wheeler report, was it?

Mr Milroy—That is correct.

Senator LUDWIG—There was subsequently a press release, I think, by the Prime Minister that indicated the expenditure.

Mr Milroy—Yes. It was some \$20 million, but Mr Phelan can give you the details.

Mr Phelan—The ACC was to receive \$20.5 million over five years to implement the government's response to the Wheeler inquiry. That includes the staffing for the new intelligence unit and collection people. It includes some material funding for integration of databases within the ACC and, importantly, to create a national technical standard for the sharing of intelligence from the various other databases to improve the flow of intelligence into ACID. It also includes the acquisition of sophisticated analytical tools that will add to the tools currently being built to surf across ACID to improve overall the usability of the intelligence that is in ACID.

Senator LUDWIG—So we are going to have, by next year, this group up and running on top of the existing inquiries—because they have not reported yet, or will one of them have reported by the end of the year?

Mr Milroy—That will be depending on the submission that we are currently putting before the board.

Senator LUDWIG—I did not want to second-guess that.

Mr Milroy—With the funding that the government have approved, that dedicated unit will be a permanent function of the ACC, irrespective of the board's decision in relation to other work that the board may require us to do in other areas.

Senator LUDWIG—Do you then liaise with the transport inquiry that is currently under way?

Mr Milroy—Yes. As I indicated, we are currently chairing a coordination committee with the department of transport and the AFP and other agencies in relation to the intelligence collection processes and working through the mechanisms that are being developed in advance of the new groups being established in the airports. So there is a lot of work well under way.

Senator LUDWIG—Is that the only one that you share a coordinating role with in terms of an ongoing inquiry? Are you aware of whether Customs have got an ongoing inquiry or whether—

Mr Milroy—Customs are part of this joint group as well as part of a working group with the AFP and us looking at specific areas of concern in the airports. So it is complementary.

Senator LUDWIG—So who is looking after the AFP, Customs and ACC working group to make sure it is not covering the same ground again?

Mr Milroy—I might ask Kevin in relation to that.

Senator LUDWIG—Is there a mud map?

Mr Kitson—Yes, there is a mud map.

Mr Milroy—The AFP might be the appropriate people to answer that question.

Senator LUDWIG—I can wait.

CHAIR—You will not have to wait very long.

Senator LUDWIG—No.

CHAIR—Actually, that is up to you.

Senator LUDWIG—I will keep it fresh in my mind. Is the AFP tasked with trying to keep track of who is doing what in this airport security area?

Mr Milroy—I cannot talk for the AFP, but my understanding is that they will be in charge of the airport command at the respective identified airports, and the joint intelligence group which will be operating under that command, with which we would liaise very closely, would come under the AFP's command and control. Again, I think it is probably a question you should direct to Commissioner Keelty.

Mr Jordana—Transport security obviously was an issue that was considered by the special COAG meeting that was held recently. There have been some policy issues that have arisen—stimulated also by the Wheeler report—that are being taken forward in the COAG context as well. Some of those policy issues, because they were COAG, are now being coordinated by the Department of the Prime Minister and Cabinet, with input obviously from other agencies, including the department of transport. So there are a range of activities taking place. Some of them are policy related and some of them are operational activities.

Senator LUDWIG—Who is watching all of them to make sure they are not overlapping or tripping over one another?

Mr Jordana—I think both the Department of Prime Minister and Cabinet and the Department of Transport and Regional Services would have key roles in that.

Senator LUDWIG—To whom should I ask that question? I can only ask the ACC, and I think they have correctly pointed out the role that they play. I will ask the AFP what their role is. I am also trying to establish what DOTARS's role is. They currently have an investigation under way. Who is providing the overall coordination or the unified approach to ensure that there is no overlap? The ACC assure me they do not overlap, but they are not aware of all the other inquiries that might be ongoing. There is an investigation ongoing about procedures and those sorts of issues and there are investigations ongoing about alleged crime at airports. Where do I find out how many committees are operating in this area, how many working groups have been tasked and who is coordinating them? From my perspective, it looks quite muddled, though I am sure it is not.

CHAIR—Did I just mishear? Mr Jordana, did you not just say PM&C?

Mr Jordana—I think that both the Department of Prime Minister and Cabinet and the Department of Transport and Regional Services would have a fairly clear picture about exactly what all the working groups were and how they all fitted together. In our department, we participate in some of those activities but not all of them. I am aware that those two departments have an overview and a perspective on how it all fits together.

Senator LUDWIG—I should direct my question to the Department of Transport and Regional Services.

CHAIR—Or the Finance and Public Administration committee or the Rural and Regional Affairs and Transport committee with Senator Heffernan.

Senator LUDWIG—Yes.

Senator Ellison—Certainly the AFP for operational aspects, because you can appreciate that the ACC has been answering the operational side of things. As Mr Jordana said, there is operational and there is policy.

CHAIR—We understand that.

Mr Milroy—I might also point out that the Australian Crime Commission's primary role of course is criminal intelligence. Senator, you might be confusing criminal intelligence with security. We play a specific role in the overall mosaic in this area.

Senator LUDWIG—That is probably a nicer term. I might leave the rest of those for DOTARS. In terms of the trafficking in persons, a Western Australian report indicated that sex industry figures had been called upon to take part in interviews. Is a special investigation going on in this area in Western Australia, on trafficking in persons or sex slavery?

Mr Milroy—The ACC does have a special intelligence function under people trafficking for sexual servitude. It is a current responsibility and we provide our services in a complementary way to the AFP, DIMIA and state agencies in pursuing their investigations—that is, we can provide coercive powers, intelligence capabilities as well as some expertise in

this area because of the work we have been doing for the past two years. In regard to any specific investigations, we would have to take that question on notice.

Senator LUDWIG—I think you have an ongoing reference for trafficking in persons for the purposes of prostitution or sexual servitude. Is that due to expire or is it ongoing?

Mr Milroy—It is still ongoing at the present moment. At the last board meeting, following a submission, the board agreed that the ACC would perform the role that I explained a few minutes ago, and that is due for review by the board in, I believe, June 2006, so the coercive powers and our ability to work with other agencies on a special intelligence operation are still current.

Senator LUDWIG—But it was due to expire in September 2005, wasn't it?

Mr Milroy—Yes, that is correct, but at the board's last meeting the board agreed to renew or continue the current special intelligence operation, along the lines that I have indicated.

Senator LUDWIG—Until it has been reviewed—and who would undertake the review?

Mr Milroy—The board. We would provide a national criminal threat assessment, plus a submission to the board as a result of our ongoing work with the various agencies—the AFP, DIMIA and the state agencies—in relation to the use of our powers or, in addition to that, the results of our intelligence collection and analysis in this particular area, and provide the report to the board in June.

Senator LUDWIG—So that was originally a lump of money that was dedicated to that particular initiative, out of the, I think, \$20 million initiative by the government in this area?

Mr Milroy—No, that was funded out of ACC's appropriation, in terms of our current menu of work. As for the money that you are referring to, that is funding that the minister may wish to comment on.

Senator Ellison—That went to AFP, and I think a bit of it went to DIMIA for the locating of a DIMIA officer in Thailand, and also for outsourcing work to a victim support group, and the contract was awarded to a company whose name I just can't remember—

Senator LUDWIG—No, it escapes me—I do recall there was a victim support group.

Senator Ellison—Yes, and that was part and parcel of it. It was about \$20 million plus, and it was also for extra AFP staff. As a result of that, there are a number of prosecutions pending. I think there are something like 15 people before the courts involved in about eight trials.

Senator LUDWIG—I thought I would ask the DPP that one.

Senator Ellison—Yes, they will have the details on that.

Senator LUDWIG—But I could not recall—and that was the reason for the question—whether the ACC had received any funding out of that initiative.

Senator Ellison—No; the ACC is doing it out of its own funding.

Senator LUDWIG—And why is that, Minister? Is there no money to help the ACC do this work?

Senator Ellison—No; the sex trafficking initiative was to deal with domestic control and international involvement, and so it involved the AFP because the AFP has got officers

overseas, particularly in the region, the countries of interest, and has that liaison with state and territory police here. There was a DIMIA aspect and there was, as I said, victim support. That was the lion's share, if you like, of the work that had to be done.

The backup work, which Mr Milroy has mentioned, has been to gather intelligence and to use its coercive powers, and that is where the ACC has been used with great effect by a number of law enforcement agencies, because the AFP does not have the powers that the ACC has. That is why, for instance, we initiated that airports referral, because no-one else had the power to use, in a special determination, those coercive powers. So you bring in the ACC to supplement the efforts that are being made on the ground. I believe it works very well and has done in a number of areas, be it money laundering, people trafficking or airport crime. That is where it is very useful. That sort of work, I think, can be done from ACC funding and, as Mr Milroy has mentioned, the ACC funding for the future is under consideration.

Senator LUDWIG—Because it is a special intelligence investigation, there are no charges or prosecutions that have been referred from the ACC to the DPP in this area?

Mr Milroy—I would have to take that on notice, because we are talking about a determination that has been running for about two years, but if it is appropriate—

Senator Ellison—We will take it on notice.

Senator LUDWIG—If there have been, in answering the question could you provide information on what stage the prosecution is at: if it has been finalised, if there has been a conviction and what conviction was recorded. Could you also tell me whether, as a result of uncovering that particular area, criminal justice stay visas have been issued to witnesses that might have been required to remain in the jurisdiction—those sorts of subsidiary issues as well, and whether or not people who have given evidence have been returned. I think there is a bridging visa too, from recollection.

Mr Milroy—The issue, of course, will be that if any matters were prosecuted they would have been done under a joint arrangement with a state or Commonwealth body. So there may be some difficulties in responding on behalf of another agency, but as the minister indicated we will take that on notice and—

Senator LUDWIG—We can always pick them up and then refer my questions to the DPP. If it is a state body then I understand the limitations that can confront us. So are the baggage handlers part of the same inquiry or is that a different reference? There was a report in the *Australian* on 1 June 2005 which said:

The Australian Crime Commission is to hold a royal commission-style probe into corrupt—
their words—
baggage handlers ...

I do not like to read it out. There were allegations.

Mr Milroy—That is part of the current special intelligence operation in airports.

Senator LUDWIG—So that is part of the current special intelligence operation; there isn't a separate inquiry?

Mr Milroy—That is correct; it is part of it.

Senator LUDWIG—And that will report on 23 November?

Mr Milroy—Correct.

Senator LUDWIG—And you cannot tell me anything about that, anyway, can you?

Mr Milroy—Unfortunately not.

Senator LUDWIG—We will try. Those aviation security identification cards are checked by ASIO, I think; is that right? I do not want to lead us down the wrong path.

Senator Ellison—ASIO is involved. Criminal history checks are made as well. But the ASICs are actually administered by DOTARS, and A-G's have a role in that. It is an area led by Transport with input from A-G's, and with the AFP and ASIO doing checks.

Senator LUDWIG—So ASIO do their particular check.

Senator Ellison—A different one to the AFP.

Mr Jordana—ASIO does a politically motivated violence check, and the check done by AFP is obviously a criminal history check.

Senator LUDWIG—Is that part of the investigation as well; are you able to say?

Mr Milroy—I cannot comment on those issues, no.

Senator LUDWIG—So I cannot go to the detail of the operation, in effect.

Mr Milroy—No. There are a wide-ranging number of issues currently being reviewed as part of the intelligence operation and it would be inappropriate to talk about some of our findings in any of those areas.

Senator LUDWIG—I understand that. I might put the remainder of my questions on this area on notice. Thank you.

CHAIR—Mr Milroy, to you and your officers, thank you very much for assisting the committee.

Mr Milroy—Thank you to the committee.

CHAIR—We will move to the DPP, I think.

Mr Cornall—While the DPP is coming to the table, can I go back to the issue of the bills that have an A category.

CHAIR—From the Office of Parliamentary Counsel discussion? Go ahead.

Mr Cornall—There is a web site which has all of the A bills on it, which are all of the bills proposed for introduction in the spring sittings, and which can be found on the Australian Parliament House web site under the 'bills' section. It is a list that was accurate at the date on which it was published, but it does not have bills that at that date did not have policy approval, those that were not able to be publicly released for some reason or other and obviously those that were added after that date. But we have printed off the list and we can hand that up to Senator Ludwig if that is of interest to him.

CHAIR—That is very generous of you, Mr Cornall. You could have just given us the URL and we could have gone down that road.

Mr Cornall—I was curious to see it myself.

CHAIR—We appreciate the assistance of the department.

Senator LUDWIG—That is part of the problem. That one includes the integrity commission with an asterisk beside it to say it will be introduced in these sittings, but we both know that is not going to happen.

Mr Cornall—As I say, it was correct as at the date on which the list was published. That was the intention at that time.

Senator LUDWIG—That is not disputed, but it is one of those matters that I am also trying to manage, having regard to what work we get through between now and Christmas, without us all sitting here on 24 December.

[5.47 pm]

Commonwealth Director of Public Prosecutions

CHAIR—Welcome, Mr Bugg and officers of the DPP.

Senator LUDWIG—You may have been in the room and heard us when we were talking about prosecutions. I was talking in particular about the ones in WA in relation to sexual servitude—whether there are any ongoing prosecutions that you can tell the committee about, whether there have been any completed more specifically in WA but broader if there are others, whether any criminal justice stay visas have been issued for witnesses that you are aware of, whether any witnesses have left the jurisdiction of their own accord or whether there are bridging visa issues that are surrounding those as well.

Mr Bugg—We took on notice a question last time we appeared before the committee—I think it was question 223—and provided answers. I could not give you an update on that without taking it on notice. With respect to the figures which were then relevant in May, we had to obtain them from another department. We do not have a direct relationship with the witnesses through the process which was being discussed when I was at the back of the room earlier. If you like, I can take that on notice and obtain it through the same processes as before, in May, and update you on question 223.

Senator LUDWIG—That would be helpful, provided that you will recall this—because I will forget it—and in February, if I ask the same thing again, say, ‘Can you wait until May,’ so that I do not put you up to it again.

Mr Bugg—Certainly. There would have been a slight variation because when we appeared before you in May one matter was before the court in Sydney. There was, one might say, a nil result on that in the sense that there was a hung jury and our principal witness has returned to Thailand and has declined to return to give evidence. So that matter is no longer before the courts.

Senator LUDWIG—I was probably only looking at trying to capture the data once every 12 months or so.

Mr Bugg—Certainly. Would you prefer it if we updated that, let us say, in February? I hope there are matters that we will have a better picture on in terms of what we can tell you in February.

Senator LUDWIG—That would be more helpful. If we have the answers on 223 and we know there are a couple there that might be dealt with between now and then, a February update would be more helpful.

Mr Bugg—It would be easier for us as well. Thank you, Senator.

Senator LUDWIG—You may be aware that the FATF report, which is an anti money laundering initiative internationally, had a number of things to say about prosecutions in this area in relation to anti money laundering and CTF—counterterrorist financing. It indicated that prosecutions and charges were rarely brought. Do you know how many money-laundering charges have been filed in the last five years through you?

Mr Bugg—Yes. I can give you a better understanding of how FATF approached this particular issue. There are some issues of principle on which we are at slight variance with that committee. I ask Mr Thornton to respond to the issue in principle. We focus to an extent on the predicate offence rather than cluttering up an indictment with a series of charges. You lay the principal charge because, at the end of the day, if anything, all it does is catch statistics and not achieve anything as far as the outcome is concerned in terms of a penalty. I ask Mr Thornton to, firstly, deal with that issue and also, secondly, provide you with a more accurate set of figures. We do not agree with the figures that FTAF has provided in its report, because FATF have looked just at money-laundering offences and not at offences outside the Criminal Code. If Mr Thornton could address that, it may clarify that and give you a better understanding of our position as far as the report is concerned and what we are doing.

Senator LUDWIG—That would be helpful, thank you.

Mr Thornton—To answer your first question, in the period from 1 January to 7 March 2005, which was when the latest figures were supplied to the committee that was doing the review, there had been 41 money-laundering prosecutions under the Proceeds of Crime Act where the offence was previously located and five money-laundering offences under the Criminal Code. The offence was moved from the Proceeds of Crime Act into the Criminal Code. I think that commenced in January 2003. I can give you an update on those figures under the Criminal Code. There were five in 2003-04 and six in 2004-05.

We did have a discussion with the FATF committee that was doing the review about the way charges are laid and the factors that we look at. We were discussing the fact that the cases that are referred to us involve a variety of criminality. What we were saying to them was that the aim of the prosecution was to represent the gravamen of the conduct in terms of the charges that were laid. To try to give you an example, if you had a drug offence, which might be an importation where the drugs were sold and somebody had got the money, technically, I suppose you could argue that you could prosecute them for the drug offence and also for possessing the money because, technically, that might be a money-laundering offence, but the conduct really involves the importation and sale of the drugs. That is what we were trying to explain. If you then took that a step further and looked at, say, doing something with the money to disguise it or put it into assets or something like that, there might be further conduct which you would then charge under money-laundering provisions, because the court would look at that separate conduct and would be more likely to impose a penalty in addition to the conduct relating to the drug importation. That would also be the case if you had somebody

who was involved purely in what you might colloquially term money-laundering, providing a service or something like that so that they were not necessarily involved in the predicate offence but providing some service in terms of disguising the proceeds of that offence. A money-laundering charge would obviously be laid. We had a deal of discussion around that.

The other area that we did talk about was the prosecutions that we do under the financial transaction reports legislation, which deals with things like opening bank accounts in false names, structuring transactions to deal with bank accounts such that you avoided the cash reporting requirements—in other words, you had a series of transactions under \$10,000 to avoid reporting—or carrying cash into or out of Australia without reporting that. If you look at the total of those figures, in the last two years of 2003-04, you will see that we have conducted about 250 prosecutions to do with those. That was one of the other factors that we were discussing with the committee.

I suppose it is fair to say that they suggested that we needed to have more emphasis on laying money-laundering charges, and since that committee visited and we discussed it with them we have looked closely at cases to see if there is further opportunity to lay money-laundering charges. But, as the director has said, you do not want to lay charges just for the sake of chalking up statistics if they do not really make any difference to the case or the outcome. But I can say that the total number of matters that we have on hand under the new section 400 of the Criminal Code is around 30, so there obviously has been an increase in the number of prosecutions that are coming through the system. That is something that might be expected with legislation that came into effect at the start of 2003 and which only applies to conduct which has occurred since that time.

Mr Bugg—I suppose it is a difference of view. FATF wants to see money-laundering prosecutions simpliciter whereas we have to look at the whole picture. So, having prosecuted the more serious—we would say—predicate offence, you are confronted with a court saying, ‘This is involved in the whole criminal conduct that we have already found against the accused in relation to the more serious count,’ and you won’t see any increased penalties. Additionally, if you look at the AUSTRAC prosecutions—if I can use that heading—obviously you add another 200-odd offences, when FATF was looking at 51 in total since 2000. So it is another 400 per cent in number just looking at the financial transactions offences that we have prosecuted. Categorisation is one issue. The issue of principle is another, where we say we have other issues to consider as a prosecuting office. But obviously, as Mr Thornton said, our numbers have increased on money-laundering counts under section 400 as well in the recent past.

Senator LUDWIG—So you disagree with FATF on two major counts: (1) their view about what you are doing, and (2) their report about what you have done.

Mr Bugg—Yes; it is qualified disagreement.

Senator LUDWIG—How do you express that to FATF? They have made their report, which is now public. Do you get to put an addendum or an erratum in there to say that you disagree? Where to from here?

Mr Bugg—What we would say is that FATF has a focus, and its focus is on the issue of money-laundering offences and prosecutions for them simpliciter. As we explained to them in

submissions we made, there are other issues that we need to consider. They have heard from us on those. I think what they say needs an explanation to you so that you understand that we are not remiss in relation to these issues—that there are other considerations to take into account. Secondly, if you look at just section 400 of the Criminal Code and say, ‘These are the only money-laundering prosecutions,’ we would say, ‘No, they’re not; there are financial transaction offences which are also a manifestation of the laundering of money, and there are 200-odd prosecutions in that area alone.’ But if you say, ‘What are the money-laundering prosecutions simpliciter?’ then you understand the base from which they operate. We really wanted to put that before you. I really argue that we are not asleep on our watch—we are dealing with the problem in other ways—and we feel that explanation needs to be before you so that you perhaps understand the focus of FATF and the broader requirement of a national prosecution office.

Senator LUDWIG—Thank you. Not that I would hold you—or the government, I suspect—personally responsible. What about terrorist financing? Do you have a similar explanation there—that there are predicate offences? I think FATF seems to say there are zero in that area. I could be wrong; I do remember the Shining Path, but I think that was a false start.

Mr Bugg—First of all, terrorist financing is of recent origin in terms of our focus as a country.

Senator LUDWIG—The legislation has been in since 2002, if I recollect correctly.

Mr Bugg—Yes, and as far as we are concerned, there have not been, one might say, predicate offences where that has been the focus rather than the financing. We are a responsive agency—that is, we respond to investigative material that comes to us. We just have not had a terrorist financing reference that I am aware of in the time that the offence has been on the statute books. I really could not answer that other than to say that nothing has come our way whereas there is an explanation with the other one. Those matters that have come our way have a different characterisation and, one might say, imperative as far as we are concerned.

Senator LUDWIG—I can see that you have taken the FATF report to heart. Have you done an analysis of the predicate offences, the range of offences, that might encompass, in your view, AML offences and the number of prosecutions and the outcomes of those? I did not particularly want to set you to a task in addition to what you would normally do, but have you written in summary form a—I will use my words—justification for why FATF has been misguided or has incorrectly stated the true position?

Mr Bugg—Not to the extent that you are asking, beyond that which Mr Thornton has explained. It was for our review of that rather narrow focus—as we would say, with all due respect to FATF—that we produced those figures, but we have not detailed it beyond that.

Mr Thornton—The information that I previously gave about the total number of prosecutions was information that was given to FATF and is actually in the report. But I think even the bit they extracted and put in the summary does not reflect the full picture, if you look at the report. You might have a debate about whether prosecutions under the Financial Transactions Reports Act are really money laundering or not but I guess what we are really

saying is, 'If you look at the activity that you're trying to combat and look at the range of ways that you might do that, that's one of the things that we would suggest you take into account.' As I said, you might have a debate about whether you call that a money-laundering offence or not a money laundering offence.

I guess a different way of looking at it is to say, 'Are there cases which come to the DPP which really should be prosecuted for money laundering which aren't being prosecuted for money laundering?' That is one of the things that we take issue with, I suppose. These matters are not referred as money-laundering prosecutions. If you look at a social security offence where somebody has obtained funds, technically if they are holding those funds that might be regarded as a money-laundering offence. So I think you need to be careful about the impression that is given that there is a whole lot of activity out there that really involves money laundering which is not being prosecuted when it should be. That is really the point that I am trying to make.

If we do 3,500 prosecutions for social security offences, a high percentage of those made be capable of being prosecuted for money-laundering offences. If you wanted to get statistics up that might be one way of doing it, but I would suggest that it is a rather pointless exercise in what you are trying to achieve in terms of deterrence and ensuring that people comply with the system. So that is really what the discussion was about. I do not know that there is violent disagreement. I suppose what they would say is: 'We would encourage you to keep looking closely at cases as they come through.' Following on from that discussion, we have said to our people: 'We need to keep looking closely at cases and see if there are opportunities to prosecute money laundering in circumstances where you can add it on to the predicate offence.' So I do not know that there is a violent disagreement about all of that.

The other thing is that the offence provisions under section 400 I think are actually much more encompassing than they were under the Proceeds of Crime Act, so you might actually find that more prosecutions occur as a result of that as we go on. I think the fact that there is now some 30-odd matters that we are looking at in terms of those provisions might be an indication of that. We said that to them as well—that it will take time for these matters to actually come through the system. I do not know that we have this violent objection. I was a bit surprised with the way they represented it in the summary.

Senator LUDWIG—I thought it was, for the DPP.

Mr Thornton—We are keen that you understand what the background to all of this is. As I said, the impression that somehow there are these cases out there that should be prosecuted which are not I do not think is correct, if that is the impression. Maybe we are being a bit defensive; I do not know.

Senator LUDWIG—For the DPP, this is a violent objection, I suspect. There was a report in the *Weekend Australian* headed 'Witness jail plan attacked'. The ACC and AGD were making a submission to the PJACC, which is the Parliamentary Joint Committee on the Australian Crime Commission, in respect of coercive powers. One of the suggestions which were skied by the AGD and the ACC was the use of contempt powers with jail terms attached. Did you have an opportunity to make a submission to that committee, and did you indicate your view about those matters?

Mr Bugg—We made a submission where we had no suggestions for change or introduction of reform in what was already there. During the questioning process, there was some questioning about the issue of refusal to answer questions. We gave responses to those questions, and one of the issues that was raised was whether or not there should be a summary form of contempt for refusal to answer questions, because obviously it takes some little while, when there is a refusal, to take the matter out and prosecute under the act for the refusal to answer the questions; and we engaged in that discussion.

If you are referring to something that was in the *Weekend Australian* only about a week ago, which suggested that there was some difference of opinion between my office and that of AGD, that was a flawed report, with respect. It suggested that we had said that we had not identified any issues which it wished to raise in the context of the review, and it then reported that this comment contradicted the federal justice department—as opposed to AGD—proposal to immediately jail noncooperative witnesses before the Australian Crime Commission. There was no such contradiction and, as I understand it, that was not a course which was in fact proposed by the AGD. There was a fair amount of poetic licence to classify it as such. If that is the newspaper report you are referring to, we did have the opportunity to make submissions, we had no suggestions or recommendations, we did engage in discussion with committee members, and an issue was subsequently raised with us, as an office, by the committee that a subsequent answer by one of the ACC examiners would suggest that maybe there was an error on the part of one of my senior staff members who appeared before the committee.

We have since sought clarification from that examiner, Mr Hannaford, as to what the case was that he had in mind when he gave the illustration to the committee, and he has not been able to recall the case and our inquiries do not reveal such a case. We think it may be a mistake on Mr Hannaford's part and that he has in mind an issue that was raised with one of the state DPPs—not my office. We have no record of it and Mr Hannaford has not been able to clarify the matter. I understand the ACC itself has no record of it, so it is one of those extempore issues where sometimes people think they have discovered a conflict and they really have not. We think it may be a state DPP matter. That is the only area I am aware of where there was any suggestion of a difference of opinion or view between what we submitted and what was said at the committee by my people. Our clarification of it suggests that there is no such contention. That is a fuller response than your question required, but it does clarify perhaps a perceived difference of opinion that may have been taken from those proceedings. We say there is not.

Senator LUDWIG—It is perhaps worth putting your position on the record, seeing we have gone this far, in terms of the use of contempt provisions as outlined by the AGD in their submission.

Mr Bugg—I think it is worth exploring some solution to that problem—that is, if you need an immediate response which will therefore enable you, with that immediate response, to move on with your examination or inquiry, the process of standing the matter down, laying a charge, proceeding through the court with that charge to a prosecution does not derail but delay the process. If there is some process whereby a summary form of contempt-like remedy for the problem can be achieved, certainly I would like to see it explored.

Senator LUDWIG—In your experience would it remedy the situation? Would it encourage someone to talk? You have been prosecuting people for a very long time, I take it, Mr Bugg. Your view would be valuable. You would also be aware that prosecutions in themselves do not necessarily produce the outcome that was sought in the first instance.

Mr Bugg—Certainly, I accept that. It will depend on the circumstances: what is the matter that is under inquiry or examination? Is the examinee's fear of reprisal from someone within an organisation or another group for providing answers greater than their fear of the consequences of a prosecution for refusing to answer or being held in contempt? You balance those two. There will be circumstances, in my experience, where the former will outweigh the latter and they will continue to refuse to answer and bear the consequences of either a contempt or a finding that they have breached the requirement that they answer a provision of the act.

Senator LUDWIG—I guess you would not necessarily see the ones that talked, would you?

Mr Bugg—No. We might see them in a different process.

Senator LUDWIG—Chair, I can put the remainder of my questions on notice.

CHAIR—Thank you very much, Mr Bugg, and your colleagues. We will now deal with the Australian Security Intelligence Organisation.

[6.12 pm]

Australian Security Intelligence Organisation

CHAIR—I welcome Mr O'Sullivan to this supplementary budget estimates hearing. I know this is your first attendance at legal and constitutional estimates as the head of ASIO and we hope you enjoy the experience as much as your predecessor did. I am sure he left warm reports in appropriate places!

Mr O'Sullivan—Thank you very much, Madam Chair. I share the same hope! If you would like, I have a short prepared statement that I can either read or insert into the record about some of the issues that have been on the agenda that I thought you might be interested to hear about.

CHAIR—I am in the hands of the committee. If it is a short statement, please go ahead. We will then go to questions.

Mr O'Sullivan—First of all, I would like to start off by paying tribute to my predecessor Dennis Richardson, who, in my view, left ASIO in very good shape, focused on meeting its responsibilities to the Australian people and set on a solid footing for the future. From my own perspective in a little over three months in the job, I can say that I am looking forward very much to cooperating with this committee and its members. While it may be two decades since there has been an attack on Australian soil, the security threat Australia faces today is nevertheless real and it is not abating. Our assessment is that a terrorist attack in Australia is feasible and could well occur. That assessment is based on intelligence, public statements and actual attacks that show we have been within the strategic vision of Islamic extremists since before September 2001.

Australia has been targeted in terrorist attacks overseas, including in Bali in 2002, in Jakarta at our embassy in 2004 and in Iraq on our embassy protection force in 2005. We know that al-Qaeda and like-minded groups have shown intent to conduct attacks in Australia. This year's attacks in London and Bali were a brutal and graphic reminder of the persistence and commitment of extremists to mount attacks against Westerners and, as we saw in Bali earlier this month and in Jakarta in September last year, with little regard for local victims who were indiscriminately killed or injured. There was no specific intelligence warning of these attacks in which Australians were also killed and injured.

The task of preventing such attacks will not become any easier and we, like our counterparts around the world, cannot guarantee that we will be successful in preventing attacks from people living amongst us, from those seeking to travel to Australia to conduct attacks or others intent on attacking Australian citizens and interests abroad. Nonetheless, the government and the community have an expectation that intelligence and law enforcement agencies will work closely together and make every reasonable effort to ensure that Australians are protected from those who would do us harm.

You will be aware that the Prime Minister and the Attorney-General have announced a significant commitment of additional funds for ASIO that will see us double in size over the next five years. That will better equip us for the challenges, workloads and demands that we will face now and into the future. Recruitment of staff has already started, and I am confident we will continue to be able to attract and retain the high-calibre people that we need. The next few years will be an interesting and rewarding time to be part of ASIO, and the people we will bring in will inject new skills and fresh perspectives with their energy, enthusiasm and creativity. We will train and develop them in ways that build a security intelligence capability that is properly equipped for the challenges of the 21st century. Our recruitment efforts are directed at not only acquiring a range of knowledge, skills and experience but also attracting people from all parts of the community so that ASIO's work force will reflect the diversity of Australian society.

Despite the inevitable challenges posed by a growing organisation, we will remain focused and committed to our security intelligence responsibilities through continued close cooperation with law enforcement and other agencies and our engagement with a regional and global network of partners. We will conduct our work with legality and probity and with due regard to human rights and civil liberties. ASIO will continue to appropriately use the special powers granted to us under legislation in strict conformance with the law and with an approach that balances long-term perspectives and short-term demands. Ultimately, ASIO will only be effective so long as we continue to enjoy the trust of the community that we serve and in which we operate. Madam Chair, I am happy to answer any questions that you and your colleagues have.

CHAIR—Thank you very much. We appreciate that statement.

Senator BOB BROWN—I want to begin on the specific issue of the arrest and deportation of the American peace campaigner, Scott Parkin, who was arrested on Saturday, 10 September in Melbourne. Were ASIO officers present at that arrest?

Mr O'Sullivan—Can I answer that question by making, for the record, a statement about Mr Parkin, since I anticipated Senator Brown or others may be interested in this matter?

Senator BOB BROWN—I flagged that it was coming, so thank you. I will take it from there.

Mr O'Sullivan—While Mr Parkin initially met the requirements for a visa, ASIO acquired credible information relating to Mr Parkin subsequent to his arrival in Australia. As a result, ASIO assessed Mr Parkin to be a risk to national security and issued a prejudicial security assessment in accordance with the provisions and requirements of the ASIO Act. This advice was provided to DIMIA and, in accordance with the Migration Act where a visa holder is found to pose a risk to national security, Mr Parkin's visa was lawfully cancelled and he was subsequently deported.

As you know, ASIO's security assessments are confidential. There was no requirement under the ASIO Act to provide the assessment or any other details thereof to Mr Parkin or to his legal representatives. The ASIO Act prevents ASIO from taking any action with regard to lawful protest activity. The fact that Mr Parkin had been involved in protest activity or may have been involved in further protest activity was not in itself a factor in the security assessment. However, ASIO is responsible for protecting the Australian community from all forms of politically motivated violence, including violent protest activity. I hope that helps set the scene, Senator, for your questions.

Senator BOB BROWN—Thank you. I begin by asking: were ASIO officers present at the arrest of Mr Parkin?

Mr O'Sullivan—I am not sure I have that detail, but I will get it for you.

Senator BOB BROWN—Would you also find out, if you do not know, whether they were present at the consequent questioning, and what part they took in relation to his period of stay after arrest and consequent deportation from the country to Los Angeles. You have said that there was credible evidence that he was a risk to national security; does that evidence go beyond the consequent story in the *Australian* where it was alleged that he had advocated rolling marbles under police horses et cetera?

Mr O'Sullivan—I cannot answer that question, because I would be revealing details about matters that have to be held within the organisation.

Senator BOB BROWN—Had Mr Parkin ever taken part in a violent or dangerous protest—that you are aware of?

Mr O'Sullivan—While he was in Australia, do you mean?

Senator BOB BROWN—In Australia or elsewhere.

Mr O'Sullivan—I understand there was some background while he was in the United States, but I believe the answer to your question in respect of Australia is no.

Senator BOB BROWN—What was the background while he was in the States?

Mr O'Sullivan—I will get that detail for you during the dinner break.

Senator BOB BROWN—What communications did you have with your counterparts in either the CIA or the FBI, or elsewhere in the United States, in relation to Mr Parkin before his arrest?

Mr O’Sullivan—The Australian Security Intelligence Organisation are constantly in dialogue with our counterparts around the world, but I can be quite clear in saying that there was no consideration of any particular matter coming from abroad in this case.

Senator BOB BROWN—Were you in contact with the authorities in the United States about Mr Parkin?

Mr O’Sullivan—Was I personally? No.

Senator BOB BROWN—No, ASIO.

Mr O’Sullivan—I would prefer not to answer that question directly, because I would be revealing what we discuss or do not discuss with counterparts around the world. But I repeat my point that the impression that has been given in some reports that ASIO somehow was pressurised or the subject of American pressure is just not accurate.

Senator BOB BROWN—Did any requests come from America?

Mr O’Sullivan—I believe not.

Senator BOB BROWN—And—

Mr O’Sullivan—But, as I say, you have to understand that I cannot reveal the details of the communications between intelligence agencies and our partners.

Senator BOB BROWN—Yes, but there were exchanges between the intelligence agencies?

Mr O’Sullivan—Well, there is a constant flow of information between them, but I am making a distinction between the broad flow of information which occurs as a matter of course and the suggestion that has sometimes been made that there was a particular effort to try and influence me personally or, more broadly, to influence ASIO about Mr Parkin.

Senator BOB BROWN—Was it something—or some things—that Mr Parkin engaged in or advocated in Australia that led to the cancellation of his visa because he was a security threat?

Mr O’Sullivan—As I said in my broad introductory comments, we had no reason to object to his visa when it was first issued, but we became aware of information which did cause us to issue a prejudicial assessment.

Senator BOB BROWN—Was that information sourced in Australia or elsewhere?

Mr O’Sullivan—It related to his behaviour subsequent to his arrival in Australia.

Senator BOB BROWN—Subsequent to his arrival in Australia?

Mr O’Sullivan—That is correct.

Senator BOB BROWN—Was it his behaviour or his advocacy that was the problem?

Mr O’Sullivan—That is a distinction which I do not think conveys a difference in respect of the way we make our assessments.

Senator BOB BROWN—Did he, in his behaviour, breach Australian law?

Mr O’Sullivan—Our task under our act—as you know, I am sure—is to protect the community from politically motivated violence and other things. We make an assessment about whether people are, as in his particular case, complying with their visa requirements. We came to the conclusion that he was not complying with those requirements.

Senator BOB BROWN—The report I saw in the press was that he was alleged to have been going to advocate such things as rolling marbles under police horses—which, I might add, he has strenuously denied. Was there something that he had said or done that either infringed Australian law or made him a security risk?

Mr O’Sullivan—Our assessment was that his behaviour contradicted the conditions of his visa, and we advised the department of immigration of that.

Senator BOB BROWN—Was this on a direct observation of his behaviour or on reports on his behaviour?

Mr O’Sullivan—I cannot answer that question, because I would be revealing how we come to know about these matters if I did.

Senator BOB BROWN—The man asserts that after the day he was taken into detention he was advised by Immigration, or advised generally, that any attempt to appeal the revocation of his visa would prolong his detention and that he was pressured into signing a statement waiving his right of appeal. Is that so?

Mr O’Sullivan—I am not aware that that is the case.

Senator BOB BROWN—But you do not know?

Mr O’Sullivan—ASIO would have no involvement in such a consideration.

Senator BOB BROWN—Who in the department was informed about the decision that Mr Parkin represented a risk?

Mr O’Sullivan—My understanding is that after ASIO gave its assessment to the Department of Immigration and Multicultural and Indigenous Affairs they cancelled his visa and the matter was then referred to the AFP.

Senator BOB BROWN—At what stage was the Attorney-General informed?

Mr O’Sullivan—I believe he was informed on 15 September. I have to check on that, but the Attorney-General would have been kept informed from a very early point in the determination.

Senator BOB BROWN—Do you know at what stage the minister for immigration was informed?

Mr O’Sullivan—I assume her department would have informed her immediately they received the assessment from ASIO.

Senator BOB BROWN—You say that the minister was informed on 15 September.

Mr O’Sullivan—That may not be accurate. That may be a mistake on my part. I would have to check on that, if you do not mind, and get back to you. I would rather be accurate.

Senator BOB BROWN—According to my information and recollection, he was arrested on the 10th.

Mr O’Sullivan—In that case, that figure is not correct.

CHAIR—Perhaps, Mr O’Sullivan, you could come back with that information for Senator Brown.

Mr O’Sullivan—Yes, I will get back to you with that detail.

Senator BOB BROWN—Why was Mr Parkin taken to a police station and then to the Melbourne Custody Centre rather than the Maribyrnong Detention Centre?

Mr O’Sullivan—The consequence of his visa having been cancelled and the implementation of that by the AFP is a matter that they would have handled. ASIO does not arrest people or process them in that way.

Senator BOB BROWN—The security assignment that saw him across the Pacific to Los Angeles, was that something that was out of your hands or in which you had a role?

Mr O’Sullivan—No. Once we have made the security assessment, that is the end of our formal involvement. The processes under the Migration Act provide for the advice to be taken. Once we have issued it and the visa has been cancelled, other processes then kick in.

Senator BOB BROWN—What are the normal processes in undertaking a security assessment?

Mr O’Sullivan—In very general terms, we have databases where information—which is, as I said in my introductory comments, derived from a variety of sources—is kept. People who might come within the terms of the activities which are proscribed in the ASIO Act are then assessed against those criteria.

Proceedings suspended from 6.30 pm to 7.34 pm

ACTING CHAIR (Senator Scullion)—We will now resume the supplementary budget estimates with the questioning of Mr Paul O’Sullivan.

Senator BOB BROWN—Mr O’Sullivan, what are the determining factors when people speak about violence in public that attract ASIO’s attention and then lead to further investigation?

Mr O’Sullivan—Senator, there is no definition of that particular matter under the act. The act refers to politically motivated violence, and ASIO has to be able to come to a judgment about what constitutes that. And, by the way, this is not just true of this particular example. The act spells out a number of grounds on which judgments are to be made, but it does not spell out the criteria for defining those. It relies on the agency to come to a judgment in its own terms on the information it holds, whether security intelligence information or other information that it has access to.

Senator BOB BROWN—But if somebody advocates violence in public in Australia, does that normally attract ASIO’s attention for further investigation?

Mr O’Sullivan—The advocacy of violence per se? It would, I suppose, depend on the context. You would have to take into account how that was conducted and who the person

was; whether there was a background and whether that was a point in the process where the person who was making such advocacy statements was then in a position of being able to be assessed as stimulating or suggesting, in a way that was likely to be followed, the process of politically motivated violence.

Senator BOB BROWN—After I had a few words to President Bush in the parliament here, a number of people, including journalists, radio commentators, and a fellow who otherwise wrestles crocodiles, variously said that I should be beaten up in one way or another. How do you define that sort of gratuitous advice to the public about a member of parliament, and other expressions of encouragement to violence?

Mr O’Sullivan—I think the answer to that question is that you have to understand the context in which it is made, and you have to understand the degree of specificity and the degree of conviction, if you like, and the likelihood that such matters would indeed be followed, and so on, rather than the sort of example that you are quoting which, presumably, was in the rather more charged and heated environment of that discussion at Parliament House at that stage.

Senator BOB BROWN—Well, newspaper columnist Miranda Devine has advocated that, in certain circumstances, environmentalists should be beaten. What about that? There is a direct injunction to readers to accept physical assault as a reasonable way of behaving. I take that quite seriously. How does ASIO assess that sort of injunction to violence in the public arena?

Mr O’Sullivan—I think that, lying beneath that line of thought, Senator, or that line of questioning, is the broader question of: ‘What is the standard of proof that an organisation such as ASIO should set for itself when it makes its judgments,’ if I have understood your question correctly. I do not know the particular columnist or column that you are referring to in the case of environmentalists. I have not had the pleasure of meeting that particular person and I do not recall the column.

In a broader context, I asked for some advice about that question that you are raising, and I understand that the procedure that ASIO understands is that the question of such a standard of proof or level of satisfaction, when making security assessments under part 4 of the Australian Security Intelligence Organisation Act of 1979, comes up in, as you would imagine, a number of contexts. The advice that I have is that judicial standards of proof, which are often couched in terms such as ‘beyond a reasonable doubt’, or ‘on the balance of probabilities’, are not, per se, applicable to the making of security assessments. Rather, ASIO must be reasonably satisfied, on the basis of credible information, that a person poses a risk to Australian national security as defined under the act. I hope that gives you a bit of a sense of the way we try to come at that question. It does not turn on an attempt to try to characterise what, say, Miranda Devine said in one context versus what somebody said in the parliament in another context.

Senator BOB BROWN—But the point I am making here is that surely that ultimately becomes a political judgment.

Mr O’Sullivan—We do not conceive it in those terms. Your characterisation would not be my characterisation.

Senator BOB BROWN—The problem is, though, that that conception can easily be put there. Who makes the security assessment when somebody is being vetted?

Mr O’Sullivan—Ultimately I do. In this particular case, information came to me and I was required to make a judgment. The judgment in this case was that the security assessment, which had previously been made and which prevailed at the time Mr Parkin’s visa permitted him to enter Australia, was a facultative one—it permitted him to enter—and it was to be changed. It was changed to a negative conclusion and, as I said before the dinner break, that information was then conveyed to DIMIA. Under the terms of the Migration Act, they are required then to take certain procedures, and they did.

Senator BOB BROWN—Can it be expected that in a court proceeding, if Mr Parkin appeals, the evidence upon which you based your assessment will be available to the court?

Mr O’Sullivan—That is a very precise and technical legal question on which I would have to get some precise and technical advice. I think you know, broadly speaking, that, because of the issues that we have to deal with and the way in which we come to our information, there are legal structures which provide for the protection of that information and those sources.

Senator BOB BROWN—Yes, there are, but if ASIO is confident that it has made a right decision—and it was quite a rare decision, I think you will agree, that was made here—then a court in one way or another, even in camera, ought to put no fear into ASIO in presenting the evidence upon which it based such an extraordinary decision. Isn’t that fair to say?

Mr O’Sullivan—The first point perhaps, in responding to that general observation, is that the Inspector-General of Intelligence and Security is in the process of conducting an investigation. We will wait and see what conclusions he reaches.

Senator BOB BROWN—That is different from my question, which was about ASIO presenting evidence to a court for a very unusual decision that has been made here which has led to the arrest and deportation of a person who was assessed at first to be not a risk and then later assessed to be a risk for something that happened on Australian soil. Does it worry ASIO that in those circumstances it might have to put that evidence before a court?

Mr O’Sullivan—In principle, our job is to defend Australians and to protect them from the threats that are enumerated under the terms of our act. So we have an obligation to carry out that protective function. The consequences that might flow in terms of subsequent legal proceedings are matters we will deal with if and when they occur.

Senator BOB BROWN—Exactly, but what do you believe in terms of accountability ultimately to the Australian people through the judicial system and through the arbitration of the court system?

Mr O’Sullivan—Of course, but before you were asking me a rather more precise and technical question. The answer to your general question is of course we do.

Senator BOB BROWN—I was asking you about the case of Mr Parkin because an appeal is, I understand—and you will know as well—a likelihood, if it has not already occurred.

Mr O’Sullivan—I do not know whether there is such a legal process underway, I do not know what the basis for such an action would be and I do not know what the prospects of

success of such an action would be. If we are required to, of course we will appear before the courts.

Senator BOB BROWN—What sort of crosschecking of the evidence that was presented about Mr Parkin's activities was done before this decision to arrest him was made?

Mr O'Sullivan—I cannot answer that question because I would be going into the details of the processes that we follow, and I cannot reveal that detail.

Senator BOB BROWN—Was any crosschecking done?

Mr O'Sullivan—The same answer. If I go into detail about the way we conduct our investigations and the processes we follow, I would be revealing matters which are properly kept in confidence.

Senator BOB BROWN—Did the initial assessment come directly from ASIO operatives who were in the presence of Mr Parkin at one of his presentations or did that come indirectly through reports to ASIO?

Mr O'Sullivan—I am sorry, Senator, I just cannot answer this line of questioning.

Senator BOB BROWN—One of the difficulties with the whole situation is that, so far as the public record is concerned, nobody has brought out any evidence at all of Mr Parkin being involved in, carrying out or advocating violence—no-one. Can you see my concern that in a country where many people advocate violence—and one reads about it in the newspapers quite frequently—a peace campaigner of all people has been arrested and deported in a very rare charge as a result of your inquiry, assessment and judgment? Why have people who have advocated violence—and I am not saying Mr Parkin has because I believe he did not; I have seen no evidence that he did—in our community not been arrested and dealt with in a similar fashion?

Mr O'Sullivan—In a sense I was trying to come at the point you are making in my initial opening comment on this matter, Senator, by setting out a little bit of the way in which we ask questions and the way in which we are given responsibilities under our act. It was those considerations which bore on this case.

Senator BOB BROWN—But my question remains: why have other people who advocate violence—and, again, I say as far as I know Mr Parkin did not—in Australia not been assessed as being arrestable, not been charged and penalised in a parallel fashion to Mr Parkin?

Mr O'Sullivan—The issue before me was the issue of the security assessment that bore on his visa status. That is the matter I had to consider. It is impossible for me to answer a hypothetical question about thousands of cases or many other cases that I do not have any details or knowledge of.

Senator BOB BROWN—Are you able to give the committee an assessment of what the situation is as far as the laws of sedition in this country are concerned? Is that a matter that ASIO keeps an eye on?

Mr O'Sullivan—I can make a comment about that, Senator, if you just give me a second to find my briefing notes. You may find that a better answer will be given by the Attorney-

General's Department in some respects, but at least I can say that my understanding is that the ways in which the sedition debate is being conducted are based on a review conducted by former High Court Chief Justice Sir Harry Gibbs a number of years ago where he, after reviewing the relevant laws in the Commonwealth criminal law, made a recommendation. Apparently, if I am correctly advised, he urged a simplification and a reconstruction of the notion of sedition making it in some respects similar and focusing on the issues of where the use of force or violence would threaten the peace, order and good government of the Commonwealth. My understanding of the general question you are raising is that there was a review some time ago by a competent jurist and that his recommendation has been around for a number of years.

Senator BOB BROWN—How does the use of force or violence or a threat to the peace and good order of the Commonwealth relate to urging people to express disaffection with the Commonwealth, the Senate or the House of Representatives? According to the current proposal as far as the sedition laws are concerned, it will be crossing into illegal territory if we urge disaffection with the Commonwealth of Australia, for example, as one of the components. The first question is this. I know you do not have to, but you might care to let us know: did ASIO give advice on this component about the bringing of very old and antiquated—Sir Harry Gibbs was right—sedition laws, not ones that describe the use of force or the advocacy of violence or disorder, into antiterror legislation, which is the domain of ASIO and which ASIO will be obliged to take note of? Did ASIO give advice on this matter of renewing this law and bringing it into the antiterror legislation proposed by the government so that people who urge disaffection towards the Commonwealth, speak in an untoward way about the sovereign, for example, or urge division within the community face serious criminal charges?

Mr O'Sullivan—I think the short answer to your question is that the issue of sedition has been a debate that has been going on, if I understand correctly, in legal circles for a number of years. Per se, whether that definition has changed or not changed, ASIO's functions are defined under its act. We do not come at the issues of whether the law on sedition should be changed or not changed, unless it had some particular angle or bearing on our activities. So I cannot answer your question. If you really want to pursue a discussion about how the laws on sedition should operate, I have to refer you to the Attorney-General and other parts of the bureaucracy.

Senator BOB BROWN—Was ASIO consulted in the process of drawing up the new antiterror laws?

Mr O'Sullivan—There was a broad range of consultations across the government, and we were involved in those, but some of the proposed changes are more directly relevant to our activities than others. Although it is arguable, in terms analogous to the ones used by Sir Harry Gibbs, that there would be a modernisation of our law in some sense by some changes, it is not necessary from an ASIO point of view that those changes be advocated by us.

Senator BOB BROWN—No. However, the advice has been taken. Does ASIO sit comfortably with the antiterror laws that have been brought to public notice?

Mr O’Sullivan—The broad answer to the question is that ASIO supports a strengthening of the legal regime, especially in those circumstances where a terrorist act was in process or about to be undertaken: when you are in that extreme situation where either something is happening or it is just on the verge of happening and you need to have appropriate powers—or, in our view, the police force would need to have appropriate powers—to intervene in ways that could either stop the event occurring or stop it getting further out of control.

Senator BOB BROWN—Let us take the package. That is one end of the package. The other end is the one I am referring to where, if you urge disaffection with the Commonwealth government or the parliament, you could face seven years in jail. That is a very serious matter. I put it to you that that is one that ASIO will be charged to keep a watch on and that Australian citizens, if you take the law literally—and there is no other way, when it is being presented to parliament, that parliamentarians should treat it; we have to be very clear about these matters—ASIO may find itself in need of the doubling of its staff complement to be chasing down Australians who urge disaffection with the government of the day.

Senator Ellison—Mr Acting Chair, I think we should perhaps clear up a misapprehension that Senator Brown has. He says that what is proposed is that anyone who has some disaffection, as he puts it, with the Commonwealth government or advocates disaffection with the government could be caught up in this. The proposals set out to catch much more serious conduct than that—advocating a terrorist act, not simply disaffection with the Commonwealth government. That is something which is daily advocated by an opposition and other people, and quite rightly so within a democracy. That is not what is being proposed as a target for action. That is not what is being proposed as the subject of these laws. I think you have to look at what the Attorney has said in relation to this package. As I understand it, the Attorney, the Prime Minister and COAG have spoken in terms of activity that would entail advocating a terrorist act—that is, advocating that Sydney Harbour Bridge be blown up or that innocent women and children be sacrificed to demonstrate a political point. That is much more than just advocating disaffection with the Commonwealth government. I think Senator Brown’s premise is very misleading, and to put it to Mr O’Sullivan in that fashion is flawed. I do not know if the secretary has further information on what is proposed.

Mr Cornall—In the briefing notes I have on this point it says that the government is satisfied that the defence of good faith will adequately ensure that people who make comments without seeking to incite violence or hatred will not be deprived of freedom of speech.

Senator BOB BROWN—Can you or the minister point out to me where in the legislation it says that these antiseditious components of the antiterrorist laws have to be combined with an intention to incite terrorism or violence? Where is that?

Senator Ellison—The proposed bill has not been released yet.

Senator BOB BROWN—Yes, it has.

Senator Ellison—No, it has not.

Senator BOB BROWN—It has.

Senator Ellison—You cannot regard that leak by the ACT government as the bill that is being proposed. I can tell you that there are ongoing discussions at the moment between the states, territories and the Commonwealth government and it would be entirely unfounded for anyone to rely on that leak. We do not have any draft bill which has been released. Discussions are ongoing and it is a work in progress.

Senator BOB BROWN—Minister, let us be clear about this. Are you telling the committee that that bill as it stands does not have antisedition measures of themselves but that people need not fear sedition components unless they are engaged in a potential terrorist activity?

Senator Ellison—What I am saying is that you can rely on statements made by the Prime Minister, the Attorney-General and COAG in relation to the activity that will be targeted, and that is activity which advocates terrorism or a terrorist act. That is to capture activity which does not come within the Criminal Code. Of course, in the criminal jurisdiction, you have to have sufficient acts in place or acts in preparation to be guilty of an attempt, a conspiracy or the act itself. Of course beyond that there are acts which can be a precursor to the criminal activity, and they are unable to be captured by law enforcement and the law as it stands. In relation to the advocacy of terrorist acts, I would suggest that is one such area. That is one of the reasons for this proposed package. That is something which Mr O’Sullivan has pointed to, that you may well have a situation where someone is getting together, gathering their resources, to carry out a terrorist attack. It is insufficient to warrant an arrest under our criminal jurisdiction because they have not put into train sufficient acts to manifest their intention and to be guilty of an attempt, a conspiracy or the offence itself. That is what we have been looking at and that is the experience we have gained from overseas.

Senator BOB BROWN—But you are saying there that the sedition component of the legislation is not a stand-alone component; it has to be read with the potential for it to be used only where people are intending, planning or advocating violence.

Senator Ellison—A brief provided by the Attorney-General describes existing sedition offences as covering:

... a person who engages in a ‘seditious enterprise’ with the intention of causing violence, or creating public disorder ... or who writes, prints, utters or publishes any seditious words with the intention of causing violence or creating public disorder ...

The brief goes on to say that the existing offences are considered to be:

... unduly complicated and are not ... suited to being used to counter the incitement of terrorism—

precisely the point I made—that is, that the incitement of terrorism stands just beyond the perimeter of current law in many instances. That is why we have to address it.

Senator BOB BROWN—What role does the incitement of disaffection with the federal government have in this?

Senator Ellison—You are saying ‘disaffection’; they are your words.

Senator BOB BROWN—No, that is the word used in the legislation.

Senator Ellison—I am telling you that there is no legislation which has been released in relation to the package that we are talking about. You have a leak which is not the bill as it

stands. There has been ongoing work, as I have said, and to rely on that would be unsafe. I am saying to you that the Commonwealth is engaged in discussion with the states and territories. I have outlined what the government has said and the statements that it and COAG have made. That is what we rely on.

Senator BOB BROWN—Yes, but I am very much aware that this is a Senate estimates committee to look at the role that is being played here under Attorney-General's, in this case by ASIO. Minister, I am saying to you that the draft legislation that has been published by Mr Stanhope, the Chief Minister of the ACT, came from your government and that that draft has a sedition component which does criminalise the urging of disaffection with the Commonwealth of Australia. That means the government of Australia, including the Prime Minister of the day. Are you saying (a) that the legislation does not contain that phrase or (b) that it does not stand alone and must be read with other components of the legislation?

ACTING CHAIR—Senator Brown, I think the minister has made it very clear that the legislation that you are referring to is no longer current because it has moved on from that case and he has also said that, because the legislation has not been tabled, it is inappropriate for him to comment on that matter at this time.

Senator BOB BROWN—The minister would say that, but this is a committee and what is appropriate to the minister at the table is not appropriate to the committee.

ACTING CHAIR—Perhaps I did not make myself clear enough. I am saying that perhaps you can explore a different line of questioning, because I think we have gone down that road a couple of times and I think both Mr O'Sullivan and the minister have made it very clear that they cannot pursue that matter any further.

Senator BOB BROWN—Yes I will. I will get back directly to the Scott Parkin matter. Consequent to Mr Parkin's departure, the *Australian* released on its front page what was said to be a leaked memo about why Mr Parkin was arrested and deported. In that memo, it was alleged that he was going to advocate such matters as rolling marbles under the hooves of police horses, something that he strenuously denied. As far as ASIO is concerned, why did it not refute that story in the *Australian*?

Mr O'Sullivan—My understanding is that the Inspector-General of Intelligence and Security has in fact referred the allegations about information leaked to the Federal Police and that matter is being considered.

Senator BOB BROWN—Yes, it is but I am considering it here too, and there is no reason why we should not do that. The question is: why did ASIO not refute that story when it appeared in the *Australian*?

Mr O'Sullivan—I have the same answer: the matter is under investigation following the inspector-general's referral to the Australian Federal Police.

Senator BOB BROWN—There was consequently another story in the *Australian*, to do with the antiterror legislation, which gave an account of ASIO's briefing of the several state Labor leaders, including the potential that 70 or 80 people would immediately come under surveillance in Australia if the new antiterror laws were passed. Did that come from ASIO?

Mr O’Sullivan—I do not know where that story came from, but I may take the opportunity to make a comment about the substantive point of numbers. First of all, the Attorney-General made a public comment that at least one story in one paper was speculative. Secondly, can I also make the point that issues about numbers do not make much sense. The categorisation of people in the way that has been done in some newspaper stories is both unhelpful and, frankly, as we are far as we are aware, not based on any framework that we are familiar with. So speculating about numbers or attempting to speculate about numbers does not seem to me to be a particularly helpful exercise.

Senator BOB BROWN—Are you aware of any leaking from ASIO to the media in the last 12 months?

Mr O’Sullivan—I have only been at the organisation for a much shorter period, but the answer to your question is that I am not.

Senator BOB BROWN—As a logical observer of this, I therefore think that such information must have leaked from the department somewhere, if it is to be taken seriously. That must surely be a matter of concern for ASIO, is it not?

Mr O’Sullivan—I do not know whether a leak took place or not. I do not know whether the information has any basis or not. I do not know where the journalist got that material from, so I cannot make a judgment about that. The only particular matter that I can comment on is the one that I have already given you an answer about, which is that in a particular case the inspector-general has in fact referred a matter to the police for investigation. That is a matter of fact. The other matters are just speculation, as far as I am aware.

Senator BOB BROWN—Did you ask the inspector-general to refer the matter to the police?

Mr O’Sullivan—I do not think it would be appropriate for me to comment on my discussions with the inspector-general.

Senator BOB BROWN—Surely that is a reasonable question. We are here defending ASIO. We see a leak in the mass media and a police inquiry has come about. Surely it is reasonable to ask you whether ASIO asked for that inquiry.

Mr O’Sullivan—I do not know that there was actually a leak.

Senator BOB BROWN—I would assume that, if there was no leak—if the information was wrong—the inspector-general would not be chasing it up.

Mr O’Sullivan—You might be right, but I do not know whether you are or not. You would have to take that up with him.

Senator BOB BROWN—Was ASIO consulted by the inspector-general before that decision was made?

Mr O’Sullivan—I am sure you are aware that the inspector-general has enormous powers in respect of ASIO. He has access to everything we do at all levels all the time. So we are in a constant process of being monitored by the inspector-general, as happens on a regular basis. I mean weekly and daily. It is impossible for me at this stage to actually answer your question because I would have to go back and see exactly what was said at what point by whom to the

inspector-general. This is a very complex question, actually. But, in principle, he has access to all the decisions and all the material that we hold on all issues all the time.

Senator BOB BROWN—Surely ASIO must treat seriously a matter like this being referred to the police by the inspector-general.

Mr O'Sullivan—We treat it seriously, of course, but I cannot tell you whether there is any basis to that reference. I just do not know.

ACTING CHAIR—Senator Brown, it has been, as you would be aware, a long-held convention of this committee that we do not delve into operational matters. Quite clearly, while I have given you some leeway, we have hit that point and any discussions would clearly cross that border.

Senator BOB BROWN—There is a degree of inquiry that this committee is charged with a responsibility to undertake. Certainly the committee can go in camera if an answer is required. I can see shaking of heads but let me say that it is our responsibility as senators to use great probity, and I have, in exploring important matters like this, because we are defenders of the public interest and that is absolutely essential in a democracy. However, I am finished with my questions.

Senator PARRY—I just want come back to—and I will use the words of Senator Brown—the responsibility and probity of this committee to delve into facts. Senator Brown has been delving into issues that have been speculation and that have arisen from the media. I want to come back to some factual issues. Mr O'Sullivan, you mentioned in your opening comments and in response to questions that, in relation to the Parkin case, which Senator Brown raised—I would just like you to confirm your words again so we get the factual aspect of this clearly on the record—Mr Parkin was deemed to be a risk to national security based upon credible information. Is that a correct statement?

Mr O'Sullivan—That is correct.

Senator PARRY—And that, based upon that, advice was given to DIMIA and a lawful removal took place following that advice.

Mr O'Sullivan—That is correct.

Senator PARRY—Another comment you made in response to a question, or it may have been in your opening comments, is that protest activity is not taken into account in relation to ASIO determination or deliberation.

Mr O'Sullivan—The fact that Mr Parkin may have been involved in protest activity or that he may have been involved in further protest activity was not in itself a factor in the security assessment.

Senator PARRY—Just finally, there was another allusion to maybe a request from external sources. It is quite clear that there was no specific request or influence from another country—in particular, the United States of America.

Mr O'Sullivan—That is correct.

Senator PARRY—Thank you very much.

ACTING CHAIR—That is all the questions for ASIO.

Senator LUDWIG—Because of the time, I will put questions for ASIO on notice.

[8.13 pm]

Australian Federal Police

Senator HEFFERNAN—In March 2004, how many AFP liaison officers from the South-East Asia region met in Bangkok to further develop ongoing strategies to disrupt the activities of Australian paedophiles overseas?

Mr Keelty—The conference was attended by the senior liaison officers from all of the 15 offices that are located in Asia. It was also attended by representatives from non-government agencies and other Australian government departments.

Senator HEFFERNAN—Thanks very much for that. At the present time, how many AFP liaison officers are stationed full-time in the South-East Asia region to disrupt these overseas activities?

Mr Keelty—Within South-East Asia we have 15 posts, with 22 officers deployed in the 15 posts. We also have officers in Hong Kong and Bangkok who have responsibility, from an intelligence perspective, for collection, assessment and dissemination of information that will include information relating to child sex tourism.

Senator HEFFERNAN—In terms of time management, what percentage of their time do they spend on those activities?

Mr Keelty—We record the time allocated to specific jobs and specific crime types. We could examine the percentage of total resources that were deployed and have been undertaken to perform certain roles, but it would be difficult to break it down specifically.

Senator HEFFERNAN—You might take that on notice. On the dividend side, how many prosecutions under the child sex tourism legislation have they initiated?

Mr Keelty—There have been 20 prosecutions. Thirteen of those prosecutions have secured convictions. Three prosecutions were dismissed, and there are another four prosecutions in train.

Senator HEFFERNAN—Could you break those prosecutions up into successful prosecutions in Australia and overseas?

Mr Keelty—Overseas, Australian nationals apprehended by foreign law enforcement in relation to sexual exploitation of children include 36 persons charged and 12 persons convicted. There are 12 ongoing matters, two people have been acquitted, three matters have been dismissed or withdrawn, four people have been deported, three passed away before court proceedings had been completed, and one matter was referred to the military police for investigation.

Senator HEFFERNAN—They were all overseas?

Mr Keelty—That is correct.

Senator HEFFERNAN—What has happened in Australia? You can take that on notice if you like.

Mr Keelty—Those are the 20 persons who have been arrested in Australia, which I mentioned before, since the introduction of the legislation in July 1994.

Senator HEFFERNAN—How many successful prosecutions have there been overseas?

Mr Keelty—Twelve persons have been convicted and 12 persons were involved in ongoing matters.

Senator HEFFERNAN—Is it possible to lay charges in such prosecutions in Australia under the Crimes (Child Sex Tourism) Amendment Act 1994 and in the foreign country under the relevant child sex legislation?

Mr Keelty—There are specific provisions in the legislation. Under part 3A of the Crimes (Child Sex Tourism) Amendment Act 1994, which does specifically raise the defence of double jeopardy, section 50FC says:

If a person has been convicted or acquitted in a country outside Australia of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Part in respect of that conduct.

Senator HEFFERNAN—Is the case of Christopher White one such example?

Mr Keelty—I am not sure that I can talk to you about specific cases, because I need to know where they are at in relation to their phase of prosecution.

Senator HEFFERNAN—That could be operational, I guess.

ACTING CHAIR—It comes under the standard operational matters.

Senator HEFFERNAN—Since July 1994, how many of those prosecuted under the child sex tourism legislation here have also been prosecuted under the relevant foreign legislation? You may care to take that on notice.

Mr Keelty—If I could, please.

Senator HEFFERNAN—Who was the Australian man who was highlighted for alleged child pornography offences in an AFP media release on 21 March 2004?

Mr Keelty—Sorry, Senator, I was unsure for a moment whether I was able to disclose that. I understand that the person referred to is Robert Scoble, who was arrested by the Thai authorities on 19 March 2004.

Senator HEFFERNAN—What was he actually arrested for?

Mr Keelty—The Thai authorities arrested Mr Scoble and subsequently charged him with and convicted him of offences relating to the possession of homosexual pornography for distribution, under Thai law. He was also convicted of employing an alien without a valid work permit. He was sentenced to seven months jail, which was suspended for two years, and fined 10,000 baht.

Senator HEFFERNAN—How long had the Royal Thai Police and the AFP been working together to get that arrest?

Mr Keelty—I would have to take that on notice, if I could, please.

Senator HEFFERNAN—And that sentence was in a Thai court, I take it?

Mr Keelty—That is correct.

Senator HEFFERNAN—How long did he spend in jail in Bangkok?

Mr Keelty—According to my briefings, it would have only been in the period between his initial arrest and when the court finalised the matter—that is, if he was held in custody for that time. It appears that his sentence provided by the court was suspended immediately upon—

Senator HEFFERNAN—To the rising of the court or something?

Mr Keelty—Immediately upon him having received the sentence, it was suspended.

Senator HEFFERNAN—What action did the Thai authorities take at the end of that so-called jail sentence?

Mr Keelty—As I understand it, he was deported—returned to Australia—in December 2004.

Senator HEFFERNAN—What action did the Australian authorities take at the end of this so-called jail sentence?

Mr Keelty—From my recollection—and I know I have some briefing notes here—he returned to the state of New South Wales. He was put on the national sex offenders register. We have been liaising with the New South Wales Police in respect of that.

Senator HEFFERNAN—I will come to that in a minute. What travel document did Mr Scoble use to return to Australia, and who issued it?

Mr Keelty—I do not have the answer to that question; I will have to take that on notice.

Senator HEFFERNAN—Thank you—that is two questions. You said that he returned to New South Wales—to Sydney, I take it?

Mr Keelty—I do not have the information on where—only that it was to the New South Wales jurisdiction.

Senator HEFFERNAN—Do you know where he currently resides?

Mr Keelty—I would imagine the New South Wales Police do.

Senator HEFFERNAN—Do the AFP have any specific concerns about the location?

Mr Keelty—It is more of a state matter than an AFP matter. Our responsibilities are to work with the Royal Thai Police to collect the required information in relation to putting Mr Scoble on the National Child Offender Register.

Senator HEFFERNAN—You have done all that. What has been the response of the New South Wales authorities to the AFP?

Mr Keelty—I am not in a position to answer that on behalf of New South Wales police.

Senator HEFFERNAN—Has there been correspondence?

Mr Keelty—Yes, there has been liaison with the New South Wales Police.

Senator HEFFERNAN—Right; thanks. Does the AFP accept that Scoble is now a convicted sex offender who has served jail time and, since he returned to Australia, has the AFP moved for the state police to monitor him?

Mr Keelty—Yes, he has been registered on the National Child Offender Register.

Senator HEFFERNAN—Finally, in relation to the material held by Scoble whilst in Thailand, is it possible that Australia could proceed towards a prosecution in Australia for his possession of material in Thailand?

Mr Keelty—Part 10.6 of the Telecommunications Services of the Commonwealth Criminal Code 1995 provides for offences concerning the possession and communication of child pornography material. For an offence against this section to be prosecuted, the offence would have to be committed within the statutory jurisdiction or over the carrier within the jurisdiction. That is a longwinded way of saying that, in the absence of an offence here in Australia, we cannot move to prosecute.

Senator HEFFERNAN—I am very grateful for those answers, and I am sorry to have held the committee up, but thanks very much.

ACTING CHAIR—Not at all, Senator Heffernan.

Senator MILNE—My question relates to the SIEV X—the Suspected Illegal Entry Vessel X—and I want to ask you, particularly, Commissioner Keelty: you will recall that on 11 July 2002 you said you were unable to answer questions in relation to this matter—in relation to what information the AFP held about the departure, seaworthiness and ultimate fate of the SIEV X, the manner in which the AFP came into possession of that information and the specific actions taken, because of the future legal proceedings that were in train at that time. Are there now any further proceedings in train in relation to the SIEV X people smugglers, now that Khaled Daoed has been convicted and sentenced this year in Brisbane for SIEV X people smuggling, and Abu Quassey has been sentenced in Egypt for accidental homicide on SIEV X, and people smuggling on all four vessels that he sent to Christmas Island? So can you indicate to me whether there are any further legal proceedings in train at this particular time?

Mr Keelty—Senator, it is my understanding that there are investigations into a third person and the role that that third person may have had in the SIEV X vessel.

Senator MILNE—Can you be any more specific than that, in terms of a time frame of dealing with that matter?

Mr Keelty—No, but if there is any more detail on that that I can provide, I undertake to provide it to the committee on notice.

Senator MILNE—Thank you. As a result of the court case in Brisbane this year, it was shown that Abu Quassey had used the same land itinerary, the same bus convoy, ferry service, car ferry service, et cetera; the same police-owned hotel. Yet, when the federal police answered questions previously on this, they indicated that often information about the SIEV X appeared to contain conflicting dates regarding their departure, deliberate misinformation regarding departure locations, ambiguity, et cetera, and yet what came out of that case in Brisbane shows that it was almost identical. Doesn't that rather conflict with what had been previously said about what the AFP knew?

Mr Keelty—I have no trouble with the previous evidence I have given before the committee about the modus operandi of the people smugglers, and there is nothing different I would add to that today.

Senator MILNE—At what point do you think the Australian Federal Police will be in a position to make a full disclosure about what information was held at the time of the departure, about the seaworthiness and the ultimate fate of the SIEV X, the manner in which the AFP came into that information, and the actions taken with that information, including who was told and when? Are we assuming that, when this third person is investigated, the AFP will be in a position to make that information available?

Mr Keelty—I am not prepared to give that undertaking, because I simply do not know how that will play out. It is an operational matter and it may lead to further investigation. So, Senator, at this point I cannot commit to a time when the matter will be disclosed. I have simply to say that the AFP has not covered up anything in relation to this. We have been as frank as we possibly can in the circumstances, given the prosecutions and the ongoing investigation, and we have got absolutely nothing to hide.

Senator MILNE—And there is nothing further you can disclose at this time without jeopardising the inquiry that you have just referred to—is that what I should take from what you are saying?

Mr Keelty—On the briefing that I have been given, that is correct, Senator.

Senator ALLISON—I would like to go back to a subject I raised at the May estimates. It was about the officer who was under investigation for drug handling activities at airports. Can you update the committee on where that is at?

Mr Keelty—If you could refer me to a part of the previous hearing, I will pick up from there which one you are talking about.

Senator ALLISON—It was the joint investigation that was conducted by the AFP and the New South Wales Crime Commission into the importation of cocaine through Sydney airport.

Senator Ellison—Acting Chair, Senator Allison said an officer was involved. Is that right?

ACTING CHAIR—I am not sure; I did not catch that part of the question.

Senator ALLISON—I said an officer was being investigated as a result of allegations.

Senator Ellison—Of which service?

Senator ALLISON—An AFP officer.

Mr Keelty—The matter the AFP had under internal investigation is not yet complete. But it would appear that the actions of the officer were not the reason for the offenders decamping the country. There is a separate investigation being undertaken by the Australian Crime Commission regarding the passing of information and, as I understand it, a separate allegation against a member of the New South Wales Crime Commission.

Senator ALLISON—So the same officer is now being investigated for a separate matter?

Mr Keelty—No. The AFP officer who was the centre of an investigation that was referred to in the May estimates is still being dealt with. That investigation is still underway. We are in

the process of finalising that investigation. As I recall, the theme of the May estimates was that that investigator may have been responsible for either knowingly or unwittingly tipping off the offenders in that drug investigation. I think our inquiries to date have indicated that was not the case.

Senator ALLISON—So in what sense is it still under investigation?

Mr Keelty—The matter is still under investigation because of some other administrative issues that have been taken up with that member.

Senator ALLISON—Could you expand on ‘other administrative issues’?

Mr Keelty—As to whether the member adhered to the guidelines on dealing with informants.

Senator ALLISON—So is it documentation or something? Whether the right form was filled in or what?

Mr Keelty—No. It is in relation to the member’s actions in meeting with an informant, that he did not adhere to the correct procedures.

Senator ALLISON—So this officer has been cleared of any charge of what? What was likely to have been the charge had one been laid?

Mr Keelty—That is hypothetical.

Senator ALLISON—I am trying to understand. You were investigating a matter and now it involves the same officer but a slightly different matter. Is that right?

Mr Keelty—I just said a minute ago that the theme of the hearing in May was that the officer may have been responsible for the persons who were the subject of the investigation for being tipped off and leaving the country. We are satisfied that that was not the case.

Senator ALLISON—So when were you satisfied that that was not the case?

Mr Keelty—That was part of the internal investigation that we have been carrying out.

Senator ALLISON—Can you be precise about when?

Mr Keelty—It has emerged as part of that internal investigation. We are now dealing with some other issues in respect of that member.

Senator ALLISON—And you cannot be precise about when the matter was resolved.

Mr Keelty—It has not been resolved yet.

Senator ALLISON—The first matter we are referring to—the tipping off, if you like.

Mr Keelty—I cannot be specific now. I may be able to, if we review the internal investigations file. Can I take that on notice and advise you as to whether we can inform you or not?

Senator ALLISON—Okay. So what is the current status of play? It is now November, what has transpired? What remains to be done to conclude the investigation?

Mr Keelty—The outstanding administrative issue that I mentioned about whether the member had adhered to guidelines in relation to meeting with informants.

Senator ALLISON—And what is the status of the officer now?

Mr Keelty—The officer is still suspended on pay.

Senator ALLISON—If it is simply an administrative matter, why is there a need for suspension?

Mr Keelty—Because we treat breaches of the guidelines in relation to meeting with informants as serious matters.

Senator ALLISON—But you just described it as administrative.

Mr Keelty—Administrative as opposed to criminal.

Senator ALLISON—How will these administrative matters be resolved? What remains to be investigated? What action is now going to be taken?

Mr Keelty—We have to follow a procedure of administrative law in dealing with the future employment of the person concerned.

Senator ALLISON—So it is still a legal matter that may result in a prosecution?

Mr Keelty—It is not a matter that will result in a criminal prosecution. It is a matter of determining whether the person is suitable to remain as an employee of the AFP.

Senator ALLISON—You just mentioned that this was a serious matter. What other factors are taken into account?

Mr Keelty—I do not want to go any further into the area of this particular individual. But, typically, if people breach guidelines, the issue of the employment suitability is one that I consider as commissioner.

Senator ALLISON—And the matter is serious enough for the consideration of this officer's employment? Could this prospectively—possibly—be a matter of a dismissal?

Mr Keelty—Prospectively it could, but I am not in a position to make that decision.

Senator Ellison—We cannot pre-empt that.

Senator ALLISON—Is it not the case that this matter is in the hands of solicitors? This officer is represented, is he, in this matter?

ACTING CHAIR—Senator, I think we have gone far enough down that line of questioning.

Senator ALLISON—Why is that, Chair?

ACTING CHAIR—I will get to that. I think the commissioner has been pretty fulsome about those aspects of the investigation which he can comment on. Clearly, you are getting to areas where, certainly, things can be drawn from his answers that may have an impact on the individual who is currently under some sort of the investigation, whether it be administrative or criminal. I think that perhaps you should find another line of questioning.

Senator ALLISON—Let me to put it another way, Mr Keelty. It has come to my attention that this officer has been now put aside for a very long period of time and that, way back in April—before the May estimates—it was understood that he was cleared. I ask you whether it is not the case that this officer may be used as a scapegoat for what might be described as

highly organised smuggling-ring activities, and perhaps it is a cover-up for some other part of the force.

Mr Keelty—I can guarantee that there is no cover-up. In fact, this is an internal investigation generated by us. There is no scapegoat. I have outlined where the various allegations have come from—allegations against other agencies who also formed part of the same joint investigation. But there are issues that are outstanding that we need to deal with in relation to this particular person.

Senator ALLISON—I refer to an article which was published in the *Sunday Telegraph* on 12 June this year. Are you familiar with that report?

Mr Keelty—No, I am not. In fairness to me as a witness before the committee, I ask that I be provided with a copy of the article.

ACTING CHAIR—Certainly. Senator, are you able to table a copy of that article?

Senator ALLISON—I have it on my screen, unfortunately; I do not have a hard copy. But I am happy to arrange one.

ACTING CHAIR—Will the committee undertake to arrange a print-out of that while we wait here? Perhaps you can move to another question. I will come back to you, Senator Allison. I understand you have a couple of quick ones, Senator Brown.

Senator BOB BROWN—I have a brief follow-up about the matters regarding Scott Parkin that I was asking Mr O’Sullivan about, Commissioner Keelty. He was reiterating that the alleged leak to the *Australian* newspaper about allegations against American peace campaigner Scott Parkin had been referred by the inspector-general to you. How is that investigation going?

Mr Keelty—It is ongoing.

Senator BOB BROWN—Have people in the department been questioned?

Mr Keelty—I am unsure of the progress to date. As I understand it, we have been working with the Inspector-General of Intelligence and Security in relation to his referral to us.

Senator BOB BROWN—What does that mean?

Mr Keelty—It is an ongoing investigation. In the tradition of this committee and operational matters, we do not comment on ongoing investigations.

Senator BOB BROWN—The inspector-general has not completed his referral to you?

Mr Keelty—The inspector-general referred to the matter to us on 23 September 2005.

ACTING CHAIR—From that point, I understand it became an ongoing investigation—

Mr Keelty—That is correct.

ACTING CHAIR—and as such it is not necessary for you to answer questions on the matter.

Senator BOB BROWN—The commissioner said that there was some continuing investigation involving the inspector-general. I just wondered what that matter was.

Mr Keelty—The inspector-general referred to the matter for investigation on 23 September, and the matter is ongoing. I do not intend to comment on the ongoing investigation.

Senator BOB BROWN—What is the expected period that this investigation might take?

Mr Keelty—I cannot give you an indication of that tonight.

Senator BOB BROWN—Can you describe how far the investigation is proceeding in terms of its scope and the type of investigation that is being undertaken?

Mr Keelty—No.

Senator BOB BROWN—Why not?

ACTING CHAIR—Because, as I said earlier—

Senator BOB BROWN—This is my question, Chair.

ACTING CHAIR—Thank you, Senator Brown. I am just again pointing to the convention of this committee. Quite clearly, to answer that question, the commissioner would have to touch upon operational matters and he should not choose to do that.

Senator BOB BROWN—You may shepherd the commissioner if you wish to.

ACTING CHAIR—That is certainly not my intention.

Senator Ellison—It is long established and accepted. In fact, we have an opinion from the Clerk to support this. The commissioner is entitled not to answer a question where there is an ongoing investigation, and it is not appropriate that he be pressed further on that.

Senator BOB BROWN—He is entitled to answer that, and I am entitled to ask him questions about that.

Senator Ellison—You can ask, and you will get the same answer. There is nothing untoward or unusual in the line that the commissioner is taking; it is entirely appropriate. In fact, if he were to engage in discussions about ongoing operations, there would be a hue and cry from people saying that it is totally inappropriate.

Senator BOB BROWN—If he would engage in giving the committee an answer about the nature of the discussions, there would be no hue and cry; it would be simply a matter of information to the committee.

Senator Ellison—It is an ongoing operation; it cannot be discussed.

Senator BOB BROWN—I will go back to Mr Keelty. Was the AFP involved in investigations into Mr Parkin himself before he was arrested?

Mr Keelty—No.

Senator BOB BROWN—Was the AFP involved in his arrest or deportation in any way, and were consultations held about that?

Mr Keelty—The AFP was involved in attending with the DIMIA officers at the time the DIMIA officers detained Mr Parkin.

Senator BOB BROWN—How many AFP officers were there?

Mr Keelty—Four.

Senator BOB BROWN—What role did they take in the procedure?

Mr Keelty—They accompanied the DIMIA officers while the DIMIA officers undertook their activities in relation to Mr Parkin. Some of them then accompanied Mr Parkin to the Carlton police station, where he was processed.

Senator BOB BROWN—And that was it?

Mr Keelty—That is it.

Senator BOB BROWN—I presume the officers who accompanied Mr Parkin to Los Angeles came from another department.

Mr Keelty—I am not aware that we actually accompanied him to Los Angeles. I would imagine that DIMIA accompanied him to Los Angeles.

Senator BOB BROWN—Thank you, Commissioner. I will ask them.

Senator CROSSIN—Mr Keelty, I wanted to ask you questions about the role of the AFP in overseas aid activities. Does the AFP conduct its own overseas aid activities?

Mr Keelty—We are involved in capacity building in the Solomon Islands and East Timor and in some of the capacity building under the Law Enforcement Cooperation Program. Is there anything more specific you want to ask?

Senator CROSSIN—Yes. I wanted to know if you are involved in the delivery of some of the Australian government's overseas aid program, particularly in relation to violence against women.

Mr Keelty—I am not aware directly of an aid program where we are focused on violence against women; but, in the Law Enforcement Cooperation Program and the capacity building, we do work with law enforcement agencies in some countries to assist the law enforcement agency with training in dealing with women who come forward as complainants in assault matters of a sexual nature and also in trafficking in women and children. It is spread across a variety of programs.

Senator CROSSIN—Would you be able to tell me what countries and what programs the AFP are involved in—with particular reference to what activities might be related to the elimination of violence against women?

Mr Keelty—Certainly. If I could take that on notice, there is a variety of programs across a variety of countries.

Senator Ellison—And children as well.

Senator CROSSIN—I particularly wanted to ask questions about violence against women. My understanding is that in some of the areas where the AFP assists the Australian government with its overseas aid program, these figures are actually on the increase. So my questions really go towards: where are you assisting; what is the nature of that assistance; and, given that violence against women is on the increase, is there any consideration to actually scaling up Australia's response in tackling this issue?

Mr Keelty—Certainly. Now that I understand the question, we would advise the government of requirements where we need to put additional resources in, but we also have significant flexibility under the Law Enforcement Cooperation Program to ensure that we are delivering the appropriate courses. I will give you the details of the countries involved, the training courses, the development programs that we deliver, and the secondments that we undertake in some cases, not only in the Asian countries but also in the South Pacific island countries.

Senator CROSSIN—How does that happen? Do you get a request to provide assistance in these overseas programs, or do you actually sit down with a discrete department in the AFP and look at, say, your coming budget and allocate where you are going to go? Is the funding allocated and is your assistance reactive or proactive? If it is proactive, what consideration do you give against targeting programs that might eliminate violence against women?

Mr Keelty—I need to be honest with you, Senator, it is not specifically—

Senator CROSSIN—Not yet; one day maybe, but not yet.

Mr Keelty—targeted at violence against women. That is not the name of the programs under which we operate albeit that the by-product does address that issue. The way it works is that we will get requests in some instances from countries. In other instances, it will be proactive—either we will develop our own understanding through our intelligence sources of a problem in a particular area or through prosecutions that are launched either here or overseas. Other government departments will also advise us, such as AusAID, of problems that they see in countries and that adds to the intelligence holdings that we have in order to develop a proactive approach to the problems.

Senator CROSSIN—If you were assisting with capacity building of the East Timorese police force, for example, would there be units in that program that might be directed against or about how to handle violence against women be it domestic violence, political or whatever?

Mr Keelty—The answer is yes. For example, in the case of Solomon Islands we have seen a demonstrable change with women being more prepared to come forward to lodge complaints against males about violence. That has been one of the cultural shifts that we have seen in the Solomons, whereas before they might have been reticent to come forward with their complaints because they were unsure how seriously a male dominated police force would deal with the issue. So there are examples of where it has been operating.

Senator CROSSIN—It may well have been quite successful—is that right?

Mr Keelty—That is right. Bearing in mind that culturally it can be a very sensitive issue with the countries involved, so it is not always the case that we will be able to deliver the programs. There has to be some sort of invitation, if you like, or acceptance that the program is warranted and wanted by the jurisdiction involved.

Senator ALLISON—Firstly, is this article accurate in that your police announced that the highly organised smuggling ring importing cocaine through Sydney Airport which used the help of bag handlers has been smashed? Is that correct?

Mr Keelty—Yes, that is correct.

Senator ALLISON—But that the leader of the syndicate, a Mr Michael Hurley, has fled the country or escaped.

Mr Keelty—That is correct.

Senator ALLISON—And not ever been to jail for a drug offence.

Mr Keelty—That is correct.

Senator ALLISON—That there is little doubt that he has skipped the country after a tip-off from someone in law enforcement.

Mr Keelty—I should correct that: whether he has skipped the country or not is speculation—he and his alleged co-offender. Bear in mind that, if arrested, the person who you have named will need to appear before an Australian court, and I do not want to say anything that could jeopardise that prosecution.

Senator ALLISON—What about the allegation that this has been done with the assistance of a handful of corrupt police.

Mr Keelty—I can only talk about the AFP's involvement. Certainly, I can update you on the one matter that we have investigated. We established through the internal investigation that we were satisfied that the individual that we were investigating was not the source of the leak. It should be remembered that the criminals involved here are paranoid about police attention and will often react to rumours that they are under investigation from time to time. My recollection is that they did discover a listening device that had been installed by another law enforcement agency. So it may well be that there was no tip-off and no leak and that, in fact, they reacted to the discovery of a listening device and thought they were under investigation and decided to escape the jurisdiction.

Senator ALLISON—You said that the police officer concerned has been cleared, apart from an administrative issue that you are following up. Does that indicate that you do not accept that there is any other corruption in the AFP—that there are not other officers who may be involved in this drug smuggling?

Mr Keelty—Certainly, in relation to this syndicate, we have had no indication from the New South Wales Crime Commission, the Australian Crime Commission, the New South Wales Police or our own holdings that there is any hint of an AFP officer being involved in the matter.

Senator ALLISON—What investigation took place after the publication of this article or prior to that to follow it up? This article goes on to say that the *Telegraph* had been told by the New South Wales Crime Commission that the Federal Police were blaming a Federal Police officer, a 30-year veteran—who I assume to be the person we were referring to earlier—believing the leak came from the commission, the secretive body set up to fight organised crime. They named one commission employee who knew Hurley well and feared that the AFP officer could become an unfortunate scapegoat. That is the crux of my question to you: is this the case? If not, what evidence can you provide to the committee that this is not the case?

Mr Keelty—The person will not be a scapegoat because we have established, as I have mentioned, that the person was not in our view the source of a leak, if indeed there was a leak. We are pursuing other matters in relation to our person. You would need to ask the New South

Wales Crime Commission and the Australian Crime Commission what they have done in respect of allegations against their staff.

Senator ALLISON—So you think it may be the New South Wales Police who are being referred to in this article?

Mr Keelty—You would have to ask the author of the article, Senator. The article is suggesting that there was a tip-off or a leak. I am saying that there might have been a number of reasons why these people left, not the least being that they discovered a listening device had been installed by another agency in one of their premises.

Senator ALLISON—Going back to my original question, you did not indicate when a formal conclusion of this other matter would be reached. Do you have a likely date or time?

Mr Keelty—No, I do not, and that is really because there is an administrative law process that we are working through. I cannot predict the outcome of that.

Senator ALLISON—If there had not been this original allegation, would this officer have been suspended for what is now five or six months? If not, how do you make good that punishment, if you like, that suspension, and the damage to that officer's reputation? As this article points out, this is an officer who is regarded as someone with integrity. How do you reinstate that officer's integrity?

Mr Keelty—Certainly I or—to my knowledge—my executive have not named the officer involved. If officers identify themselves as being the people involved, then that is a matter for them. If I was not satisfied that suspension was not warranted, I would have moved to take the person from suspension.

Senator ALLISON—So you think that suspension was warranted, even though it turned out to be a relatively minor administrative problem—they are my words; they are not yours.

Mr Keelty—If suspension were not warranted, the person would not still be under suspension.

Senator ALLISON—So the suspension always related to this administrative problem, not to the original allegation that you responded to in May?

Mr Keelty—That is correct.

Senator ALLISON—The officer was suspended immediately after the last Senate estimates session. Is that right?

Mr Keelty—I would not draw a correlation between Senate estimates and taking action to suspend an officer. There is absolutely no correlation. I work totally independently of the estimates committee in terms of my powers as commissioner under the act.

Senator ALLISON—I put it to you, Mr Keelty, that the first matter was resolved by the time estimates took place.

Mr Keelty—No, Senator; that is not correct. The date I have for the first matter being resolved as part of the internal investigation is 19 October, so it is only a matter of two weeks ago.

Senator ALLISON—What happened on 19 October?

Mr Keelty—That part of the investigation was completed by the internal investigations area, and the ongoing matter continues.

Senator ALLISON—How was that completed?

Mr Keelty—We are now sort of going into the area that is still part of the focus of the professional standards investigation, so it is inappropriate, in fairness to—

Senator ALLISON—I do not want the details. Did you advise the officer or did you not? Was there some formal notification?

ACTING CHAIR—Commissioner, you can take that on notice.

Mr Keelty—If I take it out of the context of the current matter, what normally happens is—and there is no reason to believe that this has not happened on this occasion—the person is formally advised of the outcome of the investigation and formally advised of the ongoing matters.

Senator ALLISON—And that has happened?

Mr Keelty—There is an issue of procedural fairness and administrative law that we need to follow and we do follow.

Senator ALLISON—So the officer on 19 October would have been advised that the investigation into the first matter was complete?

Mr Keelty—I would have to take that on notice to find out the precise detail of what has been advised to the individual.

Senator ALLISON—When was the last time the officer was interviewed?

Mr Keelty—I would have to take that on notice. I have not brought the professional standards file with me.

ACTING CHAIR—Thank you, Commissioner.

Senator ALLISON—Could you just check this matter. It is my understanding that outstanding matters other than this administrative one you are talking about were resolved in April. If you could just check the record on that, it would be useful.

Mr Keelty—I can tell you now that that is not right. The determination that the person was not responsible for the leak was not made until 19 October this year.

Senator ALLISON—But that was not on the basis of an interview with the officer.

Mr Keelty—That was on the basis of the internal investigation that has taken that period of time—from April until 19 October—to conclude.

Senator LUDWIG—Good evening, Mr Keelty and AFP. I have questions that relate to a couple of areas, but firstly to the policing at airports. Perhaps you could outline how that is now being arranged post—if we can call it post—the Wheeler report, particularly what role the AFP will play in the coordinating and overseeing of security at airports.

Mr Keelty—Following the government's consideration of the Wheeler review into airport security and policing, and other Commonwealth reviews, we are introducing a unified policing model at each counter-terrorism first response airport. That will include: the

appointment of an airport police commander, who will provide centralised command and control; the establishment of a dedicated joint airport intelligence group at each airport; maintaining a counter-terrorism first response capability at each airport; introducing a permanent community policing presence at each of the CTFR airports; and the establishment of a joint airport investigation team at five airports, being Brisbane, Sydney, Melbourne, Adelaide and Perth, providing a capability to investigate serious and organised crime.

Senator LUDWIG—I am curious about how that is going to work in practice. Is the commander going to be drawn from the AFP?

Mr Keelty—The commander will be a sworn AFP officer. There was a process to advertise what were called airport controllers prior to the Wheeler review. When Sir John Wheeler commenced his review, we agreed with Sir John to suspend the appointment of those airport controllers. One of the recommendations out of the Wheeler review is to create the position of airport commanders, to give them more of a policing role. We have established an arrangement whereby airport commanders will be appointed by a selection committee comprising a member of the AFP, a member of the Department of Transport and Regional Services and a member of the jurisdictional police force in which the commander will work. In other words, in New South Wales, for example, there will be a New South Wales police officer on the selection panel. An additional step that I have taken is that I have written to each of the commissioners of police and offered them the opportunity to nominate somebody from within their police force to be an airport commander. What will happen is, once the commanders are appointed through that selection panel process, they will be sworn into the AFP and those commanders will take control over the various agencies that are operating at each of the CTFR airports.

Senator LUDWIG—So they could be drawn from the local—

Mr Keelty—That is correct. They could be drawn from the jurisdictional police. For example, in New South Wales it may well be a New South Wales police officer who is appointed to the position, but they will be sworn in as an AFP officer for the purposes of conducting their duties as the airport police commander.

Senator LUDWIG—Or they could be an AFP officer who is not drawn from the local policing jurisdiction.

Mr Keelty—That is correct.

Senator LUDWIG—What happens when they do not have an operational background in how some of the units might be utilised on the ground? Is there a program for how you are going to train them? For example, they may not be aware of all the standard operating procedures of the local jurisdiction, so, if they need to draw from outside the jurisdiction for assistance to deal with an emerging circumstance, how do they then coordinate bringing those resources to the site?

Mr Keelty—It is envisaged that an induction course or a training program will be introduced, because of not only the issues that you raised, Senator, but also the intricacies of the differences between airports around the various jurisdictions, the various issues concerning the other agencies that are present at each of the airports and also the various zones that operate within the airports. So it is envisaged that induction courses will be put

together, remembering too that some of the state and territory police will also need to be exposed to the induction courses, not the least because they now will be dealing with Commonwealth law as opposed to state law.

Senator LUDWIG—And they will have your computer systems to tackle.

Mr Keelty—They will have the excellent standard of the AFP's PROMIS system to deal with. That, by the way, worked extraordinarily well during the major exercise Mercury 05.

Senator LUDWIG—I am sure it did. Dealing with another area, I sought a review of this particular area and the minister agreed—if not, he was already doing it in 2006—which is the mutual assistance in criminal matters legislation. I had an opportunity of receiving fine advice from the department about the operation of that particular area. I also sought an amendment to the law and justice serious drug offences bill to accord with the Legal and Constitutional Legislation Committee recommendation that police to police assistance also be examined during the course of that by this government, which was not agreed to by the government. It was voted down in the Senate and therefore did not get up as the numbers seem to have changed since 1 July; however, it is an area that still concerns me as to the distinction and how the AFP operate in this area.

I have already asked the AFP a number of questions—I think you can recall from the last time at estimates, and the time before, I suspect—about where you have a procedures manual which deals with police to police assistance in death penalty charge situations; however, the area of police to police assistance more broadly, prior to a charge, as I understand it, is an internal operational matter that you deal with. I think that is the evidence that you have given to date in relation to that. Do you see that as a consequence of mutual assistance legislation being reviewed—are you aware of it being reviewed?

Mr Keelty—Yes, I am.

Senator LUDWIG—Did you make any submissions in relation to the areas that should be reviewed to the AGD?

Mr Keelty—I am aware that we have had some dialogue with the department as part of their review, but most of that related to the police to police arrangement to indicate that we did not seek to have an extension of that.

Senator LUDWIG—So you did not want that area reviewed as part of mutual assistance?

Mr Keelty—That is a decision for government, but you asked me whether we provided any advice and the answer was yes.

Senator LUDWIG—Are you able to say what that advice was?

Senator Ellison—Normally, advice to government is not—

Senator LUDWIG—That is why I asked is he able to say.

Senator ELLISON—given at the estimates committees and Senate committees; it is advice to government.

Senator LUDWIG—Perhaps I can deal with this in another way: I referred you to the reported statement from the Attorney-General, Mr Philip Ruddock, on 28 September that Australia would no longer cooperate in cases 'unless there is an assurance that a death penalty

will not be sought'. I have a copy of that if you want it. What is the position of the Australian Federal Police in terms of policy in respect of these matters?

Senator Ellison—I have just been given the article.

ACTING CHAIR—Perhaps he could be given a short time to peruse the article.

Mr Keelty—It is a matter for the Attorney-General as to whether he has been correctly quoted in the article, but the police to police arrangements that we have are still in operation, and I have had no indication from the government that that ought to change. To put some context around that, from November last year to October this year, there were something of the order of 14,975 taskings going out from the AFP on a police to police basis and something of the order of 7,095 taskings coming into the AFP from police to police arrangements. With regard to Interpol operational exchanges, between January and October this year, we have had 11,167 incoming requests from Interpol and we have had 7,054 police to police inquiries go out to Interpol of which some 2,650 have been on behalf of other Australian agencies. Obviously, there is a huge volume of material that is going backwards and forwards on the police to police basis. On average, about 75 per cent of the traffic between the AFP and overseas law enforcement agencies on a police to police basis does involve the exchange of operational information and intelligence.

Senator LUDWIG—So you are satisfied with the current mutual assistance regime, if I can put it more broadly?

Mr Keelty—Very satisfied.

Senator LUDWIG—You do not see any need for change; examination or review of the area?

Mr Keelty—Recognising, of course, that the matters that come under the mutual assistance legislation are a different set of parameters than the information that is exchanged on a police to police basis.

Senator LUDWIG—What procedures do you operate under in cases of the non death penalty charge mutual assistance regime? What happens? How do you share intelligence and what procedure governs that?

Mr Keelty—On the police to police information sharing basis, outside the framework of the mutual assistance legislation—

Senator LUDWIG—I guess it is under the MA regime, because, as I understand it—and I am sure Mr Cornall will correct me—it is the act which also allows you to share information outside of the use of coercive powers because it provides a regime whereby if it is a requirement to use coercive powers then the act requires you to take certain steps. The act also says that the mutual assistance in criminal matters is not a code. In other words, it is not the only way you can share information. As a consequence, it indicates that, for argument's sake, the AFP, Customs and the like can share information outside of that; it is not the sole process. I refer to it as the regime. In other words, it is the way the government has determined in toto how it will share information with overseas jurisdictions.

Mr Keelty—In trying to explain the difference between the two regimes, one is an exchange of intelligence or information, and the reason for giving you the volume of that is to

indicate to you the sheer size of the exchange of information or intelligence that goes on on a daily basis between the AFP and overseas law enforcement agencies.

Your point about coercive powers after people are charged then brings in the regime of the mutual assistance treaty in criminal matters in the legislation, in which case it is a much more formal exchange of information and a very different set of circumstances.

Senator LUDWIG—Yes, that is right. What do you do before that—before a charge which could be a death penalty situation? Take us right out of that and tell us what procedures you operate under for mutual assistance which is prior to charge and not a death penalty situation. As I understand it, until a charge is laid it may not be a death penalty situation, because you do not know what charge will be laid. I am drawing back from that and asking what procedures you would operate under generally.

Mr Keelty—There are guidelines governing the exchange of information. I think for clarity it is not helpful to describe that as mutual assistance, because the mutual assistance is the formal framework. The police to police exchange of information and intelligence works within a framework; and where the death penalty applies certain guidelines apply—and they were tabled before the committee at the last estimates hearing. Outside of that, it continues to be police to police exchange of information in two ways. One is on a bilateral or multilateral basis, depending on how many agencies are involved; the other way is through the Interpol arrangements with the 184 Interpol member countries.

Senator LUDWIG—What would be a bilateral process of police to police exchange of intelligence? How would that operate and what procedures do you follow?

Mr Keelty—Under the AFP Act, we are authorised to provide information to partner agencies, in accordance with sections 8 and 60A of the act. There is no requirement for us to await a request from the other agencies. If we have information we can actually provide the information. So we fully engage those countries with the exchange of information. That ought not come as too much of a surprise with globalisation and the transnational nature of crime. If criminals do not recognise borders and they conduct their operations without any regard for borders, then it is important that the policing agencies work together to ensure that there are no intelligence gaps or information gaps in trying to deal with a crime.

We make no secret of the fact that we meet with groups such as the ASEAN police agencies. We are attempting to become a full member of Europol, the European policing agency. These work outside the Interpol framework, in order to maximise the exchange of information, maximise cooperation between policing agencies, and minimise the opportunities for criminals to transgress borders, which has been a phenomenon since globalisation.

Senator LUDWIG—I suspect it predates even that. What I was looking for was: what processes or procedures do you follow when you use bilateral police to police exchanges of information? What governs that?

Mr Keelty—There is a policy where, on receipt of a formal police to police request for information or assistance, a liaison officer either in the country or with responsibility for the relevant area of operation of that country makes contact with our overseas liaison communication. The task is then forwarded and actioned by the AFP PROMIS system—the

computer system. Any information is compiled in a manner that is mindful of legislative restrictions such as the Privacy Act, the Crimes Act, the Customs Act and the AFP Act.

Once the reply is compiled, the information is forwarded by the overseas liaison communication group in headquarters here, through the PROMIS system. The liaison officer in country, on receipt of the information, provides the requesting agency with a response in writing. Depending on the type of information requested and the urgency surrounding the matter, the information may be provided verbally. The verbal information is followed up by written advice.

Where the AFP is the initiator of the information to be conveyed to a foreign law enforcement agency, the information deemed suitable for transfer by the Australian based case officer is conveyed to the relevant post within the AFP's international liaison network. That information is communicated through the overseas liaison communication unit here at headquarters. The information is compiled in a manner that is mindful of the restrictions of the Privacy Act, the Customs Act, the Crimes Act and the AFP Act. The liaison officer in-country, on receipt of the information, provides the foreign law enforcement agency with a response in writing. However, depending on the type of information and the urgency surrounding the information, it may be provided verbally and then followed up by written information. The liaison officer in-country maintains contact with the foreign law enforcement agency to ensure there is timely advice to the Australian based officer who initiated the information.

Senator LUDWIG—Where is that policy kept?

Mr Keelty—Within the overseas liaison network.

Senator LUDWIG—Is there a manual? Does it have a name?

Mr Keelty—As I understand it, it is called the AFP Guidelines on Police Liaison, but I will take that on notice. These guidelines are on what we call 'the hub', which is the AFP's internal information network, where all officers can access the information online. So an officer who finds himself involved in an inquiry and investigation that requires overseas inquiries to be made or contains information to be forwarded overseas can access the guidelines through the AFP's information network.

Senator LUDWIG—Is that policy available to the committee?

Mr Keelty—I will take that on notice. The only concern we have is if it contains any methodology that we might not want publicly disclosed.

Senator LUDWIG—Yes, I understand. I would be happy if you took it on notice. If it could be made available, that would be helpful. Does that also cover multilateral and bilateral or is there a different policy?

Mr Keelty—No, it would be the same policy regardless of the number of foreign law enforcement agencies involved. It is also supplemented in some cases by a memorandum of understanding that is established between the various countries and governed by things such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and also the mutual assistance in criminal matters legislation that you mentioned earlier.

Senator LUDWIG—Are the bilateral agreements confidential or are they available? Are they treaties?

Mr Keelty—If they are memoranda of understanding, they are confidential because we are not the sole possessor of the agreement. There would be another agency involved.

Senator Ellison—But if it is a treaty it is available. You were quoting from one earlier today.

Senator LUDWIG—Yes. That is what I meant. If there was a treaty, we could identify it. If it was a bilateral treaty which underpins police-to-police exchange of information, we could identify it. Alternatively, if it was a bilateral agreement, would that be available to the committee or would it be confidential between the parties—that is, between the respective police forces or AGD, as the case may be? I am happy for the commissioner to take that on notice and get back to us.

There have been a number of newspaper reports about the AFP's actions in respect of the Bali nine situation. I am sensitive to the fact that it is currently a matter before the Indonesian authorities. I would like to get an understanding of the AFP's involvement in that and the processes in which they were involved that led to the cooperation that was allegedly provided by the AFP. Was it a bilateral arrangement or some other agreement? What policy underpinned the exchange of information, if there was an exchange of information?

Mr Keelty—There certainly was an exchange of information. The AFP have a memorandum of understanding with the Indonesian National Police. On 8 April 2005, we provided information to the Indonesian National Police. As a result of that, the Indonesian National Police commenced an operation on 13 April 2005. On 17 April 2005, a number of arrests were made in Indonesia. There have also been a number of arrests and charges here in Australia related to the same operation. So I am somewhat restricted in respect of the Australian matters that are currently before the courts. If I could go back to the volume of information that is shared by the AFP with overseas law enforcement agencies, in this case it was very similar to many other cases where information was exchanged. On this occasion, it turned out that the information was quite accurate and the Indonesian National Police took the action that they deemed necessary. We simply cannot dictate to a foreign law enforcement agency as to how they undertake their operations. We simply cannot restrict the areas in which we cooperate. We either cooperate or we do not cooperate.

The matter of the action taken by the Indonesian National Police is a matter entirely for them and, in this case, there have been different circumstances. I point out to you that whilst this has in every respect drawn attention to the plight of these particular people, there are many other instances where the AFP have exchanged information with overseas law enforcement agencies that has resulted in the arrest of people. Most of the countries that we deal with in terms of the cooperation, particularly on narcotics matters, do have the death penalty. Indeed, the United States, in some states, has the death penalty. I do not think anybody would be recommending that we stop our cooperation on police-to-police exchange of information intelligence with the FBI. It just so happens that this matter has attracted a different outcome and we are trying to work through that as best we can.

I cannot apologise for what I believe to be the thousands of lives that have been saved through the AFP interdiction offshore. It is a policy that is well known and well publicised. Indeed, nearly 30 per cent of the AFP's media releases this year alone have been in respect of interdiction offshore to stop drugs from coming to our country. Not only have the lives of many young Australians aged between 16 and 35 been saved each and every year for the last three years at least; there is also the downstream crime that just simply does not happen, particularly armed robberies. Armed robberies were occurring in Australia because people were trying to feed a heroin habit—things like break and enters and the downstream effect. These are not the AFP's observations; these are independent observations by the United Nations and independent observations by the Bureau of Criminal Statistics in New South Wales. To a degree, the offshore interdiction policy adopted by the AFP has been successful and has been invested in by the Australian government, which has seen the expansion of the AFP's overseas liaison network.

Senator LUDWIG—What do you have to say about the media coverage of the issue?

Mr Keelty—I would like to say a lot, but I do not think it would be helpful to the nine accused or their families, for whom I have a high degree of sympathy.

Senator HEFFERNAN—I just have one question for the AFP, which would be on notice. I do not expect them to be able to answer it tonight. I have a communication under the letterhead of the royal commission into the New South Wales Police. It is under the signature of the senior counsel assisting and is addressed to the service solicitor of New South Wales Police. It sets out some key covert information on a list of various names but it also includes some information on the activities in Bangkok and Phuket of various people. My question is simply: did the New South Wales Police communicate with the AFP at the time of the royal commission with information that would be relevant to the AFP and your overseas activities on child sex tourism?

Mr Keelty—I think it would be much safer for me to take that on notice. But I certainly want to indicate that we have had full cooperation from the New South Wales Police and that, without having access to the document, my memory is that the chair of the royal commission did refer copies of that report to the AFP, if I am thinking of the same report.

Senator HEFFERNAN—If you could, please take that on notice.

Mr Keelty—Chair, through you, could I correct an answer that I gave to Senator Heffernan earlier?

ACTING CHAIR—Certainly, Commissioner.

Mr Keelty—I mentioned that Mr Scoble was registered on the Australian National Child Offender Register. That is not the case. We are working with the Thai authorities to obtain the requisite certified material to consider whether we can register Mr Scoble on that register.

Senator HEFFERNAN—Thanks very much.

Senator ALLISON—I just have some quick questions. The Auditor-General's report—I am not sure when it came out—made comment about agencies generally and their responses in terms of the obligation to reveal details about contracts entered into. The Auditor-General, as I understand it, was critical of the AFP, saying that many contracts were confidential when

in its view they were not. Do have a brief you can provide the committee with on that position?

Mr Van Dam—As you know, the Australian National Audit Office regularly conduct audits of the posting of contract information. The last time that the AFP was subject to a specific audit was some years ago. There were some suggestions from the Audit Office in relation to our practices and some opportunities for improvement. My understanding is that we have taken all of those on board and have implemented changes.

Senator ALLISON—Will the AFP be providing details of those contracts that the Auditor-General identified as being not exempt from this requirement because the argument that they were confidential was not valid?

Mr Van Dam—If you bear with me, I will try and get to the specific recommendation. My recollection is that the ANAO indicated that there was some question about whether or not that was appropriate, but they did not have sufficient doubt to say that it was inappropriate. I think they raised the question about whether or not certain contracts were appropriately placed, but I do not think they came to a view specifically that those contracts were incorrectly not listed.

Senator ALLISON—So what does the AFP do now with regard to clarifying the situation or changing its practices?

Mr Van Dam—We evaluate every single contract against the published criteria. My understanding is that, if we have any doubt, we in fact confer with others, including the ANAO where necessary.

Senator ALLISON—So you are not proposing to change any practices with regard to these contracts and disclosure?

Mr Van Dam—My understanding is that our current processes are compliant with the expectations of the Senate and the order.

Senator ALLISON—You might check the Auditor-General's report. I understood it was more recent than you are suggesting, but I may be wrong. If there is a formal response that you have made to the Auditor-General, it might be useful for us to see that.

Mr Van Dam—Certainly.

Senator ALLISON—The other question is a more general one: what internal procedures and mechanisms have been discussed or put in place in anticipation of the antiterrorist bills, which of course will give the Federal Police far greater powers?

Mr Keelty—We are not pre-empting the outcome of the legislation at this point. Obviously we had input prior to the COAG meeting, and we are awaiting the draft bills to be presented to the parliament.

Senator ALLISON—This might a question for the minister then. Minister, do you anticipate establishing a police integrity commission, as has been recommended, I understand, in recent times? I apologise that I do not know the body that has made that recommendation, but could I just ask the question: do you anticipate having a police integrity commission, as is the case, I think, in some other countries?

Senator Ellison—We have had discussion on that today. There will be a bill for the Australian Commission for Law Enforcement Integrity, ACLEI. It is a bill that we propose to introduce into parliament in the first half of next year. There has already been funding put aside for such a body, and it will be dealing with not just the AFP but the Australian Crime Commission as well.

Senator ALLISON—And it will be a similar body to the police integrity commissions that we see in other countries?

Senator Ellison—New South Wales and, I think, Victoria have got one as well—most of the states have. We are setting up one for the Commonwealth.

Senator PARRY—Commissioner Keelty, I have a question that follows on from Senator Allison's questions in relation to internal investigations. I just want to make sure the hearing is left with the clear understanding that an internal investigation is not necessarily just one interview of an individual. You may care to comment that it can include the corroboration of matters from other witnesses and other interviews; interviewing of other witnesses; the availability of such witnesses; further surveillance or other ongoing operations; parallel investigations which may involve other jurisdictions; collaboration of material; rechecking evaluation of all those; not to mention the compilation of the report, and the clerical and administrative aspects of that, which can then stretch a time frame for an internal investigation. Do you wish to make a comment about that? I want to make sure the record is clear that it is not just one interview.

Mr Keelty—That is correct. It is also quite often subjected to lengthy delays whilst the individual receives legal advice, and the legal representatives representing the individual, quite appropriately, take the action that they deem appropriate at the time. Once you get into the period of procedural fairness and the application of the administrative law, these matters can be quite drawn out, through no fault of the individual and no fault of the organisation. It is just a matter of being absolutely correct when a final decision is ultimately made.

ACTING CHAIR—There being no further questions for the Australian Federal Police, we will now deal with the Australian Customs Service.

[9.45 pm]

Australian Customs Service

Senator LUDWIG—In terms of the integrated cargo system live cutover date of 12 October, release 5, how was that determined? In other words, who threw the switch on 12 October and how did you determine that it was an appropriate time for the system to go live on 12 October?

Mr Woodward—I assume in asking that question, which contains a very precise date, Senator, that you are aware of all the things that happened before then, including a number of roundtable meetings which the minister chaired. The roundtable minutes have been widely publicised and I am sure you would have looked at those. I am not sure that there has been the same publicity given to software developers meetings that took place. Quite a critical predecessor to that decision was a roundtable meeting at which the industry put a view that the original timetable, which was July, could not be met and pushed strongly to extend it.

There was very extensive discussion at the meeting and a number of factors were taken into account by everyone at the meeting. The relevant factors included that nobody at the meeting wanted to head down the track of what was shown to be a Christmas peak period.

Senator LUDWIG—But aren't we there now, in any event? Isn't this the run-up to Christmas now?

Mr Woodward—The process started on 10 October, 48 hours in advance. That process is well under way. A very significant number of messages were in fact going through the system. So it was known that there was going to be a period of intense activity, as there is now.

Senator LUDWIG—So you knew this was going to happen?

Mr Woodward—What was going to happen, Senator?

Senator LUDWIG—As far as I can see from reports, there is cargo on the wharves, there is cargo in warehouses. I am not sure of the email traffic and complaints that you get, but I get enough to know that there is not, as the minister promised in July, a seamless transition introduction of the software.

Mr Woodward—I am perfectly happy to divert from 12 October to the particular point that you are making. We have been putting out material almost daily—and I know from what you have said publicly that you are an avid reader of the material we put out. The latest figure we had was that around 9,000 containers were available to be picked up at the three major ports—Sydney, Melbourne, Brisbane—and that despite an unusually significant number of containers picked up over the weekend in comparison with what normally occurs, there are many containers that are available to be collected. That is not withstanding the fact that over the last week or so the number of containers that have been picked up—and we are focusing on those three ports because things seem to be going much better in the smaller ports—has gone up to about 4,000 to 4,600 a day from P&O and Patricks in the three major ports.

A concern that we have had—and we have been working very closely with industry, and they have put out numerous circulars and advices—was that if more containers had been collected in the two weekends, the problem that you are alluding to would certainly not be so great. I will quote an advice that I received today from the Patricks. In that advice there was an indication of containers picked up on Saturday, Sunday and Monday. It then went on to talk about that at Brisbane there were no containers picked up on the midnight shift Friday evening, midnight shifts Saturday and evening and midnight shift on Sunday; at Sydney there were no containers picked up on the evening and midnight shifts Saturday and midnight shift Sunday; at Melbourne there were no containers picked up on evening and midnight shifts Saturday and day and evening shifts Sunday; and at Fremantle there were no containers picked on the five shifts from commencement of evening shift Saturday to the end of midnight shift Sunday. The figures for Sunday, again, are very poor when you consider the media exposure given to the importer and consignee claims alleging hardship and inability to access goods, which are held up on the wharf. This is not us; this is Patricks saying there have been numerous containers that could have been collected and in fact were not.

Senator LUDWIG—But if we look at that, Mr Woodward, they are cleared from the text or Excel spreadsheet. They were not cleared through the ICS.

Mr Woodward—I am aware of those comments. We have done some figuring—

Senator LUDWIG—It is on your web site, I think.

Mr Woodward—I know and what I am about to say is that one could interpret comments that have been made that all or most of the containers are being cleared in that way. The latest figure that I had, which was earlier today, suggested that the figure being cleared in that form is about 10 per cent; 90 per cent were being cleared through normal processes.

Senator LUDWIG—What do you call normal processes?

Mr Woodward—The ICS.

Senator LUDWIG—If we look at the ICS, on 12 October was it fully functional, operational, load tested and ready to roll?

Mr Woodward—I am aware of the word ‘load testing’. I think we have a number of testing mechanisms—functionality and simulation testing. The end-to-end testing is not something that we use. Both of them provide measures of load. There was functionality testing. Simulation testing was undertaken but there could have been more. If the software had been delivered a bit earlier, more testing would have been undertaken. That would have been desirable, and we would not walk away from that.

Senator LUDWIG—So when were you aware that there was not full functionality of the software and the ICS?

Mr Woodward—There is functionality—

Senator LUDWIG—What, full functionality?

Mr Woodward—There is, and I will pass over to the CIO in just a couple of minutes, but a point that I want to make is that one could get the impression from some newspaper stories that the ICS is not working. The ICS has been working since October last year, and 4.4 million export transactions have been processed. The ICS was turned on; the cut-over date was 12 October, but material started to come in from about 10 October, and 1.1 million messages have gone through the ICS in that period. So I just want to get across that it is not as if the ICS is not working. The ICS is working. Is it working as well as we would like? No, it is not. What we are doing is putting a tremendous amount of effort into working with an increasingly cooperative industry: the CBFCA, the freight forwarders, and Paul Zalai, the ICS contact person. That is what we are putting the effort into, to get over the bugs that we have got now. I could not speak more highly of some of the people who have made the offer and, in fact, are working with us.

Senator LUDWIG—Are you now asserting that you had a fully functioning ICS on 12 October?

Mr Woodward—Your question dealt with functionality. One of the comments that I made in response was, ‘Is it working as well as we would like?’ The answer is no. There were a couple of significant difficulties which we found early on in the process. One was that, despite our best efforts—and you know how much effort we have in fact put into workshops and training, and we have provided you with that sort of information: I think there are something like 10,000 individual members of industry who have been trained—there were clearly

difficulties, in part caused by a lack of understanding on the part of some members in the broking or forwarding industry. There may well have been deficiencies in our ability to actually get the requirements across to them. Perhaps there was an expectation on our part that they would understand and readily apply the material.

One of the difficulties that flowed from it was that a very significant number of messages were coming in that had inaccuracies in them. The system has been devised in such a way that it does not forgive inaccuracies. In other words, there was more flexibility in relation to old systems. We now demand accurate information, which is a point that you have made to us on a number of occasions, including at the last Senate estimates hearings. Very early on, we discovered that there were problems with the ability of our machine to actually cope with that number of messages. That was compounded by, perhaps, a degree of exuberance on our part in relation to the design of some of our profiles—that we had made them too many and too sophisticated—and we had to deal with that. The end result was that too many people resorted to the Customs interactive processes, which in turn became clogged and far too slow. It was, I suppose, the compounding of those three elements that led to the complaints, many of them justified, which came in.

Senator LUDWIG—So what was not working at 12 October, in terms of the ICS? Did you have any reports, prior to the 12th, as to what parts of the system had lost functionality or were not working correctly?

Mr Woodward—All of the testing that we undertook before then convinced us that there was no reason to go beyond 12 October. There were no indications from any of the testing that we had undertaken that would suggest that it was not possible to proceed. That is from a technical point of view. From a practical point of view, to defer it beyond 12 October—and this had been covered in the minister's round table meetings—would have run into the Christmas period, and at no stage in the meetings that preceded 12 October can I recall anyone tabling the view that it ought to be put on next year. Since then, of course, a number of members of industry have been saying that we ought to have it in February or March. I cannot remember in any of the significant meetings that I have attended anyone suggesting that it should be next year.

Senator LUDWIG—I think that is in one of the minister's press releases or yours where the customs brokers and freight forwarders had indicated that they were not ready and wanted more time. I am stunned if you think that nobody raised it before you—absolutely stunned. Are you saying that no-one put up their hands and said, 'Excuse me, we don't think we're ready'?

Mr Woodward—No. What I said was that no-one, to my recollection, said that it should be put off until February-March next year, which is what some members in the industry are now saying.

Senator LUDWIG—So what did you think they did when they expressed that they were not ready? When did you think they wanted it to start?

Mr Woodward—In my view, whatever was being said could be measured in days or weeks but not in months, because there was unanimous agreement around the table that the

Christmas period, however you define it—and I think most defined it as November-December—was not on.

Senator LUDWIG—Let us come back to the functionality. Was the integrated cargo system fully functional and operational without a requirement to have any manual systems, without workarounds or without anything? Was it fully functional and operational as at 12 October when the switch was thrown? That is the question I keep asking and I have not heard an answer yet. It is like when you buy software off a shelf or go and interact with an e-commerce business.

Mr Harrison—The answer is yes. With regard to the functionality of the system itself in relation to whether it performed the functions that it was being asked to perform, we stated consistently through the months prior to 12 October that there would be no critical incidents outstanding on 12 October and we achieved that. We had what we would term trivial incidents outstanding, as you would with any software package you buy off the shelf, particularly some of the more common ones, as we did with exports when it went live last year. Those trivial incidents were numerous, but they are the sort of bugs whereby you expect to get an answer by pressing this button but you have to press this button and that one to get that answer. The reality is that, in relation to the functionality that was critical to the performance of ICS, it was all available on 12 October.

Senator LUDWIG—What about the EFT, or electronic funds transfer, function? Was that there on 12 October?

Mr Harrison—The function of providing a print to the person who puts it in is not there. The actual calculation and the presentation of that information in ICS is there.

Senator LUDWIG—No. Could the customs broker or freight forwarder use the electronic funds transfer system effectively?

Mr Harrison—Yes.

Senator LUDWIG—There was no problem with that?

Mr Harrison—The current outstanding issue is that we are not providing that as a response that they can print. They can see it but the part that they can print will be there this week as an output of the system here.

Senator LUDWIG—This is a multimillion dollar business that cannot print out an EFT and you think that is trivial. What you are saying is that they cannot verify the transfer by printing out a copy.

Mr Harrison—What I am saying is that they can pay it and they can see the transaction within the system.

Senator LUDWIG—But they cannot print it out to confirm that it has been paid to their customers.

Mr Harrison—The system does not provide a printable version. What they can do themselves, we do not know. But it will do this week.

Senator LUDWIG—It will what?

Mr Harrison—The system will provide a printable version this week.

Senator LUDWIG—So it did not have that function before you turned it on. Now it will have the function subsequently. Was it always planned to have that function?

Mr Harrison—We had certainly hoped to have it earlier than this week.

Senator LUDWIG—You planned to have it on 12 October, but you did not.

Mr Harrison—I am not sure we planned to have it on the 12th. I will check that.

Ms Kinnane—Basically, they do get a receipt for any electronic payments they make. However, there is a daily reconciliation report which they have to manually ask for as per current functionality with the legacy systems.

Senator LUDWIG—How do they do that?

Ms Kinnane—They send us an email and we email it back to them.

Senator LUDWIG—Have you had requirements from that for the 11th or 12th? Have they emailed you and asked for reconciliations?

Ms Kinnane—Senator, I am not sure of the question.

Senator LUDWIG—It comes from your answer. You said that they can email you and ask for a reconciliation. Do they do that?

Ms Kinnane—Yes, they do.

Mr Harrison—As they did previously.

Senator LUDWIG—And that is under the existing legacy system. Was the EFT planned for implementation so that it would be available on the 12th?

Mr Harrison—We are talking about the daily reconciliation report, aren't we? We would have preferred to provide that in a print version to make it easier, but it was not considered to be critical, no.

Mr Jeffery—If the question you are asking is were they able to pay by EFT from the 12th, then the answer is yes.

Senator LUDWIG—But they cannot print it out to reconcile.

Mr Jeffery—We have been receiving EFT payments under ICS from the 12th. The report that the CIO is talking about was provided manually under the old system, and it is still provided manually. I think he said that the intention is that it will be available electronically within about a week.

Senator LUDWIG—So you regarded that as a minor matter?

Mr Jeffery—They have no different facility in relation to that report than they did under the old system. We would have preferred to have it under the new system, but it was not available in time.

Senator LUDWIG—What about the under bond system that was in place? Were under bond movements from warehouses and wharves able to be electronically dealt with on the 12th?

Mr Harrison—The ICS functionality was available, yes.

Senator LUDWIG—Was it working?

Mr Harrison—Yes.

Senator LUDWIG—Was it being utilised?

Mr Harrison—Yes. Not by all of the software that was available to industry, but it was being used by most.

Mr Burns—The under bond process required a cargo reporter or an import declarant to apply for an under bond move. The subsequent discussions we have had with industry are that they would prefer the system to push automatically an under bond move so that they did not have to apply for it. But it is there and it is functional. At the moment, if they apply for it and the requirements of the machine are met, they get an under bond approval.

Senator LUDWIG—Was industry aware of that?

Mr Burns—Yes.

Senator LUDWIG—So they have been making requests for under bond movements?

Mr Burns—Like all parts of the functionality of this system, it has worked for many and it has not worked for some.

Senator LUDWIG—Why hasn't it worked for some?

Mr Harrison—We were talking about the ICS and the Customs developed software. The whole CMR is not just that; it is all the connections that people need to make in order to get the result that they need. Some people in industry have not had the ability to automatically request from the software such messages; others have. Those that have not had the automatic ability have needed to go into the Customs Interactive component in order to be able to request that. As the CEO said earlier, in the first week or so that was a difficult process, given the performance of the Customs Interactive.

Senator LUDWIG—So an alternative system of asking it by fax and phone was set up?

Mr Harrison—There were contingency arrangements put in place because of the difficulties some people were having, yes.

Senator LUDWIG—So we used faxes and phones in the modern era?

Mr Burns—We used the faxes and phones to communicate the desire of the applicant to have an under bond move when either their software or their expertise could not make it happen within the ICS. Customs officers received those faxes and as quickly as we could we provided that service in the ICS, and we continue to do that.

Senator LUDWIG—Why was software not compatible or why did it not have all functionality that was required of it to interact with Customs?

Mr Woodward—I will make a comment on that before we go to the technical and business experts. I think there has to be an understanding that we have the ability to handle all of our software, and we did that and got advice on that. The software that was needed to interface with our system was built by software developers. Not all of them were in Australia—some of them were and some of them were not. Varying degrees of confidence were displayed on the part of those software developers. The third component of software development was that

some of the larger firms had their software developed overseas because they are part of an international group, and I think DHL is an example of that. There were others that had their software developed internationally.

What we could do and what we had responsibility for was to ensure that our software worked and to do whatever we could to ensure that the software developed to be deployed to the customs brokers, the forwarders and all of those involved in the supply chain would work with our system and also with their back office systems. I do not want to deny that there have been problems with our system—there have been. But I would not want to leave you the impression that all of the problems related to our system. Many of the problems related to the ability of the external software providers to provide software that would actually work in the environment of those who had to communicate with us.

Senator LUDWIG—Perhaps I am just stunned. Your job is trade facilitation. That is what your annual report says when I get it. Certainly that is what the last one said, and I do not think this one will change. I think it will still continue to say that one of your main core functions is trade facilitation. What you are now seriously telling me is that you have your software—which has some problems, and we will deal with those shortly—and hang anybody else. They had to comply or make sure their stuff was ready, right or okay.

Mr Woodward—That is not what I am saying.

Senator LUDWIG—That seems to be what you are suggesting. In other words, you say to software developers: ‘You get your act sorted out. You interact with us. If you don’t, too bad, so sad for the customs brokers, freight forwarders and anyone else who uses that software.’ Isn’t it your job to ensure, if you are going to switch on a new computer with a new system, that your system is fully functional, you have given sufficient lead time for customers and clients to develop software, and you have ensured that your software is compatible and it works interactively, effectively and efficiently with your system? The failure to do that is probably what we are experiencing now.

Mr Woodward—We work very closely with software developers and other sectors of industry, and I have mentioned before that numerous software developers meetings have occurred over the years and obviously more recently as we have got close to the commencement of exports and then imports functionality. What I was trying to get over was that, despite all of those efforts and, as I say, varying degrees of assurance coming from the software developers, not everything was in our hands. I am not trying to blame anyone for anything that has happened. What I am saying is that our system, the system that we developed, has been working. The fact that five million messages have gone through it since last October—

Senator LUDWIG—I am still not getting through. This is what stuns me: isn’t it your job to ensure that for whoever is going to interact with your system, especially the way you have constructed it to have third party software providers—in other words, developers and then clients—their software is compatible and works before you switch it on? The consequences of it not working are that your clients, who want to facilitate their trade, are stopped. They cannot do it. I do not think you can shove that responsibility onto software developers. I think it is your responsibility. That is what I think. You can try to disavow me on that, but if a major

turnaround like this is going to be planned, and you are going to ensure that there are third party providers, you have to make sure, like any other major company, that their platforms will work with yours before the start date.

Mr Woodward—To the extent that we reasonably could, in my view, I think we did that. There were meetings held shortly before some of the critical dates, when the general drift coming out of the software developers was one of optimism.

Senator LUDWIG—Did you provide the software developers with a finished, tested product?

Mr Harrison—We provided the software developers with the product originally in November last year, and it was progressively developed over the period through to a couple of weeks before the 12th. We said in early July at the ministers roundtable that there were a number of incidents that were to be deployed over the next couple of months, and that was achieved, with a couple of exceptions, towards the end of September. All of that information was communicated on an almost daily basis with all of the software developers. The platform that they could test on was stable, the functionality was largely there—95 or 96 per cent was finished over the last few months. We believed that there was ample opportunity to test. In fact, in terms of the functionality in our industry test environment for that period, there were well over one million test messages processed by all of the software developers.

Senator LUDWIG—What was the last date that you stopped tinkering with your software?

Mr Harrison—I would not use the word ‘tinkering’. We were working on incidents that arose during the course of the extensive testing right up until the last deployment prior to the 12th, which I believe was on 5 October.

Senator LUDWIG—Was 5 October the last date that software developers would have had a deployed final platform to work with?

Mr Harrison—I do not believe that is the right construction. We believe they had a platform to work with for many months prior to that.

Senator LUDWIG—From when?

Mr Harrison—From November last year. There was the availability of a test environment to test. The point that you are probably making is that there was functionality that was not all there for all of that period.

Senator LUDWIG—I think we know that.

Mr Harrison—That is obviously true. There was functionality deployed on 5 October that was as a result of testing that occurred prior to that. This is not unusual.

Senator LUDWIG—So we had a seamless transition.

Mr Harrison—I will leave it to others to judge the seamlessness of the transition.

Senator LUDWIG—Everything worked and the response times were fine, and nobody complained, and wharves moved and the containers were shifted—save for the customs brokers forgetting to go and get them. Is that the scenario you are painting? It just seems

incredible to me, because that is not what seems to have happened. What were the response times like on the computers prior to testing?

Mr Harrison—I don't think we are suggesting that for a moment, Senator. The full range of testing that occurred was basically around three areas. There was the functionality of the system itself; there was what we call business simulation testing, where we succeeded in linking together the various parties within the chain in order to test that; and there was what we call stress and volume testing, which was essentially load testing of the system. Frankly, there was lots of those different types of testing that occurred. I think your specific question was: what was the response time prior to 12 October, in the testing itself?

Senator LUDWIG—Yes.

Mr Harrison—All of that testing led to acceptable response times. I can give you the detail on notice if you wish, but they were acceptable.

Senator LUDWIG—What were they post 12 October?

Mr Harrison—Again, I can give you detail on notice. The most difficulty that we had was in relation to the performance of Customs Interactive externally and to some extent internally for the reasons that were mentioned earlier. That has been progressively improved since then, to a point where we believe it is sufficient now.

Senator LUDWIG—What were the response times after 12 October—half an hour, 20 minutes, five minutes?

Mr Harrison—It varied depending on the time of day. We are happy to give you that information but there is quite a lot—

Senator LUDWIG—You know what they were indicatively.

Mr Harrison—I am not fudging, Senator. They varied depending on the time of day from a few seconds up to in some cases 10 minutes, which was one figure I saw as an outside figure.

Senator LUDWIG—So the longest response time that your records show was 10 minutes?

Mr Harrison—No, I would need to take that on notice to give you an accurate answer.

Senator LUDWIG—Was it in hours, minutes?

Mr Harrison—It was in minutes.

Senator LUDWIG—The longest response time between somebody sending a package of information and getting a response to verify that it had been received by Customs was in minutes?

Mr Harrison—I suspect you are asking a different question from the one I am answering. When we are talking about response times, it may be the response time for the computer that you are sitting in front of to return information, or it may be the response time for the actual transaction that you are trying to conduct.

Senator LUDWIG—What are the specs? What should have been provided?

Mr Harrison—The target for response times in Customs Interactive was five seconds, in terms of the screen response time, and it is different for messages. Messages were processed under EDI.

Senator LUDWIG—What is the figure for messages processed under EDI?

Mr Harrison—Fifteen minutes each way. But that needs to be considered in the context of screening periods. In the air environment there is a screening period of two hours; in the sea environment it is 24 hours. So you do not get a response inside either of those times for those two, for air cargo reports and sea cargo reports.

Senator LUDWIG—So was this an area that caused a problem—response times for messages processed under both EDI and screen?

Mr Harrison—We have had a couple of outages which have not helped. The outages were not for long periods. I am talking about less than one hour. But given the volumes of messages that are going through, it took us some time to clear those. There was a delayed response whilst the machine was doing that. There were a couple in the early days. As we said earlier, the response time issue in Customs Interactive external in the first week or so caused us difficulty, primarily because of the number of people that were using it. We made some changes over that time to improve that within the infrastructure itself. We do not believe that currently we have any particular response time issues.

Senator LUDWIG—So everything is working well now?

Mr Harrison—It will be continuously tuned, as these things normally are. It still needs tuning, but it is basically returning responses in adequate times today, yes.

Senator LUDWIG—So when did you become aware that the initial clearance of reporting of the containers at the docks was a problem?

Mr Woodward—Sorry?

Senator LUDWIG—When did it dawn on you that there was a problem at the docks with containers coming off ships and stopping moving?

Mr Woodward—We had a number of mechanisms. We had a very large help desk contingent, so we were getting feedback coming out of help desks. There was our own assessment. We had people out talking—it certainly hit the airwaves—and we were also talking to stevedores. Just to cover off the point you were making—and I do not have the figures with me here—certainly there was the difficulty that people were experiencing because they were using Customs Interactive in circumstances in which it was never envisaged to be used. The times taken in that period were far too long, unacceptably long, and that is what we have been putting a fair bit of effort into attempting to fix. There are two parts of the question. We did not focus just on sea cargo; we focused on air cargo as well. Air cargo, I think, was readily accepted by most of the industry players as working reasonably well. There were difficulties, but even in the early period it was accepted as working reasonably well. The focus was therefore on sea cargo. As soon as I and others detected that there were problems in relation to sea cargo, I initiated calls at the very highest levels in Patricks and P&O.

Senator LUDWIG—When was that?

Mr Woodward—I cannot tell you the precise date, but it was within a few days of 12 October, as soon as it became clear to me that there were problems. I have had continuing contact with the managing director of P&O and have had continuing contact with the ports and terminals managing director and the general manager at terminals level in Patricks since then, and many of my officers have had numerous contacts as well, in part to pick up concerns that had been expressed about ships being turned around and quite dramatic events. As you would know from reading the media releases that have been issued, some of the media speculation about vessels having been, being or to be turned around was simply not correct. P&O, I can recall clearly, said that. Patricks have made similar comments. I am not trying, in saying that, to underestimate the challenge before all of us on the wharves. There are still more containers that need to get off the wharves, which is why I made the point early on about weekend work. But what we are doing is putting all our efforts into working cooperatively with the terminals to overcome the problem. So far as support for continuation of the ICS is concerned, there have been a number of strong supporters, because there were some suggestions that we ought to go back to the old systems. But the strongest supporters, in my view, came out of the largest airline in the air cargo industry, Patricks, P&O, 1-STOP, which is the intermediary, and the shipping industry.

Senator LUDWIG—So what went wrong then?

Mr Woodward—When we talked before, I mentioned three, I think, particular issues. Shall I go over those again?

Senator LUDWIG—You say the software was not developed?

Mr Woodward—There were issues in relation to the software that had been developed. There were issues that related to the way in which information was transmitted to our system out of the private sector, with the accuracy and the sequencing requirements that had been specified not being followed. There was an issue that flowed from overzealousness, I suspect, in relation to the construction of our profiles. The consequent impact on the Customs Interactive system—because people were going into the Customs Interactive system for diagnostic work, for amendments and for assistance which it was not designed to do—put tremendous pressure on Customs Interactive. That was what attracted the most initial media commentary.

Senator LUDWIG—Did everything go well with port clearances? Did everything work?

Mr Woodward—The system worked but we found that, if there were difficulties in customs brokers and forwarders establishing the status of their goods, naturally there were reservations in sending vehicles to collect containers. We believe that, working with those sectors of the industry, with the stevedores and with the trucking industry, we are now getting on top of those problems. But there were significant issues in that area.

Senator LUDWIG—I am trying to ascertain what the actual problem was. We have talked about a whole range of issues but I wonder if you could describe in reasonably lay terms why we ended up with so many containers on the port. If there was not a problem, we can agree that there was not going to be a problem. But there must have been a problem. You have generally described other people who might be responsible, but what was the nub of the problem, what precisely went wrong and was it known that this was going to happen?

Mr Woodward—We expected teething problems. We knew that there would be problems. We did not know the nature and we did not know the extent. We certainly did not know that a major issue would be the incorrect insertion into the system of information that would clog up the machine and put this heavy dependence on to the Customs Interactive processes.

Senator LUDWIG—Let us hold that right there. What are you saying happened at that point that clogged up the system and then pushed people into Customs Interactive?

Mr Burns—It was a lack of matching. For a service provider to get clearance of his container, the information that was supplied by the cargo reporter and by the import declarant had to be the same and had to match. Provided it was paid up—in other words, GST and Customs duty were paid—and provided there were not any profile matches such as security counter-terrorism community protection profiles, the containers would have been clear and allowed to go; that was the system under COMPILER. What happened was that they were not able to make the matches. As Mr Woodward has said, there were a number of driving factors for that. One was their software, one was the data that industry was using and one was some difficulties with the machine to make that come together. Hence, when you did not get a match, you did not get a clearance and the containers started to build up.

We have been working, ever since that became clear, on overcoming those matching difficulties by addressing the issues that are at the core of the matching problems such as the fields of data that require matching, the processes that are a part of the functionality of the machine and the tools that they have available to them to make changes that will facilitate matches. What Customs has done to facilitate all of that is to assist industry with contingency workarounds to make the matches that allow the containers to be released.

Senator LUDWIG—None of this was foreseen?

Mr Harrison—There is a compounding issue in the sense that, with respect to the various reports in the system that were unable to be matched, when people went looking under Customs Interactive to do that work, that load was unexpected, which pushed out the response times and made it harder to find the match, which compounded the issue.

Senator LUDWIG—So as people got frustrated and tried to resolve their difficulties, it got worse as a consequence?

Mr Burns—Certainly the number of calls to the help desk rose. People repeatedly tried different things to get the system to work. Frustrations increased considerably. That is all true.

Senator LUDWIG—So if system A did not work, they then jumped onto the next available system, which was Customs Interactive?

Mr Harrison—It was not all that easy to use, either, because it was not specifically designed to do what some people were trying to do with it.

Senator LUDWIG—Because they were trying to keep their business afloat by moving cargo.

Mr Burns—There was an expectation that the transport chain in respect of imported cargo shared the same information—that a vessel voyage number was the same for everybody in terms of the cargo on that voyage; that various commercial documents which had unique numbers were known to enough people accurately, right down to the very last digit, comma,

space, backspace and whatever; and that that was well known to everybody and they all shared the same information. Clearly, the experience is that that is not the case. So when service providers put in to the best of their ability the information that they had on their documents and the like, it did not match with other information that was already in the machine; hence they did not get their clearance.

Senator LUDWIG—But it worked under COMPILE?

Mr Burns—Because a lot of that information was not critically matched in the way that it is under the integrated cargo system.

Senator LUDWIG—So you then put in a requirement to have it critically matched. Did you tell industry that there was a requirement to have it critically matched?

Mr Burns—Absolutely. This was a cornerstone of training and familiarisation dating back to two or three years ago. This was clearly seen as being a big issue, a big change.

Senator LUDWIG—And it happened anyway?

Mr Woodward—Despite everyone's best efforts, obviously there are problems.

Senator LUDWIG—You foresaw it and it occurred.

Mr Woodward—Let me be frank about the industry: we have long had difficulty getting accurate information put into the old systems. You will recall EXIT, the old export system. The approach that was put to me by a number of brokers informally was that your most junior people were given the task of looking after exports and that, if you were not quite sure, you put in a figure and if the EXIT system then responded to it, you got your goods exported. The impact on trade statistics was obviously significant. What we said was that those days are over; that we want a system that requires far more accuracy than we had under the old systems. Whether we have gone too far is what we are now debating, but accuracy is critical.

Senator LUDWIG—It is more than a matter of debating it, Mr Woodward. What you required was, it seems, a zero tolerance outcome from an industry that was not prepared, and they were then made to go to it. We can debate whether or not you provided sufficient training or understanding of what was going to happen post 12 October. The consequences were that they were not prepared for a zero tolerance response.

Mr Woodward—Whatever the reason was, I cannot disagree with your assessment. Industry was not prepared for zero tolerance. In some areas, we will obviously continue to insist on that. We are saying, 'Are there some areas where we could relax a little?' and those are the areas where we are working with the brokers, forwarders, intelligence experts and other agencies to see whether we can wind back a bit.

Senator LUDWIG—If you knew all of this, it never ceases to amaze me why you did not have a training program and a transitional program to cope with what was likely to be a problem. In other words, you identified the problem and you identified the fact that there was likely to be an issue around zero tolerance and around mismatching some three years out, yet it still happened. That can only be laid at the feet of Customs. You knew about it and then failed to deal with it in a proactive way to ensure that it would not happen. That is even more stunning: to find that it was not a wrench in the machine. This was an issue that had been

identified and articulated and, in fact, Customs sought zero tolerance, yet it did not work. As a consequence of that, your job of trade facilitation is in tatters.

Mr Woodward—I honestly do not think I can agree with that assessment. We are happy to provide you with more information on workshops, seminars, the 10,000 people being trained and the number of advertisements we put into newspapers saying, ‘Come along to our meetings’—we could not drive people to our meetings.

Senator LUDWIG—Why didn’t you adopt another strategy, if that was not working?

Mr Woodward—A point that I did want to make is: how much effort do you put into it and how long should you go? You would understand that the final part of sea cargo automation was put in in 1994. It was originally planned for introduction in 1989 and went in finally in 1994. The help desk was very heavily staffed, and in the week before 12 October, 60 per cent of the inquiries coming into the help desk were very simple inquiries about sea cargo automation. In something like 11 years there were still people in the industry asking very basic questions about sea cargo automation. You can say, ‘How long should we wait to put in a new system?’ One of the points that came out very clearly in the round table meetings chaired by the minister was that industry looked for certainty. They said: ‘We don’t want to have these vague dates. We want certainty. We want to know what to aim for and, for heaven’s sake, don’t make it in the Christmas period.’ There were not many options for us.

Senator LUDWIG—So you have given them certain chaos instead.

Mr Woodward—I do not accept that. I think it is media—

Senator LUDWIG—You say that everything is working wonderfully and cargo is moving.

Mr Woodward—I did not. There is a difference between the word ‘chaos’ and the words ‘everything working wonderfully’.

Senator LUDWIG—You advertise on your web site that 9,100 containers are available for collection, and that people can use an Excel spreadsheet or go to <http://tools> to discover it. You have an under bond system that works partly on a fax and you have mismatching of data—I take it that has not changed. You have lost functionality from the computer. You were testing it right up to a week prior to turning it on on 12 October. I cannot find words to describe that, quite frankly. It is certainly not what I would call a class four-star approach to trade facilitation from you.

Mr Woodward—There is not much more I can say on that. You used the word ‘chaos’, then you juxtaposed that with everything working perfectly. I am saying that there were problems and I am not trying to walk away from the fact that there were problems.

Senator LUDWIG—There still are.

Mr Woodward—There are problems. What we are hearing not only from my own people but from the stevedores, brokers and forwarders is that things are improving significantly. Even those who have been most critical of us are saying that things are working better and they are pleased with working relationships that have been developed between us and them to identify and tackle the residual problems. I am not saying it is working perfectly, but I am not accepting that it is chaos.

Senator LUDWIG—I could be critical and say they really do not have much choice; they have to get on with business, they have to make it work. They have no alternative now. The system is there, you are not going to turn it off.

Mr Woodward—That is right, we are not going to turn it off—

Senator LUDWIG—No, so they have no alternative. They have to make it work.

Mr Woodward—We have gone beyond that point where we could turn it off. What I am increasingly hearing is that, first of all, there is an increasing take-up of the ICS. Every day we see figures where the take-up is going up. We are now getting people prepared to tell us informally that they are very pleased with the ICS. What we are not hearing is those people going out and saying that publicly. What we continue to have is those who are critical of it rather than those who are satisfied with it, and I think that is human nature.

Senator LUDWIG—I suppose the proof in the pudding is the clearing of the ports. They are not cleared yet.

Mr Woodward—No, they are not clear. The point that I made earlier is that the backlogs are coming down. There is concern, obviously, on the part of the stevedores, but they are saying, ‘We’ll get over this.’ They are strong supporters of the system. The managing director of one of the companies strongly put the view that the ICS is good for the industry because it introduces a discipline which, in his view, was sorely needed. We are determined to get over the residual problems working with the stevedores and others.

Senator LUDWIG—So you knew there was a zero tolerance and you still did not put a grace period in to cope with that. That is right, isn’t it?

Mr Woodward—We knew that there was, using your term, zero tolerance. The testing that had been done beforehand suggested that both sides could live with that. Experience has proven that we need to look at whether there is some finetuning that can be, and should be, undertaken in some of those areas in terms of focusing on our business requirements.

Senator LUDWIG—Did you throw human nature out the window when you made the decision to turn live on 12 October? It seems to me that you had very little time to produce a finished product for industry to test, for software developers to train and provide the final versions to their customers. You knew there was an accuracy in reporting that was significantly different from what had gone on before. You knew there was potential for a mismatch of data. You then did not allow a transition and you did not allow for human nature. As a consequence, you got a meltdown. That is the line. It seems quite clear as to how it went. Then, on Friday, 23 September in your media release you said:

While the Customs Brokers and Forwarders Council of Australia again requested a further delay to the ICS timetable, this view was not supported by other industry groups or indeed, some substantial customs brokers ...

The writing was on the wall, it would seem, but you persisted.

Mr Woodward—I will give you my view on that. There had been a round table at which options had carefully been considered. There had been a software developers meeting where the preparedness of the software developers was canvassed. We were certainly getting other reports in as well. But a decision of that kind has to be taken in the context of the options.

What were the options? The first option was to abandon the whole thing—in other words, you have spent \$200 million, scrap it and throw it away. That is totally unrealistic. The second option was to get it going in February-March next year in circumstances where we knew that the software we have is old, fragile and has been patched for things like GST, work that was done for Y2K and numerous other changes that have taken place over the years, and with a Unisys platform that would not receive worldwide support after the end of March. In our view, it would have been irresponsible to put it off until February-March next year. Do it at Christmas, in November-December? We had industry telling us, in the strongest terms, that that was not on, and we accepted that. So what we had was a small window during October. There were two dates canvassed by the minister at the round table—the 12th and the 19th—and there was agreement reached to run with the 12th on the basis that there needed to be a specific date. What I am saying is that you could argue in terms of days—you might argue in terms of a couple of weeks—as to when we moved. But the 12th, or fairly soon after, would have had to have been the date. And I do not know what other options there were.

Senator LUDWIG—The COMPILE cut-over date: it has now been extended from, I think it was, the 24th—

Mr Woodward—The COMPILE contingency arrangement is still in place.

Senator LUDWIG—When does that finish?

Mr Woodward—We have not specified a date yet. We are going to keep that under continuing review.

Senator LUDWIG—Does it require legislative amendment to keep it past the—

Mr Burns—We are dealing with that administratively, Senator.

Senator LUDWIG—So how are you dealing with that?

Mr Woodward—Sorry?

Senator LUDWIG—Don't you have a regulation which then says that you are meant to be cut over no later than 7 November?

Mr Burns—We can provide a determination where the methodology for reporting to Customs electronically would be both COMPILE and the ICS. We have chosen not to do that in the current environment, but to keep the COMPILE system working in a limited fashion and to keep it under review. The difficulty with any determination for us at the moment is that not everybody would use it, and how we would determine the system in a legal term is a bit of a challenge. There is no opposition to leaving it on. The brokers and the forwarders that are using it will continue to use it for as long as we leave it on. Those that wish to use the ICS will continue to use the ICS, because they believe that is their best option. As the CEO said, the clear indication over time has been that fewer people are using COMPILE and more people are starting to use ICS.

Senator LUDWIG—You do not require a legislative amendment to—

Mr Burns—We can continue to do this administratively; that is our advice.

Senator LUDWIG—In what way? Is that a statutory instrument? Is it an amendment to a regulation?

Mr Burns—A determination? No, it would be an instrument signed by the CEO, if we went down that track. The advice we have is that we do not need to do that to continue with the current arrangement.

Senator LUDWIG—And interpreting—what: the current provisions?

Mr Burns—The current determination says that the methodology for reporting electronically to Customs is the ICS, and we have chosen to—

Senator LUDWIG—And you are complying with that?

Mr Burns—We are complying with that; that is right. But we have given industry a limited, ongoing use of some of the COMPILE functionality, in parallel, for a yet-to-be determined period.

Senator LUDWIG—So we have not cut over fully yet, in the sense that we are still running the legacy system?

Mr Woodward—COMPILE contingency arrangements still continue. We want to look at the improvements that have been discussed, among other things, at the action group meeting last Friday between industry and us. Hopefully we will continue to wean people off COMPILE into the ICS. The fact is that it is happening, and happening in a very significant way.

Senator LUDWIG—In percentage terms, how many people are using COMPILE, the new system, a combination of both, Customs interactive, or all four?

Mr Harrison—I will clarify, Senator. The Customs interactive is one of two methods of accessing ICS. It is not something different. It is just the way to get to ICS; EDI is the other way, but it is still using ICS. In terms of the actual numbers, there is a difficulty here in that the information that we have is only available weekly from COMPILE, and we have to go back to 21 October. That is the last date on which I can tell you about who was using COMPILE. As I say, the information comes out weekly so it is difficult in COMPILE, but at that date there were 37 reporters in COMPILE only; there were 178 in ICS only; and there were 113 in both. I do not have COMPILE data as of 28 October, but that is the last date for which I have ICS data, which tells me there were 330 reporters in ICS on 28 October.

Mr Burns—The very clear intention, as stated to us as late as at the roundtable last Wednesday and the action group meeting on Friday by industry, is that they want to use the ICS. They do not see any benefit to them long term in having two systems running in their offices.

Mr Harrison—I can add that these are the numbers of people using those systems. We also have fairly detailed information about each of those reporters and their incidence of using either COMPILE or ICS, and there is a clear flow from COMPILE to ICS there as well.

Senator LUDWIG—What happens 40 days after 7 November? Does COMPILE have to be switched off because of ICS being switched on?

Mr Burns—That is the issue that we are dealing with administratively.

Senator LUDWIG—That is why I asked the question. What happens if COMPILE still needs to be on 40 days after 7 November?

Mr Burns—COMPILE will stay on whilst there is a need for that system to supplement import dec reporting by brokers and forwarders. If the legal advice we have to date changes then we will have to do something about that. I spoke to our legal unit today and their view is that we can continue to operate the current arrangement administratively and that will continue to work for us.

Senator LUDWIG—And they work that through on the basis of how you interpret 40 days post 7 November, meaning the ICS has cut over and is operational, and it does not mention that the legacy system has to be shut down.

Mr Burns—I hope you are not suggesting we do turn COMPILE off within—

Senator LUDWIG—No, I am asking when you are going to come up with a legislative fix before Christmas.

Mr Woodward—Our view is that there is no impediment, but we will check on that. What I am aiming to do is have enough satisfied customers in relation to the ICS that 40 days becomes irrelevant because they will all be on ICS. That is what we are aiming for.

Senator LUDWIG—I am only looking at the fact that that we only have a couple of weeks of parliament left and then we do not meet again until the following year. If there is a requirement for a legislative fix then there is a short window.

Mr Woodward—My view has nothing whatsoever to do with the parliamentary timetable. It reflects what is actually happening and our desire to make the system sufficiently attractive to everyone that no-one would want to use the COMPILE contingency arrangements.

Senator LUDWIG—I must say that, unlike you, Mr Woodward, I sometimes take a belt and braces approach to ensuring that I have bases covered. But that might just be the difference between us. In terms of the hotline, how many calls on the industry help desk have you received since 12 October and what are the likely waiting times for assistance?

Mr Jeffery—If I am reading my information correctly, from 10 October to the weekend of 29 and 30 October we had 13,250-odd calls and total inbound contacts, which includes emails, of 23,960; and 11,107 outbound responses. We believe that covers both the information line and ICS. It is not split up. But I think there would have been a fairly heavy predominance of ICS. We can check that and confirm it on notice. The average longest wait time over that whole period was 58 minutes, the average wait time was 22 minutes and 43 seconds and the average call length was 8½ minutes.

Senator LUDWIG—What does that 58 minute wait time for a call compare to?

Mr Jeffery—Do you mean prior to 12 October?

Senator LUDWIG—Yes.

Mr Jeffery—I would have to take that on notice. I do not have that information.

Senator LUDWIG—Is it an average—58 minutes hanging on a phone waiting for your business to tick over?

Mr Jeffery—That is the average longest wait. The average wait time is 22 minutes.

Senator LUDWIG—Is 22 minutes acceptable? I do not know anyone who has, quite frankly, got the patience to sit there—other than because their business probably critically requires an answer before it falls over. Otherwise, why would someone wait for 22 minutes on a phone nowadays?

Mr Burns—We have implemented a call-back arrangement where, for that reason alone, we take names, numbers and details. That also saves our technical experts from having to spend their time on the phone and we have them dealing with the issues.

Senator LUDWIG—What is the longest wait time, if that was the average?

Mr Burns—We will have to take that on notice.

Mr Jeffery—We will have to take that on notice.

Senator LUDWIG—Go on, have a stab in the dark.

Mr Jeffery—The longest wait time on a day, which would be an average for the day but not necessarily the longest wait time, is one hour 46 minutes.

Senator LUDWIG—But there could have been a longer wait time?

Mr Jeffery—It is an average for a day so, on average, some will be longer and some will be shorter. But, to answer your question, no, it is not acceptable. As Mr Burns said, we have put in place a range of measures to diminish it. It has come down quite significantly but there have been days where it has been quite long.

Senator LUDWIG—Thank you. I will put the remaining questions on notice.

ACTING CHAIR—It being 2300 hours, that concludes the questions for today. I thank the officers who have appeared before the committee today, particularly the minister and the secretary. We will reappear here tomorrow morning at 0900 for the DIMIA estimates.

Committee adjourned at 11.01 pm