



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

ESTIMATES

**(Additional Estimates)**

TUESDAY, 14 FEBRUARY 2006

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**

**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**

**Tuesday, 14 February 2006**

**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 Bartlett, Carr, Fierravanti-Wells, Heffernan, Joyce, Kirk, Ludwig, Ian Macdonald, Mason, Parry and Scullion

**Committee met at 9.05 am**

**ATTORNEY-GENERAL'S PORTFOLIO**

**In Attendance**

Senator Ellison, Minister for Justice and Customs

**Attorney-General's Department**

**Management and Accountability**

Mr Robert Cornall AO, 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

Mr Matt Minogue, Assistant Secretary, Human Rights Branch

Ms Helen Daniels, Assistant Secretary, Information Law Branch

**Output 1.4**

Mr Bill Campbell QC, First Assistant Secretary, Office of International Law

**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**

Mr Geoff Gray, Assistant Secretary, Criminal Law Branch

Mr Chris Dennis, Director, National Law Enforcement Policy Branch

Mr Craig Harris, Assistant Secretary, National Law Enforcement Policy Branch

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

Ms Catherine Hawkins, Assistant Secretary, International Crime Cooperation Branch

Ms Sheridan Evans, Principal Legal Officer, Community Safety and Justice Branch

Mr Geoff Main, Director, Community Safety and Justice Branch

Mr Andrew Walter, Principal Legal Officer, International Crime Cooperation Branch

Mr Anthony Seebach, Principal Legal Officer, International Crime Cooperation Branch

Ms Margaret Joseph, Acting Principal Legal Officer, International Crime Cooperation Branch

Ms Robin Warner, Assistant Secretary, International Crime Branch

Mr Anthony Coles, Principal Legal Officer, International Crime Branch

Mr Nick Morgan, Section Head, 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

Ms Michele Hendrie, Director, Public Affairs

**Output 2.3**

Mr David Templeman, Director General, Emergency Management Australia

Mr Trevor Clement, Acting Director General, Emergency Management Australia

Ms Diana Williams, Assistant Secretary, Emergency Management Policy

**Output 2.4**

Mr Ed Tyrie, Executive Director, Protective Security Coordination Centre

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 Mika Kontiainen, Assistant Secretary, APEC 2007 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

Mr Michael Outram, Director, National Operations

**Australian Customs Service**

Mr Michael Carmody, 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

Mr Tom Marshall, Deputy Director-General Coastwatch

Ms Marion Grant, National Director Border Compliance and Enforcement

Ms Sue Pitman, National Director Cargo and Trade

Mr Dane Cupit, National Manager Cargo Systems

Ms Gail Batman, National Director Border Intelligence and Passengers

Mr Andrew Rice, National Manager Trade Measures

Mr Mathew Corkhill National Manager Cargo Systems

**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

Mr Mark Ney, Acting 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

**Australian Security Intelligence Organisation**

Mr Paul O'Sullivan, Director-General

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

Mr Neil Jensen PSM, Director

Mr Alf Mazzitelli, Chief Finance Officer

**Commonwealth Director of Public Prosecutions**

Mr Damian Bugg AM QC, Director of Public Prosecutions

Mr John Thornton, Acting First Deputy Director

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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 Ben McDevitt, Chief Executive Officer  
Ms Nicole McLay, Chief Financial Officer

**Federal Court**

Mr Warwick Soden, Registrar and Chief Executive Officer  
Mr Philip Kellow, Deputy Registrar  
Gordon Foster, Executive Director, Corporate Services

**Family Court of Australia**

Ms Angela Filipello, Acting Chief Executive Officer  
Mr Bruce Hunter, Acting Executive Director, Client Service

**Human Rights and Equal Opportunity Commission**

The Hon. John von Doussa, President  
Ms Pru Goward, Sex Discrimination Commissioner and Commissioner Responsible for Age Discrimination  
Mr Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner  
Ms Diana Temby, Executive Director  
Ms Karen Toohey, Acting Director, Complaint Handling  
Ms Susan Roberts, Director Legal Services

**Office of Parliamentary Counsel**

Mr Peter Quiggin, First Parliamentary Counsel  
Ms Glenyce Francis, General Manager

**CHAIR (Senator Payne)**—I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. The committee will today commence its examination of the Attorney-General's portfolio, proceeding according to the order on the circulated agenda. As indicated, the committee will begin with questions to the Australian Security Intelligence Organisation and following that will commence with questions to the executive of the Attorney-General's Department. Today's hearing will be suspended for a lunch break from 1 to 2 pm and a dinner break from 6.30 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. I note for the record that the committee has agreed to the date of 31 March 2006 for receipt of answers to questions taken on notice and any additional information. The committee requests that answers be provided to the secretariat in electronic format where possible.

I welcome Senator the Hon. Chris Ellison, Minister for Justice and Customs, the 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 discretion to withhold details or explanations from the parliament or its committees, unless the parliament has expressly provided otherwise. I also draw to the



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

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

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

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

For the record, I note there remains one outstanding response to questions taken on notice from the supplementary estimates round of October 2005. I also note for the record that the return date for answers to those questions was in fact 16 December and that the committee received 38 responses to that point in time. Between 17 December and 9 January, the committee received no responses. Between 10 January and 2 February, the committee received 71 responses. Between 3 February and 14 February—this morning—the committee received 195 responses to questions taken on notice. That makes it difficult for the committee to do its work, particularly in relation to additional budget estimates. I know that I am by no means the only person who will take this matter up today, but I do think it is important to place it on the record. Minister, do you or the secretary have an opening statement?

**Senator Ellison**—Yes, I do. In relation to those questions on notice, I think the 16 December reporting date was unrealistic. In future, I think we should consult more on these reporting dates, because this committee regularly has the most questions on notice. That date was during a very busy period of the parliament, and it was followed by a break when officials, as well as members of the committee and others, all took well deserved leave. I think you have to bear that in mind because 16 December was a deadline for a very large number of questions on notice which were complex indeed. This department has had a good record in getting questions in on time, and we do take it seriously. However, I am not going to get officials off leave to answer questions on notice. I put you all on notice in relation to that, so do not direct your wrath at the department; direct it at me.

I think that in future we should be more realistic about the time lines for reporting, because this is just a few weeks for a very large number of questions and they are very complex questions. You say there are some 300 questions, I think, on notice, but look at the detail of them and the number contained in just one question. Indeed, the Australian Federal Police, I think, did not answer questions because they said that the burden on the Australian Federal Police would be too onerous; it would take them away from other very important duties. Now, I am not saying questions on notice are not important and I am not saying we do not want to cooperate, but I do think we have to put this in context. There was an extremely busy period in the sitting weeks leading up to 16 December, for everyone, followed by a period of leave. And that is why between 17 December and 9 January I think there were no questions answered, because just about everybody was on leave—in fact, across the country, it would be fair to say.

So I just want to say, Madam Chair, that I do appreciate your concern. We want to work with the committee but I think we have to approach this more realistically. Maybe there is a way that we can have more consultation with the department about the committee work and look at how we can get more of the questions that are less complex in on time to give the committee members sufficient time to prepare, because the reason we have these deadlines is so that they can have the answers in time to prepare for the next estimates. That is the problem and I readily concede that.

This, I think, is a very important issue. The committee has been reasonable to deal with—this committee has been very reasonable—and I think the department has been, but if we are to have any issue about this particular period I want the committee to bear in mind the very heavy schedule we had with legislation up until parliament rose last December and then the period of leave afterwards which I think nobody could be expected to forgo in the circumstances. The shortness of the time between November estimates and February estimates is a pressure for us all, because that does constrict time, and maybe we will have to look at changing the timetable for estimates if we want to give more time to answer questions on notice. That is something which we will maybe have to look at.

**Senator LUDWIG**—Longer?

**Senator Ellison**—You have a period of leave between those estimates. Over Christmas and January, you have a good four weeks when most people take their leave because to do so at another time during the year would cause some issue. Can there just be a bit more liaison between the committee and the department on this, and my office as well? We want to meet these deadlines, but I think that the deadlines in this last intervening period had those issues—which are unusual; for the rest of the year they will not be there. But I foreshadow that now.

That was part of my opening statement. The other part of it deals generally, Madam Chair, with the question of the oil for food inquiry. At the outset, it is important that the government make its position clear:

... the government has directed that officials appearing before Senate legislation committees should not answer questions directed to them on matters before the commission of inquiry being conducted by the Hon. Terrence Cole into certain Australian companies in relation to the oil for food program. While examination of officials by the committees might be appropriate in the future, the government considers that Mr Cole should be able to proceed with his inquiry and present his findings without parallel public questioning that would not assist consideration of complex issues.

This has been the subject of questioning in the House and yesterday, at PM&C estimates, Minister Minchin explained the decision and the reasons for it. I will not seek to add to any explanation given by him or by the Prime Minister; I just reiterate those comments. So, those are the two opening statements I would make, Madam Chair.

**CHAIR**—Thank you, Minister. I note your observations in relation to the question and answer process. The committee in no way seeks to diminish the particularly cooperative arrangement we have with the department on these matters. We placed, I understand, approximately 312 questions on notice to DIMA and approximately 305 questions on notice to the Attorney-General's Department and associated agencies. You made an observation, Minister, about the time frame in which these questions are required to be answered. I understand most estimates committees adopt between six and seven weeks as their time

frame. If that is not a time frame which works for this committee, then I agree, and I am sure the committee agrees, that it would be appropriate to communicate on those issues. However, I think it is important to note that in the process of receiving answers on notice, the secretariat and members of the committee have found it difficult to receive little or no communication on the delay to enable us to appreciate what is actually going on. I think the communication process is a two-way street, and the committee will certainly assist in that regard. Mr Cornall, do you have an opening statement?

**Mr Cornall**—No.

**CHAIR**—On behalf of all members, I am sure, the committee would like to acknowledge your receipt of an Australia Day honour in the recent awards, and we congratulate you on that.

**Mr Cornall**—Thank you.

**Senator Ellison**—Hear, hear!

**Senator LUDWIG**—I would like to comment on the opening speech by the government. First of all, I will get the niceties out of the way. Congratulations, Mr Cornall.

**Mr Cornall**—Thank you, Senator.

**Senator LUDWIG**—I think it is wonderful to see public servants rewarded. Unfortunately, Minister, in this instance, I do not think you are rewarding public servants very well. In the opening statement, you indicated that the oil for food program is not a matter on which you think this committee should be able to question bureaucrats, public servants or other statutory officials that come before this committee. I think it is an outrageous abuse of power and it is uncalled for. You already know that Harry Evans, the Clerk of the Senate, has indicated that it is not a matter for which you can direct public servants not to answer. I intend to ask questions in respect of this matter. I expect the public servants to answer in respect of that matter. I expect the public servants to act and to ignore your remarks because, in relation to oil for food, they are not matters that the executive government can direct the Public Service not to answer questions on.

There are relevant issues which public servants should not comment on and they are well known, and they can obviously do that when called upon. This government is seeking to hide from its responsibility. If this government wants to turn a blind eye in relation to payments and facilitation fees by AWB to a Jordanian trucking company, that is a matter for this government. It is an outrageous abuse, but it is not a matter for which you can turn to public servants and say that they should not provide information that they might have, no matter how embarrassing or helpful it might be to the government. As a duty, public servants should provide answers to questions by this committee. It has always been the case unless, of course, it relates to policy. This is not a policy matter.

The second point is that public servants, during estimates, have always been able to answer the questions within a reasonable amount of time. That has been the case for many years, as far as I can recollect. If there are problems with answering the questions, then what this committee has always said—and I recollect saying it many times—is, ‘Come back to the committee and negotiate a better time frame if the question is onerous or difficult to respond to quickly.’ Likewise, I have always said, as I am sure the chair of this committee has, that if

there are questions which will require significant resources to be committed, come back to the committee and indicate that because we might be able to negotiate a better outcome for all concerned. This committee does not want to put public servants to significant costs in answering questions if it is a matter where we might be able to obtain the information more directly or in short form. But, if that is the case, we can then make that decision as a committee to pursue it and then provide additional time.

I do not know about the chair, but I am terribly disappointed that there is no word. It is simply a case where, at the last minute, you dump your questions on the committee. There were 195 in the last period. It is uncalled for. It also reflects, I think, both on you, Minister, and the Attorney-General's Department more broadly in the way you treat and think about this committee.

This committee has always been able to deal with questions and answers, to go through the work in a reasonable amount of time and to expect responses in a reasonable amount of time. If there is a departure from that then this is an arrogant government indeed, because what it suggests to me is that, now that you have control of the Senate, you are going to treat this committee with contempt. I for one am not going to yell and scream. I am going to get very outraged about it, though, and I will take it further if I have to and continue to complain that this is not the way that this committee should be treated. If there are reasonable excuses for not answering questions, this committee will always listen to those reasonable excuses, deal with them and give extensions of time. I do not know whether there has ever been a denial of an extension of time which has been asked for to answer a question.

**Senator Ellison**—Madam Chair, I take on board the comments made by you and Senator Ludwig in relation to communication between the department, my office and the committee. I think it is a valid point and that in future that could be of benefit to all of us. I am not rejecting questions on notice; there is a very valid place for them. But that is something we can work to for the future. As you said, the record has been a good one. We want to keep it that way over this period of time for the reasons I have mentioned. We have the situation we have, and I certainly take on board those two aspects you have both raised.

**CHAIR**—Thank you very much, Minister. I think we are now reasonably safe to turn to questions to Mr O'Sullivan and ASIO.

**Senator LUDWIG**—Mr O'Sullivan, if I ask you questions about ASIO's knowledge or involvement in the oil for food program, are you going to cooperate with this committee?

**Mr O'Sullivan**—Before we proceed to that matter, I have a statement that I would like to make.

**Senator LUDWIG**—That would be wonderful.

**Mr O'Sullivan**—It is about issues that I raised with the committee on my last appearance, if that is convenient to the committee.

**CHAIR**—Thank you very much, Mr O'Sullivan.

**Mr O'Sullivan**—Thank you. First of all, thank you for the opportunity to make these brief opening remarks. My last appearance before the committee on 31 October last year, you will remember, Madam Chair, followed soon after the Prime Minister and the Attorney-General

announced a significant commitment of additional funds to ASIO that will see ASIO's staff numbers double in size over the next five years. That will better equip us to meet the challenges and workload demands facing us now and into the future.

The recruitment of staff, I am happy to tell you, is well under way, and I remain confident that we will be able to attract and retain the high-calibre people that we need. To do so, we continue looking at new and better ways to attract people, including from a range of cultural and ethnic backgrounds who might not ordinarily consider applying for a position with ASIO. In many cases, such people are just the ones who we need to fill a range of positions and undertake a variety of functions.

As has been said publicly, the additional resources are designed to allow us to better address both known and unknown sources of terrorist threat to Australia, and they will allow us to respond appropriately to the continuing threat of espionage and foreign interference into the lives of Australians. It perhaps goes without saying that the next few years will be a very interesting time for ASIO. By 2010, the organisation will look and feel quite different to the way it now appears. But that will be a result of carefully considered planning and staged implementation, rather than ad hoc growth.

That transformation will take place in an environment of heightened threat to Australians, here and abroad, with an attack in Australia possible and further attacks overseas almost inevitable. Against this background, we will train and develop our people in ways that build a security intelligence capability that is well equipped to take on the challenges of the 21st century, while continuing to operate in ways that are legal, proper and accountable and that respect human rights and civil liberties. I would be happy to respond to the questions you have as best I can.

**Senator LUDWIG**—Are you able to indicate whether or not ASIO has had any communication or correspondence with foreign governments in relation to the oil for food program?

**Senator Ellison**—Madam Chair, I think I have made the government's position very clear on that in my opening statement. That is a question which is for the Cole commission of inquiry and not for this committee, as I have mentioned.

**CHAIR**—Thank you, Minister.

**Senator LUDWIG**—That may be your position but I note that ASIO do have a statutory obligation. I was curious, Mr O'Sullivan: are you going to acquiesce with the government's general direction or are you going to use your statutory office and answer the questions that have been directed to you? It is an interesting point, Mr O'Sullivan, whether you are going to cooperate with this committee or whether you are going to cooperate with the government. It would certainly reflect upon the view that I have of you—not you personally but the office.

**Senator Ellison**—It is not a question of Senator Ludwig's reflection on the office that Mr O'Sullivan holds. The position has been made very clear by the government, and the Prime Minister outlined that yesterday in the House. Senator Minchin did the same yesterday at length in the PM&C estimates and, as I have said, I have nothing to add to those comments. Really, the matter cannot be taken any further. The line of questioning that Senator Ludwig wishes to pursue is a matter which is before the Cole commission of inquiry.

**Senator LUDWIG**—I will ask one last time and then I suspect we will have to get on with it. Mr O’Sullivan, are you going to respond to any questions I ask in respect of the oil for food program and the Australian Wheat Board’s involvement overseas or any knowledge that ASIO have of those issues?

**Senator Ellison**—Again, Madam Chair, the position is as I have outlined, and I think it is pointless for Senator Ludwig to pursue this. The government’s position is clear.

**CHAIR**—Senator Ludwig, that is the third occasion on which the minister has indicated the position in relation to this matter.

**Senator LUDWIG**—The difficulty—and perhaps we should refer it—is that I do not believe the PM has the power to direct that, I do not believe the minister has the power to direct that and I do not believe that he can direct public servants not to answer questions in relation to issues the committee wants to raise. If that is the case—if you are going to accept that, Chair—then we are in a position where this government can dictate to this committee what it will answer and what it will not answer in relation to any matter, not just this matter. In the past we have had many inquiries operating in tandem—that is, both this committee’s inquiry into matters and also other inquiries outside of this. It is not unusual for this committee to operate in tandem and to ask questions as well.

**CHAIR**—Senator Ludwig, I think your characterisation of the chair’s position in this situation is not an entirely accurate one. I am in a position where the minister has made an indication about the position of the officer at the table. The officer at the table is clearly placed in that position, and the minister has indicated where that will take us.

**Senator LUDWIG**—You have to say it is outrageous!

**CHAIR**—Senator Ludwig, I do not believe that I am in any position to advance the capacity of the officer to answer—or otherwise—your questions or those of any other senator, given the nature of the statement made by the minister, at this point. Unless you have a better plan than I do for progressing this matter now, I suggest we go to questions of Mr O’Sullivan that pertain to the work of the Australian Security Intelligence Organisation which he is able to respond to.

**Senator BARTLETT**—It does raise an issue of the role of ASIO and the independence of ASIO. That is not even about not answering questions about AWB but it is about not answering questions about whether he is going to answer questions. I think that simply enabling the representative of ASIO to make that statement himself is important. The minister is not even enabling him to answer about whether he is going to answer. I think that in itself, leaving aside the issues of how it treats this committee, raises a point about the role of ASIO under its act et cetera, which I think is of significance. I personally think it is worth at least asking whether it is feasible for the representative of ASIO to answer whether not he is going to answer—if that makes sense.

**CHAIR**—Thank you, Senator Bartlett. I think it is a matter for the minister and the officer at the table. If the officer is intending to proffer a response then the committee would welcome that. If he is not then I suggest we move on.

**Senator Ellison**—Madam Chair, I heard what Senators Ludwig and Bartlett have had to say. I am aware of the discussions that took place yesterday at PM&C estimates and also the questions in parliament on this matter. As I have said, the government has made its position clear. I have got nothing further to add. We have a different view—Senator Ludwig and myself, Senator Ludwig and the government, and Senator Bartlett—but that is the position of the government. I just do not think that there is any worth in continuing this line of questioning considering the position that I have made very clear on behalf of the government.

**Senator BARTLETT**—I appreciate that it is the position of the government, but I would like to know the position of ASIO or Mr O’Sullivan.

**Senator LUDWIG**—It raises that significant issue about how Mr O’Sullivan then acts in terms of his statutory role, his appointment to the position and his mission—in other words, his overall objectives in the whole range of issues that he is required to cover. You provide a direction statement to ASIO about how they operate and similarly to the AFP, because this issue is going to be raised again with the AFP when I ask the same question again. What you are saying seems to suggest that you can step down as the government into the operational field of both ASIO and AFP, as the case may be—I suspect your answer is going to be the same for them—and direct them not to answer questions. It is highly offensive to this committee or at least to me—I suspect to the committee but they can take their own view of this—and I suspect it is also highly offensive to Mr O’Sullivan because you are not even letting Mr O’Sullivan defend himself.

**Senator Ellison**—I do not think Mr O’Sullivan needs defending, quite frankly.

**Senator LUDWIG**—He very well might if I could ask him a question.

**Senator Ellison**—The government has made a decision in this matter and I have outlined the direction, Madam Chair. I think it is unfair to pursue it with the officials. The direction has been given. As to what might happen in other parts of the committee when we come to the AFP, let us deal with that when it happens, but right now we have a question which goes to the very reason for the Cole inquiry and matters before it. That is what the statement covers which I have just given to the committee. It is not a question which is outside the statement I made. It is squarely within it—that is, it deals with the matter before the Cole commission of inquiry.

**CHAIR**—I understand that, Minister.

**Senator BARTLETT**—With respect, a question about whether he is going to answer questions is not a matter that is before the Cole royal commission. Asking the representative from ASIO whether or not they will answer questions on this matter is not a question about AWB; it is a question about what his view is about what he is going to say. I know the government’s position, but ASIO is not the government and I would like to know what ASIO’s position is.

**Senator Ellison**—I think in estimates, the minister’s view and decision, and the government’s accordingly, governs the evidence given at estimates hearings. There are other places to take up that issue if you want to but that is the decision of the government. The view of individual official witnesses does not come into it. It is a question of what the government has decided in relation to what will be said in relation to a pending inquiry.

**Senator BARTLETT**—Can you tell us that what I gather was a cabinet decision based on what was provided by the Prime Minister yesterday extended not just to not answering questions about AWB but not answering questions about whether they would answer questions?

**Senator LUDWIG**—It is Pythonesque really. It is quite extraordinary we are getting to this position where ASIO cannot even answer for itself. Is this how our leading criminal intelligence organisation is going to work where it is going to take directions from the Reps box over in the House of Representatives as to what it can and cannot say to an estimates committee? It seems to be the position we have descended to. It cannot even speak for itself because you have intervened and said: ‘No, ASIO can’t speak.’ It is really outrageous.

**Senator Ellison**—The Prime Minister outlined it very well yesterday when he talked about a decision in 1989 by the former Labor government in relation to Coronation Hill. He said:

... officials in an entire department could not answer any questions on a subject called Coronation Hill—

which some of us would remember—

not because there was a royal commission into Coronation Hill but simply because the matter was subject to cabinet consideration.

There is also a precedent in relation to the Whitlam government, which refused to answer questions about overseas loan negotiations. This is not unprecedented. In fact, in those cases, there was not an inquiry pending as there is now; it was merely that the matter was under consideration. We often have questions in relation to budgets, for instance. We always say that we cannot answer those questions. I as minister say, ‘I can’t answer that question and the officials can’t, because it is subject to budgetary process.’

**Senator LUDWIG**—This is not that, though. In this instance, the Prime Minister has no power here. If that was the case, we would not need ministers, we would not need ASIO and we would not need other bureaucrats; we could simply have the Prime Minister’s rule. But we do not have that; we have a Westminster system, we have parliamentary democracy. We have a representative democracy. It seems that, right at this moment, you are trashing the lot.

**Senator Ellison**—It was a cabinet decision. The Prime Minister has outlined the reasons for it. Senator Minchin canvassed this at great length yesterday with the PM&C estimates committee. I have nothing further to add to the comments made by Senator Minchin and the Prime Minister.

**CHAIR**—Thank you. Senator Ludwig, do you wish to proceed with questions to the Director-General of ASIO other than questions in that area?

**Senator LUDWIG**—That is the problem, Chair.

**CHAIR**—I understand that that is the problem.

**Senator LUDWIG**—I am not trying to get angry with you either.

**CHAIR**—At least we do it at less volume than they do in F&PA.

**Senator LUDWIG**—Perhaps when I get angrier I get quieter, but I am particularly angry at the moment.



**CHAIR**—It is a good thing that you are very quiet then.

**Senator LUDWIG**—The difficulty I face is the question of where do you start and stop in relation to an oil for food inquiry? ASIO can speak for themselves about when they want to talk about an operational matter and when they cannot talk about an operational matter. We have always respected that. In this instance, we have a blanket on them. I am not sure even they know how broad and thick this blanket is, because it is a one-word total phrase—that is, oil for food—that ASIO cannot comment on. If there are related questions, do they say: ‘Sorry, we can’t talk about that. It could be close to the Jordanian trucking company issue, it could be close to Canadian authorities’ advice about the oil for food program, or it could be a whole range of matters.’ How broad or narrow is this? I do not know, so how do I ask questions of ASIO if they might step across? If Mr O’Sullivan suddenly stops talking, do I think that I have crossed into the oil for food issue because he cannot comment on it? That is the ridiculous position we have got ourselves into.

**CHAIR**—I understand the concerns that you raise, but I am similarly in a position whereby I am not able to progress the discussion in relation to those matters that concern you; I can progress the discussion in relation to other matters that are the purview of ASIO if you wish to do that.

**Senator Ellison**—I remind the committee of the statement I made. It might be easier if I table it so that people have a copy. It is very clear. It says:

The Government has directed that officials appearing before Senate Legislation Committees should not answer questions directed to them on matters before the Commission of Inquiry being conducted by the Hon Terrence Cole into certain Australian companies in relation to the Oil-for-Food Programme.

While examination of officials by the Committees might be appropriate in the future, the Government considers that Mr Cole should be able to proceed with his inquiry and present his findings without parallel public questioning that would not assist consideration of complex issues.

The government is not ruling out questioning in the future; it is saying that there is an inquiry pending and that Mr Cole should be given some clear space to conduct that inquiry. Of course officials are allowed to appear before that commission inquiry.

I think people should remember as well that this is not a royal commission; it is a Senate committee. A commission of inquiry has been set up to look into this very issue. The statement I have made is that questions should not be directed to them on matters before that commission and that there should not be any parallel inquiry.

**CHAIR**—Thank you, Minister. Have you tabled that statement?

**Senator Ellison**—I will table it now.

**Senator LUDWIG**—Chair, even in respect of that, though, if I ask whether ASIO is cooperating with the oil for food program inquiry, that does not fall under that statement as I read it.

**CHAIR**—Senator Ludwig, my assessment is that we are best to proceed with questions. The minister or the officer will give an indication as appropriate. The minister has provided a copy of his statement in relation to where this discussion can head. I suggest we proceed with questions to the officer on other matters and we will take each question as it comes.

**Senator LUDWIG**—With all due respect—

**CHAIR**—If you don't want to take each question as it comes, Senator Ludwig, we can dismiss the officer and tell him we don't need to ask him any questions.

**Senator LUDWIG**—it is an issue where the minister has read out a statement and said, 'This is what I direct the bureaucrats to do,' or not to do, as the case may be. But there are gaps within that, because the terms of reference in themselves are very narrow. So can I ask a question outside the terms of reference? It would seem that it is permissible, even from my reading of that—although I will have a look at the statement. The minister is now saying, 'It's a blanket and you can't talk about anything that mentions oil for food.' So providing I don't use the magic phrase and I ask, 'Have you had any communication with Canadian authorities about "bleep"' that might be okay. But there are more general matters as to whether ASIO has been requested to consult with or talk to people. That is surely a matter for ASIO and Mr O'Sullivan, not the government. He can say 'yes' or 'no'. I can ask whether or not there has been any information from the Canadian authorities to ASIO. It is not a matter that is within the terms of reference of the oil for food program inquiry, because it is not about AWB or the related entities—BHP or Tigris—and Mr O'Sullivan could comment on it. But this government not only want to turn a blind eye to their dealings with AWB and all of that; they now want to shut down this committee. It is just ridiculous. Are they able to talk about issues of bribery and corruption or will they say, 'No, we don't want to talk about that either'?

**CHAIR**—Are there any questions for Mr O'Sullivan?

**Senator LUDWIG**—All right; so we're just going to get on with it. Being complicitous again—that's what it looks like to me.

**CHAIR**—I beg your pardon, Senator Ludwig?

**Senator LUDWIG**—I withdraw that.

**CHAIR**—Thank you.

**Senator LUDWIG**—I had a lot of issues that I was going to raise with Mr O'Sullivan but it looks like—

**Senator FIERRAVANTI-WELLS**—Do you have no questions, Senator?

**Senator LUDWIG**—No, I certainly don't have. I have plenty more but unfortunately there were a few that I would have been keen for Mr O'Sullivan to answer. Be that as it may, I might put them on notice, Chair, so that at least they are alive.

**CHAIR**—Indeed, and the minister's statement indicated that such examination may in fact be appropriate in the future. That may be a good suggestion, Senator Ludwig.

**Senator Ellison**—Yes.

**Senator LUDWIG**—Mr O'Sullivan, I am sure you are familiar with the fertiliser issue and the role that ASIO plays in doing security assessments. With respect to security assessments, can you indicate how many you have done in the last 12 months, and by each month, and how many remain outstanding?

**Mr O'Sullivan**—I believe the total number of ammonium nitrate checks was 5,649. That was up until, I think, the end of 2005.

**Senator LUDWIG**—How many remain outstanding or are still waiting to be processed?

**Mr O’Sullivan**—My advice is that ASIO is up to date with checking for access to ammonium nitrate.

**Senator LUDWIG**—I was also after the figures for the security assessments for asylum seekers over the period from 2001 to 2005. I am happy for you to take that on notice.

**Mr O’Sullivan**—If you would not mind, I would like to take that on notice.

**Senator LUDWIG**—More generally, can you indicate broadly whether they have risen or fallen?

**Mr O’Sullivan**—I do not seem to have that particular information but I will get it for you fairly quickly.

**Senator LUDWIG**—If that is not readily apparent, I am happy to wait for the answer to be taken on notice. A matter that we have been following up was in question on notice 110 from last estimates. I am going to continue with that, so you might find I that I ask it regularly at estimates. Can you indicate how many times ASIO has used its powers of detention? I am happy to use more exact terminology. What I am seeking is the number for use of those powers in terms of counterterrorism and more broadly.

**Mr O’Sullivan**—Are you referring to the review that the PJC has been carrying out about our questioning and detention powers? Is that the issue?

**Senator LUDWIG**—It is not so much the review. Significant powers have been provided to you, and this is an opportunity for the committee to determine how many times those powers have been used. It goes to what type of power was used, the duration of the power, each occasion it was used and whether subsequently any charges flowed from that or any issues were finalised as a consequence. In other words, it is a way of determining both the use of those special powers and also what may have resulted from their use.

**Mr O’Sullivan**—The broad answer to your question will be set out in our unclassified annual report that has been tabled in parliament. My memory is that we have not used the detention powers. I think we have used the questioning powers about 13 times, but I cannot remember off the top of my head the exact number. I will find out that information for you.

**Senator LUDWIG**—In your answer to question No. 110, you say:

As reported in the ASIO Report to Parliament ... ASIO has not sought a warrant under 34D(2)(b) of the ASIO Act 1979.

Is that still the case?

**Mr O’Sullivan**—I believe so, yes.

**Senator LUDWIG**—If that has changed, could you advise the committee accordingly, please.

**Mr O’Sullivan**—Sure.

**Senator LUDWIG**—In the matters of Mr Habib and Mr Hicks, on your website questions Nos 25 and 26 were concerned with their allegations of mistreatment. Has there been an

investigation of Mr Habib's specific allegations that he was rendered to Egypt and was tortured there?

**Mr O'Sullivan**—My understanding is that Mr Habib is engaged in legal action against my predecessor and against the AFP commissioner and has commenced proceedings in the High Court on that matter.

**Senator LUDWIG**—Does that mean that you do not want to discuss those issues?

**Mr O'Sullivan**—I think there is not much I can usefully say about those allegations in this context.

**Senator LUDWIG**—I understand that if there are court cases pending you might be limited in what you can say. Are there matters that you can go to that may be permissible in terms of whether or not there have been any investigations or conduct of any investigation more broadly?

**Mr O'Sullivan**—I think the previous director-general had a discussion in estimates some years ago about some of Mr Habib's claims, but as far as I am concerned there has not been an investigation of those claims or any other matter since I have become director-general.

**Senator LUDWIG**—Do you think you should have looked at that, given the allegations that were made? Is it a matter that you have turned your mind to, as to whether you should or should not have investigated—or have you made a decision not to investigate?

**Mr O'Sullivan**—Since Mr Habib has chosen to take legal action, I felt that he obviously thinks that that is his best course of seeking what he wishes to seek.

**Senator LUDWIG**—It may be a matter that goes to both the A-G's and ASIO. Has ASIO made any requests for freezing of assets of terrorist organisations in the last 12 months?

**Mr O'Sullivan**—That gets close to an operational issue that I would rather not canvass in this context.

**Senator LUDWIG**—At the hearing in October it was indicated that there were 18 proscribed organisations but they had not had their assets frozen. Are you able to say whether, for those 18, it has since been sought to have their assets frozen?

**Mr Cornall**—I will need to get the appropriate officer to come to the table to answer that question.

**CHAIR**—Is that person here this morning?

**Senator LUDWIG**—Sorry, Chair, I am not sure where that would fit in, but I figured that while ASIO was here—

**CHAIR**—That is okay. I am sure the officers outside are hanging off our every word. Perhaps that is wishful thinking on my part. Shall we go back to that question when the officers are available, Senator Ludwig?

**Senator LUDWIG**—I hope the minister does not teach them bad habits, that is all. That was a gratuitous comment. I might come back to that when the officer is here.

**Senator Ellison**—We could put that on notice for AG's when they appear. The relevant officer could be put on notice.

**Senator LUDWIG**—I might outline them because that way it will give them an opportunity to hear it or to pass it on. If the answer is yes, then I want to know the value of the assets, when they were restrained and what proceedings may have been instituted in respect of those restraints or whether they simply had their assets frozen. If the organisations do have assets which have not been frozen, I want to know whether they are aware of the nature of those assets and whether there is a problem with why those assets have not been frozen. If they do not have any assets, it really comes back to ASIO. I was going to put a similar question to the AFP. What has been the level of investigation to uncover any assets? What inquiries have been made by ASIO, AGD, the AFP or even AUSTRAC?

**Senator Ellison**—That is useful. Now that we have notice of those questions, we can pass them on to the relevant officer in AGD and we will answer it as best we can, subject to operational requirements.

**Senator LUDWIG**—There was a matter that appeared in the *Sunday Age* on 11 December 2005. I am happy to pass that on if Mr O’Sullivan is not familiar with it. It says:

ODAY al-Tekriti, a former body-guard of Saddam Hussein who fled Iraq after the assassination of his father, has been given security clearances by ASIO ...

Are you able to update us any further in respect of that matter? I think it is a matter that we have raised here before, but I do understand it may be an ongoing investigation. Or it may have concluded.

**Mr O’Sullivan**—I am aware of the report to which you refer. This has been raised previously in this committee. My understanding is that the allegation is that this person was involved in war crimes, and there was then a hearing about that matter or matters relating to that before the Administrative Appeals Tribunal. I will say from ASIO’s point of view that our mandate runs to security intelligence information and not to those allegations that were before the AAT.

**Senator LUDWIG**—More generally, in terms of the follow-up from last estimates, how many additional staff have been added to ASIO so far? The annual report mentioned a number, but I am looking at the period from the time the annual report was prepared, which would have been in September or October last year. Since then additional funds have been made available to ASIO.

**Mr O’Sullivan**—In the 2004-05 year ASIO recruited 224 staff, which is the most ever in one financial year. At the time of the annual report, if I remember correctly, our total staff numbers were around the 920 or 930 mark. Today they are around 1,020, so it is approximately 80 or so since the tabling of the annual report.

**Senator LUDWIG**—Where are they drawn from? Are they university graduates or a cross-section? Are you able to say? Or are they from the AFP or other policing ranks?

**Mr O’Sullivan**—The answer is that it is across the board. There is no particular category, although we are now running what we call intelligence officer recruitment programs twice a year. But, in addition to those people, ASIO recruits a wide diversity of skill sets. That variety is reflected in the composition of the workforce. It is a quite different sort of agency from other main government policy advising departments. We have a range of those people, and we have been recruiting in all sectors. What we are doing, just to explicate that point, is that we

have set up a team to look at the way in which, the priority with which and the sequence in which we recruit, as I was alluding to in my opening statement. We aim to grow in ways which are sustainable and which give us the thickening of skill sets in a way that is orderly and that helps us to do that prioritisation. That is what is going on.

**Senator LUDWIG**—I am happy for you to take this on notice but could you provide a breakdown of the areas these additional staff will be assigned to—in other words, as much as you are able to provide it, if there are discrete areas where they are being recruited to to assist in terms of your overall mission?

**Mr O’Sullivan**—What might help answer that question is that we have prepared a submission to the parliamentary joint committee which oversees this. When that material is tabled, it might be useful to send it to this committee as well.

**Senator LUDWIG**—That would be helpful, thank you. Are you able to say how many of those new staff have been employed through or recruited through the graduate entry program or employed directly into positions of ASIO?

**Mr O’Sullivan**—I would have to get precise figures for you but, as I say, we have decided to run biannual general intelligence officer recruitment programs whereas we tend to do the others on a more ad hoc basis, but I will get you precise figures.

**CHAIR**—Mr O’Sullivan, thank you very much for your time this morning. We will move on. I have been advised that we will begin in outcome 1, output 1.1.

**Senator LUDWIG**—You have forbidden me from asking all my general questions, Minister.

**Senator Ellison**—We can take them on notice, and that is what we have done. If we can get the answer we will.

**Senator LUDWIG**—What I was also going to ask was that the chair refer the matter to the Senate as well. I think it is a matter that we should, as a committee, refer to the Senate for a further look at, including the statement that you have made this morning. I guess that is the extent of what we can do.

**CHAIR**—Thank you, Senator Ludwig. I am reasonably confident in predicting that this would not be the only committee that might be referring the matter to the chamber.

**Senator Ellison**—I think you might have been beaten to it yesterday.

**CHAIR**—Damn! I hate that!

**Senator Ellison**—You probably got a first today. Who knows!

**Senator LUDWIG**—I am going to come to it again on Thursday, I suspect, when we get DFAT. It will not be a surprise by then, I suspect.

**Senator Ellison**—If Senators Ray and Faulkner did not raise it yesterday, I am witness to the fact that you are the first to raise it, Senator Ludwig.

**Senator LUDWIG**—No. Senator Ray and Faulkner, I think, ran into Finance and Admin.

[10.03 am]

**CHAIR**—Yes, but they made a reference to the chamber. Let us move on. We are in 1.1, legal services and policy advice on family law, federal courts and tribunals, civil procedure, ADR, administrative law and administration of related government programs.

**Senator LUDWIG**—The family relationship centres is an area about which I am going to ask a number of questions. Have the accreditation rules referred to in proposed section 10A of the Family Law Amendment (Shared Parental Responsibility) Bill 2005 been drafted yet?

**Mr Arnaudo**—Those rules have not been drafted yet. They are contained in the shared parental responsibility bill that is currently before the parliament.

**Senator LUDWIG**—Will they be drafted before it is dealt with in the Senate? There are a number of issues. The bill has been referred to the Senate Legal and Constitutional Legislation Committee to be looked at, and it has called for submissions. This matter will obviously be raised—where those accreditation rules are and whether they will be drafted both before the committee reports back to the Senate and before the Senate deals with the bill.

**Mr Arnaudo**—There is a process under way at the moment with the Community Services and Health Industry Skills Council, which is undertaking a public consultation process to assist in the development of competency standards. That will form the basis for the accreditation rules. The actual requirement for the accreditation rules will be introduced in a phased process, as the introduction of compulsory dispute resolution is introduced progressively over the coming years. So from 1 July this year, the current framework for the regulation of mediators contained in the Family Law Rules and also in the approval requirements for organisations funded under the Family Relationships Services Program will continue to apply. The bill also contains a transitional provision to allow current practitioners to become accredited under the new rules as they are introduced progressively over the coming years.

**Senator LUDWIG**—So the short answer is that you will not have the accreditation rules finalised by the time we deal with the legislation—is that right?

**Mr Arnaudo**—They are in the process of being developed through the Community Services and Health Industry Skills Council at the moment. The accreditation rules, as I said before, are not required until we introduce compulsory dispute resolution, which is expected to be in 2007.

**Senator LUDWIG**—So when are the family relationship centres due to commence?

**Mr Arnaudo**—Later this year, in July. As I outlined earlier, the current requirements in relation to the standards and qualifications of staff will continue to apply to those organisations, as well as to the individuals under the Family Law Rules, if they are conducting family law mediation.

**Senator LUDWIG**—So which rules will apply?

**Mr Arnaudo**—They are set out in Family Law Regulations 60 to 61. They are also set out in the approval requirements under the Family Relationships Services Program. They are available on the FaCS website but I am happy to provide them.

**Senator LUDWIG**—If you have identified where I can find them, that will suffice. So that will apply until such time as you finalise your accreditation rules?

**Mr Arnaudo**—Then, as we progressively introduce the new concept of compulsory dispute resolution, we will progressively also introduce the new accreditation regime.

**Senator LUDWIG**—When is the compulsory dispute resolution going to commence?

**Mr Arnaudo**—The bill allows it to be set out by proclamation, so that we can allow that to match the roll-out of the new services, including the 67 family relationship centres. It is expected to occur by about July 2007 but there is a bit of flexibility involved. From that date, new cases involving children's matters will be required to attempt a dispute resolution process before commencing a matter in the court. From around 1 July 2008, all parenting matters will be required to attempt a compulsory dispute resolution process beforehand.

**Senator LUDWIG**—From that point onwards will they be operating with the expected capacity or functions that you want the family relationship centres to operate under or will more work need to be done?

**Mr Arnaudo**—I expect that by next year we will be well set up with the accreditation regime because we will need to have a process in place for the issuing of those certificates to people who have attempted dispute resolution and who have failed to come to an agreement outside the court system, in order to allow them to then proceed to the court system.

**Senator LUDWIG**—During the supplementary estimates round last October, I asked for the raw data that went into the advice on the selection of the FRC sites. I followed this up with a question on notice, which became question on notice No. 22. You responded by providing me with a CD, for which I thank you. Can you explain to me what the data on the CD shows? It seems, from a cursory examination of it, to only contain total population and Indigenous population broken down by a geographical area. Is that the sum total of the information that is contained on that CD?

**Ms Pidgeon**—You asked about the raw data tables, and those were the raw data tables that we used from the ABS. I think that is right. I am not an expert on the thousands and thousands of bits of information on the CDs, and I will certainly let you know if there is anything else there, but that is essentially what we were using from those raw data tables.

**Senator LUDWIG**—Was that the only information that you used in terms of raw data to feed into the selection of the FRC sites?

**Ms Pidgeon**—As I explained at the last estimates—and I think I gave you a written list of what we took into account—we used the ABS data and we used information provided by the Department of Family and Community Services, as it was called then. That information is listed on that sheet that I handed up. I can give you another copy of that, if you like.

**Senator LUDWIG**—Was there any raw data from them?

**Ms Pidgeon**—We did not use raw data from them. They would have had raw data, but they would have analysed that and given us the results of their analysis.

**Senator LUDWIG**—Did you provide that to the committee—or just the list of information that you obtained?



**Ms Pidgeon**—I provided the list of the factors that were taken into account either via the ABS raw data or via FaCS.

**Senator LUDWIG**—Did you question FaCS about the raw data or the basis of their assumptions, decisions or information that they provided to you?

**Ms Pidgeon**—‘Question’ is probably the wrong word. When we were meeting with FaCS, they had their various pieces of information that they were feeding into our discussions, and they are listed in the paper I handed up last time. We would have had some understanding that it included things like separated families, child support payers/payees—a whole range of those things. We had an understanding of what it comprised; we did not look at their raw data to see where it came from.

**Senator LUDWIG**—Did you obtain raw data that would make up factors like population, divorce rates, separated rates with or without children, blended families, economic indicia, or rate of domestic violence? Did you obtain the raw data that would make up that?

**Ms Pidgeon**—No, we did not need to, because FaCS was already looking at analysing need for a whole range of purposes within the FaCS portfolio and their programs. It would have been duplication if we had gone back to the same raw data. We were relying on their work that they were already doing, which they were able to feed into our process.

**Senator LUDWIG**—Have you made available to the committee the information that they provided?

**Ms Pidgeon**—No, we suggested the committee seek that from FaCS, because we do not have that raw data.

**Senator LUDWIG**—No, the material that FaCS gave you—

**Ms Pidgeon**—They gave us the results—where they got to. We did not see any of their raw data. It was fed in during meetings, discussions, or when we asked about a particular place—in some cases by email. We did not actually have in our possession the raw data.

**Senator LUDWIG**—Correct me if I am wrong, but you also did not have in your possession information from FaCS in a format that was discernable by area about those sorts of issues. In other words, it was an iterative process through meeting and discussion that you came to the conclusion where these FRCs should be located, based on their information to you, rather than a document that established broad indicia such as population distribution, blended families, divorce rates, separation rates—those sorts of issues—in a format that you could then view and make determinations yourself.

**Ms Pidgeon**—That is correct. We had the results of their analysis, plus we had the ABS, and we also took into account things like accessibility, where transport hubs are, and also where other services are.

**Senator LUDWIG**—So the only raw data you had was that which you provided to the committee.

**Ms Pidgeon**—That is right.

**Senator LUDWIG**—Where are we up to with the process now?

**Ms Pidgeon**—The applications closed on 19 December. Since then, both departments have been working through them and assessing them. That process is well advanced and will be completed very soon, and then recommendations will go to decision makers. In our case, that is the Attorney-General. We would expect him to make a decision soon after we provide the recommendations. It is well advanced.

**Senator LUDWIG**—When will it be completed?

**Ms Pidgeon**—It will depend on how long the Attorney-General needs to make the decisions, but we certainly expect it to be completed and decisions made by late March or early April.

**Senator LUDWIG**—You want to allow enough time for them to be up and running by July 2006, don't you?

**Ms Pidgeon**—That is right.

**Senator LUDWIG**—Even if the decision is made in March, is that enough time for those places to get up and running?

**Ms Pidgeon**—Yes, we believe so.

**Senator LUDWIG**—How many applications have been received?

**Ms Pidgeon**—I would rather not talk about numbers of applications at this stage, because we are yet to negotiate with the preferred applicants. We have been advised by the Australian Government Solicitor that our bargaining position is stronger if there is not an understanding of how many applicants there are.

**Senator LUDWIG**—So questions like, 'How many of those applications come from religious orders or political organisations?'—as the case may be, to make it reasonable—or, 'How many applications come from family relationship services or programs?' are not questions that you want to answer?

**Ms Pidgeon**—We do not have that detail collated at this stage anyway. We have been concentrating on doing the assessment rather than doing an analysis of the types of applicants. That is the sort of thing that we could do once the assessment process is finished.

**Senator LUDWIG**—When will that be finished? In March?

**Ms Pidgeon**—I would expect in the next few weeks.

**Senator LUDWIG**—So the assessment will be finished in the next few weeks?

**Ms Pidgeon**—I would expect that by sometime in March we will have some recommendations for the Attorney.

**Senator LUDWIG**—So there have not been any recommendations made to the Attorney-General at this point in time?

**Ms Pidgeon**—That is correct.

**Senator LUDWIG**—The closing date has now passed. You are examining the data and making assessments on those applications. Then you will recommend X to the Attorney-General? I am trying to understand the process until March.

**Ms Pidgeon**—At this stage, I am not on the selection panel, so I do not know whether they are going to come up with a single recommendation for each place or whether, in some instances, there may be two. I expect it is most likely that in most places there will be one recommendation per location, but it is too early to say, because they are still finalising their assessment.

**Senator LUDWIG**—You have a location and now have to come up with an applicant.

**Ms Pidgeon**—There are certainly plenty of applicants for us to be able to make recommendations for each location, but I cannot say definitely whether it will be a single recommendation per location. That is the most likely result, but we have to wait until the panel is finished.

**Senator LUDWIG**—Who would I talk to about that? Is there a panel?

**Ms Pidgeon**—It is my staff and staff of Family and Community Services and Indigenous Affairs working together on the assessment.

**Senator LUDWIG**—What happens if more than one applicant per location is put up as a recommendation? Who makes the decision? Who is the final arbiter?

**Ms Pidgeon**—The final decisions about the family relationship centre are made by the Attorney.

**Senator LUDWIG**—Has the Attorney issued any instructions as to how the data, applicants or information is to be conveyed to him for selection?

**Ms Pidgeon**—No. We will provide him with a submission with the recommendations in it. We have had no direction from him.

**Senator LUDWIG**—So there could potentially be one, two or three final applicants for a particular location with the decision left to the Attorney-General, or are you going to put a preferred one and a second preferred?

**Ms Pidgeon**—It is normal for a recommendation to go up proposing a preferred applicant but, as I said before, because it is not finished yet, I do not want to be prescriptive about it in case there is, for example, in one location a lineball between two applicants. I am leaving it open as a possibility that they may want to put up more than one in one location. Normally, you would recommend one.

**Senator LUDWIG**—Are there rules that determine how many the panel can put up per location?

**Ms Pidgeon**—No, there are not.

**Senator LUDWIG**—You could put up 10.

**Ms Pidgeon**—It would not be a very useful selection process if we put up 10. This is supposed to be something to enable the Attorney to make a decision based on the assessment. I think it would be completely unrealistic to put up 10.

**Senator LUDWIG**—Do you have any contingency plans if you cannot in the time available come up with a suitable applicant per location?

**Ms Pidgeon**—One of the things that the panel needed to do when they first looked at the applications was to decide whether there was any location where the field was not good enough. If that had been the case, we would have then considered whether we needed to go back and advertise for that location again or whether we needed to look at what our options were. That has not been the case. In every location we are satisfied that there is a sufficient field of applications.

**Senator LUDWIG**—But you are not able to say how many per location?

**Ms Pidgeon**—We would prefer not to on advice from the Australian Government Solicitor in terms of our bargaining position. We are very happy to give you that information once the funding agreements have been finalised.

**Senator LUDWIG**—I understand that answer, though I would like to know the answer to the question I asked. Perhaps when we are past the point where it matters, you might advise the committee of some of that detail that I have asked for.

**Ms Pidgeon**—I am very happy to do that.

**Senator LUDWIG**—I will ask again at the May estimates if we have not received that advice by then.

**Ms Pidgeon**—I do not see that there will be any problem.

**Senator LUDWIG**—By that time you will be late.

**Ms Pidgeon**—That is right.

**Senator LUDWIG**—Will A-G's have direct contact with the applicants? When the people have been selected at each location, how will the A-G make his final decision? Will he interview the applicants if there is more than one? Will he have contact with the preferred applicant?

**Ms Pidgeon**—It is open to the Attorney to do that, but in previous selection processes for other services under the program that did not happen. It is open for the Attorney to decide. If he wants to do that, he can.

**Senator LUDWIG**—Are there any rules about how it should work?

**Ms Pidgeon**—The rules are the normal administrative decision making rules. He can take into account relevant considerations but not irrelevant considerations. Meeting with an applicant would be relevant.

**Senator LUDWIG**—Did the department provide secretarial or other support to the committee chaired by the member for Wakefield, Mr David Fawcett?

**Ms Pidgeon**—We do not provide secretariat support. We do provide papers as requested, but it is not the sort of committee that has a departmental secretariat.

**Senator LUDWIG**—What papers did you provide?

**Ms Pidgeon**—We provided a range of papers over quite a few months. I do not have a list of them in front of me. I can certainly provide you with a list.

**Senator LUDWIG**—Perhaps you could provide the committee with the list of papers as well. I assume that it is not a truck load; it is probably a briefcase load.

**Ms Pidgeon**—They are quite bulky because they did include some of the development material for family relationship centres in terms of the way they would operate. I will take that on notice and certainly provide them if they can be.

**Senator LUDWIG**—They could be put on a CD if necessary.

**Ms Pidgeon**—I will take the request on notice.

**Senator LUDWIG**—Did Mr Fawcett go back to the AGD and ask for any additional information?

**Ms Pidgeon**—It was more that if something came up at a meeting there would be a request. Generally the requests were via the Attorney's office. We were generally responding to the Attorney's office when they asked us to send information. Often, it was the Attorney's office that would initiate the request.

**Senator LUDWIG**—Did the committee receive any of the raw data which was on the CD which was already provided, or the deliberations of the AGD?

**Ms Pidgeon**—No, because they did not receive any information or any papers relating to location. That raw data related to location.

**Senator LUDWIG**—I am finished with the area concerning family relationship centres.

**CHAIR**—We are still on output 1.1, unless you advise me otherwise.

**Senator KIRK**—I have some questions in relation to the Productivity Commission's report on government services for 2006. I note in that report that the Federal Court's expenditure per case finalised has gone up significantly, from \$5,197 to \$16,767 in 2004-05. Obviously that is a considerable increase. Can you tell the committee why the Federal Court's expenditure per case has increased to this extent?

**Ms Leigh**—I understand that the Federal Court will also be appearing before the committee. Because they are self-administered, they are in a better position to give you information about those figures. I am happy to appear again at the same time as them, if that would facilitate your discussion of the topic.

**CHAIR**—Thanks, Ms Leigh. That would be helpful.

**Senator LUDWIG**—If the information is of a general nature, Ms Leigh, you could probably answer.

**Ms Leigh**—I am happy to give some answers now. I just thought it might be helpful to handle it all together.

**Senator LUDWIG**—Under which section?

**Ms Leigh**—The Federal Court itself has been called to appear today. You were asking about—

**Senator LUDWIG**—No, these are not really Federal Court issues. We have separate questions for them. They are more general. These are AGD questions. It is only the registrar that would answer them, and I am sure he would not comment on some of these issues, with respect.

**CHAIR**—Why don't you proceed, Senator Kirk, and we will see how the discussion goes.

**Senator KIRK**—My questions really go more to a matter of comparisons with other courts and other jurisdictions, so to that extent they probably are more general questions. Can you comment on that considerable increase from \$5,000-odd to \$16,000 per case?

**Ms Leigh**—Could you remind me, Senator, which year the \$5,000 related to?

**Senator KIRK**—That must have been in 2003-04.

**Ms Leigh**—One observation that I would make is that the Federal Magistrates Court has been increasingly conferred with jurisdiction, and each time it is conferred with additional jurisdiction that otherwise would be the sole jurisdiction of the Federal Court, it is conferred with that jurisdiction in relation to the less complex matters. So that means the cheaper matters shift down to the Federal Magistrates Court and it leaves the cost per case in the Federal Court being calculated on the basis of the more complex matters. It seems to me that would be one consideration.

**Senator KIRK**—Is that the analysis that has been done? Has there been an analysis done of these figures?

**Mr Cornall**—No, we have not done an analysis of the Productivity Commission's figures. I should perhaps add that remarks were attributed to the Attorney-General in the *Australian* on Friday, 10 February—that the Federal Court handled many complex commercial and native title matters and that this could have an effect on the average cost of finalising matters. He also pointed to the fact that some easier matters were now being dealt with by the Federal Magistrates Court. That was reported in the *Australian*.

**Senator KIRK**—The Federal Court has always dealt with those types of matters, and this shift of jurisdiction from the Federal Court to the Federal Magistrates Court has been going on for a while. I still wonder how that can explain such a considerable increase just in the period of a year.

**Mr Cornall**—We have not done an analysis of the figures and we are not in a position to do so.

**Senator KIRK**—Isn't that of some concern? Isn't it something that perhaps you ought to be looking at? It is a \$10,000-odd increase per case.

**Mr Cornall**—I agree with Ms Leigh's suggestion that it is a question that could well be directed to the court and see what suggestions they have in terms of the contributing factors.

**Senator KIRK**—So it is not something that the department concerns itself with?

**Mr Cornall**—Well, yes, we are concerned about the cost of justice and access to justice, but these figures have only just been published and we have not had the chance to discuss them with the courts at this stage.

**Senator KIRK**—So is it proposed that you are going to be discussing it with the Federal Court? Is this a matter that you would normally take up in due course and communicate with the Federal Court and try to determine why there is such a considerable increase?

**Mr Cornall**—We communicate with the courts on any matter that is of current concern or interest to the courts or the Attorney-General, and on that basis this is a matter that may well be the subject of appropriate discussion.

**Senator KIRK**—‘May well be’—does that mean it might not be?

**Mr Cornall**—We have not had a discussion about it yet.

**Senator KIRK**—Is it proposed to set up a meeting or some kind of communication in order to—

**Mr Govey**—Perhaps I can add to that. We do have meetings with the CEOs of all the courts on a regular basis and I would anticipate that this would be one of the matters that we would put on the agenda for the next one of those meetings.

**Senator KIRK**—When is that one due to take place in relation to the Federal Court?

**Mr Govey**—I would need to seek advice on that. I cannot remember whether it has actually been scheduled, but it was due to be held in the next month or so.

**Senator FIERRAVANTI-WELLS**—Before we move off this subject, I have a question following on from that. Did I understand there has been no analysis done of the increase in the cost per case? Does the data that you have look at the various categories of cases and where those increases have been more marked? And will that include an increase in volume and the category of cases that have resulted in the volume and consequently possibly have resulted in the increase?

**Mr Govey**—I think we would have to take that up with the individual courts to provide a meaningful analysis of the figures which relate to each of the courts.

**Senator FIERRAVANTI-WELLS**—Yes, please. I would like it if you could give me an analysis of the increase, including the increase in case load and the nature of the cases that have come before those federal jurisdictions so that we can get an accurate picture of where those increases are, what may have occasioned those and the sorts of cases that have led to that.

**Mr Govey**—We will refer that to the chief executives of the courts.

**Senator FIERRAVANTI-WELLS**—Thank you.

**Senator KIRK**—I am still trying to understand exactly how it is the department attempts to keep costs under control, say in relation to the Federal Court—and the Family Court and the other courts. Is it just the case that the courts are virtually allowed to go ahead and run their own courts as they see fit, with very little oversight from the department? From what you have said to me, it seems that you are going to have a meeting and just have a chat about the increasing costs, but I would have thought there would be a much more rigorous oversight of expenditure, given that, as you said, it goes down to the fundamental question of the cost of justice.

**Mr Govey**—At the end of the day, the nature of the self-administering process that is in place means that the courts are responsible for their own financial affairs. That includes, for example, seeking increased allocations of money through the new policy proposal where they want to seek additional money, but otherwise they receive the amount of money that is appropriated for them and then become responsible for the discharge of their responsibilities in accordance with that allocation.

**Senator KIRK**—So it is quite a hands-off approach from the department's point of view—the money is allocated and they spend it as they see fit.

**Mr Govey**—Certainly we do not regard ourselves as having a day-to-day responsibility for the management of their affairs. As I understand it, under the FMA Act that is very much the courts' responsibility.

**Senator KIRK**—But it is still something that you will raise with them when you meet with them.

**Mr Govey**—Certainly, because once a matter becomes a matter of general interest through the production of a Productivity Commission report or through matters being raised in the press, we would seek information and analysis from the courts.

**Senator KIRK**—Has there been any thought given to providing Commonwealth funding to state courts that exercise Commonwealth criminal jurisdiction?

**Mr Cornall**—My understanding is that this is a matter that is taken up in the whole process of allocating Commonwealth funds to the state for the services that the state provides for the Commonwealth across a whole range of activities. That is where that process should be taken up, not as an individual matter in relation to the provision of funds to state courts.

**Senator KIRK**—Are you saying I should direct my question elsewhere?

**Mr Cornall**—I am not sure if it is still called the grants commission process, but there is a process by which there is whole-of-government payment for the services the states provide to the Commonwealth, and that is not a process that we are involved in. That involves courts, prisons and other services that the states provide and it is dealt with by other departments.

**Senator KIRK**—So your department is not involved in the allocation of funds.

**Ms Leigh**—As a detail, the general proposition is that it is part of the payments to the states. There are some specific areas of family law where specific funding is provided to the states. That is a historical matter relating to the establishment of the Family Court and the payment to the states where certain family law matters are carried out in state courts or in some cases even in state government departments. That is a relatively limited area.

**Senator KIRK**—This is not a matter on which your department would even be consulted if there were to be a proposal to provide funding to state courts exercising Commonwealth criminal jurisdiction. The allocation of funds is not something that your department would be consulted on. Is that what you are saying?

**Ms Leigh**—I am sure that, if that issue were under consideration, we would be advising the Attorney on it.

**Senator LUDWIG**—I am not sure which output the certificates of no impediment to marriage belong to.

**Mr Cornall**—We can deal with that now.

**Senator KIRK**—On 14 January the *Age* newspaper reported that your department had advised DFAT:

... that Australian law does not allow the issue of a Certificate of No Impediment to Marriage to persons wishing to enter into a same-sex marriage.



Is it the case that that advice was given to DFAT?

**Mr Duggan**—Yes, that is true. Advice was given to the Department of Foreign Affairs and Trade that, in relation to the second limb of what a certificate of no impediment does, it was not possible to issue a certificate of no impediment in circumstances relating to same-sex marriage. That is simply a statement of the law.

**Senator KIRK**—Could you explain the second limb?

**Mr Duggan**—The certificate of no impediment is something that is required by a number of overseas countries in relation to Australian citizens seeking to marry in those countries. It generally does two things: firstly, it indicates that there is no particular impediment under the law here for that person to marry; and, secondly, it indicates that in the normal course of events that marriage would be recognised in Australia. The law has been quite clear that same-sex marriages will not be recognised in Australia since the parliament made that clear in 2004. So a certificate of no impediment can no longer say that in the normal course of events a same-sex marriage performed in an overseas country would be recognised in Australia. That is a simple statement of the law as put forward by the parliament in 2004.

**Senator KIRK**—So there was an amendment to the law in 2004.

**Mr Duggan**—That is right. You may recall that in 2004 the parliament defined marriage in this country to mean the union of a man and a woman voluntarily entered into for life. The legislation also made clear that same-sex marriage was not possible in Australia. Even prior to those amendments the common law would probably have prevented such recognition in Australia, but in 2004 that position became clear beyond doubt with a change to the law which was supported by both the government and the Labor Party at the time.

**Senator KIRK**—I understand that there has been a change to the definition of marriage within the Marriage Act but I still do not see how that impacts upon the actual certificates of no impediment to marriage. Where has that aspect of the law been changed, if it has?

**Mr Duggan**—As I indicated to you, what the Australian government, through the Department of Foreign Affairs and Trade—and it is DFAT who issues these certificates, not us—has been called upon to do by the foreign government is to say two things: firstly, that there is no particular restriction under law that we are aware of that prevents this person marrying; and, secondly, as far as the Australian government is concerned, this marriage will be recognised in Australia. Clearly the Australian government can no longer say that. That does not mean that DFAT is unable to assist people in these circumstances. You may be aware that none of those people who have had these difficulties have actually been prevented from marrying. It is possible, for example, to get certificates from registrars of births, deaths and marriages on the single status of an individual. What DFAT does is negotiate with the individual concerned and the country concerned to find out what requirements there are which we can satisfy, short of giving a statement which would not be a statement of the law in this country.

**Senator KIRK**—So really the certificate, from what you are saying, has those two aspects to it.

**Mr Duggan**—I can provide you with a copy if that would be useful to the committee of what a certificate of no impediment looks like, and I am happy to do that. You will see that the second part of that is that we are attesting that in the normal course of events these marriages will be recognised in Australia. Of course, it has always been the case that a range of marriages performed overseas potentially would not be recognised in Australia—for example, where someone was already married or if, in fact, there was a very young marriage. Some countries still allow for that. That obviously is not recognised in Australia. So it is not a question of policy in this regard; it is simply a statement of the actual law. As I understand it, DFAT has then done its best in negotiation with the individuals concerned to provide the necessary documentation to the country that is concerned with these marriages—and those marriages have in fact taken place.

**Senator LUDWIG**—Is there a copy of that or are you going to provide one?

**Mr Duggan**—I am sorry?

**Senator LUDWIG**—Were you going to provide a copy of those certificates? I am sorry to jump in. It just seemed a bit unclear to me. Is it on the form? Does it say that the law requires certificates to say that marriage would be recognised in Australia?

**Mr Duggan**—I just need to make it clear that this is not a requirement under Australian law. You may need to talk to the Department of Foreign Affairs and Trade about the origin of certificates of no impediment. They are not something that we issue. We have been asked for advice in relation to the particular issue we have now had under discussion. But DFAT issues them and, as I understand it, it is something that has evolved over time between governments at a government-to-government level in relation to these issues. So you may well want to take up that issue with DFAT as to why it is in the current form. The point we were asked about was: if it is in this form, are we able to say the second limb? The answer is no, we cannot, because the law was made clear in 2004. That is not to say that the Australian government cannot provide some documentation to assist those individuals. As I understand it—and again this is a matter you might want to check with DFAT—that has in fact occurred and those marriage have taken place. But of course those marriages cannot be recognised in this country.

**Senator LUDWIG**—It is not the latter part; it is the part about the forms and the certificates. You have provided advice to DFAT, have you?

**Mr Duggan**—We provided it in 2001; we provided it before the 2004 changes to the law, which made it clear in our view that the common law would have had the same result. But certainly since 2004—and DFAT is aware of this—the law in Australia is extremely clear. Parliament made that clear specifically in 2004.

**Senator KIRK**—So DFAT sought advice from you to that effect, as to whether or not they needed to make any changes to their practice in issuing these certificates—is that what occurred?

**Mr Duggan**—In relation to an issue of where DFAT had been asked to provide a certificate in the circumstances, they asked if they were able to certify the second limb and our advice was: ‘No, you can’t. The Australian law is as we’ve indicated to you.’ As I say, it is simply a statement of the law in this country and it is quite clear now that that does not mean, as I have

indicated to you, that we cannot provide—and DFAT does do its best to provide—other documentation to support those people’s application for marriage. Indeed, no marriage has been prevented, that I am aware of, from taking place. It is a matter primarily for the country where the marriage is occurring. These are not requirements under Australian law.

**Senator LUDWIG**—Which part do you say is impermissible on the form?

**Mr Duggan**—I will table this but if I will just read it for you.

**CHAIR**—I think Ms Leigh has provided a copy of the document to the committee.

**Senator LUDWIG**—I have got it on the web too.

**CHAIR**—That is being copied now. Senator Ludwig has his own; excellent.

**Mr Duggan**—The second paragraph says:

This certifies that there is no Australian law that prohibits an Australian citizen or person domiciled in Australia from marrying a citizen of [country] in [country] and that a marriage celebrated in [country] according to the law of [country] between an Australian citizen or person domiciled in Australia and a citizen of [country] would normally be recognized as valid in Australia.

It is those words that create the difficulty. An arm of the Australian government simply cannot say that in relation to a same-sex marriage, because the parliament has changed the law. That is the issue.

**Senator LUDWIG**—It is not that form. It must be a different one than the link to the website.

**Mr Duggan**—It may well be that DFAT have changed their certificates without informing us. If that is the case, that is a matter for them. But, in relation to the one that we were asked to comment on, which is the one that you have now been given a copy of—

**Senator LUDWIG**—There is an application for certificate of no impediment to marriage, but then there is the certificate itself, so this is really a separate issue.

**Mr Duggan**—I do not know whether it is a separate issue or not. What is of concern to DFAT and the Australian government is the fact that an Australian government agency has been asked to give a statement as to the law in this country. That law in relation to these particular marriages is very clear. There is no room to move in that regard, because the parliament has made its position clear in relation to same-sex marriages. They will not be recognised in Australia, so it is not possible for an Australian government agency to say to a foreign government, ‘Yes, we will recognise those in Australia,’ because the answer is that we will not. That is not something that is a matter of policy; it is a matter of the law. We changed the Marriage Act.

**Senator LUDWIG**—One of the difficulties is that none of that is referred to on the application for the certificate of no impediment to marriage. So, although it might be reflected upon in the certificate, one of the challenges is that, when you then fill out the application for certificate of no impediment to marriage, it is not plain that there is a problem in terms of issuing the certificate because of the reason in paragraph 2. Be that as it may, if you were following it logically, people would then fill out the application for certificate of no impediment to marriage in good faith and then find that the certificate cannot be issued

because of the wording of the certificate, not the application. I guess it is a matter that we may have to take up with DFAT.

**Mr Duggan**—With respect, I think that is right. As I said, it is not part of our process to issue these certificates. We provide advice on the detail of the Marriage Act, which we have done in this particular case. DFAT are obviously aware of this issue, but they are the ones who issue certificates of no impediment, not this department. I suggest that perhaps it is a matter for them. Obviously, we are in discussion with DFAT about this issue. As Senator Kirk has indicated, it is a matter of some controversy at the moment. In terms of the actual processes for issuing these certificates, that is a matter for DFAT. It is the DFAT application form that you are referring to.

**Senator LUDWIG**—Sorry, I jumped in anyway. Senator Kirk was asking questions. Thank you.

**Senator KIRK**—Has there been any revision of the wording of this certificate since the law changed in 2004? If so, did your department provide any advice? Who drafted the words contained within this certificate? Was this something that was done by the A-G's department or DFAT?

**Mr Duggan**—I have to say that I have no personal knowledge of these matters. They have been around for some time. My understanding of the situation is that it is a matter for DFAT. This is a form that that department issues, not us. We are asked for advice in relation to particular aspects of it, and we have provided that advice, as I have indicated to you.

**Senator KIRK**—I think it is something I will have to pursue with DFAT.

**Senator LUDWIG**—Who makes the decision not to issue the certificate? Is it DFAT or AGD?

**Mr Duggan**—That decision would be taken by DFAT.

**Senator LUDWIG**—What role does AGD have, then?

**Mr Duggan**—I have indicated to you the role that we have—that is, we provide advice to the Department of Foreign Affairs and Trade in relation to questions on legislation which we administer, in this case the Marriage Act. We have provided that advice. As I said, since 2004, there really is no legal advice required, because the law is very clear on the matter. I do not know what DFAT has done since that time to renew the form. It is a matter that, with respect, is better taken up with that department.

**Senator KIRK**—So there was no revision to the certificate or the application form, as far as you know, on the advice of AGD following the change in the law.

**Mr Duggan**—I would prefer not to answer that question because I simply do not know the answer to it. In terms of our advice, as I indicated to you, it was quite clear and it was limited very much to that particular question.

**Senator HEFFERNAN**—At the last estimates, I asked some questions about the establishment of a judicial commission. In supporting that proposition, in the meantime I have sent you some documents. Has the Attorney-General's Department received those documents?

**Senator Ellison**—I think they were sent to me. I received some documents from you, Senator Heffernan.

**Senator HEFFERNAN**—Has the Attorney-General's Department had an opportunity to see those documents?

**Mr Cornall**—Yes, we have.

**Senator HEFFERNAN**—In answer to the questions I asked at the last estimates, you start off by saying that if there is an allegation of criminal behaviour that is an issue for the criminal justice system. That is pretty basic. You then say that, if there were an allegation of incapacity or misbehaviour—I raised issues of slow judgments, alcoholics et cetera—that were so serious as to justify removal, this would be a matter for the parliament in accordance with section 72 of the Constitution. Could you explain to the committee how you would trigger that?

**Mr Cornall**—As I understand it, that provision has never been required to be used in respect of a federal judge.

**Senator HEFFERNAN**—But how would you actually trigger it? What would be the first step? How would you mount an argument that allowed you to convene both houses of parliament under the present system? My view is you cannot.

**Mr Cornall**—I do not agree with that. There is a provision in the Constitution which enables this to be done, so the process by which it is to be done would have to be found. My expectation is that it would be done through the office of the Attorney-General.

**Senator HEFFERNAN**—Have you read the documents from me?

**Mr Cornall**—Yes, I have.

**Senator HEFFERNAN**—Have you had them verified?

**Mr Cornall**—No.

**Senator HEFFERNAN**—Do you intend to have them verified?

**Mr Cornall**—No.

**Senator HEFFERNAN**—Why not?

**Mr Cornall**—The documents are, on the surface of it, copies of documents. I take them to be what they purport to be.

**Senator HEFFERNAN**—Would it be fair to say that, in those documents, a person standing at the back of the court or on the tram to wherever it is would see an example of a hole in the floor of due process when it comes to full public confidence in our legal and judicial system, its processes and accountability? Do you think there is an inkling of an issue there?

**Mr Cornall**—In what way?

**Senator HEFFERNAN**—If you joined the dots up in the documents.

**Senator Ellison**—Madam Chair, the documents which Senator Heffernan alluded to at the last estimates hearings came to me and I sought advice from the Attorney-General's

Department. I was given advice in relation to that. There has been correspondence now, as a result of that, from me to the Australian Federal Police, which is not a referral, I stress. It is for assessment and comment. The Attorney-General's Department has given me advice and I have accepted that. I think that to ask the officer for an opinion as to what is in the documents is perhaps—

**Senator HEFFERNAN**—Fair enough.

**Senator Ellison**—The Attorney-General's has given me advice, which is within the department's ambit. As for the detail of the document—

**Senator HEFFERNAN**—I do not want to go to the detail.

**CHAIR**—Thank you for clarifying that, Minister.

**Senator HEFFERNAN**—I do not want to go to the detail. In answer to a further question, I am actually trying to prosecute the obvious need in Australia for oversight of the federal judicial constituency. For instance, in relation to the High Court, the answer that has come back is that 'there are no formal guidelines for dealing with complaints about justices'. That is a pretty simple statement, isn't it? If a police commissioner or someone came across evidence that was something that they could not deal with or complained and put the proposition to the chief justice of a federal court, the High Court or anywhere else in the federal constituency, nothing could necessarily be done about it.

**Mr Cornall**—Judges are in an extremely important and unique position in the Australian democracy. They have an independence and a security of tenure that is essential to them discharging their duty.

**Senator HEFFERNAN**—I appreciate that.

**Mr Cornall**—Under the Constitution, they can only be removed for proven misbehaviour or incapacity. That is a very unusual situation but it is there for a very good reason.

**Senator HEFFERNAN**—Is the government giving thought to the establishment of a judicial commission?

**Mr Cornall**—It is giving thought to the issues that you have raised and that have been raised in other places. In anticipation of your questions today, I did speak to the Attorney-General last night. He confirmed that the matter is under consideration and that he is continuing to consult with the courts about an appropriate way to carry the matter forward.

**Senator HEFFERNAN**—It seems to me that, under the present arrangements, there is an ability for people to represent people in court under a false name and get away with it, and there is the ability of someone to sit in judgment on their own written and oral advice and get away with it. There is a series of serious issues which, as my covering letter said, have been put in the too-hard basket but which I think it is about time we dealt with.

**Senator Ellison**—I think I can assist Senator Heffernan here. The situation is that there is no judicial commission of this sort at a federal level in Australia. Nor are there any protocols for judicial behaviour, as I understand it. I think that has been answered. I think that, in the federal jurisdiction, it is fair to say that there are no protocols. As the secretary has outlined, this is a matter which has been given close attention by the Attorney-General. Indeed, going

over a good deal of time, over the last two to three years, this has been an issue under consideration and the Attorney-General has been discussing this with the judiciary. The very issue that Senator Heffernan raises is under consideration. I appreciate what Senator Heffernan is saying. It is either nothing or the use of section 72 of the Constitution—that is, you have to get both houses to sit and make a plea to the Governor-General in Council, if I recollect correctly. There is no in-between mechanism to deal with judicial negligence, misbehaviour, inaction or anything of that sort. There have been some complaints which have been brought to the attention of the Attorney-General and indeed the former Attorney-General. So the government is looking at that, and I think the secretary has outlined as best as can be put as to where it is at at the moment. So I understand what Senator Heffernan is saying. I am just trying to crystallise the situation as it stands.

**Senator HEFFERNAN**—Fair enough.

**Senator Ellison**—As to the triggering of section 72, the secretary has said that it goes through the Attorney-General's Department. Action would then have to be taken by the government of the day to call the two houses together, as I understand it. That is where I would see it going from there. Advice would no doubt be received from the Attorney-General, who would advise the Prime Minister of the day. Then that action would be taken accordingly. It would be an executive decision. As the secretary said, there has been no example of that being done at the Commonwealth level since Federation. So, rather than going to some hypotheticals, which are difficult for the officials to answer, I just thought I would put that in context.

**CHAIR**—Thank you, Minister.

**Senator HEFFERNAN**—Mr Cornall, were you alarmed by any of the stuff you have read?

**Mr Cornall**—Before we come to that, can I remind you of the answer to one of the questions you put on notice during the last estimates about complaints procedures and so on. There was a detailed answer which set out—

**Senator HEFFERNAN**—Yes, which I appreciate.

**Mr Cornall**—issues about court charters and complaint processes. There is also a guide to judicial behaviour, which is published by the Council of Chief Justices and adopted by the courts. In relation to the material that you sent to the minister, it seemed to me that it comprised, firstly—

**Senator HEFFERNAN**—You don't have to go into the details.

**Mr Cornall**—No, I was just going to say that, in general terms, it comprised assertions and allegations which were not substantiated. A lot of the material was in fact taken from evidence or reports of commissions of inquiry which have already fully investigated matters and made appropriate reports. Therefore, to just take part of that material and to form conclusions on that basis seemed inappropriate. Really, the decisions of those commissions of inquiry were the relevant decisions.

**Senator HEFFERNAN**—With great respect, they are, if they are verified, official police documents. Had you ever seen Cori before?

**Mr Cornall**—I am sorry; I don't understand the question.

**Senator HEFFERNAN**—If you don't understand it, you haven't read the documents.

**Mr Cornall**—I have read the documents.

**Senator HEFFERNAN**—Have you ever seen Cori before?

**Mr Cornall**—I am sorry, Senator; I don't recall an aspect of the documents that explains the question to me.

**Senator Ellison**—Madam Chair, the answer that I gave in relation to the action that has been taken regarding the documents that were sent to me really now takes it to another level.

**Senator HEFFERNAN**—I appreciate that. This is all about putting a case to have a judicial commission. Those documents, in my view, set in concrete the reasons why that ought to be so, without going to the detail. They are as up to date as 7 April 2005.

**CHAIR**—Senator Heffernan, as I understand the status of the situation, the material has been provided to the minister and to the secretary. Issues have been taken up with the Attorney-General—I understand that to be the case both from the information of the secretary and from the information of the minister.

**Senator Ellison**—And these documents have been taken up with the Attorney-General.

**CHAIR**—And these documents have also been taken up with the Attorney-General. Although not a referral, there has been some notice given to the Australian Federal Police of these documents, and that is my understanding of the status of the situation. Is that correct?

**Senator HEFFERNAN**—Could I ask a further question: to the best of your knowledge, has there ever been a referral made from the AFP to the likes of the Wood royal commission? I have got an answer back from the AFP that the Wood royal commission never referred anything to them, but do you know if anything went back the other way?

**Mr Cornall**—No, I don't, Senator.

**Senator HEFFERNAN**—Because I am trying to be very careful about all of this, I think I should come back to this at a later date. Obviously, as I say in my letter, I understand that other electronic and written evidence exists. I think everyone involved in this process ought to think very carefully about the need for the establishment of a judicial commission.

**Senator Ellison**—I think, Madam Chair, the points that Senator Heffernan has made and the documents he has referred to are matters for consideration generally by government. It is government that determines policy, not the officials.

**CHAIR**—Although the Attorney-General's Department is not an agency of inquiry in that process.

**Senator Ellison**—Exactly. I think that in that regard, Senator Heffernan's comments have been noted. I have discussed this matter with the Attorney-General. The Attorney-General has discussed the matter with the secretary. It is under active consideration—and I can assure Senator Heffernan of that—at the highest level of government. The question of judicial inaction or behaviour across the whole ambit is something which is for the government.



**Senator HEFFERNAN**—I will rest my case, but, in answer to your earlier question, Mr Secretary, these are not throwaway documents. They are deadly serious police documents, some of which have never seen the light of day and have never been dealt with. I think they are testimony to the fact that under the present arrangements a situation can occur where the police have their hands tied. There is a serious risk of blackmail, entrapment and compromise, and I think it ought to be dealt with using a sensible process that does not involve someone somehow magically getting out there and assembling both houses of parliament without being able to put the argument as to why they should assemble. Thank you very much.

**Senator FIERRAVANTI-WELLS**—The minister referred to instances not at Commonwealth level but at state level. I wonder whether it would be appropriate to take on notice an outline of the procedures that currently exist, as you see them. That might help clarify where some perceived deficiencies exist in this situation. If you could take that on notice, that would be good.

**Mr Cornall**—Yes.

**Senator Ellison**—That is state and federal as well, I understand.

**Senator FIERRAVANTI-WELLS**—Yes, both state and federal, thank you.

**Senator Ellison**—That could be useful.

**Senator HEFFERNAN**—Without going into the detail, there has been a bizarre death in Sydney in recent times. There are a whole range of issues that, in due course, I will raise if I have to in order to prosecute the case for what we need to do. Thanks very much.

[11.06 am]

**CHAIR**—If there are no further questions on output 1.1, I thank the officers. We will move on to output 1.2.

**Senator FIERRAVANTI-WELLS**—I want to ask some questions in relation to the costs of legal services at Commonwealth level. I have had a quick look at *Legal services arrangements in the Australian Public Service*, a report by the Audit Office. Mr Anderson, one of the recommendations of this report deals with appropriate systems to be put in place to capture, record and monitor legal services. There are a series of recommendations. I wonder whether the department has given consideration to this report. What are the department's views in relation to the recommendations that have been made?

**Mr Anderson**—The department has considered the report, and the government has published a response to recommendations. Broadly, the recommendations go to matters for agencies and the chief executive officers of agencies, because legal expenditure is primarily a responsibility of the individual chief executive officers. There are some recommendations that go specifically to the role of the department, and the department has taken steps to address those.

**Senator FIERRAVANTI-WELLS**—So, if I understand you, there are options there to look at current Commonwealth legislation that could facilitate the publishing of information, whether it be through annual reports or some other way, on the expenditure of legal services in government departments.

**Mr Anderson**—The Attorney has issued new legal services directions, which come into effect on 1 March. They are currently available on the department's website, along with some explanatory material. One of the amendments to the previous directions is a requirement that each agency publish its legal services expenditure at the end of each financial year. It will be a matter for the agency how it chooses to do that, but there will be a requirement in future years to publish that information.

**Senator FIERRAVANTI-WELLS**—I will go and have a look at it, but does that include just the expenditure internally, or externally as well?

**Mr Anderson**—It includes the total expenditure.

**Senator FIERRAVANTI-WELLS**—Total expenditure including in-house legal services?

**Mr Anderson**—Yes, that is correct.

**Senator FIERRAVANTI-WELLS**—I wanted to ask about the Tongue report that was done a number of years ago. It gave an interesting breakdown of legal expenditure and the move away from expenditure from entities such as the Australian Government Solicitor. Whilst it remains the main entity for provision of legal services, other legal firms do provide legal services. Has there been an update of the information that was contained in that report—in other words, the legal spending across government? Has there been an analysis of the legal spending in terms of breakdown of legal firms?

**Mr Anderson**—Not in terms of breakdown by legal firms. The ANAO report is the most recent update of expenditure. That, of course, did not go across all agencies of government. It went across 40 agencies. And certainly it went across a number of the largest spenders, because some agencies obviously spend far more than the majority of agencies. There has not been a more recent analysis of which firms comprise which proportions of the market.

**Senator FIERRAVANTI-WELLS**—I guess that what you are really saying is that it is only the expenditure itself rather than a breakdown. Is there any intention of doing something similar to Tongue, that updates the information that was contained in that report?

**Mr Anderson**—There is no current intention. At the moment we are focusing on making sure that the recommendations of the ANAO are implemented.

**Senator FIERRAVANTI-WELLS**—Thank you very much. If I have any further questions I will put those on notice.

**CHAIR**—Senator Ludwig, do you have questions on 1.2?

**Senator LUDWIG**—On some of those matters that have been raised by Senator Fierravanti-Wells, I think it is a matter we ask quite regularly, but can you provide the sum the department spent in the current financial year on outsourced barristers and solicitors? That would include private firms and the AGS.

**Mr Anderson**—In the 2004-05 financial year, the department spent \$1,132,391.92 on external barristers and \$4,564,108.90 on external lawyers, including the Australian Government Solicitor and the Commonwealth Director of Public Prosecutions.

**Senator LUDWIG**—Can you break that down by the AGS and the private firms? Are they all from the selection criteria that you utilise?

**Mr Anderson**—I am not in a position to give you that breakdown today, Senator.

**Senator LUDWIG**—Perhaps you could take it on notice. I am quite happy for you to do that. And could you include the internal legal services spend as well?

**Mr Anderson**—We have a very minimal internal legal services spend, because we do not have a separate legal services branch as such.

**Senator LUDWIG**—It is sort of full of lawyers to begin with, isn't it?

**Mr Anderson**—We have perhaps more lawyers than the usual agency, Senator. But we can give you a detailed breakdown as well, if we were to take that on notice.

**Senator LUDWIG**—In terms of answering the legal services direction, is it mandatory or is it a matter that the particular agencies can decide for themselves whether they report that information that you provided to the senator?

**Mr Anderson**—The new legal services directions will make it mandatory for agencies that are subject to the directions, and there is a slight difference between agencies under the Financial Management and Accountability Act and agencies under the Commonwealth Authorities and Companies Act. To the extent that agencies are covered, it will make it mandatory for them to annually publish information as to their spend. But it is a matter for them as to how they annually publish that.

**Senator LUDWIG**—This is one of the first issues where the legal services direction includes a mandatory requirement, isn't it?

**Mr Anderson**—No, there are a number of mandatory requirements in the legal services directions. It is the first mandatory requirement to publish information.

**Senator LUDWIG**—What other mandatory requirements do the legal services directions have?

**Mr Anderson**—The directions themselves are generally mandatory. Agencies are required to, for example, engage counsel at particular rates and, if they wish to vary from those rates, they need the approval of the department or the Attorney. Agencies are required to seek the Attorney's approval if they wish to use in-house lawyers for court litigation. Those are just two examples, but there are a number of different mandatory aspects to the directions.

**Senator LUDWIG**—And if they ignore them you do not police them as such, do you?

**Mr Anderson**—If a breach of the directions occurs, then we will take the action that we believe is appropriate at the time. It is possible for the Attorney to issue a direction to an agency which could govern how it operates in a particular case—for example, it could be with respect to the content of submissions that the agency might make or it could be about the use of a particular legal services provider by the agency if there were some particular behaviour by that legal services provider that was a concern.

**Senator LUDWIG**—Have there been any breaches that you have detected in the last 12 months?

**Mr Anderson**—There have been breaches. In the financial year to date there have been four breaches that we are aware of, but there are a number of others that we are investigating. We either have matters reported to us or we detect matters ourselves.

**Senator LUDWIG**—Are you able to provide any detail on those four breaches and what remedial action is being taken in respect of them?

**Mr Anderson**—Two of them are breaches of the model litigant obligation and two of them are counsel fees matters. In terms of the model litigant matters, the first one involved an inadvertent breach of an implied undertaking on the use of an affidavit. An affidavit had been obtained for a particular proceedings and was sought to be used in other proceedings. The remedy there was, I understand, to require that the agency went back to the court and sought an order permitting release from the implied undertaking. It might be quicker if I provide the rest of the information on notice.

**Senator LUDWIG**—By all means. Have there been any directions from the AGD in respect of remedial action? You mentioned, as part of the overall plan, that the next stop after you deal with it might be a direction from the AGD.

**Mr Anderson**—In a particular matter?

**Senator LUDWIG**—Yes. Have any of those been issued?

**Mr Anderson**—Yes, there have been some directions issued. We will take that on notice as well.

**Senator LUDWIG**—Right.

**Senator FIERRAVANTI-WELLS**—In relation to the new legal services directions, you listed certain agencies that will and others that will not. Could you provide a list of those that will be covered and those that will not be?

**Mr Anderson**—I know that at last count there were some 400 different agencies across the Commonwealth. Some of those are very small. Having regard to that, I will certainly give you—

**Senator FIERRAVANTI-WELLS**—Is there somewhere where I can easily access it?

**Mr Anderson**—The general rule is whether they are covered by the Financial Management and Accountability Act or the Commonwealth Authorities and Companies Act. That actually is set out in the directions themselves, and the new legal services directions have some expanded material to make it clearer who is actually covered and to what extent they are covered. Perhaps you could have a look at those.

**Senator FIERRAVANTI-WELLS**—Thank you. I will have a look at those and, if need be, I can put that question on notice.

**Senator LUDWIG**—Is there a plan to review the new directions? I know they are brand new and I am sure you are pleased with them; it is a question of whether you are also going to look down the track and, say, commission another report such as the Tongue report into the legal services directions, whether you envisage that as a process. It seemed worth while from this side of the table. I am not sure whether you found it as worth while as we did.

**Mr Anderson**—Ultimately, that will be a matter for the Attorney. I would anticipate that some sort of further investigation will occur. In administering the directions, certain matters come to our attention when it seems that the direction either is not clear or could be expanded.

Those are the sorts of things that we monitor on a day-to-day basis. Some further review is likely but ultimately it is a matter for the Attorney.

**Mr Govey**—Senator, could I clarify that the review of the legal services directions was actually done in-house by the department. The Tongue report was not a review of the directions.

**Senator LUDWIG**—I understand that. I could ask whether you would make that review available but I suspect you would say it is an internal working document and you are not going to make it available to the committee. But if you change your mind at any stage, feel free to provide it to the committee.

**Mr Govey**—What was made public was the issues paper that was released. That was a pretty comprehensive document. I think I am right in saying that after that we had a report directly to the Attorney which, in the ordinary course of events, would not be made public.

**Mr Alderson**—There is an additional document we can give you. We have provided a briefing document, which is on our website, which explains the reasoning behind the principal changes that have been made to the directions. So if it would be useful to the committee, we can certainly provide a copy of that with our answers.

**Senator LUDWIG**—That would be helpful; thank you.

[11.21 am]

**CHAIR**—There being no further questions on output 1.2, we will move to output 1.3—Legal services and advice on international law and human rights.

**Senator LUDWIG**—There is \$329,000 in the additional estimates under the heading ‘Australia United States Free Trade Agreement—copyright obligations’. Weren’t these anticipated in the budget in May? What is the nature of that expenditure?

**Ms Lynch**—That money relates to ongoing work that needs to be done in relation to technological protection measures and the provisions that need to be in place by 1 January 2007. It is also money that originally was earmarked for DCITA at the time that DCITA had responsibility for that part of copyright. So it is money that has come to us that would originally have been going to DCITA, to do the work that needs to be done to implement the TPM provisions by 1 January 2007.

**Senator LUDWIG**—They are not new matters that the US has asked Australia to look at?

**Ms Lynch**—No, Senator. They are ones that were always foreshadowed. It is just that the money has come to us as a result of the internal Commonwealth arrangements with respect to copyright.

**Senator LUDWIG**—More generally, has the US asked for changes to the Australia-US Free Trade Agreement that you are aware of?

**Ms Lynch**—Not that I am aware of in relation to areas of copyright, although there will clearly be discussions—

**Senator LUDWIG**—Yes, I should limit that to copyright, in your area of expertise.

**Ms Lynch**—There are discussions between officials in relation to the FTA but I am not aware of any changes that have been requested in the copyright area.

**Senator LUDWIG**—In terms of the implementation of the agreement in respect of copyright, is that a matter that you requested to provide input into or is that now finished in terms of the role that the AGD plays?

**Ms Lynch**—No, we are still doing work in relation to the technological protection measures. We have to review our current legislation to see if it is consistent with the provisions in the FTA for liability schemes for circumvention of TPMs. The House of Representatives Standing Committee on Legal and Constitutional Affairs is also undertaking a review of possible exemptions to the liability scheme. The free trade agreement allows for Australia to put in some other exemptions after there has been a review, and the Attorney referred that part of the implementation to the House of Representatives committee in the first instance.

**Senator LUDWIG**—Where are you up to in terms of that work? There are two parts to that question. I am going to ask about the committee. Have you provided a submission to the committee?

**Ms Lynch**—We have provided three submissions in total to the committee and have answered extensive questions on notice. One of our officers was also seconded to work in the committee secretariat for a while in relation to the review. There is ongoing work within the department on the issue of reviewing the existing provisions in relation to—

**Senator LUDWIG**—Yes, that is the first part I was going to ask about.

**Ms Lynch**—It is a parallel exercise at present. We will then be looking at the House of Representatives committee report, which is due at the beginning of March.

**Senator LUDWIG**—So you are presently examining the copyright legislation or related legislation about technical protection devices and the like. Is that an ongoing review?

**Ms Lynch**—The existing provisions. That is being done in order to ensure it is consistent with our obligations under the FTA agreement. Then the House of Representatives committee is looking at possible further exemptions which the FTA allows for.

**Senator LUDWIG**—When will your internal review be completed? Is there a time for that or is it simply ongoing?

**Ms Lynch**—Amendments have to be ready by 1 January 2007. We have to have complied with the requirements of the FTA by 1 January 2007.

**Senator LUDWIG**—Will they be made public?

**Ms Lynch**—To the extent that they may require legislative changes. They may require amendments to the act.

**Senator LUDWIG**—They would obviously have to be made public.

**Ms Lynch**—I think there has been extensive consultation with stakeholders. Ms Daniels might want to respond to that question.

**Ms Daniels**—It is intended that there will be further consultations with stakeholders once we have an idea of what a new draft bill would look like. At the moment we are working out drafting instructions on the areas of changes to the act that the committee is not concerned with.

**Senator LUDWIG**—You have confused me, I am sorry. What area is the committee concerned with?

**Ms Daniels**—They are concerned with possible additional exceptions that Australia can make to the anticircumvention provisions. The US free trade agreement allows there to be a process once every four years to look into what additional exceptions may be required under the law. The committee's process is the first of those reviews. In tandem, the department is looking at possible changes to the Copyright Act that we are required to make to ensure that we comply with the wording of the FTA. For example, for a start we have to change the definition of what a technological protection measure is. We have to look at our present exceptions under the law and to put in the seven exceptions that are already in the US FTA.

**Senator LUDWIG**—And that is in addition to the already extensive alterations to the copyright law that you made as part of the FTA process?

**Ms Daniels**—That is correct.

**Senator LUDWIG**—Is it envisaged that there will be a step after that or is that the end of the matters in terms of meeting the Australia-US FTA in terms of copyright?

**Ms Daniels**—In relation to copyright, the only other remaining thing that we have to do is to accede to the World Intellectual Property Organisation internet copyright treaty. That process is under way.

**Senator LUDWIG**—So that is another process operating in parallel to these two.

**Ms Daniels**—That is correct.

**Senator LUDWIG**—Do you envisage any changes to the legislation as a consequence of needing to accede to that convention?

**Ms Daniels**—It is likely that there will need to be some minor changes to the libraries and archives exceptions to fully comply with the WIPO copyright treaty.

**Senator LUDWIG**—What would those changes be?

**Ms Daniels**—We have not drafted the changes as yet but the intention is that they would define certain terms in the act which are not presently defined.

**Senator LUDWIG**—Can you give an instance? I am just trying to understand.

**Ms Daniels**—For instance, what is the definition of 'reasonable portion' as to how much of a work can be copied by a library for a user?

**Senator LUDWIG**—And what does WIPO require?

**Ms Daniels**—The WIPO treaty does not set down that level of specificity, but the WIPO treaty requires that exceptions under countries' laws have to comply with a certain test that any exceptions to copyright be specific and not unduly prejudice the copyright owner or their

right to commercially exploit their work. So it is really looking at the exceptions to make sure they are confined.

**Senator LUDWIG**—So there are those three matters then running in parallel. When is the date for the WIPO finalisations? In other words, is it proposed that there will be two sets of amendments, or are we going to combine them into one?

**Ms Daniels**—At this stage it is likely that the minor technical amendments to accede to the WIPO treaty will probably go into a bill early this year, because we are doing other amendments to the law. The ones in relation to technological protection measures will probably be in a stand-alone bill, and that will come later in the year.

**Senator LUDWIG**—What other amendments are you doing to the present copyright law? You mentioned they will be included with other amendments we are currently doing.

**Ms Daniels**—The Attorney has signalled that there will be some changes to the law as a result of a number of reviews to the Copyright Act over the last year. In relation to criminalising some forms of accessing pay TV broadcasts, there will be some new amendments to the enforcement provisions of the act. That is one area where there is already draft instructions issued. If there is a government decision on possible new exceptions to the act arising out of the fair use and digital agenda reviews then those amendments will also be included in a bill.

**Senator LUDWIG**—Whereabouts are the fair use reviews and digital reform agenda up to?

**Ms Daniels**—The department has completed its work on the digital agenda reform issues and has a submission before the Attorney.

**Senator LUDWIG**—And the other one?

**Ms Daniels**—Similarly, on fair use we did some further work and further consultations at the end of last year and we have put a submission to the Attorney for him to consider.

**Senator LUDWIG**—When were they finalised to the Attorney?

**Ms Daniels**—In the last fortnight.

**Senator LUDWIG**—Has the department been asked to prepare any advice in respect of changes to patent law that would remove the anti evergreening provisions that were put in the US FTA Implementation Bill? They are also contained in the Therapeutic Goods Act 1989.

**Ms Daniels**—The Copyright Law Branch has not.

**Senator LUDWIG**—Who would I ask that question to?

**Mr Govey**—If there are any international law aspects the matter might have been referred to the Office of International Law, but of course they would be constrained in what they could say in terms of any legal advice provided. Other than that it would be primarily a matter for the IPA.

**Senator LUDWIG**—I can ask those in 1.4.

**CHAIR**—I understand Senator Carr has some questions which—

**Senator LUDWIG**—That would be wonderful.



**CHAIR**—we believe and are advised are in 1.3.

**Senator CARR**—They are to do with the residential tenancy databases.

**Ms Lynch**—That is us.

**Senator CARR**—I would like to follow up some matters that I raised in October regarding the Standing Committee of Attorneys-General and the report on the Residential Tenancy Database Working Party. Can you confirm for me that the tenant databases are run by private organisations as subscription services to real estate agents?

**Mr Minihan**—Yes, that is right.

**Senator CARR**—And they provide information about prospective tenants.

**Mr Minihan**—Yes, that is right.

**Senator CARR**—Is it true that each state and territory has a separate database?

**Mr Minihan**—I am not aware of the commercial arrangements. Some, I believe, go across a number of different states.

**Senator CARR**—Is it fair to say then that there is no national consistency in the collection of materials on tenants?

**Mr Minihan**—They are commercial organisations so they operate in different ways. There is no uniform body that oversees them in the private sector.

**Senator CARR**—I wonder if you could refresh my memory. As I understand it, the working party of the Ministerial Council on Consumer Affairs announced back in 2003 that there would be a report in the first half of 2004 on responses to the question of reform to the national tenancy database processes. Is that the case?

**Mr Minihan**—The joint working party was established in 2003 and it became a joint working party with the Standing Committee of Attorneys-General. So it was not just the Ministerial Council on Consumer Affairs.

**Senator CARR**—I appreciate that.

**Mr Minihan**—I do not recall whether there was an announcement of a time frame in 2004, but I can certainly get that information to you.

**Senator CARR**—You would appreciate that I am still getting my head around these matters. I saw a statement to the effect that in August 2003 there was an announcement that the working party would be considering options for a nationally consistent framework for the regulation of residential tenancy databases and that it would report in the first half of 2004. Putting aside whether my recollection is correct, can you tell me if there has been a report issued on the question of national consistency in the regulation of residential tenancy databases?

**Mr Minihan**—There has been no report issued. There has been a report finalised by the working party which went to the last SCAG meeting in November last year. We have now prepared a regulation impact statement, which will be considered by SCAG at its next meeting in conjunction with the report. We expect that ministers will form a view on the working party's recommendations and that will be decided then. Of course, being a joint

working party, SCAG will also refer the matter to the Ministerial Council on Consumer Affairs, and their next meeting I believe is in the first half of this year—either May or June.

**Senator CARR**—Is it your intention to make the working party's report publicly available?

**Mr Minihan**—That is a matter for ministers. That is certainly a matter that they will be considering.

**Senator CARR**—Is it your intention that there be public consultation concerning any proposed changes?

**Mr Minihan**—The report is based upon previous public consultation. Whether there is further work that comes out of that and further public consultation is a matter for ministers.

**Senator CARR**—So you do not know?

**Mr Minihan**—No.

**Senator CARR**—I just wanted to be clear about that; that it is a matter for the ministers to determine. In your last answer to me, you indicated that the ministers agreed that the officers report back to ministers at the first meeting in 2006, which is what you have outlined here again today. Have you reached any decision yet as to what you will recommend?

**Mr Minihan**—The working party's report does contain options and recommendations, and the SCAG officers' paper will make recommendations to ministers as to what they do with those recommendations.

**Senator CARR**—Has the working party actually made a decision in regard to a recommendation?

**Mr Minihan**—The working party has finished its report and has recommendations in its report.

**Senator CARR**—What is the date of the meeting in which the recommendations will be considered?

**Mr Minihan**—The next SCAG meeting is in April.

**Senator CARR**—Do you have a date in April?

**Ms Lynch**—I do not think we actually have a date in April, but we can take that on notice and get back to you later this morning.

**Senator CARR**—Thank you. Has the regulatory impact statement that has already been prepared been concluded?

**Mr Minihan**—No, we are preparing that at the moment. We will finalise it for consideration by SCAG ministers at their meeting.

**Ms Lynch**—A draft of that regulatory impact statement has been prepared and been the subject of consultation with the Office of the Regulation Review. We are making amendments in light of those consultations.

**Senator CARR**—Your answer to me from last October indicated that the RIS will consider the working party's recommendation 'as well as several alternative courses of action'. Would

you be able to provide this committee with information on what those alternative courses of action are?

**Mr Minihan**—In general terms, the regulation impact statement looks at the impacts of not regulating but leaving the situation as it currently is. I think there are a number of different options of regulation. That is the kind of information it considers.

**Senator CARR**—That tells me that you will either do nothing or you will do something, which is terrific. I am interested in the bit about doing something. What options are you considering?

**Ms Lynch**—Are you talking about the regulatory impact statement or the officers recommendation statement?

**Senator CARR**—No, I am talking about the regulatory impact statement. I am looking for further information concerning an answer you have provided me with. You said, ‘The regulatory impact statement will assess the working party’s recommendations as well as alternative courses of action.’ I am interested to know what the alternatives that you will also be considering are.

**Ms Lynch**—These are the alternatives that the regulatory impact statement models?

**Mr Minihan**—That is right. Sorry, Senator, off the top of my head I cannot provide in detail the alternatives that are considered by the regulation impact statement apart from the kind of broad outline I provided then. Perhaps I could provide that information on notice.

**Senator CARR**—I would appreciate that. I take it that the process from here, as I understood you indicated this morning—correct me if I have got it wrong—is that you are saying the recommendations, if they are accepted by the SCAG, the Attorney-General’s committee, will be further considered by the ministers for consumer affairs. Is that right?

**Mr Minihan**—That is right.

**Senator CARR**—So should I assume that the ministerial council will not consider this finally until the Attorney-General’s committee has accepted the working party’s recommendation?

**Mr Minihan**—Until the Attorneys have formed a view on the recommendations.

**Senator CARR**—It seems to me that it is a fairly convoluted process.

**Mr Minihan**—I think it is the nature of having two different ministerial councils which do not have their meetings in tandem.

**Senator CARR**—It appears to me that we have a report that is over a year late, we do not have a clear decision yet, in any event, and now we have two ministerial councils which have to bounce around these ideas before we even get to a position where we discuss possible legislative change. Is that a fair summary of where we are at?

**Mr Minihan**—Yes, that is right. One other issue which will be considered by both SCAG and the Ministerial Council on Consumer Affairs is which body takes it forward from here. That is a matter which needs to be determined by the ministers. If the working party’s report recommendations are accepted, there will be further action required. There is a question as to whether that is more appropriately taken within the SCAG group or within the Ministerial

Council on Consumer Affairs. SCAG will form a view as to whether they should take it forward or not and then refer that to the council on consumer affairs.

**Senator CARR**—Are you aware if the Ministerial Council on Consumer Affairs have received any feedback or any response to their consultation concerning the working party's work that was commissioned in 2003?

**Mr Minihan**—The working party is made up of state and territory representatives who are primarily officers who would ordinarily report to the council on consumer affairs, as well as a couple of officers of SCAG bodies such as ourselves and the ACT government. We have spoken to Treasury, who provide a secretariat to the Ministerial Council on Consumer Affairs, about the possible outcome of this process and how that would be passed on to that council. We are still in the process of working out what the officers' paper will ask SCAG ministers to consider.

**Senator CARR**—Why is Treasury interested in this matter?

**Mr Minihan**—They provide the secretariat to the Ministerial Council on Consumer Affairs.

**Senator CARR**—Are there any other funding implications?

**Mr Minihan**—I am not aware of any.

**Senator CARR**—So Treasury's only interest is in providing a secretariat service?

**Mr Minihan**—In a consumer affairs policy portfolio interest.

**Senator CARR**—You have indicated that you thought there would be a meeting of the A-Gs committee in April but there is no fixed date yet. Is there a fixed date for the council meeting?

**Mr Govey**—We can give you the dates.

**Senator CARR**—Thank you.

**Mr Govey**—They are 11 and 12 April.

**Senator CARR**—What about the consumer affairs committee? Do they have a fixed date yet?

**Mr Minihan**—We have not been advised of one by Treasury yet, although they did tell us that it is likely to be in late April or early May.

**Senator CARR**—Can I have any indication from you as to what the Commonwealth office's position is with regard to uniform regulations before either of these committees?

**Mr Minihan**—That is a matter for the Attorney to consider because it will be in the SCAG ministers meeting.

**Senator CARR**—Are you aware that the Privacy Commissioner has an interest in this matter?

**Mr Minihan**—Yes, the Privacy Commissioner was involved in the working party.

**Senator CARR**—And in fact recommended that the Commonwealth should consider making the Privacy Act apply to all residential tenancy databases. What is the response of the committee to that recommendation?

**Mr Minihan**—It is a matter for Attorneys to consider.

**Senator CARR**—That is another issue.

**Mr Minihan**—Yes. It is considered by the working party in its report.

**Senator CARR**—And that is the only consideration that has been given to that recommendation?

**Mr Minihan**—We are also preparing a government response to the Privacy Commissioner's report in which he made that recommendation.

**Senator CARR**—When will that appear?

**Mr Minihan**—That is currently under consideration by the government.

**Senator CARR**—I must say that we seem to have an awfully big mirror here looking into a lot of things but very little action.

**CHAIR**—It is an observation you can make.

**Senator CARR**—It is an observation I do make.

**CHAIR**—I do not think you expect the officer to respond.

**Senator CARR**—A series of events have occurred since 2003, and we have a series of committee meetings.—

**CHAIR**—I understand that. I do not think you expect the officer to respond to that.

**Senator CARR**—That is an unfair observation for you to respond to, but it is a point that strikes me as being self-evident.

**CHAIR**—The point is made.

**Senator CARR**—Can you indicate to the committee what the impediments are to the adoption or the implementation of a nationally consistent regime in regard to the residential tenancy databases?

**Mr Minihan**—The key impediment is that the states and territories currently have different regimes, as you are no doubt aware.

**Senator CARR**—We do not have a nationally consistent approach.

**Mr Minihan**—Exactly. It is a matter of trying to resolve what the key policy issues are, which is what the working party has attempted to do in its report.

**Senator CARR**—Are the states likely to agree to a nationally consistent approach?

**Mr Minihan**—The working party's report has made recommendations to which the state and territory members have agreed, and that issue is addressed in that report.

**Senator CARR**—You indicated to me that you were preparing advice for government in terms of the minister's response to the Privacy Commissioner's review. Are you able to tell me what the time frames are for a government decision on that?

**Mr Minihan**—It is currently under consideration by the government. We do not have a precise time frame, although it is—

**Ms Lynch**—If we are talking about the Privacy Commissioner review, a draft has been prepared and is being considered by government. We have prepared a draft response to that.

**Senator CARR**—Can you tell me how long that has been with government, with the minister?

**Ms Lynch**—No.

**Senator CARR**—Are you able to take that on notice? What date did you provide—

**Ms Lynch**—I will take it on notice, but a draft has been prepared and is going through the usual clearances.

**Senator CARR**—The reason I raise this is that there is clearly a good deal of concern in the industry about this question. As I read it, there were a number of complaints about the misuse of the database. I asked question 164 in October. You indicated that there were occasions where 99 complaints had been received concerning the inappropriate use of the residential tenancy databases. You would agree that the real estate industry has obviously been lobbying on these issues. It has been going on for a number of years. Is there any assurance that the committee could receive that the matter will be dealt with quickly?

**Mr Minihan**—Yes, it will be considered by SCAG ministers at their meeting, and we expect to have a resolution to the working party process at that time.

**Mr Cornall**—I should say that the matter that is under consideration by ministers is really a matter for ministers. We cannot give you assurances about when ministers will make decisions.

**Senator CARR**—I take it that if a uniform database provision is accepted, it will require legislative change. Have I understood that correctly? Will there be legislation required to implement such a policy position?

**Mr Minihan**—Yes, by the states and territories or by the Commonwealth, depending on whether ministers accept the working party recommendations.

**Senator CARR**—There are two options: whether it is a state by state proposition or a piece of legislation through the Commonwealth parliament.

**Mr Minihan**—There are two options—that is right.

**Senator CARR**—What would be the head of power for the Commonwealth parliament to enact legislation?

**Mr Minihan**—If it is addressed as a privacy issue, it is based upon the foreign affairs power.

**Senator CARR**—International power, yes. Are there any other constitutional avenues you could explore for there to be national legislation?

**Ms Lynch**—It may depend on the way in which these sorts of changes are implemented or the way in which the databases may operate, so it is a bit difficult to give you a definitive answer on that.

**Senator CARR**—It is a pretty important question, though, isn't it?

**Ms Lynch**—There are a potential range of powers that might be relevant, depending on how the databases were operated or how they were regulated.

**Senator CARR**—Would you be relying upon a referral from the states?

**Ms Lynch**—I think we need to take that on notice. That is not an answer we can provide readily to you at the moment.

**Senator CARR**—I am surprised all this work has gone on and that issue has not been addressed.

**Mr Minihan**—There are a range of options, and one option is for the states and territories to also put laws into place in a uniform or consistent manner.

**Senator CARR**—I have heard of this. It occasionally happens. Has the information on the 99 cases of inappropriate use of residential tenancy databases come directly to the Commonwealth, or are you relying upon data provided by the states? This is question No. 164.

**Ms Lynch**—Was the answer to that question—the number of complaints—from the department or from the Privacy Commissioner?

**Senator CARR**—From the Privacy Commissioner. Are you familiar with the answer?

**Ms Lynch**—We are. There were 61 submissions received in response to the discussion paper that was put out on RTDs, but if you are asking us—

**Senator CARR**—How did you get this information? How do you know that there are 99? In fact, there are 128 occasions or complaints.

**Ms Lynch**—That information would be coming from the Privacy Commissioner's office. The answer to that question on notice I think came from the Privacy Commissioner.

**Senator CARR**—Do you discuss these incidents with the Privacy Commissioner? Have you have the opportunity to discuss the nature of these complaints with the Privacy Commissioner?

**Ms Lynch**—I think Mr Minihan mentioned a minute ago that the Privacy Commissioner's office was involved in the working group considerations.

**Senator CARR**—You have had no other formal discussions concerning this matter?

**Mr Minihan**—We have not discussed those particular complaints in detail with the commissioner, but those complaints have informed the commissioner's involvement in the working party.

**Senator CARR**—How serious are the complaints?

**Mr Minihan**—I am sorry, I cannot answer that.

**Ms Lynch**—I think we would have to take that on notice.

**Mr Cornall**—It is a question for the Privacy Commissioner in the first instance, because she has all the information.

**Senator CARR**—Thank you very much.

[11.53 am]

**CHAIR**—If there are no further questions on output 1.3, Legal services and policy advice on information law and human rights, we will move on. I thank the officers. We will move on to output 1.4, Legal services and policy advice on international law.

**Senator KIRK**—I have some questions in relation to evergreening provisions, following on from the questions that Senator Ludwig was asking in relation to the Australia-US free trade agreement.

**Mr Campbell**—If the question before was whether we have given legal advice on that matter, then, as the committee will be aware, we do not normally provide information on whether legal advice has been sought by another department or whether it has been given.

**Senator KIRK**—Essentially, that was what I was going to ask—whether there has been any advice or drafting of any anti-evergreening provisions, but I take it from what you are saying that—

**Mr Campbell**—I can say on the latter part that I am not aware of whether there is any drafting, but I would not necessarily know.

**Senator KIRK**—Who would know?

**Mr Campbell**—I suppose Intellectual Property Australia would know.

**Senator KIRK**—Thank you.

**CHAIR**—Is there anything further on output 1.4?

**Senator LUDWIG**—No, that was the only area we wanted to look at.

**CHAIR**—Is Mr Graham, from the Office of Legislative Drafting and Publishing, present?

**Mr Cornall**—Madam Chair, our initial advice was that you required officers other than for output 1.5.

**CHAIR**—That is why I was checking. I was checking with my colleagues to confirm with them that we had had no indication that there was a request made for 1.5 to be dealt with. Senator Ludwig had said that he did have an issue to pursue.

**Senator LUDWIG**—It is a matter that has only come up during the course of this morning. There is a range of legislative drafting that looks like it is under way, so I might ask a couple of questions about it. I can put them on notice.

[11.57 am]

**CHAIR**—We will turn to output 1.6—Legal services and policy advice on native title.

**Senator CROSSIN**—I want to follow up on a question that I asked in October. Thank you very much for the comprehensive list that has been provided. I know that would have taken quite a bit of time to compile, so I want to put on record that I appreciate that effort. I take it from this that there will be an exposure draft made public of the proposed changes to the Native Title Act. Is that the intention?

**Mr Anderson**—The Attorney has indicated the intention to issue an exposure draft with respect to the technical amendments. That may or may not take in other reforms.



**Senator CROSSIN**—At this stage you are expecting an exposure draft that will definitely have technical amendments. Do you know if consideration has been given to providing within that draft other reforms or has that been excluded at this stage?

**Mr Anderson**—At this stage the intention is simply to include the technical amendments in the exposure draft.

**Senator CROSSIN**—Will that go to amendments regarding native title rep bodies?

**Mr Anderson**—That is correct.

**Senator CROSSIN**—And prescribed body corporates?

**Mr Anderson**—That is correct—anything that is not a technical amendment.

**Senator CROSSIN**—Sorry, anything that is—

**Mr Anderson**—Anything that is a technical amendment in the terms of that reform set out will be included in the exposure draft. Anything else in the reforms that does not constitute a technical amendment will not be in the exposure draft. That is the current intention.

**Senator CROSSIN**—So we may well see amendments that relate to native title rep bodies or prescribed body corporates—is that correct?

**Mr Anderson**—Only if they fall within the notion of the technical amendments. There is a slightly different process for the technical amendments simply because the intention there is to see if we can also generate any further suggestions for technical amendments—amendments which, without going to the substance of native title, might nonetheless enhance the effectiveness of the system.

**Senator CROSSIN**—What about the claims resolution review—the interaction between the Native Title Tribunal and the Federal Court? Are there technical amendments in relation to that area?

**Mr Anderson**—That may well throw up some amendments but at this stage the consultants have not delivered their report to the Attorney yet, so it is too early to say.

**Senator CROSSIN**—Why was the native title and indigenous land fund joint committee of this parliament not among those who were consulted? We are currently doing an inquiry into native title rep bodies. I just wondered why there had not been an approach made to the joint parliamentary committee.

**Mr Anderson**—Regard has certainly been had to submissions that have been made to the inquiry to the extent that they have been published and to evidence that has been taken by the committee. Certainly there are reports that have been published by the committee previously that have also been considered.

**Senator CROSSIN**—But there was no consideration given to actually consulting with the current members or providing the members with a briefing about the proposed changes.

**Mr Anderson**—No. That is correct.

**Senator CROSSIN**—I suppose it is probably within the committee's purview to ask you to do that.

**Mr Anderson**—It is perfectly possible to provide that.

**Senator CROSSIN**—Just while I am on the committee, can you inform me what the intention of that committee is? It only has a life, as I understand it, until about the middle of April under the current extensions.

**Mr Anderson**—The government gave an undertaking that it would review the term of that committee within the six months before the term of that committee expires, and that is currently being reviewed.

**Senator CROSSIN**—Who is part of that consultation review process, then?

**Mr Anderson**—It is a matter that is with the Attorney.

**Senator CROSSIN**—It is not a public consultation?

**Mr Anderson**—It is a matter that is with the Attorney.

**Senator CROSSIN**—Have the views of the committee been sought? We have provided our view to the Attorney—

**Mr Anderson**—I believe that that is correct.

**Senator CROSSIN**—but there has been no dialogue with the committee about the committee's view.

**Mr Anderson**—That is a matter I could simply refer to the Attorney.

**Senator CROSSIN**—When is the exposure draft on the technical amendments planned to be released?

**Mr Anderson**—In the first half of this year.

**Senator CROSSIN**—So that could be on 29 June, perhaps.

**Mr Anderson**—It is partly a question of drafting resources being available and it is partly a question of what amendments do actually come out of the different reform processes. For example, the claims resolution review is required to report to the Attorney before the end of March. If that delivers its report to the Attorney on 31 March and if there are technical amendments that might come out of that, it makes it difficult to then get those drafted and included in an exposure draft early in the first half of the year.

**Senator CROSSIN**—So what is the time frame for that exposure draft to be in the public arena?

**Mr Anderson**—I cannot say anything firmer than within the first half of the year. Ideally it will be as soon as possible in the first half of the year, subject to whether the technical amendments come out of the different reforms, the availability of drafting resources and that sort of thing.

**Senator CROSSIN**—But once the draft is made public, how long is it intended to be out there for comment?

**Mr Anderson**—I cannot say at the moment.

**Senator CROSSIN**—You do not know, or it is a decision that government has made and you do not know about it—

**Mr Anderson**—I do not believe government has actually made a decision on the timing. It will partly depend when it actually comes available.

**Senator CROSSIN**—As I understand it, the technical amendments will really only constitute about one-sixth of the proposed reforms. Would that be an accurate mathematical assessment?

**Mr Anderson**—They constitute one-sixth of the reforms in the sense that there are six different elements of the reforms but I would not say that they are one-sixth of the reforms in terms of the different matters that are going forward. It is difficult to compare amendments to legislation with amendments to other aspects of the system. For example, one of the six reforms is consideration of changes of the approach with respect to the funding for respondent parties. That may or may not result in legislative amendments but it is very difficult to compare something like that to legislation and say which one is weightier.

**Senator CROSSIN**—I take it then that most of the sector will not actually see any of the proposed changes to the legislation until it is tabled.

**Mr Anderson**—That is quite possible. I cannot comment on the respondent funding measures but other colleagues here could comment on that. I also cannot comment on the representative body changes that may or may not come out of that amendment because that is a matter with the Office of Indigenous Policy Coordination. There is going to be some further consultation with a number of stakeholders before the matter is actually introduced into parliament in final form but I cannot comment on all of the different reforms.

**Senator CROSSIN**—Do you have any idea what the time frame will be between the release of the draft and the introduction of the bill into parliament?

**Mr Anderson**—I cannot say, because we do not know when the exposure draft is actually going to be ready, but I can say that there is no intention to have a short time period between the final bill being introduced and the coming into effect of reforms that are included in that bill.

**Senator CROSSIN**—With regard to the claims resolution review, from the list that you provided for me here, it seems that the consultations were pretty much conducted in one day. For example, in Queensland seven very different organisations were consulted in one day. In Western Australia, six different organisations were met with in one day. How was that done?

**Mr Anderson**—The consultants travelled to each of those different places and met with the parties.

**Senator CROSSIN**—Did they actually gather the parties to meet them at a particular location or did they physically get around and go to the organisations' headquarters?

**Mr Anderson**—On some occasions I believe that they gathered the parties to them and I think that on other occasions they went to the parties' headquarters. I could take that on notice to provide further detail if required.

**Senator CROSSIN**—Seven were consulted on 4 November. It would seem almost physically impossible to travel around and do that.

**Mr Anderson**—My understanding, as I said, is that some of the meetings were joint meetings and some of the meetings were not joint meetings, and I understand they did have lengthy days.

**Senator CROSSIN**—According to this, they were pretty lengthy days, if that is what they did. I would be interested to get a bit more detail about how that occurred. Who were the consultants that undertook this on your behalf?

**Mr Anderson**—Dr Ken Levy and Graham Hiley QC.

**Senator CROSSIN**—I notice that the Northern Land Council has only been consulted once in all of this long list of consultations. Are there plans to perhaps consult those major bodies in more detail when the exposure draft is released?

**Mr Anderson**—I should say that, where in the course of consultations a party or a body raised issues that went to other reforms, those matters were also passed on to the people conducting the other aspects of the reforms. Secondly, of course, a body like the Northern Land Council had the opportunity of putting in submissions on each of the different aspects of the reforms. As to what will happen further down the track, I cannot say, with respect to the native title respondent body, which reforms would be the ones they might be most interested in. I understand that OIPC intends to meet again with the representative bodies before finalising the reforms, but that is a matter that is best directed to them.

**Senator CROSSIN**—I want to ask you something that is a little unusual, I suppose: has your department ever done any analysis of the impact of native title or land rights changes in terms of agenda perspective—what impact this may have in relation to, say, women in communities?

**Mr Anderson**—We are certainly not aware of anything with respect to native title, although it is possible that another part of the department might have had consideration of those sorts of things in considering communities more broadly.

**Senator CROSSIN**—It was put to me when I was travelling before Christmas by some women who are traditional owners in the Northern Territory. They asked me if the federal government had ever looked at how native title or land rights changes impact on women in communities. You are not aware that anything has been done?

**Mr Anderson**—I am not aware of anything. It is also something that could be directed to the Office of Indigenous Policy Coordination.

**Senator CROSSIN**—They would be the people, if any, who might look at that?

**Mr Anderson**—They would be another organisation that might have looked at it.

**Senator CROSSIN**—You also deal, I am assuming, with changes to the Northern Territory land rights act.

**Mr Anderson**—That is actually something for the Office of Indigenous Policy Coordination.

**Senator CROSSIN**—You do not do that in consultation with them?

**Mr Anderson**—We have had some discussions with them, but it is a matter that is actually administered by Minister Brough rather than the Attorney.

[12.09 pm]

**CHAIR**—We will move on to output 1.7, Legal services and policy advice on Indigenous law and justice and legal assistance, and the administration of related government programs. Do you have questions in that area, Senator Crossin?

**Senator CROSSIN**—No. I do not have any questions until we get to outcome 2.

**CHAIR**—We are going to be there in a nanosecond, I suspect. If there are no other questions: thank you for visiting us, Dr Popple.

**Dr Popple**—Always a pleasure, Senator.

**CHAIR**—I would like to move on to outcome 2, if we have the officers available.

**Mr Cornall**—While we are doing that, Senator Ludwig asked about the freezing of funds of terrorist organisations. The first point to make is that the funds are actually frozen by the financial institutions themselves. The second point is that this aspect of the counterterrorism activity is managed by the Department of Foreign Affairs and Trade. The Attorney-General answered a question on notice, which was asked by Mr Danby on 27 May 2004, about these matters. In the answer, the Attorney said:

There is one current case of assets frozen under the Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002. On 27 August 2002, relevant agencies took steps to freeze three accounts held by the International Sikh Youth Federation, totalling \$2196.99.

I understand that amount is still frozen and that is the only current amount that is so frozen.

**Senator LUDWIG**—Thank you very much for your assistance.

[12.12 pm]

**CHAIR**—We now move on to output 2, Coordinated federal criminal justice, security and emergency management activity, for a safer Australia. We will start in output 2.1, Policy advice on, and program administration and regulatory activities associated with, the Commonwealth's domestic and international responsibilities for criminal justice and crime prevention, and meeting Australia's obligations in relation to extradition and mutual affairs.

**Senator LUDWIG**—I have been pursuing this for a while now, but could we go back to ACLEI. I think I got a briefing the last time we were here. Could we have an update on where we are with establishing the statutory authority or the overseeing body—in terms of the legislation, whether it has been drafted yet, whether it is intended to have an exposure draft, when it is likely to be brought forward for parliamentary approval.

**Mr Harris**—There is a bill which is being finalised by the department now to establish the Australian Commission for Law Enforcement Integrity. We would hope to be circulating that around the government agencies in the next week or so for final endorsement. We would hope to be able to have it ready for the government to introduce in March.

**Senator LUDWIG**—Will that include oversight of all law enforcement agencies?

**Mr Harris**—The government's decision in this area has been that it would initially, at least, have oversight over the AFP and the Crime Commission.

**Senator LUDWIG**—Why only those two?

**Mr Harris**—Those are the two principal law enforcement bodies. All other government agencies do have external oversight, in terms of corruption issues, by the AFP.

**Senator LUDWIG**—What about Customs, CrimTrac and ACC?

**Mr Harris**—The other agencies do have oversight from the AFP if there is a corruption matter.

**Senator LUDWIG**—But ACLEI will not have any authority to look over them then.

**Mr Harris**—There would be the potential to expand it out at a later date, if the government so decided, if there was a need to include other agencies under the commission. At this time the government has decided that it will just be those two.

**Senator LUDWIG**—There are a couple of issues about ACLEI I wanted to explore with the department and also you, Minister. It seems to be that it is an area where on some issues you ask for LEAs to cover the field and in this instance you are bringing forward a body which, although it is going to have a title which may cover all LEAs, is not going to do that in effect. It is principally only going to cover the AFP.

**Senator Ellison**—And the Australian Crime Commission.

**Senator LUDWIG**—Yes, and the ACC.

**Senator Ellison**—That has been the reason for the time that has been involved—it is partly because of the consultation with the states and territories. How do we deal with the seconded officers? But let us leave that aside for the moment. The title does not refer to police, for a very good reason; it refers to law enforcement. The regulations will provide a framework for ACLEI to be extended, should the government determine that it should. I have made statements previously where I have said that the government does not necessarily have a closed mind on this issue but we believe that, in the first instance, it is best to proceed with the AFP and the Australian Crime Commission and see how that goes. In relation to other law enforcement bodies, they can be considered in due course, but the flexibility is there to extend the application of ACLEI by regulation, which would make it very easy for the application to be extended.

For the reason I have just said, we call it the Australian Commission for Law Enforcement Integrity. We are not ruling out its expansion in the future; we just believe that, in the first instance, we will bed it down with the AFP and the Crime Commission and see how it goes. But obviously bodies such as Customs, maybe some enforcement areas of Immigration and the Australian Taxation Office all have an enforcement aspect. But I think that, to put them first-up into this commission would have extended the period because of the complexity of applying it to some of those bodies which are not totally about law enforcement. We have just seen the way the make-up of the Australian Crime Commission has caused some complexity because it involves the states and territories, and I have had to consult with the ministers on the intergovernmental committee which deals with the ACC. The government is very keen to get this legislation introduced. We think that by doing it this way we can get it moving much quicker, albeit so that it is open for expansion in the future.

**Senator LUDWIG**—And you intend to do that by regulation contained in the primary legislation?

**Senator Ellison**—Any extension could be covered or dealt with by regulation.

**Senator LUDWIG**—Are you intending to have a review prior to that or are you simply going to leave it open ended?

**Senator Ellison**—There is no plan to have a review but, of course, this bill will no doubt go to a Senate committee and we will look with interest to the recommendations that the committee makes.

**Senator LUDWIG**—The difficulty that always presents itself, of course—and this is the nub of the question—is that under the Crimes Act there is a broader definition of what federal bodies defined as law enforcement agencies are. It always creates potential confusion between what is a law enforcement agency and what is not a law enforcement agency. And now you are going to have a body that effectively oversees law enforcement agencies, but only the AFP and the ACC. The remainder will be dealt with by regulation. It seems to me that it creates an expectation that law enforcement agencies will have an overseeing body—but they will only be partly covered.

The problem also arises that there is also legislation now before parliament. I am not sure how much I can talk about it; I am certainly not going to go on for a long time. There is a financial framework bill. From memory, I think section 58, although I am open to correction, allows the AFP or law enforcement agencies more broadly to have undercover accounts—those that cannot be readily ascertained because they might be dealing with certain operations.

That power is also extended to ASIO. It was extended, I think, in 1997, or some time ago. That is designed to cover the field. It is designed to cover all law enforcement agencies. But of course the accountability framework will be ACLEI when it comes in in March, which is sensible. But then there is a disconnect between ACLEI looking after LEAs more broadly as an accountability framework and this financial framework bill, which will allow them to have accounts that are not readily able to be audited by the ANAO. It is certainly a worry, at least to me.

**Senator Ellison**—But the financial accountability for ANAO is a different issue to the issue of anticorruption. What we are looking at is the issue of potentially corrupt activities by law enforcement officers. I see the point you are making with the reference you make to—

**Senator LUDWIG**—If you can set up a black ops account, then it can be used for corrupt purposes. I am not suggesting that any of the current people we know would, but that is the potential.

**Senator Ellison**—It would be under the purview of the ACLEI to look at that. But I think what you are looking at from a financial management point of view in the ANAO is something different; it is more about how the agency is administered. And, if there was corrupt activity of that sort, the AFP could investigate that, in any event. I think that what we have to look at is how far a Commonwealth law enforcement authority extends. Centrelink, for instance, has an enforcement aspect—quite a large one. Is it a Commonwealth law enforcement authority or agency? I do not think so, as such. But it may be that, in the future, you need to look at the enforcement methods or some accountability there. I think at this stage the main area to look at is AFP and ACC, and that is where most of the concern has been expressed. It is certainly what I have detected as the main concern. I do not approach this with

a closed mind. One such agency, Customs, could be looked at, and as the responsible minister I think that is a definite possibility for the future.

**Senator LUDWIG**—Was the amendment in the financial framework bill a matter that you requested?

**Senator Ellison**—I think that came from Finance. I will check on that.

**Senator LUDWIG**—My understanding is that it came from the AFP. I know the AFP are not here and I can ask them later but, ultimately, it would not be the AFP that would request it from Finance. It would be a matter for you, Minister, I imagine.

**Senator Ellison**—I am pretty sure it was not my office or AGD; that much I can tell you.

**Senator LUDWIG**—But AFP are acting on their own.

**Senator Ellison**—We will just check on that. We will take it on notice.

**Senator LUDWIG**—I want to explore a couple of issues on that point. I will put it on the record and then perhaps we can get back to it at some later stage. The concern I have in terms of that bill is that it would extend to all LEAs. The length and breadth of LEAs is probably judicially determined at the lower court level, but I do not think that the length and breadth of that has been established. Under that bill, it will then mean that they will be able to set up—and these are my words—accounts that cannot be easily audited. I want to understand how far the ANAO can look into those accounts to ensure that they are being properly administered, they are properly accounted for and they are not used for practices that are outside the accepted practice for accounting.

My second concern is that there be an accountability framework in place, which includes something like ACLEI with not only internal audit and internal management but something in terms of an anti-corruption body to look after those accounts that might be set up for those types of operations. You can understand that the AFP, with Axiom, might want to set up accounts. You can understand that role, and that is where I suspect the request has come from.

When ACLEI is established, it would have that anticorruption accountability framework, plus the AFP would have their internal audit system, and I suspect the ANAO would also have a role. I want to establish what that residual role for ANAO would be to ensure that there is very little room for mistakes to be made.

**Senator Ellison**—I take your point. We can take that on notice and hopefully have an answer for you when the AFP appear before the committee.

**Senator LUDWIG**—I just thought it might be helpful to put it on the record now and we can deal with it when the AFP turn up.

**Senator Ellison**—Yes, we can do that. I am aware of the AFP's concerns in relation to that, but they can provide the answer to that. We will also check on the accountability aspect which you have raised in your question.

**Senator LUDWIG**—In the budget papers last year there was \$2.5 million and \$1 million due to be spent on setting up ACLEI in 2005-06. Where about are you with regard to that expenditure?



**Mr Harris**—I would have to take that on notice to give you an absolutely up-to-date figure. As of the end of the calendar year, the money that we had spent was around \$130,000 on staff costs within the department for this financial year. Overall, as at that time, we have spent about \$237,000.

**Senator LUDWIG**—What happens to the remainder? Is that intended to be spent before June?

**Mr Harris**—It is intended that the money would run until June, at which point ACLEI would be implemented.

**Senator LUDWIG**—Perhaps you could update question on notice 47 in that regard. I am happy for you to take that on notice. It is now February and this was first mooted some time ago. It is running a little late. Why is that? It is of concern to me that an accountability framework has been proposed and now the government is not keen on it, or is the government still keen on it and just a bit slow?

**Mr Harris**—There are a number of reasons why the drafting of the legislation has taken a little time. One is the level of complexity that was identified once we started to actually draft. This is the first such body at a Commonwealth level. There have been some complexities identified. The election also placed a certain hurdle in the way of moving forward.

**Senator LUDWIG**—That excuse is getting a bit old now. Surely we can move on from that one.

**Mr Harris**—It certainly delayed the process initially, before we could get to the point of drafting instructions. Once we had prepared drafting instructions, there were delays towards the end of the last calendar year when there was a significant workload legislatively for the government to pass through parliament, and it was difficult to access a drafter for a certain period. We do have a drafter on the case now full time and we are progressing that.

**Senator LUDWIG**—You have said you have pulled it out of the legislative black hole that it fell into before Christmas. Do you think it is on track now?

**Mr Harris**—We do. There are still some complexities we are trying to get our teeth around, but we think it is progressing quite well now.

**Senator LUDWIG**—In May I hope I do not have to ask what has happened to it. Four million dollars was reported as unspent by the Criminal Justice Division of the AGD for a program designed to combat drug use. Is that the case?

**Mr Harris**—If you are talking about the national precursor strategy, which is to prevent the diversion of chemicals to the manufacture of illicit drugs, there is a budget of \$5.4 million for that strategy with the department. Of that amount of money, we will have spent \$1.8 million by the end of this financial year. The balance of those funds is committed to over the next few years.

**Senator LUDWIG**—When you say they are committed to the next few years, when it was initially announced, was that program designed over the out years? Was it to be spent in certain years? How was it structured to be spent?

**Mr Harris**—It was initially set up over four years. There was an extension by one further year with another \$1 million, which brought it up to the \$5.4 million. It is structured over five years. We are underspent at this point by approximately \$1.4 million. The reason for that is one particular project, which is the development of a national clandestine laboratory database. That has taken some time to move ahead due to refining the technical requirements of the database in consultation with the states, territories and, in some places, international organisations who have similar databases in place overseas. It has taken some time to get to the point where we are in a position to develop a business case around that database and to go to state and territory ministers along with the Commonwealth minister and to seek agreement that we would develop that database. We are hopeful that we would have a business case for ministers by the middle of this year and have a decision, at which point we would then construct that database. That will take 12 months and will cost about \$2 million. That is the major reason why we are underspent at this point.

**Senator LUDWIG**—So that is double what you envisaged it would cost at the beginning?

**Mr Harris**—No. That is about the cost we thought of, but it has just taken a long time to get to the point where we can reach a decision on moving forward with the database.

**Senator LUDWIG**—What will happen to the underspend? Will that be carried forward?

**Mr Harris**—Yes, that has been carried forward into the future.

**Senator LUDWIG**—How is that done financially?

**Mr Cornall**—We can ask our chief financial officer to explain that process. That would be better than getting Mr Harris to.

**Mr Kennedy**—Essentially, there are two processes. One is that we simply request approval from the finance minister to spend the unspent funds in the following year and to apply for approval to budget for a deficit in that year. That is what we will be doing with the funds that have been accumulated that have been unspent up until this financial year. Another option for us is to seek to reprofile funding across financial years.

**Senator LUDWIG**—And you are doing the former in this instance.

**Mr Kennedy**—We are, yes.

**Senator LUDWIG**—That means that the underspend of \$1 million or more gets carried through to the next year.

**Mr Kennedy**—That is correct. From an accounting perspective, we will be budgeting for a deficit for that year.

**Senator LUDWIG**—And that will be reflected for this year as a deficit of \$1 million and then—

**Mr Kennedy**—A surplus this year and a deficit the following year so, over the two years, it will even out to zero.

**Senator LUDWIG**—Thank you. Is that the only underspend?

**Mr Harris**—That is correct. That is the major reason why there has been an underspend.

**Senator LUDWIG**—That is that program to deal with—

**Mr Harris**—Clandestine laboratories.

**Senator LUDWIG**—Can you indicate why it has taken so long to develop that clandestine laboratory database?

**Mr Harris**—The central issue is the level of consultation required. No database like this exists within Australia. We have had to consult with overseas agencies such as the US Drug Enforcement Agency on similar systems that they have in place. We have had to work through a number of technical requirements and user requirements of the states and territories in order to take this thing forward. It could be quite a complex task. It is a significant database that would be set up. In order to take that forward and make sure that we maintained the cost estimate that we have in place, we needed to move quite slowly as well, and make sure that what we were doing was feasible and could be done within the budget that we have set out. So we have been quite careful in moving this forward and have managed to consult as broadly as possible on technical and user requirements. We have looked at various other systems to determine which was the most cost-efficient way of moving forward.

**Senator LUDWIG**—Have you determined what the most cost-effective way of moving forward is or is that still under review?

**Mr Harris**—It has been finalised but it is still to be looked at by ministers.

**Senator LUDWIG**—What stage has it reached? Is there a proposal to be put forward? Is this another computer database of some description?

**Mr Harris**—It is a national database which will allow jurisdictions to collect information on various characteristics of clandestine laboratories that they find in their jurisdictions—to be able to exchange that information nationally. It will give them enhanced intelligence and information sharing on the common characteristics of those clandestine laboratories.

**Senator LUDWIG**—Is there a proposal as to where that database will reside? Will it reside with CrimTrac or within AGD?

**Mr Harris**—There are a couple of options being considered. As I say, ministers are yet to determine which proposal to go for. There is a business case which is being developed and which will be given to the two ministers in the middle of this year.

**Senator LUDWIG**—Does the consultative process include states, territories and overseas as well or simply states and territories to develop a business model?

**Mr Harris**—As I say, we have consulted with the likes of the Drug Enforcement Agency in the US, and Europol as well. We have also established a task force amongst all jurisdictions, which includes forensic people and police, to take this forward. There has been extensive consultation with the states and territories, and there will continue to be extensive consultation.

**Senator LUDWIG**—What about the remaining funds? What have you spent the money on to date?

**Mr Harris**—The program is broadly broken up into four areas. The first one, broadly speaking, is intelligence and information sharing, under which the clandestine laboratory database falls. There are a number of other projects there that we are also dealing with. The

second area is training for the likes of prosecutors and customs officials. The third one is looking at the controls around precursor chemicals and further regulatory reform. Finally, there is a general awareness raising aspect to the program that we are looking at. Under each of those four categories there are a number of projects that we are pursuing—again, in consultation with the states and territories, and specifically with the precursor working group that the minister established two years ago or thereabouts.

**Senator LUDWIG**—What about the second, third and fourth areas? Where are they up to? The first was the laboratory database, the second was training, the third was controls in respect of the precursors and the fourth was general awareness.

**Mr Harris**—I can run through the list that I have before me. There is a lot of information in here and it is quite detailed, but I can run through a very quick list of the projects that we are undertaking under each of those categories.

**Senator LUDWIG**—That would be helpful.

**CHAIR**—You would not like to receive it on notice, Senator?

**Senator LUDWIG**—I don't want to be smart, Chair, but when?

**Senator Ellison**—We might be able to table the information so that Senator Ludwig can have a look at it.

**CHAIR**—Is it in a form that can be tabled, Mr Harris?

**Mr Harris**—Probably not. We can provide you with a response very quickly.

**Senator LUDWIG**—By this evening?

**Mr Harris**—Yes.

**Senator Ellison**—There is nothing controversial in it. It is pretty straightforward but it contains a lot of detail.

**CHAIR**—I was not trying to curtail your questioning, Senator Ludwig; it was just that, in the interests of time and Mr Harris's indication that it was a detailed response, I thought it might be easier to receive in a written form.

**Senator LUDWIG**—It would be, but I am reticent to ask—

**CHAIR**—We have an undertaking that it will be received by tonight.

**Senator Ellison**—Then, Senator Ludwig, you might want to ask questions on the written document.

**CHAIR**—We have an undertaking, I think from Mr Harris, that it will be received.

**Mr Harris**—We can provide that to you this evening.

**Senator Ellison**—We can come back to questions on that if you want.

**Senator LUDWIG**—We may even be here on Friday.

**Senator Ellison**—We could do that. You may look at it and see it is fine; you may look at it and say, 'No, I want to ask a couple of questions.'

**Senator LUDWIG**—I could always follow up those on notice in any event, I suspect.

**Senator Ellison**—We would be more than happy to do that.

**CHAIR**—As soon as you can would be helpful. Thanks, Mr Harris.

**Senator LUDWIG**—The general impression I am getting, unfortunately, is of the inertia in getting this moving. It seems to be very slow. It seems to be taking quite a long time to get these things in place. You seem to get the money, the money remains unspent and you hold it over for the next year. Then it starts to come to the end, two or three years have passed and we have not really progressed much. This is an important area in the fight against drugs in this country. It seems to me that this government is not taking it seriously enough, especially in the area of precursors.

**Senator Ellison**—Can I say that it was the Commonwealth that provided leadership in this regard and brought together this working group, which by its very nature had to be quite large. State and territory governments, health, law enforcement, the pharmaceutical industry and the Pharmacy Guild are all involved. There are some achievements which are far greater, I think, than just spending money, such as dealing with medication which contains pseudoephedrine, the limitation on the quantity of tablets that you can purchase and the fact that from 1 January you have to buy them over the counter. We have limited the accessibility of medications which contain pseudoephedrine. That really did not involve a lot of money. What it did involve was a lot of coordination and cooperation across the state, territory and Commonwealth jurisdictions plus industry.

One of the things we are also looking at is legislation on tablet presses. That will not cost much money, but the legislation could be decisive in cracking down on tablet presses. We have also had training for Customs officers in identifying precursor chemicals. That is a very important part of the initiative and, again, it is not really part of the expenditure that has been mentioned by officials here today. Many of the achievements have not really involved a great deal of money. They are just getting everyone to work in unison. It is of course always difficult when you have nine different governments and private sector to boot involved. Not only that, but you have health and law enforcement working together. You have seen it with our serious drugs legislation on having children at laboratory sites and the decontamination of sites. All of these things are associated with it. I think that just to look at dollars and cents does not do it justice. There is a lot of achievement which is not just measured in monetary terms.

**Senator LUDWIG**—Thank you. It still seems to be very slow when you still do not know at this point whether you are going to have the database sent off to CrimTrac or you are going to do it in-house. Unfortunately, looking at the development of some of the databases from CrimTrac, it frightens me that it may take yet longer and you will be seeking further extensions and rollover of this money. Looking at the experience that we have had in developing databases that work and come online, none of them to date have been, from memory, delivered on time. I am happy for you to correct that, but I cannot remember one that you have delivered on time to date. All that I am being told today is that we are going to develop a business review, we will send it off for an outcome, we will develop a database and we could end up with an agency dragging its hands under your leadership again.

**Senator Ellison**—I think a database is not as important as restricting the availability of medication which contains pseudoephedrine. I think you have to look at what you need to do first up, and restricting the availability of that medication was the most important aspect. Getting a rescheduling of it was very important.

The database is a factor, yes, but if you ask me about it as a priority I would not put it up there equal with the question of the availability of medication. What we are doing now is clamping down on what we initially saw under the National Crime Authority, where organised criminal groups, certainly bikie groups, were involved in the diversion of precursor chemicals via legitimate medication. Around two to three million Australians a year use cold and flu tablet medication which contains pseudoephedrine. That was a prime source of diversion for organised criminals. Now we have limited that availability, and that has been a big step forward.

The database is important but, if you asked me to choose between the two, I would say the first one was the most important thing to achieve first up—as well as working internationally in relation to precursor chemicals, dismantling the biggest amphetamine lab we have ever seen in the Southern Hemisphere, in Fiji, and intercepting in South-East Asia shipments of several hundred kilos of precursor chemicals. Those are the high priority areas.

All this other work can be done as well, of course, but you have to remember that in the clandestine labs, which have increased dramatically—I think 300 per cent is a figure often used—you have to have tablet presses. There was a recent operation, which I cannot go into, which was very successful, by the Australian Crime Commission, in that regard.

I think that those areas of priority in clamping down on precursor chemicals have to be looked at when you are looking at overall achievements. I am not saying the work is done—it is not—and the database is part of that ongoing work. But to say that this whole thing is falling in a hole because of this database is, I think, looking at the tail of the dog rather than the dog itself. I think that we have got big issues which we need to tackle up front, and we are doing that.

**Senator LUDWIG**—Is the Crimes (Traffic in Narcotics, Drugs and Psychotropic Substances) Act, or TINDAPS, within the criminal justice area? Is that act due to be amended, coming from the Law and Justice Legislation (Serious Drug Offences and Other Measures) Bill?

**Mr Gray**—That act has to some extent been replaced by the new drug provisions. The reason why that act was not repealed is that the range of drugs which is dealt with under that act is wider than the range currently dealt with under the new provisions. There is a scheduling committee which is due to report in the course of this year. I am not quite sure when that report will be. The schedules that are currently in the new drug offences are interim schedules designed to be reviewed when the scheduling committee has presented its report. At that stage what we expect will happen is that those schedules will be finalised, formalised and then there should be no need for the TINDAPS act to continue in force.

**Senator LUDWIG**—You should be able to move them over to the—

**Mr Gray**—That is right. That is the reason why that work has not been done yet.

**Senator LUDWIG**—When is that likely to be finalised?

**Mr Gray**—I am not sure what the current date is. Sometime in the middle half of this year is my understanding, but we might take that one on notice and get back to you.

**Senator LUDWIG**—Legislative drafting will be required to then move what remains in the TINDAPS legislation over to the Criminal Code.

**Mr Gray**—The schedules will require legislative amendment, and what I envisage is that the bill which is brought in to amend the schedules will also include some consequential provisions.

**Senator LUDWIG**—Why wasn't that ready to go with the original serious drug offences measures?

**Mr Gray**—The scheduling committee had not done its work by then; we are still waiting for the report. The whole concept, as you are aware, is to have uniform drug legislation at Commonwealth and state level and that scheduling committee is a Commonwealth-state body. When that committee provides a final report, what we will do, at the Commonwealth level, is review the schedules and we would hope that the states and territories would do the same to actually, for the first time, bring model uniform drug legislation into Australia. The decision had to be made at the time of the serious drug offences bill: should the government bring in that legislation when it did or does it wait until the scheduling committee has finished its work? So the drugs that are scheduled in the serious drug offences bill are taken from the Customs Act and from a selection of other drugs which were considered to be high priority by the law enforcement community.

**Senator LUDWIG**—Who is on the scheduling committee?

**Mr Gray**—It is a Commonwealth-state body. I do not have a list of the membership.

**Senator LUDWIG**—Is it a formal committee? I am happy for you to take that on notice.

**Mr Gray**—It is not a statutory body, it is an intergovernmental working party.

**Senator LUDWIG**—It is a interdepartmental group or intergovernmental group?

**Mr Gray**—Yes.

**Senator LUDWIG**—And comprises what—A-G, states, territories?

**Mr Gray**—That is correct.

**Senator LUDWIG**—Perhaps we should not guess that. Perhaps you could take it on notice and provide some information about the scheduling committee. Is this what they are working on at the moment? It just does not seem to explain to me the delay.

**Mr Gray**—Yes, this is the task that they are working on. I would have to take on notice the timetable for them to present their report. I just do not have that information.

**Senator LUDWIG**—All right, and then, if there is a problem, you could see what the problem is and advise the committee. It seems that there was a lot of work done on the serious drug and other measures bill and, at the time, it would have been neater to provide a whole framework to work with. We are months down the track now and we still do not have the remaining TINDAPS transferred across. You are unsure of the date that that is going to be

finalised so we will limp along for another six months or so, and it just seems to blow out before either of us forget about it, and then it comes along again.

**Senator Ellison**—I would remind the committee that this does involve working with the states and territories and, as I said, with nine different jurisdictions it is a hard way to do business. I have often said it is like herding cats. If you want an example, try the Australian National Child Offenders Register, where we still have not got legislation in place across the country, and try DNA. Some of the questions, I think, are best directed to some of the jurisdictions who are lagging behind, because the Commonwealth does not have the constitutional power to step in and legislate. There are some jurisdictions which are fantastic in the work they have done and there are others which are not. We can only do as much as we can to provide that leadership but we cannot provide the compulsion, unfortunately. We do not have the jurisdiction.

**Senator LUDWIG**—So you are saying that in this instance it is the states' fault that the TINDAPS has not been finalised and reviewed and those measures brought across?

**Senator Ellison**—What I say in relation to that question is this: you get different approaches from different jurisdictions because they all have, invariably, different laws, and to try and get them to adopt a uniform approach or to form some agreement is very difficult. As I said, some are very good, some are not. I hold that out in just about every case where we have to deal with the different jurisdictions. It is a general remark and I stand by it.

**Senator LUDWIG**—Let us take a look at ANCOR, then. Isn't it about a million dollars over budget and you still have not got full functionality?

**Senator Ellison**—Well, ask the South Australian government, which is—

**Senator LUDWIG**—I am asking you, Minister, about ANCOR. It begs the question that if it is over budget, it is not completed, it has not got full functionality—and then you then say 'ask South Australia'. No, Minister, I am asking you why it is over budget and not fully functional.

**Senator Ellison**—Because I cannot legislate for South Australia. I am afraid I do not have that power as the Commonwealth Minister for Justice. Tasmania has only just introduced its legislation. There are others that are well advanced. There are some states which are really very good. I do not have the jurisdiction to go and legislate for South Australia. Tasmania has only just introduced its legislation, as I understand it. There are a range of areas in which we have this issue. With DNA, some of the states are only just exchanging information for the first time. That has nothing to do with the Commonwealth. We can lead a horse to water but we can't make him drink.

**Senator LUDWIG**—But, in many instances, you do not consult with the states, in any event. Nor do you have to. This is about the functionality of the system itself. The analogy is that you are expecting people to buy the apples when they are still green on the tree.

**Senator Ellison**—I can tell you that the system can accommodate the information that they want to or can put on it. In some cases, they either will not or cannot—or they do. As I said, some are very good. But we are totally dependent on the states in things like DNA and child offenders. Across the board, we are dependent upon the states and territories' cooperation,



because we do not have the constitutional jurisdiction over criminal law that they do. So when they have their arrest powers to take DNA, it is a state function. It is similar with child sex offenders. Fingerprinting is an example of how it can work. We have a national automated fingerprint system. But, quite frankly, we raise this time and time again at the Police Ministers' Council twice a year.

We work in groups which try to achieve a national agreement. I have been trying to get a national firearms management system, which would be in the interests of everyone. Victoria is the only one that is interested in that. So there is a thing which is crucial, I would think, to national law enforcement and also to lawful gun owners. But it really is a situation in which the Commonwealth does not have the power to simply say, 'You will do this or do that.' It just doesn't. We have to cajole them, to entice them and to encourage them to work together. As I said, some states are very good; some are not.

**Senator LUDWIG**—To come back to my original question, why is ANCOR \$1 million over budget when its functionality has not been delivered in full yet?

**Senator Ellison**—The problem with the child sex offenders register is that, because of the inaction of some jurisdictions, we do not have a truly national system. That is the issue. The funding has nothing to do with that.

**Senator LUDWIG**—But you do not have full search functionality. It does not work in Queensland. Is that not correct?

**Senator Ellison**—You cannot have that when you only have one state, as I understand it. If we can get the detail on that, we can go through where the states are at on that.

**Senator LUDWIG**—What really amazes me is that you talk about consulting with the states and what an impost it is but you did not even consult with them on the serious measures on the schedules.

**Senator Ellison**—This is under the CrimTrac section, but the centrally hosted ANCOR application has been operational since 1 September 2004. That speaks for itself. Jurisdictions which have enacted the necessary legislation are able to view and share registered offender information and to notify the AFP if offenders intend to travel overseas. That says it all. I think that the question should really be directed to those jurisdictions which have not got their act together.

**Senator LUDWIG**—I will hold it for CrimTrac and re-examine it at that stage.

**CHAIR**—We will resume at 2.00 pm with the Family Court and then go back to output 2.1 after that.

#### **Proceedings suspended from 12.59 pm to 2.02 pm**

#### **Family Court of Australia**

**CHAIR**—As I indicated before the break, we will resume with the Family Court of Australia. I have correspondence from the CEO of the court, Mr Foster, indicating that he had longstanding arrangements in relation to this period which mean he is unable to attend. The committee notes that correspondence. We would be grateful, Ms Filippello, if you would pass

on our acknowledgment to Mr Foster of his receipt of an Australia Day honour in relation to the PSM.

**Senator Ellison**—This is a matter of no great moment. When I was addressing a question from Senator Heffernan in relation to the removal of a judge, I might have referred to a joint sitting of parliament. In fact, it is a sitting of the two houses at the same time or in the same session.

**CHAIR**—So it is a simultaneous sitting as opposed to a joint sitting?

**Senator Ellison**—Yes. I think I might have said ‘joint’, which was a mistake.

**CHAIR**—We will now go to question for the Family Court. I understand that Senator Mason has questions.

**Senator MASON**—Ms Filippello, I have asked similar questions in the past, and if Mr Foster were here he would not be surprised that I am asking these questions. My questions go to the productivity of the judges of the Family Court. I suspect that you will want to take this question on notice. Can you provide me with a table which contains the following information? Perhaps down one side of the table you can include a list of all the judges of the Family Court by name. Across the top of the table I would like to have the following headings—this is the information I would like: firstly, how many cases the judges sat on; secondly, how many days they sat; thirdly, how many judgments, including joint judgments, they delivered; fourthly, the average time taken between hearing and delivery of the judgment. If possible, I would like that information to be provided for each of the last three years. It does not matter whether it is provided by calendar year or financial year.

**Ms Filippello**—Thank you. I will take that question on notice.

[2.06 pm]

**CHAIR**—There are no more questions for the Family Court. Ms Filippello and Mr Hunter, thank you very much. We will return to questions on output 2.1.

**Senator LUDWIG**—I notice that the AGD has been dealing with the issue of double jeopardy in the criminal justice area. Can you indicate what has happened with that to date? I notice there was a report dated March 2004 and there was a Model Criminal Code Chapter 2 which would issue estoppel, double jeopardy and prosecution appeals against acquittals. That built on an earlier discussion paper in November 2003. Where is that up to at this point in time?

**Mr Cornall**—I might ask if someone can catch Ian Govey before he leaves, because that is a matter that has been on the SCAG agenda, and I am unable to recall the details of where it is up to. If we have missed Mr Govey, we might see if we can get an update brief during the course of the afternoon.

**Senator LUDWIG**—I see Mr Govey has been found.

**CHAIR**—He did not manage to escape.

**Mr Cornall**—Can we see what information we can get about that quickly this afternoon for you?

**Senator LUDWIG**—All right. The questions go to where it is at; the amount of resources committed by the Criminal Justice Division, and whether you have managed to reach agreement with the states in respect of that; whether there has been any further view about whether you are going to update the last paper, which was is dated March 2004; or, if it has stalled, the reasons why it has stalled.

**Mr Cornall**—Do you want those questions answered this afternoon or are you happy if we take them on notice?

**Senator LUDWIG**—They can be taken on notice.

**Mr Cornall**—Thank you.

**CHAIR**—Is that all you have for Mr Govey, Senator Ludwig? He is showing signs of trying to escape again.

**Senator LUDWIG**—It did cross my mind that if he was dealing with SCAG, I might have some questions, but I will let him go.

**CHAIR**—You seem to be safe to go, Mr Govey.

**Senator LUDWIG**—Unless he deals with money laundering, he can go.

**CHAIR**—Not on a personal basis.

**Senator Ellison**—We have the people for that. We are keen to go.

**Senator LUDWIG**—Could we have an update on where we are at with the issue broadly. At the moment a consultative process is being undertaken, there is draft legislation and the matter has also been referred to the Senate Legal and Constitutional Legislation Committee. More broadly, has the department done any work on compliance costs that might be imposed on industry as a consequence of meeting the FATF recommendations?

**Mr Gray**—The short answer is that at this stage we have not done any detailed costings. We have certainly discussed with industry in general terms what it is likely to cost. The consultation process is currently under way and will continue until April. One of the things we have discussed with industry is the fact that we are going to have to work out the cost of the proposals—what it is going to cost it. The objective is to produce costings at the end of the consultation period as part of the package which emerges from the consultation period. It is a chicken and egg situation, obviously: until the detail of what the industry is going to be required to do is known, it finds it difficult to do costings. So it is an iterative process that we are addressing in that way.

**Senator LUDWIG**—The proposed amendments have a relatively small cost impact—that seems to be the broad view that government is expressing. That may or may not be correct. It seems to me that that is challengeable on the basis of what legislative requirements you place on banks or financial institutions and others. Why wouldn't you have some broad idea of what the cost impact is likely to be?

**Mr Gray**—I am sorry, Senator, I am not sure where you are quoting from—the suggestion that it will have a minimal cost impact. That is not something that I have seen suggested.

**Senator LUDWIG**—The antiterrorism bill, to start with, contained a range of money laundering issues which at the time the ABA indicated they would have to meet. They

certainly came along to the committee hearing. But that legislation stated that it would have a minimal cost impact, and this is an issue I have raised before—how much the costs are going to be in this area and what cost imposts there will be on business. You are telling me it is going to be an iterative process. I am not sure that I am really satisfied with that answer as a realistic assessment. It is your legislation that is going to affect business. Has any consideration been given to providing a regulatory impact statement?

**Mr Gray**—Senator, we may have been talking at cross-purposes. I was talking about the consultation process for the anti money laundering and counter-terrorism bill. Certainly, it has never been suggested in that context that it won't have an impact on industry, and significant costs. As far as the antiterrorism bill was concerned, yes, the assessment was that it would have a minimal impact on industry because what they were required to do under the provisions in that bill was fairly limited. It was very much a first set of obligations that they would be required to meet.

The concern that industry came back with in relation to the requirements of that legislation was that they may be being asked to do things twice—that they would be asked to do something under the antiterrorism bill and then have to do it all again under the anti money laundering and counter-terrorist financing bill. Those concerns have been addressed and hopefully met on two bases. One is that, because of the implementation period under the antiterrorism bill, they were given 12 months to implement those changes. The other is that, in the consultation process, hopefully we have convinced and satisfied industry that they will not be required to do things twice and that the obligations under the anti money laundering and counter-terrorism bill are designed to build on what was in the AT bill. So their initial concerns, that they would do all of this for the AT bill and then have to do something different, I hope by now have been allayed. We have certainly attempted to do that in the consultation dialogue.

**Senator LUDWIG**—Have you done any work to date with industry on the development of those costs—on how much industry thinks those costs might be?

**Mr Gray**—No, not at this stage.

**Senator LUDWIG**—How do you know whether you have allayed their concerns?

**Mr Gray**—It is concerns about having to do things twice—that what they would be required to do under the AT bill would be different from what they would be required to do under the AML bill, and therefore concerns that they would set up systems to comply with the AT bill obligations and then have to tear those systems down and put something else in place. The response to that has been no. The entire proposal is that those things that they have to do under the AT bill will form part of what they will have to do to meet their obligations under the AML bill. So it is those concerns—not in terms of the concerns that it is going to cost industry.

**Senator LUDWIG**—More broadly, then, have you done any work whatsoever in what the cost impact to business is likely to be with the introduction of the money-laundering exposure draft and then finally the legislation itself?

**Mr Gray**—Only in the general sense that I referred to: that we have spoken to industry about the need to do that. The first step to that will be to get agreement, or a better picture of

what exactly they will be required to do, and then essentially we have asked them what they see it will cost them—cost industry—since they are the people with the expertise.

**Senator Ellison**—The Australian Bankers Association has done some work on costings, but I think even they would agree that it is a bit premature at this stage, because you have got to look at the proposed legislation first. To give you an idea, initially it was thought that we were going to require them to re-identify all existing customers. If we made that requirement, it would be a huge cost. But we are not doing that. We are saying that they do not have to go and re-identify all existing customers. It is risk based, and of course that makes a huge difference to costs.

Mr Gray is dead right about the fact that you have got to get an idea of what is going to be required first and then you can gauge the costs from there. But the dialogue is ongoing and we will certainly be getting feedback from industry as to what they see the cost as being. The Bankers Association, the ABA, has done that, and they are still working on that.

**CHAIR**—I expect the committee will be getting similar feedback, Minister, as it engages in the task you set it in the exposure draft.

**Senator Ellison**—I am sure it will.

**Senator LUDWIG**—Can you give the committee any confidence that you will not make the same mistakes in terms of this exposure draft as you did in relation to the last one? You said in relation to the anti-terrorism bill that there would be minimal cost impacts, and the ABA indicated that they thought there were going to be significant costs. Their submission went to some of those points. So we end up with this position where you say ‘minimal’, the submissions say they are going to be significant; and you add to that by saying, ‘We will have an interim process, so we will see how it goes.’ It seems to be that you have got your exposure draft. Have you asked the ORR to have a look at it or commissioned some independent work to at least find a middle ground? Otherwise we are going to end up in the same position again where there will be claims that it will have significant cost imposts, there will be red tape, there will be regulatory burdens; and your position will be, ‘We’ll see how it goes.’

**Mr Gray**—I am not sure that is quite the description of the department’s position. The anti-terrorism bill and this bill are very different exercises in the way in which they are developing. The consultation that we have had with industry in relation to this bill was not part of the process of developing the anti-terror bill and those parts of the anti-terror bill which dealt with the FATF recommendations were essentially the noncontroversial ones—the things that could be done without extensive consultation with industry. As you are aware, the department and the ABA took different views about the potential cost of it. We did not have the opportunity in that exercise to resolve those issues with industry.

This time, this process, is very different. There will have to be costings, and I sincerely hope that when we come forward with the final package those costings will be agreed to, that they will have been discussed with industry and that there will be full agreement about the impact of this legislation. It is no secret that this legislation is going to have a significant impact on the financial sector and the Australian community in general. It is because of that and because of the need to balance the legislation with its impact that we are going through the process that we are going through.

**Senator LUDWIG**—Is there any intention to provide industry with any assistance to remit the costs in terms of red tape or regulatory reform?

**Mr Gray**—I do not think I can answer those questions at this stage.

**Senator Ellison**—That is to do with policy. I suppose that one is a government decision. Industry has asked us about that. The view is that, certainly, there are a number of aspects to this. One is an awareness program and assistance with education. I think that is a greater concern that industry has expressed, rather than compensating industry for costs. You have to realise that there is a benefit from this to the private sector. It has been recognised by the Australian financial sector that we have dealt with, which has been very well represented, that Australia does need to have a good reputation for its financial sector if we are to be competitive in the world today. Having good security is also good for business, so there definitely are some commercial pluses for the financial sector. Having said that, though, I think the issue is going to be more about how we can assist with the awareness and public education.

**Senator LUDWIG**—In terms of that public information agenda, what are you going to do between now and when the legislation is brought down to allay the concerns of industry about imposing significant red tape or regulatory burden on industry?

**Senator Ellison**—I think the way to do that is by the mechanisms that we have engaged in, which is through roundtable discussions, and we will be meeting again before Easter, and also through the four working groups that were set up. Industry is largely going to have some ownership of this. AusTrac is working closely with industry and will do so in relation to the formulation of rules. I think just being involved in that process and helping to develop it will allay the concerns of industry—or go a long way to doing that. What has been indicated to me is that industry is largely happy with the process so far. Of course, you have differing interests in the private sector—the big end of town, the small end of town. That is what we are trying to accommodate. But I think having them actively involved is the best way to allay any concerns.

**Senator LUDWIG**—So you are saying that you are going to do more than what you said—at least as reported by Mark Davis in the *Australian Financial Review* on Saturday, 17 December 2005. The title of the article is ‘Industry fears money-laundering rules won’t wash.’ It says:

On Friday, Justice Minister Chris Ellison said the bill would not impose onerous costs on legitimate activities.

“The challenge that we face is between achieving a secure regime in relation to money laundering and balancing that with the cost to business,” Senator Ellison said.

Let me understand that. We have heard there are going to be significant costs and that they are going to be on legitimate business.

**Senator Ellison**—Yes, there will be a cost with this. I think it is generally acknowledged.

**Senator LUDWIG**—And to date we do not have an estimate of what those costs are going to be.

**Senator Ellison**—No, but as the form of the legislation rules crystallises day by day—and industry is part of that consultation process—industry is going to get a better idea of what it is dealing with. We set up systems working groups last year to look at what systems were being used by the private sector so that we did not impose on them a square peg to put in a round hole. We want to use existing systems, if we can, to achieve that level of scrutiny rather than saying, ‘You’ve got that system. You’ll have to put something else in place because this is what we require.’

Another side of your cost argument is to try and use what we have. It is much like document identification—using existing documents rather than coming along and saying, ‘You’re going to have to have a whole raft of new identification indicators.’ That is what we want to do with industry, and I have said that, and the government remains committed to that. It is early days at this stage to put a figure on what it will cost. I think the ABA have agreed that it is a work in progress. Initially, they did some modelling, but we have now refined a great deal how we are proceeding on this. We had joint communiques with the roundtable where we agreed on guiding matters of principle. I think that has helped give a lot more people certainty and assurance. That aspect of cost will be looked at as we move along.

**Senator LUDWIG**—Thank you.

**CHAIR**—Have you finished questions on output 2.1?

**Senator LUDWIG**—No, I have just finished on that issue. I would like to pause.

**Senator KIRK**—I have some questions in relation to so-called credit card skimming offences. I notice that on the AG’s website there is a page devoted to proposed credit card skimming offences, but it has been some time since it was updated—at least a couple of years. Can someone give me some idea as to what is happening with this area of the law and whether or not there has been any progress?

**Mr Gray**—I am trying to recall the details. It is an exercise of the Model Criminal Code Officers Committee. It is one of the projects that MCCOC has had. MCCOC has, with the enactment of the code, slowed down in its work. We did have a meeting with them—I think it was in November last year—to try and get the process moving again. The MCCOC report on credit card skimming offences was on the agenda. Precisely where the matter is at this moment, I cannot tell you. If you want that information, I would have to take it on notice. But I can assure you that we are progressing that exercise. It is another one of these processes which requires Commonwealth-state cooperation.

**Senator KIRK**—There is reference to the final report being produced of what I assume is that committee. Has that been produced as yet?

**Mr Gray**—I would need to check on that.

**Senator KIRK**—What is the process for following these matters up? Anyone who is looking at the website will see reference to such matters as credit card skimming offences and the like, and will perhaps get excited about the prospect that there are going to be such laws, yet nothing really seems to happen. What is going on? When are we likely to see a result? There is no reference on the website to the fact that this matter appears to have stalled.

**Mr Gray**—MCCOC reports to SCAG—the Standing Committee of Attorneys-General—and, as you say, there is a report. The process really depends on MCCOC doing the work. The problem with MCCOC is that it is a part-time committee of officers who have other projects, so it requires some energy to keep the process moving. This is what I have referred to. We are conscious of the fact that there are a few projects which have not been progressed. The point of the last meeting, which was the first time MCCOC had met for a while, was to review projects and keep them moving forward.

**Senator KIRK**—How are matters prioritised? If there are a number of projects that are in train, how is it determined which matters will be given priority if, as you say, there are limited resources and limited time available for this committee to meet?

**Mr Gray**—MCCOC takes its direction from SCAG and takes direction on priorities.

**Senator LUDWIG**—Is there a representative of MCCOC who can appear before the committee at some future point?

**Mr Gray**—I am the Commonwealth representative on MCCOC at the moment. As I have indicated, I have been to one meeting. There will be more.

**Senator LUDWIG**—They have been operating for many years now.

**Mr Gray**—Yes, they have produced a large number of reports and they have produced a model criminal code. So it is not as though the committee has not produced product.

**Senator Ellison**—The Commonwealth has passed legislation on this. I hope that is understood. Indeed, South Australia, for instance, has some very good ID legislation which some other states have not pursued. Several SCAG meetings ago I raised having a combined approach, because credit card fraud costs the country about \$200 million or \$300 million a year. We have had some notable operations in which people with credit cards have been apprehended—I refer to the Australian Crime Commission, the Australian Federal Police and customs importation—and these new laws are in place.

**Mr McDonald**—The situation with credit card skimming offences is that they were implemented. They are called financial information offences in part 10.8 of the Criminal Code. Those offences involve dishonestly obtaining or dealing in personal financial information and possession or control of a thing with intent to dishonestly obtain or deal in financial information. That is contained in sections 480.4 and 480.5. Section 480.6 refers to importation of a thing with intent to dishonestly obtain or deal in personal financial information. So that deals with the credit card skimming devices and also the actual skimming activity, which involves taking someone else's identity or cracking the code to a particular card.

The model code committee produced a short report on this issue just before a Standing Committee of Attorneys-General meeting. These provisions were approved by the Standing Committee of Attorneys-General. But there were some issues about identity theft as a broader issue, and that is the issue that Mr Gray was thinking about in terms of being an ongoing project. So on credit card skimming, that was done back in my time.

**Senator LUDWIG**—Yes, it was just that additional matter that was ongoing. Mr Gray will now be carrying that forward while you have moved on to greener pastures.



**Mr McDonald**—It is not necessarily always greener!

**Senator LUDWIG**—In terms of MCCOC, is there a place where those matters can be updated by the Commonwealth? The way it seems to work is that they are flicked up on the website, there is a paper drawn up, we can generally draw the conclusion that there has been legislation that has come out of it, but there are then some ongoing matters and if we do not continually try to remember them and ask you at each estimates hearing how they are travelling, they can get lost in the ether and they bob up some time down the track. I know you don't think they get lost in the ether and that you may be working on them. But, as a consequence, trying to piece them all together takes a little bit of time. Obviously there is the MCCOC website which has its model criminal code, but they don't tend to update that very regularly.

**Mr McDonald**—One thing that we did in my time was that we had a sort of summary of where the chapters were up to and which states and which jurisdictions had implemented them. We could possibly adapt that summary and put that on the website. That could be something I could suggest. We might discuss that and consider whether that would be a good idea.

**Senator LUDWIG**—It would be helpful. Minister, I know the blame game can be played from both sides as to whether it is the responsibility of the states or the Commonwealth, or who should be taking the lead and so on, but it would be helpful, in this instance, for the Commonwealth to at least highlight where people are up to and what they are doing. So, if someone were to take issue, they could say, 'That's not right; we've fixed that,' and so on. The blame could be sheeted in the right direction.

**Senator Ellison**—I am more than happy to do that. I think it is a good suggestion. As I have said, I acknowledge, where states and territories have done good work, where they have done it. And, where they have not, I am critical of them. But I think that is a good way of keeping everyone honest.

**Senator LUDWIG**—Thank you. And if I keep referring it to the Model Criminal Code Officers Committee I will be that much better at it.

**Mr Cornall**—Just before we leave that point, Mr Gray has some information about the scheduling committee that was asked for this morning.

**Mr Gray**—It is called the Intergovernmental Committee on Drugs Scheduling Working Party, to give its full title. It reports to the Intergovernmental Committee on Drugs, which is a committee of officers, which in return reports to the Ministerial Council on Drug Strategy. That is the reporting chain. I can provide a list of the initial membership of the scheduling working party. There were initially 12 on the working party, which was a cross-section of lawyers, police, health regulators—and industry was also involved. So it also brings in industry representatives, which I think I failed to mention before. The secretariat is provided by the Australian Customs Service and the Attorney-General's Department. We have had an officer who has sat on the working party who is not actually listed on the initial membership but was virtually co-opted because of the need to involve the Commonwealth because so many of the issues affected the Commonwealth.

The working party is close to presenting a report to the intergovernmental committee, which in turn, as I say, will report to the ministerial council. The ministerial council meets on 15 May 2006. I cannot give any assurance that there will be a final report by that date, or of what will follow after that, but that is the current timing of the process. When the working party completes its work and develops a model schedule, there will then need to be some policy decisions, which will have to be taken in consultation with the states and territories, and there is that same issue there that, if all the states and territories accept the schedule that they come up with, then it should be fairly easy to make legislative change. If they do not, then there could be further consultations. That is the process and that is where it is at at the moment. I apologise for not having that information this morning.

**CHAIR**—That is okay, Mr Gray. That is very helpful.

**Mr Gray**—Should I table that?

**CHAIR**—Yes, please, if it is in tabling form. Thank you.

**Senator LUDWIG**—I would like to deal with the document verification service. Where are we at with that? It is one of those matters that I keep asking about, but I just have not seen anything more on it. Is it being trialled at the moment? Have you got results from the trial?

**Mr Jordana**—Minister, would you like me take this one?

**Senator Ellison**—Please do. Mr Jordana is our resident expert on this.

**Senator LUDWIG**—Or he is becoming better at it; one or the other.

**Mr Jordana**—As I think we indicated last time we spoke, the prototype of the document verification system has been under development. It started its operation for the first time on 6 February this year. The process involved the two active agencies, DFAT and DIMA, asking questions of other agencies, including state and territory births, deaths and marriages and Austroads. The questions were in respect of the documents that they produce or might produce for identification purposes. The prototype document verification system is actually operational now.

**Senator LUDWIG**—Is that the actual system?

**Mr Jordana**—No, that is the prototype system. The prototype is only two Commonwealth agencies asking the questions of other bodies—either of each other or of state and territory agencies. In this case, it involved asking questions of the ACT, Victoria and New South Wales birth, deaths and marriages registries and asking questions of Austroads, which represent the drivers licence issuing authorities of those three jurisdictions.

**Senator LUDWIG**—To recap, that is to identify the primary documents between DFAT and DIMA—that is, births, deaths and marriages and drivers licences from Austroads?

**Mr Jordana**—If someone comes into a DIMA office, a DFAT office or a post office, if this is contracted out, with a document—say, a birth certificate or a drivers licence—then that can be checked via the document verification system through to the issuing agencies.

**Senator LUDWIG**—Do you call that a trial or a prototype?

**Mr Jordana**—It is a prototype. It has a life and its life will go through to the middle of this year.

**Senator LUDWIG**—During that time is there an estimate as to the cost of that prototype?

**Mr Jordana**—We have been provided with funding for that project until the middle of this year. Could you help me with the breakdown, Dianne?

**Dr Heriot**—Funding of \$5.9 million over two years was allocated in the 2005-06 budget to cover the costs of the strategy, and that includes funding for the prototype DVS.

**Senator LUDWIG**—How much has been expended to date?

**Dr Heriot**—\$230,000.

**Senator LUDWIG**—\$230,000 out of \$5.2 million?

**Dr Heriot**—\$5.9 million. That funding was appropriated over two years and elements of it are being paid out to the participating agencies, but it has not been transferred yet.

**Senator LUDWIG**—I was going to say that that was a significant underspend at this point in time.

**Dr Heriot**—We were anticipating that.

**Senator LUDWIG**—How long has it been running for?

**Dr Heriot**—Since the 6th.

**Senator LUDWIG**—No, the \$5.9 million.

**Dr Heriot**—That was in the 2005-06 budget.

**Senator LUDWIG**—Is that to conclude in two years or June 2007?

**Dr Heriot**—June 2007.

**Senator LUDWIG**—Is it apportioned in each year or is it \$5.9 million for the two?

**Dr Heriot**—It is \$5.4 million in the first financial year, this financial year, and \$0.5 million in the second.

**Senator LUDWIG**—You have expended \$230,000 to date.

**Dr Heriot**—Yes.

**Mr Jordana**—That amount of money, however, was to cover the two projects. One was the document verification system and the other was the pilot project on the integrity of data, which was run out of the Australian tax office and was to look into the integrity of the information they hold on their databases. The money was to cover both.

**Senator LUDWIG**—Yes, I understood there were two pilot programs.

**Dr Heriot**—We expect also to be making payments to the participating agencies in the near future.

**Senator LUDWIG**—What are those payments?

**Dr Heriot**—Payments to meet their costs of participating, whether it is building the system or rejigging their system. Births, deaths and marriages and Austroads charge a fee for searches. It will cover those elements. I think we covered the sort of elements that were going to be paid in an answer to a question on notice.

**Senator LUDWIG**—I have some recollection of it. That is why I know there are two projects. I am not sure whether we went to the financials in that answer. Did we?

**Dr Heriot**—I am happy to cover the financials.

**Senator LUDWIG**—Yes. I thought we had left some of that out.

**Dr Heriot**—I think we left a couple out because it had not yet been settled, but some were settled in the new policy process.

**Senator LUDWIG**—I am happy for you to take that on notice in terms of covering off on the financials—how much has been expended, how much you envisage you will expend up to June this year and how much is then going to be reapportioned—I think that is the financial term. It is one of those terms meaning they pass it on to the next year. Will that necessitate a delay in the project finalisation? In other words, will there be a delay? When will the pilot program finish for the DVS?

**Dr Heriot**—The prototype is scheduled to run until the end of the financial year.

**Senator LUDWIG**—So it is only going to run a very short time.

**Dr Heriot**—Yes.

**Senator LUDWIG**—Is there a decision making process after that as to whether it will be implemented?

**Mr Jordana**—You may be aware that when the Council of Australian Governments had their special meeting on 27 September last year there was an agreement on the development and implementation of a document verification service. How the Commonwealth is going to respond to that is still under consideration by the government. Obviously the government is committed to that COAG agreement, but exactly how it is going to implement that agreement is still with government at the moment.

**Dr Heriot**—If I could return to your question, we do not anticipate rephrasing funds. We will be able to come back with the answer before the end of the day—not quite instantly, but certainly this evening—to your question about payment dates and amounts.

**Senator LUDWIG**—That would be helpful. Will it only be for the primary document verification? I think the Attorney-General has indicated that he is, correct if I am wrong, looking at a national identity card. Certainly the idea is being floated around. How will they interact? Is there a process for an independent system for primary document verification or will they gain numbers to be used? How do you identify that that is a primary document? Do you have a number on it?

**Mr Jordana**—A framework has already been developed in collaboration with Commonwealth agencies and states and territories called the proof of identity framework, which indicates the processes one should go through to accurately confirm someone's identity. Documents are indicated in that framework as being documents that one should or could take into account when trying to confirm someone's identity. The aim of the document verification service when it is fully operational will be to ensure that you could, through the document verification system, in a sense process those particular documents that are identified in the

framework. The most common are obviously things like passports, drivers licences and birth certificates.

**Senator LUDWIG**—So there is no plan for where to next after the trial?

**Mr Jordana**—That is currently with government for consideration. As I indicated to you, there has been a COAG agreement in regard to the full development of a national document verification system. Clearly, the implication of that is that it would be a system that would join all the major Commonwealth document-issuing and user agencies with state and territory accredited agencies so that there could be a system of cross-checking. That would be the definition of a national document verification system. The proposal for how the Commonwealth would take forward its path, in the sense of the COAG agreement, is still with government.

**Senator LUDWIG**—Is that an item that remains on the agenda for COAG for report back? I do not recall it being mentioned in the last communique. Or do I need to do a word search to find it?

**Mr Jordana**—If my recollection serves me correctly, I am not sure there is a report-back time frame that is set. However, given that it is something which has been indicated as a COAG issue, I should imagine there would be processes by which it would go back to COAG.

**Senator LUDWIG**—How would it fit with an ID or a single identifier?

**Mr Jordana**—That is obviously still a very open question for government. As the Attorney has said, that issue of identifying how the study on an identity card would be taken forward is still with him. Clearly, whichever route a government decided to take on the identity issues—whether or not through an identity card and whether or through a more differentiated or dispersed system where you have more than one identifier—a document verification system would play a very important role in any kind of future architecture you would have for an identity system in a country.

**Senator LUDWIG**—So it would not necessarily mean that the document verification system would be redundant if we had a national identification system, be it a central model or a distributed model.

**Mr Jordana**—Not at all.

**Senator LUDWIG**—So the document verification would then sit on all those primary documents that were held by the states in their various forms and then communicated in a distributed way through the various departments. Is that the type of model that is envisaged?

**Mr Jordana**—Sorry, could you repeat the question?

**Senator LUDWIG**—Is it envisaged that the document verification system will use primary documents from various state and federal agencies such as Austroads, as an example, and that that information will then be able to be communicated backwards and forwards between federal and/or state agencies, depending on who is inquiring or trying to verify a document?

**Mr Jordana**—There is no conveying of information. As you know, the way the system works—

**Senator LUDWIG**—I think we have had this discussion! I did not want to use the term ‘conveying information’. In a sense they are packets of data that are transmitted but not information per se.

**Mr Jordana**—In its current form, the way that it works is that someone will come to a passport office with their drivers licence. The person in the passport office will take the drivers licence, enter in some basic information about that drivers licence—such as the name, the number, the date of birth and so forth—and then ask a question electronically back to the Austroads database, as it is in this case, or in effect the database held by the New South Wales Road Transport Authority about whether they had issued a licence with those details on it. The answer would come back: yes or no. That is the way the system is currently operating in its prototype form and, when expanded into its full form, would enable that kind of electronic questioning to take place between and among Commonwealth agencies, between and among accredited state and territory agencies and between and among Commonwealth, state and territory agencies. It would allow that kind of questioning to take place in a network.

**Senator LUDWIG**—With regard to the idea of a national ID that has been proposed by the Attorney-General, would that require a significant restructure of the current pilot for the DVS whether you use a national identifier or you do not use a national identifier in terms of developing a national system?

**Mr Jordana**—This is a rather hypothetical question you are posing.

**Senator LUDWIG**—I am not sure it is.

**Mr Jordana**—If one were to go down the route of a single national identifier, to be able to issue that identifier in the first place, people would have to prove who they are. They would have to demonstrate to the issuer of that national identifier that they are who they say they are. To do that, we would require a document verification service.

**Senator LUDWIG**—Will the document verification service that is being piloted at the moment accommodate that? In other words, will you then have to significantly restructure or rebuild the DVS that you are piloting at the moment, or will it fit into that system?

**Mr Jordana**—We believe it would fit into such a system, but a national identity card would be a substantial undertaking and require its own particular infrastructure, so how a document verification system might fit into that particular infrastructure is a rather complex question. We certainly have not investigated that in any detail.

**Senator LUDWIG**—I am concerned about what would happen if we do end up with a system in the future and we have spent the money on a DVS which is pointless or has been overtaken by other events, because we will have spent \$5.9 million on this DVS.

**Mr Jordana**—As I said, a document verification system would be a very important component of any particular identity regime that the government decided to undertake.

**Senator LUDWIG**—So you would need a DVS in place in any event.

**Mr Jordana**—Yes.

**Senator LUDWIG**—Notwithstanding whether we do or do not have a national identification system.

**Mr Jordana**—Yes.

**Senator LUDWIG**—A DVS is required to be able to verify primary documents, so that is why it is part of COAG and why we are spending \$5.9 million on it. Hopefully you will be able to report back how it is going at some point in the future. When will you do a summary of the review?

**Mr Jordana**—As part of the Commonwealth's assessment of where to go with a document verification system, obviously the report on how the prototype went would be an important part of informing how we take the process forward from here. There will be implementation lessons that we are deriving from the prototype which will inform our way forward. That will be part of the broader government consideration as to how it wants to take the DVS forward from here.

**Senator LUDWIG**—Is the establishment of a DVS a precursor to the national identity card?

**Mr Jordana**—I would not describe it as such, because it implies that night follows day. The document verification system that is being developed in the prototype form and is envisaged in its final form is a good in its own right, if I can put it that way, and will serve an important purpose, as I say, whichever route the government decides to take in the identity field.

**Senator LUDWIG**—Which other route—not having a national identity card? There seem to be only two choices: either we do or we do not.

**Mr Jordana**—The government has outlined, and the minister and the Attorney have announced, a national identity security strategy that has a number of key components to it which aim to strengthen our national identity security regime across the board. We are doing that by focusing on a variety of key issues, all the way from the registration process through to the issue of authentication. That is a process and an undertaking which is already under way. There is already an elaborate set of working groups and working structures taking that forward.

**Senator LUDWIG**—What if we reverse it and say that you cannot get a national identity card up and running without a DVS?

**Mr Jordana**—You could introduce an identity card any way you wanted to. A document verification system would, however, be an important component to help confirm the identities of people who might be issued with an identity card. I am not saying that you could not have an identity card without a document verification system but what I am saying is that a document verification system would help underpin a stronger process.

**Senator Ellison**—I think that historically we need to realise that the DVS was being looked at at the APMC some time ago. The APMC has been looking at this issue for some time. In some of the states, very good work has been done with drivers licences and such. Of course, there have been recent events. When the Prime Minister announced that everything was on the table, that included an ID card. But I do not see the one as being a precursor to the other—that is, that the DVS is a precursor to the ID card. They are two quite separate issues which can complement each other.

But, with all the work, time and money that has been invested in the DVS, I think it would be a great shame if you stopped the DVS and just went for an ID card. I think that, even if you adopted an ID card, you would still carry on working on the DVS because I think it still provides a robust foundation for identity security in this country. I think that any review which looks at an ID card would have to look at DVS and ask whether the system was robust enough for us to carry on working with it and make it stronger rather than setting up a new ID card system. The Australian chamber of commerce has said that, in its opinion, it would cost \$15 billion for an Australian ID card. So I think work must continue with the DVS. I certainly think it is essential. What is more, other Australian jurisdictions such as states and territories are working on that as well. The APMC has a commitment to it. The next step will be looking at the private sector and the interface with the private sector. I would see that work continuing, regardless of the ID card. If it did not—well, I could not contemplate that it would not happen, because the states and territories are continuing down that path in any event, as we are at the Commonwealth level. As Mr Jordana has said, that has been announced by the Attorney-General and me.

**CHAIR**—Are you moving off that subject now, Senator Ludwig?

**Senator LUDWIG**—Yes.

**CHAIR**—Before you do that, I will ask Mr Jordana a question. What role does the Privacy Commissioner play in the development and administration of the DVS?

**Mr Jordana**—The Privacy Commissioner, or the Office of the Privacy Commissioner, has been consulted in the development of the prototype DVS and will continue to be consulted in any further work on the document verification system. In fact, the Office of the Privacy Commissioner has been involved in the broader work that we have been undertaking on identity security overall. You mentioned the ‘administration’ of the document verification system. There is no day-to-day role in that; although, obviously, the Privacy Commissioner has a certain task which covers not only the document verification system but also many other things, and so oversight of the system would apply to that extent.

**CHAIR**—Perhaps I used the wrong word when I used the word ‘administration’. You said that the Office of the Privacy Commissioner had been consulted in the development of the prototype of the DVS. Did the Office of the Privacy Commissioner raise any concerns about the operation of the DVS and its impact on privacy?

**Mr Jordana**—I am not sure I can answer that definitively, and I am not trying to avoid the question. In our ongoing dialogue with the Office of the Privacy Commissioner, the kinds of problems that might arise were certainly addressed and have been addressed in the development of the document verification system. I do not want to speak for the Office of the Privacy Commissioner, but I am not aware of any major outstanding issues with respect to that system. As you can appreciate, the system is a fairly straightforward system which, as we mentioned before, does not have any particular database that exists in its own right. It does not exchange information per se. I do not want to underplay the problems, but the types of privacy principles that might be engaged are not such difficult issues, because of the way the system works. It is an electronic system, and it is a yes-or-no-type system. It does not allow



the party asking the question to look into the database of which the question is being asked, so the nature of the system makes the handling of privacy issues a lot easier.

**CHAIR**—However, if an individual felt that personal information obtained from documents which were being used in the document verification system had been misused—that personal information obtained in that way, or confirmed in that way even, was misused—what recourse would that individual have in relation to a perceived or real breach of their privacy? Could they make a complaint to the Office of the Privacy Commissioner in the normal way under the document verification system processes?

**Dr Heriot**—Because the agencies participating at a Commonwealth level are operating under the Privacy Principles and the Privacy Act, the same arrangements would pertain. Obviously, the Privacy Commissioner has been actively engaged in the Commonwealth-state working group overseeing the technical and operational issues. We have also been working in an environment where we need to meet the privacy requirements of not only the Commonwealth government but also the state governments under which the various RTAs and births, deaths and marriages agencies operate. It operates within the legislative regime.

**CHAIR**—You have in fact anticipated my next question, which was about the participation of state agencies, such as births, deaths and marriages and road and traffic authorities. Are the privacy laws applicable to the data that is in their possession and the protection of privacy of individuals to whom that data relates looked after at the state or federal level?

**Dr Heriot**—The agencies that issue identity documents at a state level operate under the state based regimes, which have to be satisfied that they operate within those requirements, and they are very conscious of that.

**Mr Jordana**—Can I just make the point, Senator, that the process that is being done electronically at the moment is not a new process for any of the agencies involved, in a sense. In previous circumstances, when people fronted up with a New South Wales drivers licence to get a passport, checks were made to try to check the veracity—

**CHAIR**—I understand that.

**Mr Jordana**—of that. So there was a process already. The document verification system tries to make it an instantaneous process and will allow for more comprehensive checking. Your questions are still germane; I just wanted to point that out.

**CHAIR**—I am glad they are still germane! Dr Heriot, I understand that the New South Wales Privacy Commissioner, for example, exempted the New South Wales Roads and Traffic Authority from the operation of the New South Wales privacy legislation so that they could participate in the DVS pilot. What implications does that have for the protection of individuals' privacy?

**Mr Jordana**—Could you repeat the question, please, Senator?

**CHAIR**—I understand that the New South Wales Privacy Commissioner gave an exemption to the New South Wales Roads and Traffic Authority from the New South Wales privacy legislation so they could participate in the DVS pilot. I am seeking advice on where that leaves the protection of the privacy of individuals in New South Wales in relation to the

Roads and Traffic Authority, and what information they might hand over through the DVS process.

**Mr Jordana**—I would have to check the details of that. I am not questioning whether or not your information is correct; I am not too sure that we have that level of information available.

**CHAIR**—Again I am relying on information provided to me.

**Mr Jordana**—Yes. It may very well be a question that one would need to ask of the New South Wales system. I am not sure that we could confidently answer that question.

**CHAIR**—Then I might place it on notice. Thank you.

**Mr Jordana**—Okay.

**CHAIR**—And just to clarify one point, Mr Jordana: you said when I was asking about the role of the Privacy Commissioner in relation to the DVS that the Office of the Privacy Commissioner has an ongoing role in relation to the whole national identity security strategy.

**Mr Jordana**—That is correct.

**CHAIR**—Thank you.

**Senator LUDWIG**—It gets more confusing.

**CHAIR**—I didn't mean to do that.

**Senator LUDWIG**—To spell it out clearly, the DVS, if you think about it, is essential to ensuring that, if you were going to issue an identity card, you can verify the documents that were used to obtain the identity card. If you did not have that then you would run the risk of issuing an identity card without having any reasonable checks to ensure that those primary documents were accurate.

**Mr Jordana**—Again, we are dealing very much here with a hypothetical world, with what kind of identity card it would be—

**Senator LUDWIG**—I guess it would be a card.

**Mr Jordana**—Yes, but I mean that there are many forms of identity card around the world that have been used and that are called identity cards. But, to answer your question, a document verification system would significantly strengthen the process through which an identity card might be issued.

**Senator LUDWIG**—It wouldn't be essential or it would be essential?

**Mr Jordana**—I guess it depends on the definition of 'essential'. I would have thought that if you had the technology available to have a document verification system, to make a process to issue an identity card sufficiently robust you would use such a system.

**Senator LUDWIG**—All right. If I have any more questions on this area, I will put them on notice. I am happy to go to output 2.2.

[3.15 pm]

**CHAIR**—I thank the officers from output 2.1. We will move to output 2.2, national leadership and coordination of legal and policy advice on national security and counterterrorism laws and critical infrastructure protection.

**Senator LUDWIG**—I am looking at table 1.2 on page 20 of the portfolio additional estimates statements 2005-06. I note that the National Security: Increasing Public Awareness with a National Media Campaign is about \$8.3 million. That is more than half of the additional funding in this portfolio additional estimates statement for the AG's department, so the bulk of the money is going to be spent on a national security public awareness campaign. Do I have that right?

**CHAIR**—I think we might be seeking another officer.

**Senator LUDWIG**—Mr McDonald, surely you could have a stab at that?

**Mr McDonald**—No. You need a public affairs person.

**CHAIR**—You do not have to have a stab at it. We will get the appropriate officer.

**Mr Cornall**—In answer to your question, Senator Ludwig, that is correct.

**Senator LUDWIG**—Could you provide a breakdown of how those moneys are going to be expended on that media campaign, whether it be radio, television, advertisements, fridge magnets?

**Mr Cornall**—It will not be fridge magnets. Our public affairs person is here.

**Ms Hendrie**—Following the London attacks in July, an additional \$8.4 million was provided to the National Security Campaign. That money all went to increased media buy. The breakdown of that money is that originally in that financial year the campaign was provided with \$1.2 million for the production of the campaign. All the additional money that came forward—\$8.383 million—was spent on media buy. All that money went to increased advertising for the period after the London bombings.

**Senator LUDWIG**—Has that money already been expended?

**Ms Hendrie**—The bulk of that money has been expended. The campaign goes in a series of bursts of advertising activity. There is one burst of advertising activity which will start shortly, and that money will all be expended.

**Senator LUDWIG**—How much is remaining in the budget, or is there a—

**Ms Hendrie**—Funding for next financial year is as originally budgeted, and that is \$1.2 million.

**Senator LUDWIG**—The advertising campaign that has already proceeded—what is it, is it a publication of the phone number?

**Ms Hendrie**—The advertising campaign that we have had?

**Senator LUDWIG**—Yes. I can see it is effective.

**Ms Hendrie**—It builds on the original campaigns in terms of raising awareness of the national security hotline and encouraging people to report suspicious activity to the hotline.

The most high-profile aspect of it is the television advertising but there is other work involved as well. There is market research to support directions of the campaign and development of material, and to track how it is going in accordance with government communications guidelines. We also have work under way in terms of developing culturally appropriate material for people of non-English speaking backgrounds and we work with consultants in terms of developing print production materials to support it. The bulk of the buy is on advertising though.

**Senator LUDWIG**—That is what I was trying to get a break down on—how much went, in fact, to media buy, and was there any other programs that supported the media buy—that is, the television advertisements?

**Ms Hendrie**—I will break it down for you. Of the original \$1.2 million allocated the initial allocation was \$160,000 for advertising; \$90,000 for public relations activities, including mainstream, non-English speaking backgrounds and industry communications; \$330,000 was for market research; \$100,000 was for work on the national security website in terms of the provision of information to the public; translation and cultural advice in terms of culturally appropriate materials and input for the campaign was \$80,000; and the initial media buy was \$440,000. Following the additional estimates we actually spent \$900,000 which was funded by the additional estimates figure of \$8.383 million, and \$617,000 which was an underspend from the previous year's allocation.

**Senator LUDWIG**—The \$8.3 million, that is the—

**Ms Hendrie**—It was media buy. Primarily it would have been television advertising and outdoor advertising to promote awareness of the hotline and to report suspicious activity.

**Senator LUDWIG**—Were they new advertisements or were they existing advertisements with media buy?

**Ms Hendrie**—No, we had funding for the campaign originally of \$1.2 million per year, so there was a campaign that was already underway, and the \$8.3 million quickly brought that quickly forward and onto the air.

**Senator LUDWIG**—All right, so the \$8.3 million was ostensibly all media buy—in other words, advertising space on television, radio, billboards?

**Ms Hendrie**—Yes.

**Senator LUDWIG**—Is there a breakdown between television and billboards?

**Ms Hendrie**—Not radio? I might have to take that on notice, Senator.

**Senator LUDWIG**—And if it did not include radio then it did not include radio. What was the market research on? Is that about where you should spend your money or how well you have spent it?

**Ms Hendrie**—In accordance with government communications guidelines we track the awareness of the campaign—so that helps target the media buy to make sure that the spend on where the advertising is going is being effective or that there is an awareness of it. We also use research to ensure that the products are appropriate and achieve their communications objective.

**Senator LUDWIG**—Is any of that research available to the committee?

**Ms Hendrie**—Under government communications guidelines research conducted for a campaign is not available until the end of that campaign.

**Senator LUDWIG**—When will the campaign conclude?

**Ms Hendrie**—That will be a consideration for government, Senator.

**Senator LUDWIG**—So it has not concluded?

**Ms Hendrie**—No.

**Senator LUDWIG**—When it first started, was there an indication of when the campaign might conclude?

**Ms Hendrie**—It is an ongoing consideration of government.

**Senator LUDWIG**—How much is left? You said it goes in bursts; when will that happen?

**Ms Hendrie**—We have one more burst, which will start shortly and end shortly prior to the commencement of the Commonwealth Games.

**Senator LUDWIG**—The information I would be interested in obtaining from you—and perhaps you could take this on notice—is the types of contracts that you have entered into; the types of media buy, like radio and television advertisements, billboards; who the contracts are with, in terms of how that money has been apportioned; and what you have achieved. Separate from that, is there any research to indicate whether you have achieved your result, or is the market research the only way you will tell and you will not be able to tell from that until you have finished the campaign?

**Ms Hendrie**—The market research would be one of the primary indicators; however, certainly the hotline response, in terms of numbers of calls, is an indicator as well.

**Senator LUDWIG**—Roy Morgan Research provides information about a Morgan poll—I do not know whether you are familiar with it—under the heading ‘Only 1% of Australians know right number for terror hotline’. It reads:

A special Morgan Poll shows that only 1% of Australians know the number of the Government’s National Security Hotline: 1800 123 400. However over three-in-four (76%) Australians had heard of the hotline, but when asked what the number was only 1% was able to give the correct number, with 9% giving an incorrect number and 66% unable to say what the number was at all. Twenty-four percent of Australians had never heard of the National Security Hotline and overall 99% of Australians do not know the correct Hotline number.

Does that accord with the market research that you have obtained?

**Ms Hendrie**—I really cannot compare whether that accords with the market research. I do not know the methodology, the timing or the groupings of that research that was conducted. I think, from memory, that the Roy Morgan Research poll was of 600 people, so I would hesitate to see whether that compares, and probably to do so would not be appropriate anyway. I cannot comment on that.

**Senator LUDWIG**—Well, it is some free research for you. Who came up with the 10-digit number, the 1800 number?

**Ms Hendrie**—That would have been a number of years ago, just after the first Bali bombings, I think. I would not have that information to hand.

**Senator LUDWIG**—Has any research been done about whether or not the number is too large and whether you should try to find a simpler number? I do not know what your research tells you—you will not give me your research—I can only go on what the Roy Morgan research seems to suggest. You will not agree or disagree with that and you will not confirm or deny it, but it seems to me that the general research is that nobody knows your number. You are spending \$8 million on telling people about the number, but you are unable to tell me who knows the number. Roy Morgan seems to say that it is very few people. Is it the size of the number? It just seems to be a waste. It is a lot of money. Half of your portfolio additional estimates statements are going to be spent on advertising and you cannot confirm whether your market research says you are actually getting a bang for your buck, to use a terrible analogy.

**Ms Hendrie**—The only comment I can make is that, after the London bombings and the additional advertising that was put to air, there was, as announced by the Attorney-General, a significant increase in the number of calls to the hotline. Whether that is directly attributable, I cannot comment.

**Mr Cornall**—Numbers like this do have to have the prefix number, the 1800 number, just like you have to have 0417 or whatever number it is you are using for your mobile phone. After that, the number is 123400. It is a pretty simple number. While I take the point you are making, that it is a 10-digit number, I think it is a relatively well-thought-through number.

**Senator LUDWIG**—I reject that, unfortunately. They use 000 as an emergency number. Most people get that one and can use it. You can use Call Connect, which is a less-than-10-digit number. There is a range of numbers that are less than 10 digits, yet you have a 10-digit number. The research that is publicly available to date—and I am happy to see yours if it says it is any better—seems to be that it is a waste of money, you are still spending money on it and nobody knows it. And that is a concern. It is our job to look at this issue and ask you if you can justify why you are spending so much money using the number that you have, with the research that you have that you cannot share with this committee, on an advertising campaign that the public research seems to indicate is not working.

**Mr Cornall**—I do not recall the origins of the number. As Ms Hendrie said, it was decided some time ago. I do not know what the considerations were at the time the number was selected. In terms of going back to that information, we would have to take that question on board and see what we can do by way of a question on notice.

**Mr Jordana**—You would have to say, in a sense, that there are a number of components to the advertising campaign, or a number of things that one hopes to achieve. Certainly, recognition that such a number exists and memory of it is one component of that but the other component, and a very important one, is to encourage people to be aware of their environment and their personal responsibility to report any suspicious activities. With the number of calls that the hotline has received, the number of investigations that have been prompted or assisted by those calls and the general value that the hotline is seen to have by law enforcement agencies in the Commonwealth, states and territories, you would have to say that it is a useful

and valuable resource. From all those perspectives, with the memory factor for the hotline as you have described it—and I am not sure about the quality of the research that was done—I think it would be difficult to say that it is not achieving its purpose.

**Senator LUDWIG**—I guess it is handy if you have a fridge nearby with a fridge magnet on it, but I would like to see your research. Perhaps the government can indicate when the campaign will finish so that they can provide their research so as to see its effectiveness, because it is a significant amount of money. Half of your portfolio's additional estimate is being spent on a media buy. It may not be much money to you; it is a lot of money to me, and I cannot see any justification for it or outcomes from it. It may exist; you may have it. But to date there is very little evidence to suggest to me that it is working. I am happy to be convinced that I am wrong. At the moment, all you can say and point to is that there are a few more phone calls coming in to the hotline. I would like to be assured that that number is easy to use, is used and that people know about it. That is the purpose—amongst other things, but more broadly—of the media campaign, so that people can use the number, is it not?

**Mr Cornall**—Amongst other things, yes.

**Senator Ellison**—Madam Chair, I will take it on notice insofar as what can be given to the committee will be given.

**CHAIR**—Thank you, Minister. That is helpful.

**Senator LUDWIG**—What was it that created the expectation of the additional money that was going to be spent? Was that as a consequence of the London bombings? I am not sure about the decision to spend another \$8 million.

**Mr Cornall**—I think we should be clear that these are decisions taken by the Government Communications Unit and that we are the agency which was responsible for the implementation of those decisions, the placement of the advertisements and buying the media advertising because we have the facilities within our department to do that. But these decisions are not taken in this department.

**Senator LUDWIG**—Is it in PM&C?

**Mr Cornall**—They are taken through PM&C, yes.

**Senator LUDWIG**—I should then go and harass or, to put it politely, ask them some questions about this as well?

**Mr Cornall**—They would be able to answer some of the questions you are asking us, yes.

**Senator LUDWIG**—Do they ask A-G's for advice on how A-G's could best expend that money? It seems that employing more Federal Police might have been one good use of the money.

**Mr Cornall**—No, these decisions are taken through the Government Communications Unit. Our public affairs people take part in those discussions, but we implement the decisions that are made in that unit.

**Senator LUDWIG**—I might put some of those questions on notice to the A-G's.

**Ms Hendrie**—Advice on the allocation within the media spend to the various segments is provided to the GCU and the department through the Australian government's master media

buying agency, which bases the information on the target audience, on who it wants to reach in the amount of time and on the budget.

**Senator LUDWIG**—Are they politically directed advertisements, then? Does central office then direct where they want to spend the money?

**Ms Hendrie**—If the decision is that they want to raise awareness quickly then normally advice is sought from the media buy company as to the best way to spend money on media buy to raise awareness quickly. They come forward and break up the buy into what should be television, what should be outdoor, how quickly it can get on, what timeslots and what spread across the country and the networks.

**Senator LUDWIG**—Has the government received intelligence of any credible nature that there has been an increased threat at any time between May and now?

**Mr Jordana**—That is a question you might like to direct to ASIO. That is the body that is responsible for the provision of such advice, as you know, on whether there is—

**Senator LUDWIG**—I am not sure they are going to answer any of my questions ever again.

**Mr Jordana**—If they were unwilling to answer your questions, I would be loath to as well.

**Senator LUDWIG**—No, I am sure they will. Where does the advice come from on where to spend the money on advertisements?

**Ms Hendrie**—The Government Communications Unit reports to the Ministerial Council on Government Communications, and the Government Communications Unit will pass information requests from the ministerial council to the department.

**Senator LUDWIG**—Did you have any further questions on the national hotline, Chair?

**CHAIR**—I just wanted to show off because I knew the hotline number.

**Senator CROSSIN**—You must be one of the one per cent!

**CHAIR**—I usually am!

**Senator LUDWIG**—I did not want to go there!

**CHAIR**—I am nothing if not self-deprecating.

**Senator LUDWIG**—We could take a straw poll in here.

**CHAIR**—We might set that for homework, I think.

**Senator CROSSIN**—There might be too many public servants embarrassed if we do that!

**CHAIR**—I am sure Mr Holland knows the number, though.

**Mr Holland**—He does now!

**CHAIR**—Senator Ludwig, do you have anymore questions on the NSH?

**Senator LUDWIG**—I might put some of those on notice, if I do. I guess Mr McDonald might be able to help me with questions on the antiterror laws that were past recently. Have the preventative detention orders and the control orders been utilised?

**Mr McDonald**—Not yet. I am not aware of them being utilised.



**Senator LUDWIG**—They could be, though. There is an interim process, isn't there?

**Mr McDonald**—The laws have commenced.

**Senator LUDWIG**—Have there been any applications?

**Mr McDonald**—I am not aware of any.

**Senator LUDWIG**—We will probably ask this every time, so we will see how we go. Has any of the detention equipment been bought or examined yet?

**Mr McDonald**—There is a considerable amount of work being done by the AFP and the various state governments to finalise the memorandum of understanding and procedures, but I cannot answer as to whether they have started buying equipment.

**Senator LUDWIG**—I should ask the AFP?

**Mr McDonald**—Yes.

**Senator LUDWIG**—The last time they were not sure. I think the legislation was proceeding there.

**Mr McDonald**—The detail of the legislation gets quite relevant to it, but I have been at meetings which show to me that various serious considerations are being given to implementation issues.

**Senator LUDWIG**—So no preventative detention orders and control orders that you are aware of; I guess we will come back to that. I cannot recall without looking at the legislation again, but will the use of those orders go in the annual report or be tabled?

**Mr McDonald**—There are reporting requirements. My recollection is that for the law enforcement agencies it goes in the annual report.

**Senator LUDWIG**—Should I ask the AFP those questions as well?

**Mr McDonald**—Leave that question with me. I can double-check.

**Senator LUDWIG**—I am sorting out the protocol for between now and May, November and the following February when I will ask those questions, but I will probably also ask whether the power has been used and, as much as you are able to say, the nature of the exercise of that power.

**Mr McDonald**—The reporting requirement is that the Attorney-General must, as soon as practicable after each 30 June, prepare a report. The Attorney-General must cause copies of the report to be laid before each house of parliament within 15 sitting days after the report has been completed. That is for 104.29 on control orders. A similar provision exists for preventative detention, so there is a requirement to report. I think I said it would go in the annual report; in fact, it is a separate report, probably similar to what we do with telecommunications interceptions and some other matters like that, where we do a separate report.

**Senator LUDWIG**—The Emergency Management Agency has received an additional \$15 million over two years in the portfolio additional estimates statement to continue work on its Urban Search and Rescue: Enhancing the National Capability program. Should I ask questions on that now or wait for EMA?

**Mr Cornall**—Wait for EMA, please.

**Senator LUDWIG**—There was a review of the protective security for holders of high office.

**Mr Cornall**—The Protective Services Coordination Centre?

**Senator LUDWIG**—Yes. Is that under way, or is it going to take a couple of years?

**Mr Cornall**—The PSCC is here; we will get to them in a minute.

**CHAIR**—They are in output 2.4; they are coming.

**Senator LUDWIG**—I have finished up to output 2.4, then, and I think Senator Crossin had some matters in output 2.4.

**CHAIR**—Have you dealt with output 2.2, Senator Ludwig?

**Senator LUDWIG**—Yes.

**CHAIR**—And you have nothing in output 2.3?

**Senator LUDWIG**—No. I think I dealt with them at the same time.

[3.44 pm]

**CHAIR**—If there are no questions on output 2.3, we will move to 2.4.

**Mr Cornall**—Madam Chair, when it is convenient to the committee, we do have the material that Mr Harris was asked about before lunch.

**Senator Ellison**—We could hand that up now. It would give Senator Ludwig a chance to have a look at it while Senator Crossin asks questions on 2.4. Then, if Senator Ludwig has anything further on that document, we can canvass those questions.

**CHAIR**—Senator Ludwig, they are the answers you were seeking today with Mr Chris Harris and the National Law Enforcement Policy Branch, in case you wish to pursue them further.

**Senator Ellison**—It is the precursor working group stuff.

**CHAIR**—We now move onto outcome 2.4, development and promotion of protective security policy, advice and common standards and practices, and the coordination of protective security services, including counterterrorism and dignitary protection, the provision of security for special events, the development of counter-terrorism capabilities, and the coordination of national security crises and information through the Watch Office and National Security Hotline. Senator Crossin, do you have any questions?

**Senator CROSSIN**—I want to ask questions about the funding arrangements under the National Community Crime Prevention Program.

**Senator Ellison**—That is outcome 2.1.

**Senator CROSSIN**—It is my understanding that the appropriation is under outcome 2.4 in the PBS.

**CHAIR**—Under outcome 2.1, it says ‘domestic and international responsibilities for criminal justice and crime prevention’. I think the NCCPP is under that, isn’t it?

**Senator Ellison**—Yes.

**Mr Cornall**—Dr Heriot is here to answer your questions.

**Senator CROSSIN**—So, even though it is not international, it is still outcome 2.1, is it?

**CHAIR**—Yes. Outcome 2.1 deals with the Commonwealth's domestic and international responsibilities, which is why it falls in there in relation to crime prevention.

**Senator CROSSIN**—Can I get the PBS before we start, and can you show me in the PBS where the appropriation for this particular crime prevention program is funded?

**Mr Cornall**—We are just getting that. I have not got the PBS with me.

**CHAIR**—I understand.

**Mr Cornall**—Do you mean in the additional estimates statement, or in the original portfolio budget statement?

**Senator CROSSIN**—The original PBS.

**Mr Kennedy**—In the 2005-06 portfolio budget statements, we have a resourcing table for outcome 2 where we show the funding for 2004-05 and 2005-06 for the National Community Crime Prevention Program.

**Senator CROSSIN**—What page is that on?

**Mr Kennedy**—It is not shown separately in the additional estimates book. If you have it, you need to look at the 2005-06 portfolio budget statements.

**Senator CROSSIN**—What page are you looking at there?

**Mr Kennedy**—It is page 39 of the 2005-06 portfolio budget statements.

**Senator CROSSIN**—It is not itemised as a single item of crime prevention program money. What heading is it under?

**Mr Kennedy**—It is administered funding. There is a separate line for the National Community Crime Prevention Program.

**Senator CROSSIN**—What is the output?

**Mr Kennedy**—It is administered funding in terms of the grant funding, so there is no output; it just falls under outcome 2.

**Senator CROSSIN**—So it is a broad outcome 2 area.

**Mr Kennedy**—Yes. The administered items, which we have quite a few of for the portfolio, sit immediately under the outcome. Funding is not attributed to an output. It is only the departmental funding that is attributed to an output.

**Senator CROSSIN**—I want to ask about a particular program that has been funded. It goes to the Hillsong Emerge funding following from a number of activities that have occurred around the nation, as you are no doubt aware, in the last couple of months. Can you tell me when Hillsong Emerge submitted their first application for a grant under this program?

**Dr Heriot**—Sorry, I am searching for information.

**Senator Ellison**—While that is being done, Madam Chair, perhaps Senator Crossin might have another question we could deal with in the meantime.

**CHAIR**—Certainly.

**Senator CROSSIN**—My next question is related to my first question, so we might need to wait. We have a sequence here, Minister. You have probably figured that out by now.

**Dr Heriot**—In answer to question on notice No. 1370, we provided advice that Hillsong had lodged two applications in the same grant round, but I do not actually have a specific date of lodgement for those. One was subsequently withdrawn by Hillsong.

**Senator CROSSIN**—I wanted to get further detail about each of those activities, you see. Do you have a month perhaps in which that grant was lodged—the first application for the grant?

**Dr Heriot**—I would have to take that on notice.

**Senator CROSSIN**—You do not have a month there.

**Dr Heriot**—No.

**Senator CROSSIN**—Not a particular date but a rough estimate of when that would have been.

**Dr Heriot**—No.

**Senator CROSSIN**—When did they withdraw the application?

**Dr Heriot**—They withdrew the application before the assessment process had commenced—I do not have a month for that either.

**Senator CROSSIN**—When did they submit their second application?

**Dr Heriot**—They submitted a second application within that same funding round.

**Senator CROSSIN**—I see, so we have got a situation where a grant is submitted and then withdrawn, and before the closing date a second application is submitted. Is that correct?

**Dr Heriot**—I would have to seek clarification regarding the dates as to when both came in. I am sorry, I do not have that information.

**Senator Ellison**—They might have come in together. They might have come in before the other one was withdrawn.

**Senator CROSSIN**—That is exactly what we would like to determine, you see.

**Senator Ellison**—That will have to be taken on notice, Madam Chair.

**Senator CROSSIN**—You might need to take on notice when the application was withdrawn.

**Senator Ellison**—Yes.

**Senator CROSSIN**—In between the original application being lodged—let us call that the first application—and withdrawn was there any contact between the department and Hillsong?

**Dr Heriot**—Not that I am aware of. It was one of however many hundred grant applications we received in the round.

**Senator CROSSIN**—So what happens when each grant comes in?

**Dr Heriot**—They are logged, an acknowledgement slip is sent and, if in the course of the assessment process we need to seek information on a particular application because we need clarification or information, we may contact the applicant.

**Senator CROSSIN**—Did that happen in this instance?

**Dr Heriot**—Not that I am aware of, no.

**Senator CROSSIN**—You are not aware of any contact at all. No meetings with Hillsong about their application?

**Dr Heriot**—We had no meetings with Hillsong about their application prior to the assessment process.

**Senator CROSSIN**—No clarification of any aspect of the detail of the grant.

**Dr Heriot**—I would have to check that out—none that I am aware of.

**Senator CROSSIN**—I will get you to take that on notice. So you are saying the first application was withdrawn and did not even get a chance to be assessed by the department—is that correct?

**Dr Heriot**—Yes.

**Senator CROSSIN**—That is what happened?

**Dr Heriot**—Yes.

**Senator CROSSIN**—Do you have any knowledge as to why they withdrew their initial funding application?

**Dr Heriot**—No.

**Senator CROSSIN**—There was no explanation as to why they withdrew?

**Dr Heriot**—I am sorry, Senator. My notes simply say that the application was withdrawn by Hillsong.

**Senator CROSSIN**—I want to go back and ask about the dates. Is there anyone present in this room who would know the dates those applications were lodged?

**Dr Heriot**—No, Senator.

**Senator CROSSIN**—Nobody here at all?

**Dr Heriot**—No. I think we have advised we will take that on notice.

**Senator Ellison**—I might point out that I think in each round we receive a couple of hundred applications, so that is a fair bit. We can get it on notice but the date of applications is not something that officials would have at their fingertips. And can I just say that if someone withdraws an application it is not the case that the department is going to pursue them as to why they withdrew; it is just a fact that they withdrew their application. But we will take that on notice and see what we can advise the committee.

**Senator CROSSIN**—I would have thought, with all due respect, given the sort of attention in the media since this incident occurred you might have come with that information with you.

**Senator Ellison**—The fact is it is in the media today that Hillsong has had its offer of the grant withdrawn, and it is as simple as that. It is unable to deliver the project as originally proposed and the department has withdrawn the grant offer. That is fairly clear.

**Senator CROSSIN**—Dr Heriot, did the department actually ask Hillsong to resubmit their funding application?

**Dr Heriot**—No.

**Senator CROSSIN**—Nobody in the department looked at the first application in detail and contacted Hillsong at all?

**Dr Heriot**—To ask them to resubmit an application?

**Senator CROSSIN**—Yes.

**Dr Heriot**—No.

**Senator CROSSIN**—Are you certain about that? Would you need to take it on notice?

**Dr Heriot**—I can see no reason why that would have happened. We just process applications.

**Senator CROSSIN**—Can you take that on notice for me?

**Dr Heriot**—We can double-check.

**Senator CROSSIN**—So you would say that your department would deny allegations made by Hillsong that the department asked them to resubmit their funding application? Because that is the allegation that the company is suggesting—that in fact the department asked them to submit a second application.

**Dr Heriot**—I would have to go to the detail of that. I cannot imagine that we would have gone specifically and exceptionally to Hillsong to ask them to do that. When we announced the first round of the greater Western Sydney stream we wrote out to all organisations who had previously submitted an application for funding under the national stream saying we would consider the applications they had submitted or, if they wished to develop new project submissions and make those—

**Senator CROSSIN**—So that was just a general letter saying—

**Dr Heriot**—That was a letter to everyone who had applied or was on the register of interest when the greater Western Sydney stream was first announced.

**Senator CROSSIN**—Well, Hillsong Emerge are suggesting publicly—in articles that have been written—that in fact the department approached them and asked them to resubmit their funding application. Are you suggesting that is wrong?

**Senator Ellison**—Well, I think, Madam Chair, that Dr Heriot has answered the question—that is that there was no approach by the department to Hillsong Emerge to resubmit the application. That is the clear evidence of Dr Heriot. Dr Heriot said she will check after being pressed by Senator Crossin. That is not unreasonable but to then invite Dr Heriot to engage in

some comment on allegations by Hillsong Emerge—I think it has been answered. The department says they did not ask Hillsong Emerge to resubmit any application. What comments there are reported in the paper by Hillsong Emerge are a matter for Hillsong Emerge and whether or not those reports have been reported correctly, but I do not think it takes us anywhere. The question has been answered by Dr Heriot.

**Dr Heriot**—I should add that, in writing to withdraw the offer of grant, we did invite them to submit projects for future grants rounds, noting that there would be others advertised this year, but that was any new projects.

**Senator CROSSIN**—Can you provide us with a copy of that letter?

**Dr Heriot**—I would need to seek advice as to whether we would provide you with a letter that we had addressed to someone else.

**Senator Ellison**—We will take that on notice.

**CHAIR**—Thank you, Minister.

**Senator CROSSIN**—Would that have been a general letter that you might send out to everybody who withdraws a grant?

**Dr Heriot**—No. Sorry; I have miscommunicated. When we wrote to Hillsong withdrawing the offer of funding we said they were free of course to apply for future grants.

**Senator CROSSIN**—I guess I am not up to that in my time line of questioning. I am not quite at that stage yet.

**Senator Ellison**—We are still back at the early stage where they have not been given the grant, aren't we?

**Senator CROSSIN**—Yes. We are still at the stage where they have withdrawn their first and then resubmitted a second. That is where I wanted to know if you or anyone in your department had spoken to them.

**Dr Heriot**—I am sorry. I was taking the offer to apply in its broader sense. I am sorry for having caused that confusion.

**Senator CROSSIN**—I am still in the early stages of this time line. Can I ask that question again.

**Dr Heriot**—The same answer will stand as previously.

**Senator CROSSIN**—There was no contact between the first application being withdrawn and the second one being put in. Is that correct?

**Dr Heriot**—As I said, not that I am aware of.

**Senator Ellison**—That is a different question. No contact is different from inviting them to resubmit. There might have been some receipt or acknowledgment of the withdrawal, but that is different. Let us get consistency in our questions. The fact is that a question has been asked, in relation to when the first application was withdrawn, 'Did the department invite Hillsong to resubmit?' The answer to that is clearly no. Now you have mentioned contact: 'Was there any contact?' There might have been acknowledgment of the withdrawal: 'We acknowledge that

you have withdrawn your application.’ That could constitute contact. I just want to make that clear.

**Senator CROSSIN**—Perhaps we could just have a clear answer if either or neither of those things occurred, Dr Heriot.

**CHAIR**—Senator Crossin, could you just specify exactly what your question is for the officer.

**Senator CROSSIN**—We have a situation where Hillsong puts in the first application for funding. That application is then withdrawn. They put in a second application for funding. I would like to know if you contacted Hillsong between the first and second application being put in and whether you asked them to resubmit an application, which is why you then got a second application.

**Dr Heriot**—I think that I have addressed the asking them to resubmit by noting that there was a general mail-out to applicants who had applied under the second round, saying we would take their current application and carry it over or they could resubmit, but that was not targeted to Hillsong. We have advised that we are not sure of the sequencing and dates of arrival of the applications and withdrawals and we would have to take that on notice.

**Senator CROSSIN**—And can you take on notice for me any other correspondence or contact you would have had with Hillsong between the first and second applications being received.

**Dr Heriot**—Yes.

**Senator CROSSIN**—So, once the second application is then received, what checks are made of the veracity of any statements that are in applications?

**Dr Heriot**—We go to listed referees, we talk to them about financial management, we look at their financial statements and letters of support and those sorts of things.

**Senator CROSSIN**—How rigorous are the guidelines that state, ‘Where projects have an Indigenous focus or component, organisations must provide evidence of the explicit agreement and support for the project from the appropriate local elders’? How is that checked?

**Dr Heriot**—We look for evidence in the form of contact names and numbers or letters of support.

**Senator CROSSIN**—Do you actively contact the organisations to see if they have provided that support?

**Dr Heriot**—If there are letters, we go by letters.

**Senator CROSSIN**—How do you verify how accurate those letters are?

**Dr Heriot**—We accept the letters.

**Senator CROSSIN**—I am assuming you accept them because they are on letterhead and they are signed appropriately—is that correct?

**Dr Heriot**—Yes.



**Senator CROSSIN**—If they are not on any sort of letterhead, if they are simply signed, how do you accept the veracity of them?

**Dr Heriot**—We often get letters from individuals that are not on letterhead, so we accept that they are from individuals. For example, we will often get letters of support for a particular project from residents in the local community, and they are not on letterhead, because they are affiliated with no organisation.

**Senator CROSSIN**—So you do not actually contact the organisations or seek to meet with them?

**Dr Heriot**—We do not meet with organisations, no.

**Senator CROSSIN**—Organisations that provide letters of support by whatever means or indicate support by whatever means?

**Dr Heriot**—No.

**Senator CROSSIN**—During the process of the second application from Hillsong Emerge, did your department ever become aware that there were a number of organisations that did not support the application, as opposed to what was purported by Hillsong? Have you ever been made aware of that?

**Dr Heriot**—I am sorry. What time frame are you in now?

**Senator CROSSIN**—You would have got the second application now. You would be assessing the second application. At any time during that assessment, were you aware that there were organisations and individuals that did not support the application, even though Hillsong Emerge had alleged they had their support?

**Dr Heriot**—No.

**Senator CROSSIN**—How would you prove otherwise, then?

**CHAIR**—I am sorry, Senator Crossin, what is the import of that question?

**Senator CROSSIN**—There have been a number of organisations—

**Senator Ellison**—I think we need to clarify some issues here. It might help us in progressing this matter. As I understand it, you get many applications and many people writing in support of the application—for instance, members of parliament from all political persuasions are just one case in point. You also have those that are more germane to the viability of it and financial referees. I understand that they are contacted, but perhaps Dr Heriot could deal with that and go through the process of how an application is assessed—what is done to check what is said. That might help us in the first instance, and then we can confine it to Hillsong.

**CHAIR**—Certainly. Dr Heriot, do you have that information?

**Dr Heriot**—I am sorry, but this will be a stream of consciousness process. We would look at the application. We would assess the eligibility of the organisation as an incorporated, not-for-profit or local government organisation. We would look at the annual reports and financial statements and its constitution or articles of incorporation. We would then look at the nature of the project to see whether or not that was an eligible project under the guidelines. We

would then look at the type of project it was seeking for funding to see whether it met the criteria for the particular stream, since they differ between the partnership and other streams. We then look at issues of demonstration of local need in the application and the description of the nature of the intervention. We try and map that against good practice in that particular area. We would then look at the partner and cooperative arrangements that the organisation was proposing to put in place in the course of the organisation. We would contact other Commonwealth, state and territory agencies through the assessment process—I am sorry, this is not necessarily in sequence—to see whether they had implemented a similar project with that organisation or another organisation in the locality to see whether there are any issues relating to organisational competency. I am trying to think whether I have left anything out.

**CHAIR**—If you have, you can add it on notice.

**Dr Heriot**—Okay.

**Senator Ellison**—That is a description of how an application is dealt with. The questions now are: was that done in relation to Hillsong Emerge? What was done in relation to checking what was said? They might have to be taken on notice, and we can get back to the committee with a more detailed assessment of the Hillsong Emerge application against the checklist, if you like, that Dr Heriot has outlined. I do not think all that detail can be provided here and now as to what was done in particular in relation to the Hillsong Emerge application. That may have to be taken on notice. Dr Heriot has outlined the general approach to applications for all funding.

**CHAIR**—Senator Crossin, based on that and in relation to your specific questions—

**Senator CROSSIN**—I will keep going.

**CHAIR**—And, where it is not possible to provide the detail, Dr Heriot will take those on notice.

**Senator CROSSIN**—I have to restate that, given the attention that this whole debacle has received in the press and in the New South Wales parliament, I am surprised that more detailed information has not come to estimates. I will continue. If you cannot answer them or will not answer them, we will take them on notice.

**Senator Ellison**—It is not a question of will not. Let me get that straight.

**Senator CROSSIN**—That is good. It is not like the Wheat Board, then.

**Senator Ellison**—There is no lack of desire to answer these questions. It is a question of great detail that is being sought here. We have answered questions on notice in relation to this before and provided detail which formed the basis of an article in the *Australian* today. I do not think the department has been anything less than forthcoming in relation to this matter. It is just that there is a lot of detail being sought, and we want to make sure we give the right answers. That will have to be taken on notice. If we can answer something now, we will.

**CHAIR**—Thank you, Minister. I understood that to be the approach.

**Senator CROSSIN**—I have a fairly full brief in front of me with a whole pile of correspondence from a whole range of individuals, not just the article in the *Australian*. The issue really goes to the accountability and transparency of the allocation of the funding

provided by the federal government. The first application is received by Hillsong Emerge for this funding and it is withdrawn. I am assuming nobody looked at that first application before it was withdrawn; it was simply received, noted and tagged. Is that correct?

**Dr Heriot**—To my knowledge, it would have been logged, but it would not have been assessed.

**Senator CROSSIN**—My understanding is that their second application arrived without the acknowledgment or knowledge of the supporting individuals or organisations. This company or organisation has simply taken the letters of support from the first application and attached them to the second application. Was that ever brought to your attention?

**Dr Heriot**—We have had that statement made subsequent to the announcement.

**Senator CROSSIN**—Which announcement are we talking about now? The Prime Minister's announcement of the funding being granted?

**Dr Heriot**—Yes.

**Senator CROSSIN**—When did you become aware that the Riverstone Aboriginal Community Association had written a letter of support for the first application but was not aware of and did not support the second application by Hillsong Emerge?

**Dr Heriot**—I do not have a specific date, I am sorry. It was when we read the media post launch. It was not drawn to my attention at the launch when I met individuals from Riverstone. It was subsequent to that.

**Senator CROSSIN**—Is that because, when you assess the applications, you take a letter that is written on a letterhead as a letter of support and you never question that beyond seeing the letter attached to the application?

**Dr Heriot**—We accepted it as a legitimate letter.

**Senator CROSSIN**—Concerns were raised in the media. What action did the department then take?

**Ms Evans**—Following the Prime Minister's announcement on 22 August 2005—

**Senator CROSSIN**—That was for the grant of \$414,479.

**Ms Evans**—That is right. With all those grants, the department enters into a process with the applicant to come to a funding agreement. In that context, the department did start to have correspondence with Hillsong re how to progress that grant application, including how the partnership arrangements would work.

**Senator CROSSIN**—What triggered concerns within the department about these arrangements?

**Ms Evans**—I think it is fair to say there was a bit of gossip and innuendo and a few different telephone conversations. Hillsong then invited the department to meet with the project partners in October 2005, which the department then did.

**Senator CROSSIN**—When we are talking about project partners, are we talking about the Riverstone Aboriginal Community Association?

**Dr Heriot**—No, if I could clarify: there were a number of them. There was Blacktown PCYC, the Australian Sudanese Youth Union Incorporated, the Riverstone Neighbourhood Centre and Community Aid Service, and the Riverstone Sports Centre—as well as the Aboriginal association.

**Senator CROSSIN**—Was it out of this that your concern about the grant was highlighted even further through the media?

**Ms Evans**—It was simultaneous. Hillsong had invited the department to meet with the partners to provide some assistance in progressing the project. From memory, that same day there was some publicity and RACA walked out of that meeting and that is what got some media attention.

**Senator CROSSIN**—Did you at any stage contact RACA with the purpose of hearing their side of the story?

**Ms Evans**—There may have been some informal contact, but the department's legal advice has been that the relationship was with Hillsong and the project needed to be progressed with Hillsong, not with the partners. That is the primary relationship.

**Senator CROSSIN**—That is true, but isn't the funding application based on the relationship Hillsong is then supposed to have with other partners?

**Ms Evans**—That is right, and that is why the department had approached Hillsong in September, asking for details about how the partnership would work. There were clearly some problems emerging with the partnership, and that is what culminated in the meeting on 20 October.

**Senator CROSSIN**—At what stage did you become concerned that there was a possibility that the same letter of support had been attached to the second application, even though the second application funding was for something totally different? Did you not find that out until the October meeting?

**Ms Evans**—I do not think we are in a position to confirm that even now. We took the letter of support for that application at face value—as we do with other applications and other letters of support—and had not questioned it.

**Senator CROSSIN**—And because you had not looked at the first application in detail, you would not have realised that that letter of support was simply hijacked to the second application—despite the fact that the second application was different?

**Ms Evans**—What I am saying is: at this stage we do not know for a fact that that letter from RACA was not legitimate.

**Senator CROSSIN**—Have they not conveyed to you their concerns that a letter of support they gave to the first application was reused for the second application?

**Ms Evans**—Not directly to the department, to my knowledge.

**Senator CROSSIN**—And not in a meeting with you?

**Dr Heriot**—It may have been raised. I am sorry; I was not at the October meeting.

**Senator Ellison**—We will take that on notice.

**Senator CROSSIN**—Could you take that on notice and see if those concerns were raised at that meeting?

**Senator Ellison**—And also whether Riverstone wrote any letter of complaint. There is also the question of Riverstone meeting Dr Heriot at the announcement of Hillsong's award of funding and not raising the issue at that point. Rather than doing things on the run here and risk facts being confused, let us go away, take it on notice and we can set out the sequence of events in a clearer fashion—and who wrote letters and when and how.

**Senator CROSSIN**—The reason I keep pursuing this is that I actually have a copy of the application form from Hillsong here. It goes to the funding of Hillsong's programs. It does not specifically mention any partnership with anyone, and yet there are letters from partners attached to it. So in the assessment phase—

**Senator Ellison**—Madam Chair, I think you mentioned the 1998 resolution's fairness to witnesses. Senator Crossin is saying she has an application there. We are not sure that that was either of the applications that were submitted. There were two applications submitted by Hillsong, and now Senator Crossin is proceeding to question the officials on the basis that this is the application that was forwarded to the department.

**CHAIR**—I think in fairness to the officers, Senator Crossin, it is very difficult to respond to questions asked orally in relation to three, if not more, different sets of applications and the processes attached to those without the material available to the officers at the time.

**Senator CROSSIN**—Let me rephrase my question. My understanding is that Hillsong's second application went to the operations and programs that it delivers. It did not mention, require or state any partnerships, particularly a partnership with RACA. What happens in the assessment phase? You look at an application that is based purely on the operations of Hillsong Emerge. Before the funding is actually awarded, didn't somebody actually look at the letters of support and realise there was some disconnect here?

**Senator Ellison**—Again, I think that this would require the officials to agree with the premise that the application did not acknowledge the partnership. I think that we cannot answer any further questions on this matter unless that document is provided to the officials. That may be Senator Crossin's take of the application but it may be that once we look at it the officials could say, 'This was never received' or 'Yes, it was, but it is in a different context.' That is why we have these rules for asking witnesses questions in a certain way and, in the time honoured procedures that we have in our system, when you question a witness on a document, you put the document to the witness. That is essential fairness.

**CHAIR**—Or you enable the officer to get access to documents that are in the department's possession, which is the point that I made earlier, Senator Crossin. It is very difficult for the officers to participate in this exchange if they do not have access to the material.

**Senator CROSSIN**—Dr Heriot, on what basis was the second application successful?

**Dr Heriot**—Senator, I do not have the assessment file in front of me, I regret. It would have been determined on the basis of a recommendation that would have gone to its claims against the criteria comparative to other applicants. It was considered by an advisory committee process, but I regret I do not have the files and the commentary with me.

**Senator CROSSIN**—Can you take that on notice for me? I would like to know what the criteria were or how it was that the second application was deemed successful.

**Senator JOYCE**—I just read about this in the paper today. I do not think that, unless Dr Heriot was to bring every file in here today, she would have that information ready for us. I think it is a fair statement that the questions are taken on notice so at least we can get some sort of a corroborated form of evidence rather than best guess assessments.

**Senator CROSSIN**—Senator Joyce, glad to see you have just popped up, but I reiterate: it is not just based on articles that have appeared in the last 24 hours. I have quite a thick file of correspondence here from a whole range of different people—

**CHAIR**—Unfortunately, we do not have the benefit of the material, Senator Crossin.

**Senator CROSSIN**—Perhaps if you could just take on notice—

**Dr Heriot**—Yes, Senator.

**Senator CROSSIN**—to provide for us what it was about that application that made it successful and eligible for that grant to be given.

**CHAIR**—Thank you, Dr Heriot has agreed to take that on notice.

**Senator CROSSIN**—Can you also take on notice for me what it was about the letters of support that convinced officers in your department that that application should be considered to be successful?

**Dr Heriot**—That would, I imagine, be a subset of the previous question.

**Senator CROSSIN**—Yes, thank you.

**CHAIR**—Thank you, Dr Heriot.

**Senator CROSSIN**—When was the decision taken to withdraw the offer of the funding to Hillsong Emerge?

**CHAIR**—Is that information that you have, Dr Heriot?

**Senator JOYCE**—That is another question relating to Hillsong.

**Dr Heriot**—I can advise that I wrote the letter on 1 February this year.

**Senator JOYCE**—Dr Heriot, were you aware that the committee was going to be asking you a range of questions all about Hillsong today?

**Senator CROSSIN**—Madam Chair, I think I have the call to ask questions—is that not correct? Usually on this committee we wait until each and every one of us has finished before we interrupt.

**CHAIR**—Sometimes if we waited until we have finished, we would be here until 2010!

**Senator Ellison**—This was a subject in outcome 2.1. We recalled Dr Heriot, who had left—quite properly, because there were not questions on this and questions had been exhausted in 2.1. I think Dr Heriot is being very reasonable in offering information and offering that questions be taken on notice in the interests of getting it right and also in order to get the detail. Notice was given that questions would be asked under 2.1, among which is the crime prevention program, along with a vast range of other subjects. There was no notice

given as to Hillsong. Having said that, though, there is no problem whatsoever in taking these questions on notice and finding out what we can.

**CHAIR**—Thank you, Minister.

**Senator CROSSIN**—Dr Heriot, you wrote to Hillsong Emerge on 1 February—is that correct?

**Dr Heriot**—Yes.

**Senator CROSSIN**—Who made the decision to withdraw the offer from Hillsong?

**Senator JOYCE**—You will probably have to take that question on notice.

**Dr Heriot**—The department decided; I was the delegate.

**Senator CROSSIN**—On what basis did you make that decision?

**Dr Heriot**—On the basis that Hillsong was unable to deliver the project that had been awarded funding with the specific partnership arrangements and breadth of participants.

**Senator CROSSIN**—So, between the announcement in November and February, you came to a conclusion that in fact there was no such partnership with other organisations?

**CHAIR**—Is that a statement, Senator Crossin?

**Senator CROSSIN**—I asked whether they came to the conclusion that there was no such partnership.

**CHAIR**—Thank you; that is question.

**Dr Heriot**—I think that that is not the conclusion that I came to and that that is not what I said. As I said earlier, there are a number of partners involved in the specific application. The issue at hand seems to have been the partnership arrangements with RACA rather than the partnership arrangements with the other bodies. We should have that on record. We have nothing to indicate that there is any issue with any of the other partner agencies or partner organisations involved in this. Sheridan Evans, who was acting in my position, had written on 12 December to request Hillsong to advise the department how they would in fact achieve the partnership project described in their application. We had not received a response. We then contacted them in January. We received no response, so we made the decision to withdraw the offer of the grant.

**Senator CROSSIN**—What has now happened to the \$414,000 that was earmarked for the grant? Does it simply go back into consolidated revenue or does it stay in the grant program allocation?

**Dr Heriot**—It stays in the grant allocation to be reallocated.

**Senator CROSSIN**—Has another grant application round for this program been held for this region?

**Dr Heriot**—It is currently under way. Applications have closed and the assessment process is under way.

**Senator CROSSIN**—When did those applications close?

**CHAIR**—You can take that on notice, Dr Heriot, if you do not have the information with you.

**Senator Ellison**—We will take that on notice.

**Senator CROSSIN**—Do you know whether Hillsong Emerge have put in another application?

**Dr Heriot**—Hillsong have not applied as the lead agency. I think they may have been involved in a consortium as an ancillary partner but they have not applied in their own right.

**Senator CROSSIN**—So, in this round, you think that they are part of a consortium in an application?

**Dr Heriot**—Yes.

**Senator CROSSIN**—What is the timing of this round? Applications have closed. What happens next?

**Dr Heriot**—The advisory group is made meeting later this month and the Western Sydney advisory group is meeting in March.

**Ms Evans**—If I can just clarify, the third funding round was advertised on 8 October 2005 and applications closed on 18 November 2005.

**CHAIR**—And that is the round we are currently talking about, Ms Evans?

**Ms Evans**—Yes.

**CHAIR**—Thank you.

**Senator CROSSIN**—This is the current round?

**Ms Evans**—Yes.

**Senator CROSSIN**—So they are now before the advisory committee for assessment?

**Ms Evans**—Yes.

**Senator CROSSIN**—What is the total amount of money available in this grant round for that region?

**Dr Heriot**—For the region, about \$2 million is available this financial year.

**CHAIR**—Do you want to take on notice to provide the accurate, specific amount?

**Dr Heriot**—Yes.

**Senator CROSSIN**—Thank you. That is all I have for that.

**Senator FIERRAVANTI-WELLS**—Dr Heriot, if I understand correctly, the package of announcements that was made on that day involved two streams, and I think there are three streams that are part of this package, if I can put it like that—and on that day there were about eight organisations that received funding?

**Dr Heriot**—Yes, eight projects received funding.

**Senator FIERRAVANTI-WELLS**—You have been asked to take some material on notice. Senator Crossin has highlighted this application, but you said that there were about 200 applications, some of which would have been rejected; this is probably not the only one that



was rejected. Perhaps you might like to give us a bit of a snapshot and put it into the context of the other applications that may have been rejected or withdrawn, or that for whatever reason were dealt with and were not successful, so we get a bit more of a picture. I am happy for you to take it on notice.

**Dr Heriot**—Certainly. I should clarify, I am sorry: for the second round of grants we received 460 applications. I am sorry, I have under-represented that. And I think, of that component, around 70 were for the greater Western Sydney stream specifically. So I am sorry; I was generalising for the national round and undergeneralised.

**CHAIR**—So you will take that on notice, Dr Heriot?

**Dr Heriot**—Yes, I will, as to what information we can provide.

**CHAIR**—Anything further, Senator Fierravanti-Wells?

**Senator FIERRAVANTI-WELLS**—No, that is fine, thank you.

**CHAIR**—Okay. Thank you very much. Now, I am going to determine that concludes discussion on matters pertaining to output 2.1 completely and return to matters pertaining to output 2.4, where I understood Senator Ludwig had questions.

[4.33 pm]

**Senator LUDWIG**—I think the only questions I had left in that area other than on EMA was on the review of protective security for holders of high office. In respect of the answer to question on notice No. 297, am I right in saying it is going to take two years to completely implement the findings of that report? That is my understanding of how it is going to go.

**Mr Tyrie**—Funding was provided over a period of time, ranging from four to five years. My understanding is that phase 1, the implementation of some of the recommendations of that review, is ongoing at present and that, while the department expects to sign off on the issues it is responsible for in April of this year, matters that the AFP are responsible for will be ongoing.

**Senator LUDWIG**—I take it none of the recommendations were critical, if they are going to take two years to implement, or is there a hierarchy of those which are critical and will be implemented shortly and those which are not critical and can be implemented over two years?

**Mr Tyrie**—My recollection is that none of the recommendations were critical. This was about a re-evaluation of a system that had been in place for considerable time and we needed to review it and put in place a more modern system, reliant on greater use of technology.

**Senator LUDWIG**—So will the budget change? In terms of expenditure in this area for the review, will it require additional budget or is there sufficient budget to implement the review, in terms of your responsibility?

**Mr Tyrie**—As I said, we will sign off on our work in April this year. My understanding is that that is on budget. In relation to the AFP, you will have to direct that question to the AFP. As far as I am aware, the department has met its obligations and will sign off in April.

**Senator LUDWIG**—When you say you will sign off in April, does that mean you will then implement the recommendations to an agreed timetable or that you will have finished your component of the work?

**Mr Tyrie**—We will have finished our component of the work.

**Senator LUDWIG**—Will there be a review or a report at that point? In other words, will you pass a document or a report to the A-G?

**Mr Tyrie**—We continually review our work in this area because of the changing dynamics of the environment with regard to security. As usual, we would do a review of our work in that area, but I have no knowledge of a report that we would submit to the Attorney. I would say not, at this stage.

**Senator LUDWIG**—Is there a timetable other than April? How many recommendations are yours, in that sense?

**Mr Tyrie**—I do not have the number of recommendations. This was a move from the reliance upon guarding to a transition to the greater use of electronic technology and a rapid response capability. You might recall that, when we were here before, we discussed the movement of the funds for the guarding to the AFP, and of course the movement of APS. This is a further progression of that arrangement to smarten up our guarding, our protective security arrangements for high-office holders and the diplomatic and consular community.

**Senator LUDWIG**—I might leave the remainder of those questions to the AFP and put some on notice in that area.

**CHAIR**—Is that all the questions you have for Mr Tyrie, Senator Ludwig?

**Senator LUDWIG**—Yes.

**CHAIR**—As nobody else has questions for Mr Tyrie, we thank him very much. We will move now to the agencies, beginning with the AAT.

[4.38 pm]

#### **Administrative Appeals Tribunal**

**Senator Ellison**—Before we start with questions for the AAT, I would just like to raise a matter with the committee. The National Security Committee is meeting this afternoon and there are a couple of matters that I am required to be there for. It should not take long at all—20 to 30 minutes is my estimation—and I have been unable to find a replacement for me, so I would ask the committee's indulgence that I be absent for a short period of time as required. The secretary will be here. If there is any question that needs to be put to me, it can be put to me on my return.

**CHAIR**—Thank you very much, Minister. We were aware of that meeting and we made adjustments to the program to cater for officers earlier in the day on that basis. I am sure that is agreeable to senators. It would be unusual if questions to the AAT generated the need for questions to the minister, but we will see. Senator Bartlett may begin questioning now.

**Senator BARTLETT**—Firstly, I noted in your annual report that there seemed to be quite a large spike in appeals in the taxation division in the last financial year. I wonder whether you could give any indication as to what that might have been due to. Was there some specific event or class of cases or whatever that generated that?

**Mr Humphreys**—There has been a considerable degree of activity within the Australian Tax Office in relation to the finalisation of tax scheme matters, if I can use that term. It is a

situation where that has continued. In fact, I can hand up some figures which show that, in the six months June to December, we received a further influx of tax appeals. This financial year, we are expecting to receive double the number of appeals than we received last year. We were aware that they were coming. We have regular meetings with the Australian Taxation Office, and they had forewarned us of the fact that these tax appeals would be coming.

**Senator BARTLETT**—Has that generated any staffing issues for you? Do you have enough members with the tax—

**Mr Humphreys**—We have been aware of the need for additional members. As a result of that, we have taken action with the assistance of government. A full-time deputy president has been appointed in Western Australia, where previously there was a part-time deputy president. An additional member, who has extensive tax experience, has been appointed in Western Australia too. We have looked at the position in relation to taxation matters, and we have put in place a tax management scheme. That involves the allocation of particular classes of matters or schemes to managing members within the tribunal. Those managing members take charge of that particular scheme. In many cases, it may be over a number of states. They will coordinate the progress of that scheme and get it ready for hearing. It is taking up a considerable amount of resources, and we anticipate it will take up more resources as time goes by.

Page 3 of the document I have handed up shows lodgments by jurisdiction. In the taxation division, you will see the number of lodgments jumped from 1,382 in 2003-04 to 2,162 in 2004-05, which was a 56 per cent jump. In the six months to the end of December, we received 2,075. We have done a projection by simply doubling the number we received for this financial year, which would take us to 4,150, which would be a 92 per cent jump in the number of matters that we anticipate to receive. We are aware of the problem. As I said, we knew it was coming and we have been working fairly hard by managing them and by obtaining additional resources in terms of members who have tax expertise to try and deal with them in an expeditious manner.

**Senator BARTLETT**—And that, in broad terms, is based around the tax office finalising its position on a whole lot of those investment schemes?

**Mr Humphreys**—They finalised the matters. They warned us in a letter that they were anticipating about 5,000 matters, which they anticipated would result in 2,500 appeals to the tribunal. As it turns out, we think we are going to get more, and we are reviewing the situation as it unfolds. I should add that part of that is an increase in GST appeals.

**Senator BARTLETT**—Are all the appeals basically around the one principle about how the tax act is interpreted, or do you need to burrow down individually into each of them that is not like a class?

**Mr Humphreys**—They cover a broad range of matters. The tax division covers things like individual issues over objections. It goes through to tax schemes. It covers the complete broad range of matters, although the bulk of matters are what I would call tax schemes.

**Senator BARTLETT**—Looking at the statistics in your appendix of your annual report—

**Mr Humphreys**—It is nice to have someone read our annual report.

**Senator BARTLETT**—I cannot promise I have read every page—

**Senator JOYCE**—He has trouble sleeping.

**Mr Humphreys**—What page are you looking at, Senator?

**Senator BARTLETT**—The tables in appendix 3. I am particularly interested in the fate of the various appeals in—I think it is table 3.5—the outcome of the applications. I presume an application and an appeal is the same thing. There seems to me to be a reasonably significant set-aside and variation rate. In the veterans area, for example, over 50 per cent or just on 50 per cent are either set aside or varied. I am wondering how that compares to previous years. It seems to me to be quite a high variation or set-aside rate from the original decision by the DVA, particularly since, as I understand it, these go through the Veterans Review Board first before they get to you normally. Is that a higher than normal percentage or is that about your average?

**Mr Humphreys**—I would need to take that on notice and have a look at previous years. I should add that in the veterans affairs area the legislation is very complex. It is an area where there are quite difficult technicalities. To ensure you get every matter right, particularly when people start looking at the various technicalities on it, there is potential for appeals there.

**Senator BARTLETT**—With the changes in the veterans military compensation area a year or two ago, I think it was, which was meant to simplify things a bit, has that assisted in cutting down on both the number of appeals and the number of successful appeals, for want of a better phrase?

**Mr Humphreys**—I would have to take that on notice because we have to look at each individual appeal and see if we can get any general trend out of that.

**Senator BARTLETT**—I was trying to get a sense, based on those changes, which I think were 2004 from memory—I am pretty sure that they were before the last election—of whether that had had a positive effect. Obviously, one of the aims of simplifying the system is to make savings down the line with regard to bodies like yours.

**Mr Humphreys**—The number of lodgments in the area remains pretty much the same.

**Senator BARTLETT**—Table 3.12, I understand, is the outcome of appeals against tribunal decisions to various courts. Again, if you could let me know whether there is any trend there, because it only gives the figures for this year as opposed to previous years about the numbers of appeals that were allowed or remitted.

**Mr Humphreys**—I will take that on notice. Off the cuff and without the benefit of having looked at all of them, the appeal rate, I understand, is pretty much the same and there is not a huge amount of variation. The number of appeals we get from the number of the decisions that we actually give is fairly static. There are spikes, but we are talking about small numbers there in terms of percentages. The number of appeals that are successful remains reasonably low.

**Senator BARTLETT**—I want to ask you about one specific case. I am aware of a court ruling of an appeal of an AAT decision which goes back to 2004. Having read the appeal, I was concerned about the way the AAT handled the case in terms of the broader principles. It

was a case of applicant S214. It was an immigration appeal about excluding from a protection visa on the basis of alleged war crimes.

The appeal related to the failure to provide procedural fairness with the use of the powers under section 35(2)(c) about restricting disclosure of evidence. Basically, the person who was appealing was not able to see some of the evidence that was made against them. Without expecting you to necessarily know all the details of that particular case, it seemed to me to be a finding that raised concerns about how the tribunal operated, at least in this case, in allowing somebody who had serious allegations made against them to be able to see what the evidence was so they could respond to it, which they were basically denied from doing, according to the court ruling. I want to get a sense of whether that finding in particular and all findings are reviewed and whether the tribunal's procedures are reviewed or the individual member involved in that initial case is notified or talked with in some way to make sure that they change their procedures.

**Mr Humphreys**—Tribunal members are independent in the same manner that a judicial officer is independent. Tribunal members are aware of the results of appeals. If there was a concern raised in relation to an appeal, that would be a matter for the president in terms of whether or not he would raise the matter with the particular member concerned. It is not a matter for a tribunal officer to speak to a tribunal member about how they handle a matter; that is a matter for the president.

**Ms Leatham**—I add that, of a general nature, we have what is called a weekly bulletin in the AAT which does communicate to all members and staff the outcomes of appeals, for example. That information is fed back to all staff and members. The members also have a fairly robust professional development program that they run themselves, and they would certainly discuss cases that come down from time to time with the Federal Court.

**Senator BARTLETT**—I have more experience with the MRT and the RRT and how they operate, so I might not be aware of some of the distinctions with you or have not paid as much attention to them. I suppose this particular area caught my interest because of the issue of procedural fairness. People having access to allegations made against them in the course of appealing a matter seems very fundamental to me, certainly in some areas with changes to security laws and the like. I fully appreciate that this aspect of the act where it may be necessary at times to protect sources and not fully disclose evidence. Has specific attention been paid to the procedural fairness area as part of professional development or any of that sort of process within the tribunal to make sure that those very finely balanced judgments do not lead to injustices?

**Mr Humphreys**—We run an induction program for new members. Part of that induction program covers particular areas in relation to procedural fairness. At the moment, there is a Council of Australasian Tribunals practice manual being written. In fact, the final draft has been received, and we are hoping that it will be launched at the AIJA tribunal's conference, which will be held in Canberra in April. Included within that is a specific chapter in relation to such issues as procedural fairness, so it is a matter that we are very aware of. As I said, it is a matter that receives specific attention in the induction program. It is also going to be part of this tribunal's practice manual so that it covers all of what I will call the basic points that tribunal members—and, when I say tribunal members, I do not mean the AAT, but tribunal

members in general—should be aware of, namely, what they need to do to make sure that they do not fall into appellable error. It will be available generally.

**Senator BARTLETT**—Thank you for that. That gives me some reassurance. Finally, as part of my extensive perusing of the annual report, I note that there is a section about decisions by the tribunal, covering some decisions of interest. Is there a section that outlines decisions of interest or significance by the courts that affect the tribunal? I know that in MRT and RRT reports they often talk about key court findings that impact on their area. There is no section like that in here, is there?

**Mr Humphreys**—Not in the annual report. We cover those matters in the members bulletin, so that they are aware of matters coming back.

**Senator BARTLETT**—Is that publicly available?

**Mr Humphreys**—It is an internal document that goes out. If you wish to have a look at some copies of it, I am sure we can make it available to you.

**Senator BARTLETT**—That would be more reading for me. That would be good.

**CHAIR**—If there are no further questions for the Administrative Appeals Tribunal: thank you very much, Mr Humphreys and officers.

[4.58 pm]

#### **Human Rights and Equal Opportunity Commission**

**Senator BARTLETT**—I want to start with questions about the report the commission did which detailed views of the Islamic communities in Australia. My understanding and recollection from that report was that there was ongoing work in attempting to raise greater awareness about some of the truths about the Muslim community rather than just the misunderstandings. What sort of work has the commission been doing following on from that report?

**Mr Calma**—The report was tabled in June 2004. Since then we have maintained a fairly regular dialogue with Muslim organisations across Australia, particularly in New South Wales and Victoria. We maintain an Isma reference committee. That last met in August in a formal capacity, and we have communication on a regular basis. In particular in relation to projects that have come out of that exercise, one of the recommendations was that the Australian Broadcasting Authority produce some information for the Muslim and Arab communities about complaints procedures. They have done that, and that was a very successful campaign. They were the first to pick up on the recommendations. We have since maintained a dialogue with the Australasian Police Multicultural Advisory Bureau, looking at ethnic descriptors. We have been invited to participate in a strategic alliance with that committee, and that is being formalised the moment. Two of the other recommendations related to how MCEETYA could be involved in educating the broader school community. I understand that those two recommendations will be picked up at their next meeting, which is scheduled for 3 March.

**Senator BARTLETT**—This might be a difficult question to answer off the top of your head because it is a fairly broad one, but I would be interested in your views about the progress of that, given, obviously, some of the debates and public events that have happened in recent times and the general apprehension that I know is present, particularly in some parts

of the Muslim community, about the security laws and how they are focused. Do you feel that those fears are getting worse or that the situation, broadly speaking, is being addressed or contained?

**Mr Calma**—Specifically in relation to the security fears, I could not pass comment. What I can suggest is that it has been a bit of an up and down road with the Arab and Muslim communities. There seems to have been some progress during dialogue since the Prime Minister has worked with the communities to develop the national action plan. There are a number of projects that may emanate from that, and there appears to be some goodwill, but whenever we seem to be taking a step forward there are a couple of steps back with some other event that causes some regression.

**Senator BARTLETT**—I was looking at the statistics in your annual report about the inquiries received by issue. I had not been able to find—it may be in there somewhere; it just had figures for last year—any particular trends in regard to areas of growing complaint or reducing complaint.

**Ms Temby**—The complaint statistics remain about the same year to year.

**Senator BARTLETT**—I think this would again be your area, Mr Calma. Have you been involved at all with the ongoing discussions or concerns about the future of developments of Redfern and the Block? Has the commission been involved in that with the New South Wales government?

**Mr Calma**—Not in a formal capacity. I have personally participated in two meetings with members of the Redfern-Waterloo community. One was alerting them to how they might get the rights to development and what rights they do have, and the other was just a general community meeting.

**Senator BARTLETT**—I noted some more developments reported again in the last day or two. Is there any likelihood that attempts will be made to have a more formal role for the commission?

**Mr Calma**—I guess it is up to the community or the authority as to whether they invite us to have a formal role, but at this stage that invitation has not been extended.

**Senator BARTLETT**—I noted as well, I think in the early stages of your term as commissioner, that you indicated that you wanted to specifically address and do a lot of further research into issues related to Indigenous health. Can you give us an update on what has been done in that area and what is coming up?

**Mr Calma**—In fact, some hours ago, the 2005 social justice report and the 2005 native title report were tabled in the House of Reps, and in the social justice report I dedicate a chapter to looking at Indigenous health issues and suggest some strategies through which we can maybe bring some equity into the health area.

**Senator BARTLETT**—Okay, I will have a look at that. Have you been involved at all in proposals by the federal government and I think also the Northern Territory government to modify the land rights act?

**Mr Calma**—Not formally, no.

**Senator BARTLETT**—Thank you. I wanted to ask Ms Goward a question as well. You made some comments in recent times about the potential dangers to maternity leave and some work and family issues of the new workplace relations laws. Obviously, I do not want to get into a debate about the laws per se, because we have had plenty of that already. But does your office have any ongoing role in trying to ensure that there are no inadvertent consequences in that area as the new laws come into operation?

**Ms Goward**—I think we could answer that by referring to our new complaints-handling program that we are going to manage on behalf of the Industrial Relations Commission.

**Ms Temby**—Senator, the commission has been provided with funding at these additional estimates to assist us to deal with any possible overflow or referral of unfair dismissal matters that would come to us instead of going to the Industrial Relations Commission, as Ms Goward says. It may well be that a number of those will be from women, and of course we will now be in a position to respond quickly and properly to those complaints due to the funding in this funding round.

**Senator BARTLETT**—Would that include scope to be able to report on issues that arise from those and make recommendations if necessary?

**Ms Temby**—We do report very fully on the nature of the complaints which come to us, and they in fact then inform the work of Ms Goward and other commissioners. So it is very early days yet, of course—it is from 1 March—but the commission is very pleased to be in a position to respond effectively to the changes that the legislation will I think inevitably make to our jurisdiction.

**Senator BARTLETT**—Is that going to be a specific stand-alone service with a special number and that sort of thing or will it just be part of the division?

**Ms Temby**—It will be part of our overall complaints process.

**Senator BARTLETT**—So it is just extra funding to provide more staff?

**Ms Temby**—Exactly, and to make sure that we are fully informed as to the ramifications of the legislation, to provide a proper service to those who inquire.

**Senator BARTLETT**—I assume that, if there were issues arising out of a perception or otherwise that unfair dismissals were being made on other grounds, on discriminatory grounds of various sorts, that would allow the commission to be in a position to identify those.

**Ms Temby**—We have been informed by the ASC that a proportion of claims previously made to the ASC are issues covered by anti-discrimination laws, so we do expect that a percentage of those claims would come to the commission after the beginning of the legislation.

**Senator BARTLETT**—There have been a number of public statements made by various members of the government, including in a fairly specific sense by the Prime Minister, about not supporting—I am paraphrasing here—structural discrimination against same-sex couples, differentiating against formalised relationships but acknowledging other areas where there is discrimination. Has there been any approach made to the commission to provide advice in that area? I know you get some complaints—it is listed in your report—about discrimination



in that area, but as I understand it it is not protected under antidiscrimination law federally at the moment.

**Ms Temby**—It comes under the Human Rights and Equal Opportunity Commission Act, provided it is a matter involving the Commonwealth or employment. But in general, that is correct.

**Senator BARTLETT**—So has the commission provided any input in that area in recent months about any other areas where further discrimination could be removed at federal level?

**Ms Temby**—Do you mean advice to government? In the particular context that you are referring to, not that I am aware of, but I will take that on notice to ensure that that is the case.

**Senator BARTLETT**—Thank you.

**CHAIR**—As there are no further questions for the Human Rights and Equal Opportunity Commission, I thank you, Ms Goward, Mr Calma and Ms Temby, and please thank President von Doussa very much for his attendance. We understand the constraints in relation to the timing.

[5.13 pm]

#### **Australian Transaction Reports and Analysis Centre**

**Senator LUDWIG**—There were a number of questions I was going to ask about AWB, but the minister is not here at the moment. I will come back to those.

**Senator BARTLETT**—We should do it while he is not here.

**Senator LUDWIG**—That does sound like a very good idea, but I suspect I should—

**CHAIR**—It is, however, not through the minister's own fault that he is not here, as you are aware.

**Senator LUDWIG**—That is right. We have just got back some answers to a number of questions that we had asked on notice and I want to follow up on those. In addition, at page 48 of your annual report there is a statement that you are undertaking projects to assess the possible effects of any new framework on AUSTRAC vis-a-vis the new AML-CTF framework. Are you able to indicate what projects are being undertaken?

**Mr Jensen**—We are doing a number of things at the moment. We are re-evaluating the structure of the organisation. We have looked at the functions that we perform and the functions that we will likely perform in the future. We are evaluating staff skill sets at the moment. We are evaluating the skills sets that we believe we will need into the future, analysing all of the different aspects of the work we are doing, the types of roles we are undertaking with regard to the draft exposure bill as it stands at the moment and on that basis looking forward into the future as to what we will look like, what work we will do and how we will go about doing that and what sort of resourcing levels we are likely to need.

**Senator LUDWIG**—Are there names for the projects or a bit more specificity as to what you are talking about?

**Mr Jensen**—No, it is all a process of managing potential change into the future. We do not have any specific project names that we place on that. Workforce planning is one aspect of it.

**Senator LUDWIG**—When are they expected to be finalised by? Is there a cost? Or are they more generally ongoing work?

**Mr Jensen**—It will be ongoing work, but what we look like and how we will be in the future will depend on the outcome of the legislation. To ensure that we are in a position to go forward, we have to make some judgments at this point in time. Through the normal budget process we will be seeking resources to enable us to move forward. As this bill will take a period of time to come into effect, then potentially have an implementation period, it will be an evolution, so it will be an ongoing process over a number of years before we move to a fully established functional operation in that sense under the provisions of the new legislation.

**Senator LUDWIG**—In terms of the FATF recommendations, have you started any projects looking at what your responsibilities will be under the exposure draft of the new AML legislation?

**Mr Jensen**—That is what I was just explaining to you. We are looking at all of those processes. What will our role be? One example of that is: what will our compliance role be? Part of our process recently has been to distinguish more clearly between the education process and the regulatory compliance process. We have already made a move within the organisation to split those two functions so there is more clarity. Under the draft bill, there will potentially be a greater requirement on AUSTRAC on the compliance side, so we will be focusing on that compliance side and developing that side of the organisation further.

**Senator LUDWIG**—Have you made any assessment as to whether additional resources will be required?

**Mr Jensen**—Yes. We have commenced a look at that. We are putting proposals through the normal budget process to obtain adequate resources to go forward.

**Senator LUDWIG**—In answer to question on notice No. 50 in respect of shell banks, the new legislation will prohibit shell banks. In question on notice No. 132, we asked about what you are doing now to try to identify shell banks in Australia. Will the operation of shell banks come under your responsibility? Will you effectively be a regulator?

**Mr Jensen**—Not in that sense. That is a prudential regulatory position. I understand that that will remain where it is at the moment. I believe that APRA has responsibility for shell banks.

**Senator LUDWIG**—Have you entered into arrangements, negotiations or a memorandum of understanding with APRA about what parts you will deal with as a regulator under the proposed legislation and what parts APRA will then deal with?

**Mr Jensen**—We have not entered into anything at this particular point in time, because we will not be certain until the bill develops further as to exactly what the roles will or will not be. We have had discussions with them as to their current role, and we will be having discussions with them. Hopefully, we will have the ability to enter into a memorandum of understanding with them. I anticipate a much closer working relationship with APRA as a result of the bill.

**Senator LUDWIG**—The FATF report on Australia—my words, but I think it is fair to say—was critical of the fact that AUSTRAC rarely used the full range of powers allocated to

it under the FTR Act. At the last estimates hearing you indicated you preferred to use educational means. Are you able to indicate how many on-site visits you have conducted since last November?

**Mr Jensen**—Not since last November, but I would be pleased to provide that to you on notice.

**Senator LUDWIG**—And would you split that between those which are educational, those which are compliance related and ‘other’ as a category, unless there is a third or fourth category that I have not identified?

**Mr Jensen**—Certainly.

**Senator LUDWIG**—From your knowledge of the inspections or educational visits that you have done, would it be fair to say that very few are compliance visits?

**Mr Jensen**—Formal compliance visits, yes. We have used the powers in a limited sort of way, particularly over the past 12 months. Prior to that time we had used the powers under section 27 in the inspection process on a number of occasions. What we have been doing, particularly over the last 12 months, is pursuing what we refer to as remittance dealers—identifying those dealers, educating them and making sure that they are reporting to us. So rather than going through the formal process of using the inspection powers we have specifically tried to educate the remittance dealers and get them reporting, and that has been successful.

**Senator LUDWIG**—What happens after a compliance visit—is there notification that there is a fault?

**Mr Jensen**—There will be an agreement between the party that we are inspecting and our inspectors as to what is required to be rectified. That will be in a letter formally sent to the cash dealer. There will be another meeting explaining what those issues are and then the cash dealer will move forward and take the relevant actions. There will be a time frame established and we will check with the cash dealer to make sure that the processes have been put in place.

**Senator LUDWIG**—All right. How many cash dealers would there be? Is there any data to provide to the committee as to the total cohort?

**Mr Jensen**—Certainly, I can provide those details. I do not have them readily available to me. It changes as we, for example, identify further remittance dealers, or a particular product comes onto the market and, as a result, they have obligations under the legislation—so that can change reasonably quickly. If a product goes off the market the same sort of thing could happen—a cash dealer may not be a cash dealer from that time on. But we can provide the figures as of today’s date.

**Senator LUDWIG**—Of those, is there a percentage that you can inform the committee of as to how many you visit or how many compliance visits you have with cash dealers?

**Mr Jensen**—The information that we have provided to you in the answer to question 121 sets out that information.

**Senator LUDWIG**—I think it says how many cash dealers you have visited but, because I do not know the cohort or the total population, it is hard to guess whether it is one per cent, two per cent, five per cent, 10 per cent or 20 per cent of the market that you are reaching.

**Mr Jensen**—I understand. In terms of education visits and compliance inspection, I imagine that would be a reasonable percentage. In terms of compliance visits, yes, that is very low—it is a very small percentage of the total cash dealers. But, as I mentioned at last estimates, we also look at the data coming through in our database and we can look at the system in what I would loosely call desk audits. We look at our data and see where the blips are in the system and then go back and make an approach, either by phone or in some other way, to rectify the situation. So it is not just about going out and formally inspecting; it is a range of tools that we use to make sure that there is compliance.

**Senator LUDWIG**—Are you able to give us an indication in terms of the gaming industry, or are they lumped under the cash remittance dealers?

**Mr Jensen**—No, the gaming industry—

**Senator LUDWIG**—It is separate again. Are you able to provide details about the on-site inspections or your compliance visits or educational visits in that area?

**Mr Jensen**—We can certainly provide that to you; I do not have that today.

**Senator LUDWIG**—What about solicitors?

**Mr Jensen**—We can provide that to you as well.

**Senator LUDWIG**—The last answer that you gave was that you had not conducted any in the past two years.

**Mr Jensen**—In the year prior to that, we made a concerted effort in terms of visits to solicitors. We visited solicitors around Australia. What we have done over the last few years is to select some particular industry types and focus attention on them and then move on to another area, while maintaining our continual desk audit type process of watching the data.

**Senator LUDWIG**—Is there a program that you are working to or is it as you see them—that is, the cash remittance dealers this year and solicitors two years ago? I do not want to tip off the next group, but it seems to me that you are moving through in a metered away.

The **Mr Jensen**—What we have done to this point in time is to set our program particularly with solicitors because we had not taken any specific activity across the board in that industry and with remittance dealers because they are high-risk cash dealers. But we also look at other things. We may do a couple of the industries but then go and focus, as we have more recently, on a particular activity, such as account signatory identification processes. So we have moved from a particular industry to look across a range of industries at a particular activity. So it is not set in concrete. What we are doing is looking at what is happening in the marketplace and adjusting our programs to that. It is a risk-based process.

**Senator LUDWIG**—Do you follow up on the solicitors again? Although I am sure they are not listening, otherwise they will know that they were done two years ago and are unlikely to be visited again.

**Mr Jensen**—We do not let them go. As I say, we look at our data and look at the reporting process. Will we be looking at them again? Yes, it will be part of our ongoing work.

**Senator LUDWIG**—What it seems to show, though, is that there are not a lot of compliance visits. That is what, from my reading, seems to be troubling the FATF group in their recommendations about Australia's compliance.

**Mr Jensen**—My reading of what they were concerned about was that there had not been any prosecution of cash dealers as such rather than the actual compliance visits. Our approach—and this is where we differed, as I mentioned at estimates last time, and I argued quite vehemently with the evaluators both here and at the meeting in Paris—is that our process does work. We educate, and we get compliance through education. We have not seen the need to take formal legal action. From our perspective, it is better to get the compliance and get the information in than to spend a lot of time and money on legal actions.

That is not to say that we would not if we found something that was not appropriate. As I mentioned last time, the success of the program here in Australia is largely based on the fact that we do get the reports in and we do have significant compliance across the range of cash dealers. Where we do not get compliance then, with a risk-based approach, we will look at those area if we have to. Consequently, couple of years ago we looked at solicitors. Over the past 12 months in particular, we have been focusing on the remittance dealers. Prior to that, we did a lot of work with the main players in the financial sector—the banks, building societies and credit unions. We have done inspections of the gambling sector, and I think we have pretty much covered most of the casinos, for example. That is the argument that I put forward. There was no evidence to the contrary that the system was not working and there was not compliance.

**Senator LUDWIG**—So your argument is effectively that the gaming industry, the solicitors and the casinos are all complying and there are not significant problems that exist.

**Mr Jensen**—I do not believe there are significant problems. Certainly there is compliance—there is no doubt about that—and we continue to work with them in an educative approach to make sure that they do continue to comply.

**Senator LUDWIG**—In a subsequent question on notice, we spoke to you about the Customs computer system. Do you still not have access to Customs computers?

**Mr Jensen**—My recollection is that we do have access to some information but I think the specific system you were talking about was the commercial side, and I do not believe that we have access to the commercial databases.

**Senator LUDWIG**—Have you looked at whether you should have access to those databases or not?

**Mr Jensen**—We are looking at a range of different databases for our analysts to have access to. There are a number of constraints in being able to get access to those databases, and some of that is legislatively based. We are working through that process. On the other side of it, we do not necessarily need access to certain databases. Customs, for example, have access to our information rather than us necessarily needing access to theirs. They work on their database; they can have access to our information either through assessments that we draw up

or from online access. Having said that, we are looking at a range of databases. We do have access to a number of law enforcement databases to assist our analysts along as well.

**Senator LUDWIG**—What concerns me is that, if you look at the different money-laundering typologies, they do include interactions with Customs per se in terms of overcharging, different billing and different ways of laundering money through that system. If you do not have access to the business model end of Customs computers—their integrated cargo system or the cargo management side—then there is a range of typologies that you are not examining to see whether or not there are problems or issues that might stand out. I do not know what you call them. I have had the opportunity—and I thank you for that—to see some of your analysts at work in the types of programs that they run. Many of those would show up unusual transactions, depending on the query or queries that you make the database. If you do not have that access, how can you be assured and how can you assure this committee that there is not in fact any significant issue on the Customs side, given that we do know that there are typologies that have been mentioned on the FATF site that relate to Customs?

**Mr Jensen**—I think you have to look at the program as not just being AUSTRAC and AUSTRAC doing all the work. It is a joint program, if you like. We work very closely with Customs. We have one of our officers working in Customs with the Customs people and looking at what they are doing. I think the answer to the situation is that, working jointly, we are able to cover off most of the bases. We are expert in terms of the data that we have. As you have mentioned, you have seen the way we can work on that data. We can provide items of interest and Customs can have a look at those items of interest and compare them with their data.

I think it is important to identify that it is not a sole unit but a joint working group, if you like, of all the various law enforcement agencies and their databases, and AUSTRAC is a component of that. One of the major areas where that comes up is through joint task forces in the Australian Crime Commission, where we are working closely with them. Customs is one of the agencies involved in that process. We have ongoing close working relationships with Customs, even though we may not have access to that specific database.

**Senator LUDWIG**—To meet the FATF 40 plus 9, your role will be as a regulator plus education, compliance, and looking at remittance dealers and the like. In terms of meeting the 40, this round of exposure draft will not meet the 40 in full, as I understand it. There will still be a number of recommendations that will remain either partially complied with or not complied with. Have you done an assessment as to what is required to meet FATF in full?

**Mr Jensen**—The Attorney-General's Department, Criminal Law Branch, has responsibility for that issue, and it would be better for them to answer it. In short, there are expected to be two tranches of legislation. Once those two tranches of legislation have been enacted, then I think we will have covered the majority of the recommendations. But I would have to leave it up to the department to answer that question.

**Senator LUDWIG**—I think we have lost the Criminal Justice Division, but I am happy for them to take that on notice. I was trying to establish whether there was any further legislation, other than what was flagged in the first tranche and then the second tranche. There is no date

for the introduction of the second tranche, so if there is any further information about an implementation date or an exposure date for the second tranche would be helpful.

**Mr Cornall**—There is not, that I am aware of, but if there is we will make it known to you.

**Senator LUDWIG**—Thank you. With respect to question on notice No. 126, EIV, is there an interim report?

**Mr Jensen**—That was an internal working paper that we provided to DFAT in part of the program.

**Senator LUDWIG**—Is that available to the committee?

**Mr Jensen**—I think we would have to check with DFAT as to whether we could produce that.

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

**Mr Jensen**—Certainly if we can make it available, we will.

**Senator LUDWIG**—How much of your budget would you spend on educational issues?

**Mr Jensen**—I can pass that over to Mr Mazzitelli. He should be able to respond to that.

**Mr Mazzitelli**—We have budgeted to spend, in this financial year, \$1.6 million on the compliance program.

**Senator LUDWIG**—Have you made any assessment or commissioned any research as to how many new small businesses, small companies, sole traders, even sole director companies, professionals and semi professionals will then come under the legislation, that is, the exposure draft, when it is introduced and whether or not your educational programs are reaching them to inform them as to what is coming their way?

**Mr Jensen**—At this point in time we have not made an assessment in terms of the education program. With the first tranche of the bill, it is not likely that there would be a great increase in the numbers of cash dealers-reporting entities that would be caught by the legislation. It is mainly the financial sector and those that are already caught by the legislation. We will need to do further work in respect of the second tranche, where there are likely to be solicitors, accountants and real estate agents—and there are large numbers of those, particularly in the single entity and small business organisations.

**Senator LUDWIG**—There was an article in the *Weekend Australian* of Saturday, 17 December 2005 by Geoffrey Newman entitled ‘Laundering laws will trap many’. I am happy to provide it to you if you need a copy. It reads:

EXPERTS have warned that professionals such as lawyers, accountants and real estate agents are still unprepared for tough new anti-money-laundering rules ...

There is certainly concern that they are unprepared to deal with the second tranche, which is still a little way off. It also means that the information about the first tranche and second tranche is not getting out—that is, that they are not going to face the second tranche at this stage, that banks and financial institutions will be the first tranche.

**Mr Jensen**—In reading what is in the newspaper, it might not entirely be the situation. Certainly there have been a range of meetings that have been organised over a long period of

time with the various industries. The industry bodies representing the solicitors, accountants and real estate agents have been involved in those discussions. They have been involved in the discussions with the minister, Attorney-General's Department staff and my staff. There has been quite a range of meetings. We will be going out and speaking with the various industry groups and individuals. I have a number of speaking engagements coming up, and my staff has a number of speaking engagements coming up. We will be giving information in an ongoing sort of way. The Attorney-General's Department website has information on it, our website has extensive information on it. I think that the message is getting across, but we also will need to look at this very closely and make sure that we do get the information across to those who necessarily need it. We will use a variety of means to do that. For example, we have used industry magazines in the past, and we will do that again, and we will be speaking to industry groups and will continue to do that. In fact, we will increase the level of that work. Meetings with various industries and, collectively, across industries will continue on well into the future.

**Senator LUDWIG**—Have you done a review of the effectiveness of the e-learning application?

**Mr Jensen**—Not in that sense. We can look at the figures, and I can provide you with figures, in terms of access to the site. I do not have those with me.

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

**Mr Jensen**—We have not done a formal review of it, but the comments that have come back to us from people who have looked at it from industry, private and overseas, have been that they have been very impressed with the website. We can certainly provide figures on access to the site.

**Senator LUDWIG**—Are you able to provide information about people who have not just simply visited the sites—that is, page impressions—but who have utilised the system to drill down and work through some of the modules?

**Mr Jensen**—I can check that out for you.

**Senator LUDWIG**—I am not sure what is available to you in that respect.

**Mr Jensen**—I think we can find some but we will see what we can do and get it back to you on notice.

**Senator LUDWIG**—That project has wound up in that sense. You have finished that project—or is there an iterative process where you might then add new learning modules?

**Mr Jensen**—With the new bill, we are going to have to make some changes to the application itself. We were always aware of that. So in many respects, although it is a project that we have done as sort of a pilot project to assess its value, as I say, from general feedback it is well worth us going ahead and making the changes and updating it in terms of what finally comes out in the first tranche of the bill and then the second tranche.

**Senator LUDWIG**—When you talk about the feedback, the feedback is anecdotal.

**Mr Jensen**—Yes.



**Senator LUDWIG**—Has any work been done to establish whether or not there is a shortage in the market of this type of information and whether or not you are actually filling a need in the market for this type of information?

**Mr Jensen**—I do not know whether there has been any survey at all but certainly the anecdotal information is that there is and also other organisations are looking to develop similar sorts of programs—for example, I believe the World Bank is looking at putting together a similar type of application. The United Nations Office on Drugs and Crime has also put together a similar sort of program.

**Senator LUDWIG**—Perhaps turning to a slightly different topic, do you have many employees seconded to other agencies?

**Mr Jensen**—We do not have secondments in the sense of a secondment but we have them placed in other agencies. So they are still working for us rather than for another agency. We have one in Perth, one in Adelaide, a number in Melbourne—a total of 14 actually offsite in Brisbane, Sydney, Melbourne, Adelaide, Perth and Canberra.

**Senator LUDWIG**—Are they operational employees?

**Mr Jensen**—Yes.

**Senator LUDWIG**—Out of a total of how many operational employees?

**Mr Jensen**—A total of 138 staff but in that particular area a total of 35.

**Senator LUDWIG**—I am happy for you to take it on notice, but I was looking at the list of where these people are seconded to and generally their role—if they are operational employees whether they are contributing to the organisation as well, whether they are contributing to the organisation which they are placed within and whether there is any secondments as such as distinct from placement.

**Mr Jensen**—They are all placements as such but they are working on projects for the law enforcement agency where they are stationed and they then work with a number of other law enforcement agencies as well. They are taking our education role out, so they are training the people as well. They may be doing some project work and some training work. The reason we have them stationed in the various law enforcement agencies is a closer working relationship. They understand what the people are working on in the law enforcement agencies; therefore, they can give them best fit in terms of accessing our data and what the needs may be and pointing them in the direction of some of the applications we have. They are located in one agency but they may be dealing with three or four different agencies, depending on which location they are in.

**Senator LUDWIG**—Is it fair to say that you have effectively got just under half of these operational employees placed outside of AUSTRAC doing work of an educational nature or assisting a law enforcement agency with an end result and there is no replacement within AUSTRAC to deal with the work that you are required to do?

**Mr Jensen**—In fact, I would suggest that it is probably about a third.

**Senator LUDWIG**—I am sorry; I was just working on 14 out of 35.

**Mr Jensen**—That is their work. That is our work. That is their function within our organisation so it is our work that they are doing by assisting the law enforcement agencies, because part of our work is to assist the law enforcement agencies in getting access to our data, but where there need to be some specific aspects or specific projects then they can help out of those. I am not sure whether that has answered your question or not.

**Senator LUDWIG**—It is helpful. Chair, I do really want to deal with AWB. Time has marched on and I want to move to another agency. As I said earlier today, I intend not be thwarted. I intend to continue to ask questions in respect of this matter. If the agency does not want to answer the question, it is a matter for the agency. If the department wants to shield the agency, that is another interesting matter.

**CHAIR**—I understand that. In light of the topic you wish to explore, in my view the preferable situation is to have the minister here. I might ask Mr Jensen and Mr Mazzitelli if they would step back from the table. We will hear from the Federal Court, in the interests of dealing with that agency, and when the minister returns we will go straight back to AUSTRAC.

**Senator LUDWIG**—I can ask this: is there any ministerial power of direction within the AUSTRAC legislation? I cannot find any.

**Mr Jensen**—I do not believe there is, no.

**Senator LUDWIG**—There is in others, as you would appreciate.

**Mr Jensen**—I do not believe there is, but we would have to check.

**CHAIR**—My lateral thinking has been for nought; the minister is here.

**Senator Ellison**—I apologise, Chair. An unforeseen matter was raised.

**CHAIR**—We understand. Mr Jensen has been subjected to lengthy questioning from Senator Ludwig on a vast range of AUSTRAC matters, but we are glad you are back because there are matters Senator Ludwig wishes to raise which necessitate your presence.

**Senator LUDWIG**—Minister, as I indicated this morning, I will continue to ask questions in respect of AWB, of AGD and AUSTRAC and other agencies—AUSTRAC being the first agency I turn to. My understanding—and you can correct me if I am wrong—is that there is no ministerial power of direction in AUSTRAC's statute. AUSTRAC, to my mind, should be able to answer questions in relation to AWB and need not follow your direction, or your leader's direction, in this regard.

**Senator Ellison**—The government's view is that that direction does apply to Mr Jensen, who is appearing here on behalf of AUSTRAC. There is a performance agreement in existence, and I think that is the basis for that. I think that really the statement I gave before was very clear. It applies to AUSTRAC and I think that is as far as I can take it. There was a question the other day you asked of me in the Senate—

**Senator LUDWIG**—I was going to follow up on that one as well.

**Senator Ellison**—I can answer that question—because I undertook to get back to you in the Senate. That was in relation to the MOU. The Cole inquiry, as I understand it, is not disposed to release it.

**Senator LUDWIG**—So the answer is no.

**Senator Ellison**—That is a supplementary follow-up to an undertaking I gave in the Senate the other day, but that does not apply in relation to the statement I have made today in relation to the government saying that Mr Cole should be given clear space to conduct his inquiry. That was a matter which related to an outstanding question in the Senate, and you now have the answer. I do not think we can take it any further than we did this morning.

**Senator LUDWIG**—We can but try. Is the performance agreement that you referred to available?

**Senator Ellison**—I do not have it here. I will have to take that on notice. You are asking to see that, are you, Senator Ludwig?

**Senator LUDWIG**—Well, you are relying on it. I do not think it applies, quite frankly. AUSTRAC are able to answer questions. I can ask Mr Jensen whether or not he intends to answer questions in relation to AWB that I might put to him, or I can ask AUSTRAC whether they are aware of the Volcker report that identified and detailed a 2002 transaction of €3.2 million between AWB and the Jordanian trucking company.

**Senator Ellison**—I think the best thing, if you have questions, is to give them to us on notice, as we did this morning. That is an appropriate way to deal with it, because we have indicated that, in the future, officials will not be precluded from answering questions—after the Cole commission has conducted its inquiry. I think that is the best course of action, Madam Chair.

**CHAIR**—You have an answer there from the minister, Senator Ludwig. Did you wish to—

**Senator LUDWIG**—I am not sure I have got an answer from Mr Jensen, with respect. The case is that either Mr Jensen can speak for himself or he cannot.

**CHAIR**—We find ourselves in the situation—

**Senator LUDWIG**—I know. I know the position we find ourselves in, and I am very unhappy with it.

**CHAIR**—Yes, I know; it is that quietness again! However, we do find ourselves in the same situation as we were this morning. The minister has provided the same advice and response. I do not discern any change in the minister's position or in the position that obtains generally in relation to this matter across a number of the committees.

**Senator LUDWIG**—Are you able to say when that memorandum of understanding was entered into?

**Senator Ellison**—I do not have that date. I can take that on notice. That may be a question that we can answer, in view of the question the other day.

**Senator LUDWIG**—You obviously cannot provide the memorandum; can you provide an overview or details as to what it purports to do?

**Senator Ellison**—Nice try!

**Senator LUDWIG**—I said I am not going to give up!

**Senator Ellison**—I appreciate that, Senator Ludwig. Look, the situation is that Mr Cole made that decision and I respect that. I do not think we can give you that information in view of that decision, but the date—I think I might have even mentioned it in the Senate the other day.

**Senator LUDWIG**—No, I listened very carefully. I could not hear a date.

**Senator Ellison**—The date is 13 January.

**Senator LUDWIG**—Do you rely on that performance agreement between the executive and AUSTRAC? I have not heard from Mr Jensen. Mr Jensen, do you rely on the performance agreement as a—

**Senator Ellison**—It is the government who is the one relying on this.

**Senator LUDWIG**—Yes.

**Senator Ellison**—It is the government that has made the decision, and I think it is unfair to put that to Mr Jensen.

**Senator LUDWIG**—Well, I think it is unfair that you will not answer my questions.

**Senator Ellison**—The government has made the decision. The Prime Minister outlined that the other day in the parliament, as did Senator Minchin yesterday and as I did this morning.

**Senator LUDWIG**—What I am trying to establish, with respect, is how Mr Jensen is bound by that.

**Senator Ellison**—I believe that he is. The government believes he is.

**Senator LUDWIG**—But does he believe he is?

**Senator Ellison**—In relation to that performance agreement—you did ask about that—we would have to take that on notice because it is a matter between the government and Mr Jensen and there are privacy aspects to that, as you would appreciate.

**CHAIR**—Indeed, Minister.

**Senator Ellison**—But we will look into that and see what we can do. I will take it on notice.

**Senator LUDWIG**—Is the performance agreement an employment contract between the government and Mr Jensen, or is it a matter between the government and AUSTRAC? Does it apply only to Mr Jensen; are there other AUSTRAC employees here who can answer questions?

**Senator Ellison**—It is part of the employment agreement between Mr Jensen and the government.

**Senator LUDWIG**—So is Mr Mazzitelli able to answer questions that I ask? He is not subject to the performance agreement.

**Senator Ellison**—I think that I have made the government's position clear and I think that it cannot be taken any further. The government has directed that this matter not be canvassed in estimates because of the reasons we outlined earlier. That is the position. The secretary has

advised me that the other officers are under the Public Service Act, whereas Mr Jensen is not. The Public Service Act covers them as officials.

**Senator LUDWIG**—I thought you might get there. If I leave a long enough pause, they might change their mind, Chair. I do not think that is going to happen.

**CHAIR**—It would need to be quite a long pause, I think.

**Senator LUDWIG**—I am reluctant to put them on notice. I will give it some thought. At this moment, as I said, I am extremely unhappy with the way the government is now answering questions in relation to the AWB. It seems that I cannot do any more but get on with other matters. I can call on Mr Jensen to answer questions but clearly that would be an embarrassment to Mr Jensen and the government. I do not care much about the government's embarrassment, though.

**CHAIR**—I thank Mr Jensen, Mr Mazzitelli and their officers for appearing today.

**Mr Cornall**—While officers at the table are changing, I will just confirm something. I have checked my briefing notes, and in respect of the second tranche of reforms, the government will consider them once the first tranche has been implemented. Secondly, Senator Ludwig was interested in the breakdown of the funding for the document verification service and the identification security integrity pilot. We have those details and I can table them now.

**CHAIR**—Thank you. In the context of which discussion was the first response you made in relation to the second tranche of reforms?

**Mr Cornall**—It was the first tranche of reforms in relation to money laundering applying to financial services and so on, and then the second tranche of other groups that we looked at after that.

**Senator LUDWIG**—The only thing I would like you, Chair, to follow up on—and we seem to be creating a precedent every day—is that we now have a position where the government has issued an edict to its bureaucrats. It has now utilised a performance or non-performance agreement to support its edict to both public servants and non public servants who are subject to performance agreements to direct them not to answer specific questions. That seems to me a significant precedent and one that I have not seen before. I would ask the chair to reflect upon that and seek advice in respect of whether that is a valid excise. I do not think it is; I think it is an unlawful excise and cannot and should not be done. I am not acquiescing to it. I just want to make it plain on the record that I do not accept that. I accept that Mr Jensen has not answered any questions.

**CHAIR**—On that particular matter.

**Senator LUDWIG**—Yes. It seems to be creating a precedent that I am not prepared to accept, and that should also be referred both to the Clerk and to the Senate.

[6.04 pm]

#### **Federal Court of Australia**

**Senator KIRK**—I asked some general questions earlier on in the day in relation to the Productivity Commission's report on government services. It was suggested by Ms Leigh that

I direct those questions to the Federal Court. As I said earlier, the Productivity Commission has reported that in 2004-05 the Federal Court's expenditure per case finalised went up from about \$5,197 to \$16,767. I wondered if you could give us an explanation as to why the amount has increased as significantly as it has.

**Mr Soden**—On the first figure that you mentioned—\$5,000—I think the report actually said \$11,000 to \$16,000, so it was a \$5,000 jump in that year. I have actually got copies of the details here. I can provide that exact information to you.

**Senator KIRK**—If you could, that would be good.

**Mr Soden**—The cost per case finalised in our court is clearly sensitive to a number of factors: our appropriation, the revenue that we generate and the number of cases finalised in a particular year. So it is appropriation less revenue divided by the number of cases. In that particular year there was a decline in the number of cases finalised compared to previous years and compared to the present year. I have got a collection of data that would clearly explain how that occurred and how in the coming financial year that cost differential will be back to what it was in 2002-03. In other words, that \$5,000 difference will almost disappear this financial year. I can explain, if you would like me to go through the details, how the casemix, for want of a better description, or the different sorts of cases, can change from year to year and have a significant effect on the costs of finalisations.

**Senator KIRK**—If you could broadly outline why it is that there was such a decline in the number of cases, that would be helpful.

**Mr Soden**—I will table a document which sets it out. Essentially, in the 2004-05 financial year there was a shift of migration cases to the Federal Magistrates Court. Our court did not receive the number of remittals of migration cases that it had in the previous year from the High Court. On the other hand, from the difference in the figures for this year and projected to the end of the financial year, you will see that there has been a large increase in Corporations Law cases filed in our court, which means that our projections of cost per cases at the end of this financial year will be much less than for last financial year, simply because the number of cases has gone up and there has been no dramatic change in our appropriation.

**Senator KIRK**—Has there been any change in the revenue, relatively speaking? Has that gone up or down?

**Mr Soden**—No. Our forecasting model for this financial year indicates only a \$500,000 difference in the revenue. It is not a significant difference.

**Senator KIRK**—When the comparison is done between the Federal Court and some of the state Supreme Courts, there appears to be a significant difference. Why is there is such a significant difference? Does it really just come down to the number of cases? Is that what you are suggesting?

**Mr Soden**—No. You might have noticed at about this time of the year, when the Productivity Commission report is released, that there are a lot of comments from courts in relation to the results of the data. A lot of those comments express some concern about the actual comparability of the courts. I suppose I could explain some of the differences by giving examples.

It is very hard to compare the Federal Court with all other Supreme Courts in that category. It is easier to compare all other Supreme Courts with all other Supreme Courts. For example, none of the Supreme Courts exercises anything like our native title jurisdiction. Those are extremely resource-intensive cases. We conduct hearings in some of the remotest parts of Australia. On the other hand, in some of the Supreme Courts they have what I would describe as money and possession actions that can be dealt with by default.

A default procedure is where an application is made to the court in the absence of a defence—there can be an application for a default judgment—and an order of the court is never actually heard; it is dealt with in the registry. I think a number of supreme courts have a large number of those cases, which our court does not have. We do not have money claims and we do not do possession. Possession matters are where there is a default on a mortgage and the lender seeks, in effect, to sell the property because the mortgage has not been paid. It is an action for possession. They are two variations. Essentially, what I am saying is that our cases in many respects are very different to those in the supreme courts. The good thing about this whole exercise, from the Productivity Commission's point of view and from ours, is that it does raise the questions that need to be asked in order to satisfy institutions interested in the questions that there is efficiency and effectiveness.

**Senator KIRK**—Do you normally do that calculation yourself as a court—that is, expenditure per case finalised? Is that something that you calculate on an annual basis?

**Mr Soden**—Yes, we do, but again there is a very big difference in what we do compared to all of the other courts. Our court is a completely 'self-administering agency' of government. One of the things that we do is ensure that the information we provide to the Productivity Commission can be completely reconciled with our fully accrued, audited financial statements. Now, I do not think any of the other courts that are included in that comparison have independent, fully accrued, audited financial statements. They are part of another organisation—for example, a department of justice or a department of the Attorney-General. I am also not convinced that, in relation to the figures provided by other jurisdictions, they would include all of the information that we provide.

In the information I have given you on that analysis, I can refer to one example. In our accrued financial statements, we include an item titled 'notional judicial superannuation'. We have an actuarial calculation that is inserted into our financial statements that calculates the accrued pension liability that ought to be reflected in those statements. I just do not know whether or not the other courts put something similar in. The data that is provided by us and by all the other courts is data that is used by the Productivity Commission. There is no auditing of it. But what we do, as I said, is make sure that the data we provide can be reconciled with our publicly available audited financial statements. So we are concerned about ensuring that ours is absolutely accurate.

**Senator KIRK**—The Family Court would be in a similar position to your court, would it not?

**Mr Soden**—It would.

**Senator KIRK**—But how do you explain the low figure? The figure I have got here is 2,560. Would you explain that on the basis of the different nature of the cases that are heard by the Family Court?

**Mr Soden**—You can confirm this with them, but they have a different way of counting their cases. They count their cases by forms filed rather than by what I would describe as an action involving the parties from beginning to end. And that is perfectly legitimate in family law proceedings, clearly. The sort of work that they do is more conducive to being counted in that way. We do not. We would count one migration case as one case, the C7 case as one case, a native title case as one case. What we do not do is count as cases within cases mini-trials or notices of motion and things like that. And it is often the case in our court that, in some of the bigger cases, you will have a number of cases within cases—a number of hearings, a number of judgments delivered—along the line, but we just count that as one case.

**Senator KIRK**—I notice also that the Productivity Commission produced figures on clearance rates in the courts. According to its index, the Federal Court's clearance rate has dropped from 100.8 to 95—this is on their scale—over a period of just one year.

**Mr Soden**—The best way of explaining the clearance rate is that if you have 100 cases commenced and you clear 100 cases, you have a clearance rate of 100. If there is a slight drop in the number of cases disposed compared to the number commenced, you can have a reduction in your clearance rate. That to us is an indicator but not a significant performance issue. When we work on performance issues, we put in our portfolio budget statement our performance target of 85 per cent of cases disposed of within 18 months, and we report against that performance target in our annual report.

**Senator KIRK**—Given that there has been quite a shift of work from the Federal Court to the Federal Magistrates Court, one would think looking at it that the clearance rate would be improving rather than going in the other direction.

**Mr Soden**—That is one way of looking at it. Another way of looking at it is that if all of the smaller cases have moved and we are left with the larger, harder, more difficult to resolve cases, it could follow that it might take us longer and require more resources to clear the harder cases—the small ones now being in the Magistrates Court.

**Senator KIRK**—On the question of revenue, apparently the national average of superior courts is that 18.6 per cent of their funding is recovered through court fees, but in the Federal Court the rate is only 6.2 per cent. What is the reason for that? Why is cost recovery so much less in the Federal Court? What steps are you taking to improve on cost recovery?

**Mr Soden**—We do not set the filing fees and we do not manage in any way to increase revenue as against the appropriation. I do not think that would be appropriate for a court to try and increase its revenue. It might lead to some unusual circumstances.

**Senator KIRK**—Are filing fees the only way in which you are able to recover costs? Are there any other methods?

**Mr Soden**—The other revenue we do get is some payments to us by the Federal Magistrates Court for some of the services that we arrange for them—I think interpreters are a good example. We actually get reimbursed for some of those costs. The other components that



we mention in our annual report which is a revenue related issue is that there is a large number of statutory exemptions to paying filing fees. Any applicant in the migration jurisdiction who is in custody is exempt from paying filing fees, for example. Off the top of my head, in our last annual report I think the figure for exemption was about \$2.2 million per annum. If you add that in, that would not substantially increase the revenue in proportional terms but it is a factor.

**Senator KIRK**—Are there any other plans that the Federal Court has to improve its efficiency overall?

**Mr Soden**—We are going to look very closely at these figures in terms of cost per case. One of the issues that I think we can probably do a little differently is our calculation of the value of the services provided free of charge to the Federal Magistrates Court. May I remind the committee that we deliver all of the Federal Magistrates Court's registry services and provide them with a large amount of accommodation. I think that the way in which that figure has been calculated in the past—that is, the value of the services provided free of charge—undervalues the real value. We will talk to the administration of that court about how to recalculate that. There is a consequence that is interesting for them. If the value of our free services goes up, the cost of their cases per case will go up because they would need to put that into their cost per case. That is the example of what this exercise does: it does bring to proper account the proper costs.

**Senator KIRK**—So that might well be reflected in their costs next time round?

**Mr Soden**—Yes. They might be here answering some of these questions. But, in terms of efficiency, we were subject to the independent ALRC review a number of years ago now, and that looked at our organisational arrangements, our procedures, our efficiency, our effectiveness, and it is good to record that it came to the independent conclusion that we were a world-class court, by any comparison. Subsequently there was an interdepartmental review in relation to how we were spending the native title funding, and that, I think, produced the result that a further allocation was provided. Clearly there was an assumption there that the way in which we were spending that allocation was justified.

**Senator KIRK**—I asked this question earlier: is it the case that you will be meeting with officers from the department to discuss this Productivity Commission report?

**Mr Soden**—Certainly. They have not had the benefit of the information that I have provided here now, and I will be going through that information with them to help in their understanding of why the costs are so.

**Senator IAN MACDONALD**—Did you just say that the Federal Court subsidises the running cost of the Federal Magistrates Court?

**Mr Soden**—I would not say it subsidises it; I would say it delivers services free of charge to the Magistrates Court.

**Senator IAN MACDONALD**—Is the Federal Court funded entirely, or principally, from court fees charged to litigants?

**Mr Soden**—No. I think the point made earlier was that there is quite a gap between our appropriation and the revenue generated by court fees. There is no connection.

**Senator IAN MACDONALD**—What about the Magistrates Court?

**Mr Soden**—They would be in similar circumstances, as far as I am aware.

**Senator IAN MACDONALD**—It would be even less.

**Mr Soden**—The Productivity Commission report did indicate that the proportion of fees that that court generates—this is from memory—was 26 per cent of its costs.

**Senator IAN MACDONALD**—That is as a percentage of its total running costs?

**Mr Soden**—Yes.

**Senator IAN MACDONALD**—What is it for the Federal Court?

**Mr Soden**—Nine per cent.

**Senator FIERRAVANTI-WELLS**—Thank you for that information. That was a sufficient response to my previous question.

**CHAIR**—As there are no further questions, I thank you and your officers very much, Mr Soden.

[6.23 pm]

#### **Office of Parliamentary Counsel**

**CHAIR**—Welcome, Mr Quiggin and Ms Francis. Senator Kirk will begin the questions.

**Senator KIRK**—In your annual report there is mention made of a number of cases in which a bill was introduced and it was recognised that it was not legally effective. I am puzzled by what that phrase means. Could you please inform the committee exactly what a non legally effective bill is.

**Mr Quiggin**—I think it is to reflect that there have been a number of bills where there have been slight technical errors with them and we have then needed to do government amendments to correct those errors.

**Senator KIRK**—Are you saying that your office has identified that there are technical problems after the bills have been introduced?

**Mr Quiggin**—Either our office or the instructing department may have.

**Senator KIRK**—Are you able to give us a list of the bills that were recognised to not be legally effective.

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

**Senator KIRK**—Are we talking very many?

**Mr Quiggin**—No.

**Senator KIRK**—One or two? Or 20?

**Mr Quiggin**—One or two rather than 20.

**Senator KIRK**—How is this monitored? When a bill is found to be not legally effective, is there some kind of accounting done for this? What happens when this occurs? Is there some review of how it was that the bill was drafted?

**Mr Quiggin**—Not generally. It may come up in the performance review of the drafter involved. I would generally talk to the drafter about how the error arose. On some occasions, it would be an error the drafter has made; on others, it may be the case that the instructing officers might not have been aware of particular issues.

**Senator KIRK**—Normally when a bill is drafted I would have thought it would undergo quite a few checks—it would not just be one individual drafting it and it then being taken as being effective.

**Mr Quiggin**—No. All our bills are read by at least two drafters, one of whom would be one of our SES drafters. I suppose with the volume of work we do—and certainly some of the work is done quite quickly—a small number of errors may come through.

**Senator KIRK**—What sort of percentage would these bills represent? You say there is quite a limited number.

**Mr Quiggin**—I would say around one per cent. We introduce a couple of hundred bills each year; therefore if there was one or two then that would be quite a small percentage. I should clarify, Senator Kirk, that the problem would often be a small problem with a part of the bill rather than the whole bill being legally ineffective.

**Senator KIRK**—So perhaps one provision.

**Mr Quiggin**—Yes.

**Senator KIRK**—And you have said that you will provide us with a list.

**Mr Quiggin**—I will go back through the financial year and find those.

**Senator KIRK**—Perhaps you could also alert us to which provision or which part was found to be not legally effective. That would be helpful too. In relation to the deficit, which I note is \$268,576, can you indicate to the committee what projects and/or sectors overran in that financial year that led to this deficit?

**Mr Quiggin**—The deficit basically reflected the increasing costs, mainly in salary for our staff. Again, most of the salary costs for our staff are from our drafting staff. They increased over a number of years to a point where they exceeded the appropriation that we were receiving. As you will see from our annual report, we received additional funding in the last budget which addresses that.

**Senator KIRK**—So how did these increases in salary come about? Was it a matter of having to employ additional staff or was there some increment in the salary of various individuals that caused this blow-out?

**Mr Quiggin**—It was mainly the latter. Over a number of years, increases through certified agreements and similar and increases in the levels of some of our staff resulted in us overspending.

**Senator KIRK**—So it was purely a salary increase that caused this deficit? Are there any projects or sectors that contributed to the deficit or was it purely salary?

**Mr Quiggin**—It was salary. Basically, our expenses are divided between salaries and administrative expenses. Administrative expenses have stayed stable or reduced, and so it was in fact salaries of drafting staff that caused this.

**Senator LUDWIG**—Did you have to get more bodies? Was the workload more than you could deal with and that is why you overran?

**Mr Quiggin**—No, the number of bodies, as you put it, that we had at that stage had remained fairly constant. Part of the increase that we got in the budget was to increase our numbers over the current financial year plus the next financial years. We are in the process of trying to do that.

**Senator LUDWIG**—So you identified a shortfall in the number of people you could assign to particular tasks and therefore you needed an increase to deal with the drafting.

**Mr Quiggin**—The general demand for drafting was increasing over time and therefore we sought additional funding for additional positions.

**CHAIR**—It being half past six, may I suggest the committee adjourn for one hour.

**Proceedings suspended from 6.30 pm to 7.32 pm**

**CHAIR**—We will resume. Questions were being directed to the Office of Parliamentary Counsel. I thank the officers for returning.

**Senator LUDWIG**—I think we were trying to ascertain the deficit of 268. That you budgeted for more staff seems to be the explanation. Is that right?

**Mr Quiggin**—Perhaps we could go back slightly further. In the previous year we had a loss of around \$600,000, which was larger than it would otherwise have been due to amounts that were included as a result of an accounting issue with superannuation for leave entitlements. So the \$268,000 basically reflected that our costs had grown to an amount that was higher than our appropriation.

**Senator LUDWIG**—In that respect, is it an indication that you had more work that needed to be completed, you were not completing work on time or work was building up?

**Mr Quiggin**—We had maintained roughly the same number of drafters over that period although the number slightly decreased in 2004-05 because at that stage we were not sure what our long-term funding was so therefore we did not fill some positions. But the amount of work has, I suppose, slowly increased over the last number of years. As I said, in the last budget we received additional funding both to bring our budget back to a balancing point plus to allow us to recruit a small number of extra staff.

**Senator LUDWIG**—So what is the position now? Are you completing work on time and on budget?

**Mr Quiggin**—As I explained at the last estimates hearings, we work to a legislation program that is set by the Parliamentary Business Committee of cabinet. That breaks the bills up into four priorities: category T for time critical that are to be introduced and passed in the one sittings, and then three other categories—categories A, B and C, in decreasing order of priority. We never do all of the bills on the program. We generally do nearly all of the category Ts, most of the As, some of the Bs and occasional Cs. The proportion that we have completed over the past few years has remained fairly constant.

**Senator LUDWIG**—In this parliamentary session, are you on track to complete the time-critical bills?

**Mr Quiggin**—Most of those will be completed.

**Senator LUDWIG**—Save that it is not your fault in that sense, that there might be other issues to be resolved.

**Mr Quiggin**—I do not think there are any category T bills that will not be finished due to a lack of resources in Parliamentary Counsel.

**Senator LUDWIG**—How many bills are in that category?

**Senator Ellison**—That is cabinet in confidence. It is a matter which is determined by the—

**Senator LUDWIG**—I was not sure whether I could ask the number. I was not going to ask the names of the bills, although I was tempted. Is the number itself also cabinet in confidence?

**Senator Ellison**—I think it would be. What if all of them were category T or category A? It is a subcommittee of cabinet which determines these.

**Senator LUDWIG**—I will move on. It is all right.

**Mr Quiggin**—I will mention, as we did at the last estimates, that there is a list of proposed legislation for each sittings that is published by the Department of the Prime Minister and Cabinet.

**Senator LUDWIG**—Yes, I see the list.

**Mr Quiggin**—We have that available, along with the location on the internet for it.

**Senator LUDWIG**—Will you provide that to the committee?

**Mr Quiggin**—Yes.

**Senator LUDWIG**—I do not have any further question, Chair.

**CHAIR**—Do you have any further questions for the OPC, Senator Kirk?

**Senator KIRK**—No.

[7.37 pm]

#### **Australian Crime Commission**

**Senator LUDWIG**—I want to go to the AWB issue again. Minister, I understand the government's position, but does it apply to the ACC as well? My concern is that the ACC is subject to a range of legislation. Public servants are also subject to the Public Service Act and should act impartially in providing advice, particularly, I expect, in providing advice to this committee, but to government as well. Is it again the case that, if I ask the ACC questions in respect of the AWB, you will direct them not to answer?

**Senator Ellison**—Let me put it this way: any question you would put to the Australian Crime Commission—which is a law enforcement body, of course—would not be relevant, because, as I understand it, it does not have any involvement with the Cole inquiry. What would you ask?

**Senator LUDWIG**—That is for me to ask. It is a question of whether or not you will let me ask.

**Senator Ellison**—I have never stopped you from asking a question; it is just the answers that I have stopped. There is a big difference.

**Senator LUDWIG**—It is relatively small from this side.

**Senator Ellison**—I have told you and I have answered questions in parliament about what AUSTRAC has done, and we have covered the MOU. If you are asking whether the ACC is assisting the Cole inquiry, then the answer is no.

**Senator LUDWIG**—There is a range of questions that go to that: whether the ACC have entered into a memorandum, whether they are assisting the Cole royal commission, whether any of their coercive powers have been utilised in examining this issue, whether or not they have intelligence in respect of the AWB operation and knowledge of the Jordanian trucking company—I could go on. There are also allegations of bribery and corruption. They are within the area that the ACC may or may not have an interest in.

**Senator Ellison**—I think you have to look at the situation. If you are talking about ongoing investigations, then I would say that any answer from the ACC is operational and therefore cannot be answered. I am telling you that it has no involvement with the Cole inquiry, so it has no involvement. That is the end of it.

**Senator LUDWIG**—I am not going to waste any more of my time on this. It seems that you are going to close out scrutiny in this area, which is extraordinarily disappointing.

**Senator Ellison**—But I have answered that question. It cannot comment on something it does not have any involvement in, in any event.

**Senator LUDWIG**—I do not know. I can ask Mr Milroy if he does or he does not.

**Senator Ellison**—I have answered the question and that is it.

**Senator LUDWIG**—That is the difficulty: you have answered it on behalf of Mr Milroy rather than to let Mr Milroy answer it for himself.

**Senator Ellison**—That does not have to happen. It is estimates. The minister can choose to answer questions, and that is the answer. I answered a question about AUSTRAC the other day and I did not call Mr Jensen into the Senate chamber and say, 'You've got to answer this question.' I answered the question. That is the end of it.

**Senator LUDWIG**—I suspect that is a surprise. Just turning to another matter, are you able to confirm the total amount that you believe has been—I am not sure smuggled is the right word—removed or otherwise dealt with offshore and then returned to Australia through the scheme that is the focus of Operation Wickenby? I understand it is an operational matter and there may be limited amounts of information that you can provide to the committee. As usual, the committee or I put a caveat on the question. But, to the extent that you are able to assist the committee, it would be helpful. If they are operational matters, then the committee does understand that.

**Mr Milroy**—I think it has been stated publicly that the estimate of the value of the revenue at risk through the type of schemes under investigation—that is, the nine cases that are under the area of responsibility for the ACC through Wickenby—is \$300 million.

**Senator LUDWIG**—There were some larger amounts indicated, I think. You say the estimate is about \$300 million?

**Mr Milroy**—That is correct in relation to the matters we are currently investigating and for alleged criminal offences.

**Senator LUDWIG**—Was money-laundering involved in that? What was the nature of the types of offences that allegedly occurred?

**Mr Milroy**—I can advise that, in relation to the matters that are currently under our investigation, we believe that a range of offences were allegedly committed by the promoters and participant. They include defrauding the Commonwealth, obtaining financial advantage by deception, knowingly dealing with the proceeds of crime and money-laundering offences. The penalties range from 10 to 20 years if they are convicted.

**Senator LUDWIG**—What types of money-laundering offences?

**Mr Milroy**—Again, it would not be relevant to go into that sort of detail, especially in a public discussion.

**Senator LUDWIG**—Are you able to say whether it was detected by the ACC or AUSTRAC?

**Mr Milroy**—As an explanation, the current nine cases which we are investigating with our partners under Wickenby fall under the Midas determination, which is a board approved determination that was approved in 2003 to investigate serious large-scale money-laundering and tax fraud and associated crimes with the aim of deterring and dismantling organised crime enterprises of national significance. Under that umbrella, we are investigating the matters that I have referred to.

It originated as a result of a referral from the ATO in 2004 which led to the commencement of an operation called Operation Duxford. As a result of our investigations into Operation Duxford which related to an individual and a promoter, we were led to additional intelligence which subsequently led to the ACC taking responsibility for an additional eight cases. The original matter plus the new eight cases make up the nine cases that are currently under investigation that have received quite a lot of publicity. While our initial operation focuses on one international promoter—that is, the nine cases I referred to—work is being conducted by the tax office to investigate a significant number of other promoters of international tax schemes, which refers to the overall Wickenby case that has received publicity recently as a result of the government's additional funding.

**Senator LUDWIG**—Are you able to confirm whether there are three persons on the Gold Coast with whom you are seeking to reach a settlement?

**Mr Milroy**—I think you are referring to a matter that is currently publicly raised in relation to a proceeds of crime matter where in excess of \$11 million in assets have been seized. That matter is currently before the courts in Queensland. In relation to the other details of the individuals, it would be inappropriate for me to comment at this stage.

**Senator LUDWIG**—It was dealt with in a newspaper article. So they are not part of Operation Wickenby; they are a separate matter in relation to proceeds of crime.

**Mr Milroy**—No, they are part of Wickenby. In relation to the matters that are the subject of a criminal investigation I referred to, we are also addressing the issues of pursuing these targets for proceeds of crime action as well as the matters referred to under the Criminal Code.

**Senator LUDWIG**—So there are two limbs. The first limb involves possible prosecution in respect of Operation Wickenby for the primary offence and the second limb involves a proceeds of crime matter for \$11 million, and it is that second limb about which you are negotiating. I am trying to understand what part of the offences committed is being negotiated.

**Mr Milroy**—I do not think the word ‘negotiated’ is the right word to use. Under the civil forfeiture arrangements, of course it is under civil prosecution and discussions are entered into in relation to the assets seized in relation to establishing ownership and the value of that et cetera. But as those discussions are ongoing, it is not appropriate for me to comment further. But it is not about negotiating an easy way out that is a common practice in proceeds of crime matters.

**Senator LUDWIG**—Are there primary offences still waiting to go to trial in respect of those individuals?

**Mr Milroy**—The nine cases to which I referred, which include the matters that you have commented on, are still under investigation. Investigations are ongoing across all of the nine cases. It is not appropriate to comment on what state the relevant cases have reached at the present time, but they are being pursued as well as proceeds of crime action where we believe there is appropriate evidence to justify it.

**Senator LUDWIG**—Are you able to say how many people are being investigated by Operation Wickenby?

**Mr Milroy**—There are the nine cases, but in relation to the total number of people at the moment we would not be able to divulge that information—not at this stage.

**Senator LUDWIG**—It relates only to the proceeds of crime—that is, the civil forfeiture regime—in respect of three persons, or perhaps more, but at this point in time only three.

**Mr Milroy**—On a case basis, but it is quite common in a civil proceeds of crime matter for discussions to be entered into in relation to the subject assets that were seized and the value towards a resolution of the case. It is in the early stages and it is not appropriate for me to comment further.

**Senator LUDWIG**—But there are nine cases in total that have been examined, or recommended for prosecution, or referred to the DPP?

**Mr Milroy**—As I indicated to you, our investigation of the nine cases is ongoing, and at this stage I am not prepared to comment as to what stage we have reached in terms of whether or not we are in a position to prosecute, while we are carrying out our ongoing investigations.

**Senator LUDWIG**—Given the size of it, when do you expect to see those sorts of decisions being made?



**Mr Milroy**—As I indicated, the investigation is ongoing, and it is quite common, in these protracted money laundering fraud matters, for them to take some time. Other than to say that we are satisfied with the progress to date, I am not in a position to comment at this stage as to when and if charges will be proffered.

**Senator LUDWIG**—There were, I think before Christmas, a number of actions taken against the ACC in respect of these matters. Are there still ongoing matters that revolve around these cases that have been launched against the ACC?

**Mr Milroy**—Yes, there are some challenges that have been laid against the ACC and in relation to the Wickenby matter. I believe that totals eight, and they are currently before various courts at the moment. These challenges, and the other challenges that we have been subjected to, are not delaying the Wickenby matter or the other operations which those challenges relate to.

**Senator LUDWIG**—Are you able to give the committee a view about the nature of those challenges?

**Mr Milroy**—Yes. There have been 20 challenges to the exercise of the powers by the ACC, and the ACC has been successful in 17 of the cases. As to the other matters that relate to Wickenby, as I indicated, some of those challenges relate to privilege against self-incrimination, while others concern spouse privilege, legal professional privilege, and whether examinations could proceed where the witness was involved in other court proceedings. Also, in relation to Wickenby, there were challenges in relation to the validity of the summonses, the relevant determination, the constitutional validity of section 4A of the ACC Act, and, more recently, the execution of search warrants by the ACC pursuant to the Crimes Act. As I have indicated, these challenges have not substantially impacted on the ongoing Wickenby matter or other matters that are currently under investigation.

**Senator LUDWIG**—Do any of those relate to matters that are going on appeal, or have the cases been settled or finalised?

**Mr Milroy**—There are quite a large number that are listed for argument and for appeal adjournments. So there is a variety in all of the cases.

**Senator LUDWIG**—Are there any that you have lost in the primary judgment that you have chosen not to appeal? I am happy for you to take this on notice, if you want, in terms of dissecting the matters. There are about 20, I think, cases or challenges. Could you take on notice the nature of each challenge—whether you won or lost at the primary judgment, whether you decided to appeal or not to appeal, the reason for the decision not to appeal, whether any of those appeals have been heard or finalised and, if you lost at the primary stage and did not appeal, whether that required any additional work or request for remedial action from the government in terms of legislative amendment or suchlike. In other words, as a hypothetical, you may have decided not to appeal the primary decision because it was manifestly obvious that there was some invalidity in the legislation that prevented you from continuing it any further and therefore it needs to be remedied. That is hypothetical, but it gives you an idea of what I mean.

**Mr Milroy**—As I indicated, the ACC have been successful in 17 of the cases. One of the matters that was under appeal has been resolved as a result recently of the Federal Executive

Council dealing with the regulations. That was issued on 15 December. Action has been taken in some of the matters where appeals have been lodged, but we will answer those wide ranging issues out of session if that is convenient.

**Senator LUDWIG**—Are you able to say whether or not in Operation Wickenby you have abandoned any of the investigations of individuals?

**Mr Milroy**—No. The nine cases that I referred to—that is, the original case and the eight cases that were referred to the ACC from the tax office following consultation with the Commonwealth DPP—are current investigations.

**Senator LUDWIG**—In your annual report I noticed that you have drastically increased the number of formal disseminations that you make to member agencies from 424 in 2003-04 to 722 in 2004-05 and the number of information reports from 67 to a staggering 1,631. There is also a jump in the number of strategic intelligence reports from 58 to a not so staggering figure of 171. When you add them all together, it seems to be a monumental jump by any standard in the type of information that you are disseminating. What is happening there? Is it par for the course? Is it likely to continue at that rate or is it peaking?

**Mr Milroy**—I think it is a result of the work that we are doing in the intelligence directorate. The director of intelligence, Kevin Kitson, is here and can comment shortly. It also is attributed to the work that we have been doing in developing the partnership with the jurisdictions and marketing the role of the ACC in terms of its primary function of gathering criminal intelligence. Through a lot of the work across our determinations you will see a significant increase in the partner agencies' contributions to the work of the ACC. I think there is a progressive increase in understanding the work the ACC are doing in our intelligence operations and investigations with our partners. Their understanding of the importance of intelligence and the value-add cycle is increasing. We are starting to see significant improvements not only within the ACC in how it deals with intelligence and dissemination but also with our partner agencies. Kevin might wish to comment further on the topic.

**Mr Kitson**—Part of what underlies this is that during the period under review we undertook a couple of major surveys and established some ongoing evaluation processes that I think have enabled us to better understand what our clients want and therefore to essentially put out information at a different rate, in a different format and hopefully with improved quality—the feedback certainly indicates that is the case. You asked the question: will the rise be sustained? The most recent solid feedback that we have suggests that we might need to pull back on the total number of disseminations and focus on some more specialist areas. So it is possible that when we come to the next annual report there may in fact be a slight fall in some of those figures.

**Senator LUDWIG**—What type of drain on your current staff is that?

**Mr Kitson**—I think it is less than a drain on staff—it is actually optimising the way in which we operate. We have done some significant internal reprocessing—we have looked very carefully at the way in which we gather, collate, analyse, use and ultimately disseminate the information. I think ultimately that means we are simply working more efficiently at

getting the information out and recognising what it is that is useful to our partners, and working to overcome those perceptions of, perhaps, obstacles to dissemination.

**Mr Milroy**—Another area of work where we have seen an increase is in information sharing and the drawing of Commonwealth, state and territory partners into this intelligence information-sharing arena, and how they have to contribute. Also there has been a 23 per cent increase in the number of summonses issued by our examiners and, of course, one should not lose sight of the fact that the examinations are a very important intelligence-gathering mechanism within the ACC. So we have seen an increase in not only the work of the intelligence area, operations and the value adding by our partners, but also in the increased value of the coercive powers in intelligence collection work as well as, of course, in identifying potential areas for evidence.

**Senator LUDWIG**—Are you able to unpack the number of staff in terms of the average level of staffing increase between 2003-04 and 2004-05, or the decrease as the case may be? In other words, how many additional staff have you put on in the last 12 months?

**Mr Milroy**—The director of corporate services has got the figures that he can provide to you in relation to staff numbers, in relation to APS employees as well as the secondees we fund and the seconded task force personnel who are funded by the jurisdictions. That basically gives us our total workforce.

**Mr Phelan**—Over the years, if you look at the public service staffing, at 1 January 2003 we had 334; at 1 January 2004, 342; in 2005, 422; and it has dropped slightly to 405 at the present time.

**Mr Milroy**—As well as the staffing at present, of course, there will be some changes as a result of the government's approved funding in relation to not only Wickenby, but also in relation to the airports—we will see increased staffing numbers in those specific areas. So for this financial year, as well as the out years, we will be increasing staff numbers by figures in excess of probably 35 to 40, depending on the work that we need to undertake in those areas where the funding has been approved.

**Mr Phelan**—There is significant recruitment action under way at the present time.

**Senator LUDWIG**—So in total, with the additional funds, how many staff will that relate to?

**Mr Milroy**—In relation to Wickenby that is in the vicinity of 18 or 19 staff, I think, with an additional 27 who will come from the tax department and will be working under the ACC management under these nine cases I referred to. In the airports the staff numbers will be—

**Mr Phelan**—There is an additional 16.

**Senator LUDWIG**—That is in the airports area, is it?

**Mr Phelan**—That is correct.

**Senator LUDWIG**—How many staff work in the area of dissemination of strategic intelligence products?

**Mr Kitson**—That number will vary from time to time. As you would be aware, we move our resources to meet surge demands and to respond to any given circumstances. Particularly

in the advent of our work on the aviation sector and indeed the maritime sector we shifted resources but as a rule of thumb you could expect something in the order of 20 to 25 staff to be specifically engaged in strategic intelligence. But I think the question is more broad than that in that all of our intelligence staff, who would number between 60 and 80 over the course of a year, have a role in developing strategic intelligence. They may not be the analyst that hits the send button, so to speak, but they all have a role in translating operational and tactical material into something which provides advice and benefit.

**Senator LUDWIG**—So because of the increase in strategic intelligence reports, the information reports and the other reports that I have mentioned, has there been an increase in the number of employees in that area or are they working harder and longer?

**Mr Kitson**—Both. We have seen an increase in number. We have had some very successful recruitment campaigns in the last 12 months or so. Intelligence is a highly competitive field for staff so we have had, as is common with many of our partners in law enforcement and other government agencies, reasonably high rates of turnover, but we have also had high rates of attracting staff. But I think it is also fair to say that ACC intelligence staff are working a good deal harder and smarter.

**Senator LUDWIG**—Are you able to indicate how much additional resources, both staffing and financial, have had to be contributed to this area to maintain that output that you have got?

**Mr Kitson**—The outputs have been balanced over the last couple of years. We have increased some of the resourcing, we have moved staff across the agency to move flexibly and we have a very integrated approach to the way in which we look at intelligence and operations. At times, the distinction between who is actually working in the intelligence directorate and the operations directorate is perhaps an artificial distinction. Ultimately we are working towards the outputs of disrupting the particular activity that we are focusing on.

**Senator LUDWIG**—Is this increase in the dissemination of strategic intelligence and the like expected to continue?

**Mr Kitson**—Yes.

**Mr Milroy**—As you may be aware, the menu of work is subject to ACC board approval. Depending on the intelligence and the trends that we have detected, we would provide the board, this year in June, with the intelligence findings and new and emerging areas of crime. We will then discuss with the board the menu of work for the next 12 months, allowing some degree of flexibility for any new and emerging work. That has a bearing on the resources that are allocated to work in the strategic criminal intelligence area as well as it does in relation to operations. So we have a fairly moving workforce depending on the trends and the priority work that the ACC is required to do, subject to the submissions that we put forward to the board.

**Mr Phelan**—I need to correct something: it is not 16, it is 18 additional staff as a result of the Wheeler initiative. For example, all of those are going through to intelligence directorate or intelligence systems supporting the directorate. So there is a direct increase in staffing to meet the particular need.

**Senator LUDWIG**—Has this budget remained the same? It seems to me, if you look at the figures, that there has been a \$1.3 million fall in the budget amount in this area of disseminations and strategic intelligence products. Is that right?

**Mr Phelan**—I am sorry; what are you referring to there?

**Senator LUDWIG**—I am asking the question: has the budget in this area remained the same in the last year to this year or has there been a drop?

**Mr Phelan**—Internally we have all the time been trying to maximise the deployment of staffing and other resources to meet our main outputs, as reflected in the portfolio additional estimates statement. There has been no significant downward shift, from my observation. Obviously we have had to manage with an overall bucket of resources. The additional funding that has come through, particularly for Wheeler, will go into the intelligence directorate and to the intelligence output to increase the value of that. Some of the outputs might have shifted over time as proportions that largely reflect the movement in an accounting sense of some of the overhead costs but, in a real sense, if anything there has been an increased emphasis on intelligence throughout the organisation.

**Mr Milroy**—I think it is important that we actually operate with an integrated intelligence and operational process, and, even in the areas of the special investigations into high-risk crime and firearms and some of those other matters, the intelligence is being collected by the investigators during the whole process of the operations or the projects that they are undertaking. So I think at times that to look at the intelligence and the costs by the directorate is not a true indication of how much has been spent with the resources that have been allocated to intelligence because we collect intelligence across all phases of our work, whether that is in operations or in the true intelligence area. I think it sometimes can be a false indicator.

**Senator LUDWIG**—If you look at page 82 of the annual report, under ‘Enhanced Australian Law Enforcement Capacity’ it gives the total for outcome 1. Your budgeted amount in 2004-05 was \$77,645,000 and the total for actual expenses was \$78,506,000. Your budgeted amount in 2005-06 is \$76,302,000. It is trending down, not up. What you have told me is that you have also got significant increases in your disseminations and your workload.

**Mr Phelan**—What you are seeing there is that, yes, there has been some slight movement in terms of the total appropriations—the revenues from government—over that period, which has since been changed quite markedly at additional estimates with the infusion of funds for both Wheeler and Wickenby, which has increased that, as indicated in the PAES document. But also what you are actually seeing there is probably a boom in 2004-05 for services provided free of charge from other agencies for some significant task force activity in that particular year. So the budgeted estimate for this particular year showed a slight change but again that has also been revised up significantly as a consequence particularly of the Wickenby initiative where additional resources are to be provided to the ACC free of charge from the tax office and some other offices.

There are obviously some adjustments made in the accounts to reflect the movements in appropriations et cetera but there is no significant or material drop in the outputs or resources deployed to outputs. In fact, as I mentioned before, with the AE additions there is a significant

infusion of resources for both—Wickenby gets into output 1.2—under 1.1, the intelligence services output, as a result of the Wheeler initiative.

**Senator LUDWIG**—So in total how much does it cost to run your budget? What you are saying is that the figures that I rely on in the annual report do not actually reflect what they are showing me—that there is less money available and you have had a significant increase in your work output. What you are then saying is that the portfolio additional estimates provide money for Operation Wickenby but you then say it is going to be utilised in this other area for strategic intelligence and other products—dissemination of information and strategic intelligence reports. Is that what you are telling me?

**Mr Phelan**—No. In terms of the output structure of the Australian Crime Commission, Wheeler sits very much within output 1.1—that is the provision of criminal intelligence services. So, as an accounting for that part of the output structure of the commission, that is where the resources are going. It is clearly specifically to increase the strategic intelligence specifically targeted at airport aviation safety in that output. There are a lot of things going on, obviously, in the commission to improve work processes, to automate processes, to better support staff in terms of the systems and other mechanisms that are available to help them analyse intelligence et cetera. As was said earlier, a lot of mechanisms have also been put in place to make it easier to gather intelligence, through better partnerships with our law enforcement agencies and smoother, less arduous ways of gathering intelligence. All I can do is repeat that we are doing a lot more but we are also doing it a lot smarter.

**Senator LUDWIG**—Do you also get assistance outside of financial assistance? Is there ex gratia assistance, such as support from other agencies in terms of non-financial assets?

**Mr Phelan**—Yes, particularly through the area of ACC task forces. Partner agencies volunteer their personnel, experts et cetera, and on occasion their equipment to work cooperatively with us in achieving the outcomes of the ACC as well as those of our partner agencies. So there is a significant proportion budgeted for services provided free of charge in accounts, as reflected in the annual report. The ‘revenue from other sources’ on page 82 reflects the historical situation that has prevailed in that area. Also, there are some intergovernmental agreements that came across from the previous Australian Bureau of Criminal Intelligence which allow for a number of partner agencies to contribute funds to allow the ACC to engage specific intelligence people to support the ACC and the broader law enforcement community.

**Senator LUDWIG**—Are you able to quantify that at all? How much is that?

**Mr Phelan**—Yes, it is in our accounts.

**Senator LUDWIG**—That is what I was just trying to find. I take it you put it under ‘non-financial assets’ or ‘non-financial contributions’.

**Mr Phelan**—Just bear with me. I will just find the note as well.

**Mr Milroy**—While Andrew is looking for that, Senator, I can indicate that in relation to the ‘funded by jurisdiction’ question, there are currently 11 personnel funded by other jurisdictions; they are allocated to the ACC at their cost. As far as task forces are concerned, it ranges from about 60 to a high of about 90, where those resources are allocated to the ACC at

the agency's cost plus fully resourced with vehicles and other equipment. And that is the sort of total amount that Andrew will now refer to, bearing in mind that it varies on an annual basis depending on the task forces established and the joint operations, which are short and long term.

**Mr Phelan**—Senator, if you look at page 101, there is the 'statement of financial performance' for the year. This is an example for one year, the year ended 30 June 2005, with a comparison to the previous year. If you look down the page at 'services provided by state and territory police', you will see that the additional revenue in the year ended 30 June 2005 was about \$7.4 million.

If you look at note 4B on page 117, it breaks down the components that were referred to by Mr Milroy. It reflects about \$1.653 million in terms of the salary reimbursements for intergovernmental agreements. The services provided free of charge for the task forces is \$5.794 million in that note. That represents a significant increase from the previous year. I cannot work out the percentage, but it is a significant percentage increase. It is also reflected in our portfolio statements. The forward projection for an increase is on page 54 of the portfolio additional estimates statement in table 1.9. That particularly shows the Wickenby impact, after the additional estimates bills are passed, on the contribution from the tax department. The estimate rises to \$8.429 million from the budgeted \$5.329 million.

**Senator LUDWIG**—Thank you. That is helpful.

**Mr Milroy**—I think it is a very flexible arrangement that we have on a case-by-case basis with the jurisdictions, even for the Commonwealth agencies. For example, the Customs and AFP input into the current aviation project is free of charge. So we have Commonwealth agencies and state and territory agencies. These figures will probably vary each financial year because it is a moving workforce. It is all linked to the menu of work and the benefits that these various agencies can see from working with the ACC. And of course the dividend from an operational success to intelligence also is a win-win for everybody.

**Senator Ellison**—I might add, Madam Chair, despite criticism from the states, that the vast majority of ACC staff is funded by the Commonwealth. Indeed, the ACC budget is funded by the Commonwealth. In return, the states get the benefit of that work, not that we in any way begrudge that. I think it should be placed on the record that the funding is from the Commonwealth. The majority of the staff is Commonwealth funded but there is a great dividend there for the states in the fight against organised crime. I merely put that on the record in the face of criticism that the states have levied against the Commonwealth in relation to the resourcing of the ACC.

**Senator LUDWIG**—You touched on proceeds of crime earlier. It seems that there has been a large drop in both the value of assets restrained and assets forfeited, under the Proceeds of Crime Act, from 2003 to 2004. I am looking at page 48 of the annual report. The full figures are, of course, given in appendix G on page 160. It seems to be from two determinations, ECN and Midas. Despite restraining \$13.4 million worth of assets, less than \$300,000 was forfeited. Is that usual or would you expect a better result?

**Mr Milroy**—I think it is really linked to the cases. As I indicated before, a number of the matters have been investigated under the Midas determination. I can say for the record that,

irrespective of whether we are investigating matters under Midas and money-laundering and tax fraud or we are investigating matters under higher risk crime group or under a task force, we pursue not only the area of crime that these groups are involved in but also all of the groups that we are targeting for either tax assessments or proceeds of crime as well as the criminal offences that have been committed. So we pursue proceeds of crime opportunities across all of the operations and not just specifically under money-laundering and tax fraud, although in that determination we target the higher level targets that are clearly involved in this sort of activity.

But you will notice for the proceeds of crime that in the first six months of operation of the ACC it restrained \$16 million and \$10 million in tax assessments. In the next 12 months it restrained \$16 million and \$19 million in tax assessments. The figures for 2004-05 were \$13 million and \$12 million. At present, for the first six months of this financial year, we have \$40 million restrained. If you look at the totals in the three years, we are talking about \$88 million restrained and tax assessments in the vicinity of \$33 million, with \$12 million recovered. I think you have to look at the cases. Because of the degree of difficulty and the vigorousness with which these cases are defended, they are not normally resolved in 12 or 18 months. Some of the cases that Midas has been successful in were carried forward from the former agencies and successfully resolved. This sort of variation in restrained property, forfeited property and tax assessments is quite a regular occurrence in our figures.

**Senator LUDWIG**—I guess this is a problem. If I ask this now and next time and the time after that, the amount restrained or the amount forfeited might change, but it seems to me, when you look at the figures, there is a 66 per cent drop in 2004 in what has been forfeited. If you look at the \$13.4 million of profits restrained, how much of that has since been released? It may be helpful if you can provide—I do not know how you can show this—a breakdown by either case or issue so that we can have a look at it. I guess it is an indication of how well you are doing.

**Mr Milroy**—That is correct. Looking on a case-by-case basis, you will see that some cases have been under investigation since 2002 and they are only coming to resolution now. Even in cases where people have been convicted and, in some of the successful cases, sent to prison, the tax department is still recovering cash while they are in prison. These figures take some time to come to finality, if you know what I mean. I think we can provide out of session some information on a case basis which might explain the fluctuations that you will regularly see in proceeds of crime restrained and forfeited and the tax assessments in the work we are doing under the money laundering and tax fraud area.

**Senator LUDWIG**—Otherwise, with respect to the gross figures it looks like \$13.4 million was restrained and you have had forfeited about six per cent of that, which is a drop of about nine per cent from the previous year. When you look at the raw data as reported, it looks like you are not doing a particularly good job.

**Mr Milroy**—For a small agency that has a specific case-driven approach under the Midas determination, to have tax assessments of \$33 million, \$12 million recovered and \$88 million restrained—and in this financial year there has been \$40 million restrained—means that a considerable amount of pressure is being put on a number of individuals and groups that we believe are involved in criminal activities. I think that, if you weighed it up on a case-by-case



basis, the agency is doing quite well. But, as I mentioned earlier, you cannot judge these sorts of figures just on an annual basis. I think it has to be looked at by way of the individual cases that are under investigation and the lengthy proactive action that is taken by those under investigation and charge to fight these cases right through to the High Court.

**Senator LUDWIG**—I am happy for you to take it on notice, but this is an opportunity to provide those, at least broken down by Midas or ECN, so that we can have a look at the category, the case and the type. Do you have a target for what you would expect to achieve in restrained assets and those that have been forfeited as a consequence of the restraint?

In other words, do you have a way of determining how well you are performing in this area? It sounds impressive to say, ‘I have restrained X million dollars worth of assets,’ but then we have a look at it and we find that there is five or 10 or 15 per cent which is forfeited, or even less in some respects this year, although we have got a part explanation for it. There is a significantly small percentage that was actually recovered or forfeited, as the case may be, which may or may not reflect how well you are going. Is there a way of expressing the figures or a target—I hate to use word ‘target’—or a way of demonstrating that you are performing well in this area, or a benchmark that you have set yourself so that others might be able to make an independent assessment of how well you are performing?

**Mr Milroy**—Yes. I can indicate that, as part of our effectiveness and efficiency framework, we are actually looking at improving performance measures. We are currently working with Macquarie University to come up with a better way of looking at the cost-effectiveness and potential return on investment and a more quantitative and qualitative outcome on the work that we do, looking at a number of things, like economic indicators, return on investment and other factors. There has been a general acknowledgment by overseas agencies that we are setting a high benchmark here, and they are very interested in the outcomes of this new performance measure regime which we have been tasked to do on behalf of the board and the IGC.

We think that when that is completed it will probably give us a very good indicator. But again, of course, with all our cases there is a target set based on the intelligence of the case and the tactical decisions that are undertaken to pursue certain syndicates and to disrupt their activities by pursuing their assets. There is a general understanding as a result of the ongoing work and the intelligence known about that syndicate of what we believe their assets are, and there is a target that we believe we would try to recover, based on the work that we have done on that syndicate. So there are a number of those things, but I believe that this new performance measure and effectiveness regime will address some of those issues that you have raised.

**Senator Ellison**—I would add that it really is quite significant that the ACC reports to the intergovernmental committee, which is made up of all police ministers from around the country, and is under the scrutiny of that body, notwithstanding that it also has a parliamentary joint committee. One of the difficulties when the IGC asked for this to be done on a regular basis was not only to deal with it in terms of money raised, much like a speeding fine for traffic police—to gauge it by how much revenue you collect—but also that, where there can be a disruption of a syndicate and the arrest of a person concerned, the quality of the target is really what makes it a great achievement; it is not that there was a large amount of drugs or

money concerned, but that they took out a key criminal figure. That is always very hard to put into a sort of benchmark situation. You can measure the proceeds of crime, you can measure the amounts of drugs seized, but really in policing it is difficult to get that. I just bring that to the committee's attention because you can get a rather narrow approach to this and look at it in terms of dollars and cents and amounts seized. Sometimes the quality of the person who is locked up is also very good.

**Mr Milroy**—You raised the issue of intelligence. One of the other factors in our trying to be able to capture the information is that, with intelligence that we have recovered as a result of our work, or even the work that we are doing with AUSTRAC with the financial action team under Midas, where we disseminate that information to another agency and that agency is able to pursue a proceeds of crime action or recover assets, we try to be able to capture the results of the action undertaken by the other agency and show that that is the result of the intelligence from the ACC subsequently leading to certain action. So that is another area of trying to look at the performance and effectiveness process.

**Senator LUDWIG**—On another issue: we asked about penalties for non-cooperation, in question on notice No. 94. Could you update those figures that were provided in relation to question No. 94. Do they deal with all the persons who have refused to cooperate with the examinations in those years or are there other groups outside that?

**Mr Milroy**—Thank you for asking that question, because I think the newspaper article inferred that the ACC might be going soft. I can assure this committee that that is far from the case. Your question on notice referred to whether people are refusing to cooperate. There are people who go through the process of the coercive hearings and subsequently decide to tell lies, so there are other offences other than refusing to cooperate. So we can provide you with a lot more detail to your original question on notice.

I can advise that 51 persons have been charged with respect to offences committed under sections 30 to 33 of the ACC Act, clearly in relation to their being called before the hearings, before our independent examiners. Eight of those matters have been finalised to conviction, with sentences of up to 12 to 15 months imprisonment. One matter was fined. There are currently 37 matters before the courts, and they range from matters that can be dealt with summarily or on indictment. The matters proceed based on an initial assessment by a case officer in conjunction with our ACC legal officer following charges of failing to answer questions, refusing to answer questions or giving false or misleading evidence, for example. Those are some of the offences and charges that have been laid. Following our assessment, we then have formal submissions provided to the Commonwealth DPP.

It is appropriate, of course, to deal with the matter either on indictment in accordance with the Commonwealth DPP's prosecution policy, so some of these matters go to precommittal proceedings and others are dealt with summarily. From those statistics it is quite clear that a large number of people have been charged and sent to prison, and the other matters are currently being dealt with over the next few months at various courts around the country.

**Senator LUDWIG**—Could you provide a breakdown which reflects what type of charge has been laid, going over those statistics that were requested in question No. 94, and include the types of information that you are now prepared to share with the committee. It seems to

me that there is a material difference between someone who has lied and someone who will not cooperate. There might be various motivations, and I am not about to guess what they might be. I guess one is a matter of noncooperation and one is where someone is found to be untruthful or is otherwise not providing information that you requested.

**Mr Milroy**—Yes. As I indicated, they are either misleading evidence, refusing to answer questions, failing to attend examinations, failing to take an oath or affirmation, or giving false or misleading evidence. They are basically covered in section 30 and 33 of the act.

**Senator LUDWIG**—How many examinations, in total, are done? Are you able to compare?

**Mr Milroy**—The examinations have progressively increased. Comparing the 2004-05 figures, there is a 23.53 per cent increase in summonses issued, and we are presently tracking, on the first six months of this year, to probably equal the figures from the previous year—which was nearly double the preceding year, nearly three times the former agencies' use of coercive powers. So we are seeing a greater use of the coercive powers across all of our determinations.

There has been an increase in the number of determinations approved by the board, in particular in the area of special intelligence operations. Also, we are seeing some significant intelligence dividends coming out of the use of the coercive powers—not only better understanding criminal markets that we are now being asked to profile but also gaining a lot of knowledge in relation to criminal markets and the infiltration of organised crime. That is increasing the intelligence dividend, which has also been picked up in the number of intelligence disseminations that you previously asked questions about.

**Senator LUDWIG**—The question was how many. I know you have indicated the percentage increase.

**Mr Milroy**—I can indicate to you that examinations in the first six months of the ACC were 119; in the 2003-04 financial year, 355; for 2004-05, 629; and for the first six months of this year, 254. As far as the issuing of notices to produce, there were 103 in the first six months; 453 in the second year; 516 in 2004-05, which was the third year; and we currently have 278 for the first six months, which would indicate there would be an increase on the preceding 12 months in relation to section 29 notices issued.

**Senator LUDWIG**—Would it be fair to say that there has been a dramatic increase in the exercise of the coercive power and requests for information?

**Mr Milroy**—Yes, that is correct.

**Senator LUDWIG**—How many of those in comparison to those totals relate directly to noncooperation?

**Mr Milroy**—Do you mean in relation to those people who have been charged?

**Senator LUDWIG**—If the coercive power has been used and they have chosen not to cooperate, is that included in the total?

**Mr Milroy**—One of those hearings might involve five people being called and one of them refuses and subsequently gets charged. Are you interested in the relationship between the charges back to the number of hearings? Is that what you are interested in?

**Senator LUDWIG**—Yes.

**Mr Milroy**—We can take that on notice.

**Senator LUDWIG**—You might have four or five hearings in respect of one person and at the fifth hearing that person says, ‘I’m sick of this. I’ve told you all I’m going to tell you in the first four and I’m not going to talk anymore,’ and you subsequently charge them. Or the first time someone fronts up, they say, ‘I’m not going to tell you anything,’ and you subsequently charge them. I am trying to get a reasonable picture of the circumstances in relation to how many times the coercive powers have been used, how people have been subsequently charged for not cooperating, not providing information or misleading the examiner. Perhaps the use of the power could be bracketed into that. We need a comparative analysis: are you getting knocked back on five per cent, 10 per cent or 20 per cent of the time? What is the rate at which you are finding it is not providing you with the information you want?

**Mr Milroy**—Yes, we can do that out of session, if that is appropriate.

**Senator LUDWIG**—Thank you. I have one last question. Have any recent appointments in the ACC not been followed through or subsequently withdrawn?

**Mr Milroy**—Appointments?

**Senator LUDWIG**—Staff: a Ms Florian.

**Mr Milroy**—She is currently a permanent APS staff member, who is currently the head of one of the major determinations.

**Senator LUDWIG**—Is that an examiner?

**Mr Milroy**—No. A head of a determination is a person who, in this case, runs the special intelligence operation, which is currently approved by the board. She is the lady who runs that and she is in charge of the national determination.

**Senator LUDWIG**—Thanks very much. I do not have any further questions.

**CHAIR**—Thank you, Mr Milroy, Mr Phelan and Mr Kitson.

[8.45 pm]

#### **Australian Government Solicitor**

**CHAIR**—I welcome officers from the AGS. We have questions from both Senator Ludwig and Senator Fierravanti-Wells. I will ask Senator Ludwig to start.

**Senator LUDWIG**—Are the current contracts that you have with government agencies on the increase or the decrease? Are you able to say? Number and by value, I guess.

**Ms de Gruchy**—The question is a little difficult to answer because of the wide variety of relationships that exist between a service provider and Commonwealth agencies across the Commonwealth, for example. In some cases there have been more formal contracts; in others it could be that we are engaged on a particular matter, in which event, in essence, a contract

would arise in relation to that particular matter. But, speaking generally, there would be more formal contracts between AGS and clients than perhaps in years past. In essence, there are more panel arrangements—they have increased from year to year—and perhaps more contracts in relation to particular matters or projects. So in answer I would say that there are more contracts—in essence, there are more formalised relationships—between AGS and its clients.

**Senator LUDWIG**—Are you able to say it on a volume basis—whether there is a greater volume of work now being generated between the AGS and various government departments and agencies, or has it been decreasing? Money value is one indicia.

**Ms de Gruchy**—Certainly we monitor revenue. That is one indicator of volume. We also monitor a number of other trends. In essence, we are in a market situation that has been evolving since 1999 and even prior to that. So to a certain extent, while the nature of work changes, that volume of the work we do can change as well. For example, some types of work change over the years, some work is complex and requires lots of hours put into it, other work is more transaction based work and therefore lends itself to more repetitive actions and perhaps smaller numbers of hours on particular work.

So over the period of time our revenue has grown, and that is in a market where there are more players in the market and we are all, in a sense, competing for a volume of work that itself has increased over that period of time. For example, the ANAO report that was published last year appeared to indicate that there had been an increase in the overall volume in terms of the size of the market.

**Senator LUDWIG**—Are you able to say what the size—in monetary terms—of that volume is between this year and last year?

**Ms de Gruchy**—In relation to—

**Senator LUDWIG**—Your work between the government agencies and departments.

**Ms de Gruchy**—So how much work is AGS doing in that market?

**Senator LUDWIG**—Yes.

**Ms de Gruchy**—We publish in our annual report what our revenue is. That would give you a very accurate indication of the value of services that we are providing into the market.

**Senator LUDWIG**—Is that all drawn—I am trying to depack this—from government agencies?

**Ms de Gruchy**—The vast majority would be from Commonwealth government agencies. We do a small amount of work for clients that are not within the Commonwealth.

**Senator LUDWIG**—Is it put in the annual report how much that market is?

**Ms de Gruchy**—We publish overall revenue—revenue from all clients.

**Senator LUDWIG**—How much, as a percentage, is non-government work? I am happy for you to take it on notice if you are not sure.

**Ms de Gruchy**—We do not have a precise figure for that. It fluctuates slightly. In each year probably of the last few years it would be under five per cent of our revenue.

**Senator LUDWIG**—Have you been excluded from any departments? Have departments said that they do not want formal arrangements with you anymore or broken off formal relationships with you in the last 12 months?

**Ms de Gruchy**—It is up to each client to decide who they want to be providing services. In essence, one of our roles as provider of legal services to the Commonwealth is that we are available to assist wherever a Commonwealth client wishes to engage our services. So, whether or not we have a formal relationship by means of a contract or a panel appointment, we would enter into a service arrangement with any Commonwealth client in relation to work that they were looking for us to do. There are situations where we are perhaps not on a formal panel for a department or agency and we continue to provide services.

**Senator LUDWIG**—I will ask again: in the last 12 months in how many situations where there are formal arrangements, or you have been on a panel, have departments indicated that they no longer want work from AGS or that they are no longer going to give you work? Has anyone done that? They may not have.

**Ms de Gruchy**—I am not aware of there being any Commonwealth government client or agency who has formally said to us, ‘We do not wish to engage your services.’

**Senator LUDWIG**—Have you been taken off any panels in the last 12 months?

**Ms de Gruchy**—The last time we were before this committee, we indicated that there had been a panel for general legal services providers for the Department of Finance and Administration and that AGS had not been reappointed to that panel.

**Senator LUDWIG**—Have there been any more since then?

**Ms de Gruchy**—I am not aware of any department that has not engaged AGS on a panel contract. I would have to take it on notice as to whether there were any agency panels, as opposed to Commonwealth department panels.

**Senator LUDWIG**—If you would not mind doing that, that would be helpful. Are there any contracts that you have had with Commonwealth departments or agencies that have expired and have not been renegotiated in the last 12 months?

**Ms de Gruchy**—There could be some situations where there is an expired contract or a contract that has not yet been renewed. There could be a number that are currently subject to tender processes, for example. Contracts of these kinds are many in number and fluctuate for various reasons across the Commonwealth.

**Senator LUDWIG**—I am looking at those that may have an option for renewal but have not been picked up again, when you would have expected them to be picked up. As a business case you would monitor those, wouldn't you? You would look at those contracts where there are renewal options and if they have not been picked up you would be inquiring as to why they have not been picked up, because you would have otherwise expected that work to continue. I am trying to get a snapshot of how you operate in a market environment. These are ordinary questions that I imagine businesses would be able to answer.

**Mr Riggs**—Indeed. We monitor closely the time intervals in contracts and the opportunities for renewal and extensions. We monitor expiry dates. We have an active relationship with the clients in relation to future service. There are a few examples, as Ms de

Gruchy says, of a client who asks us to extend the validity of the period of a tender because it takes them an amount of time to redefine exactly as they want the service requirements. Over the last year or two years, with the exception of the case that Ms de Gruchy mentioned, I am not aware of any client ceasing to use AGS.

I am aware of a number of projects we bid for—individual one-off pieces of work that in competition we have not won—but I am aware of no panels, which are standings offers to offer service to a client over a period of time ahead, that AGS has not been reappointed to, save the one that Ms de Gruchy referred to.

**Senator LUDWIG**—Thank you.

**Senator FIERRAVANTI-WELLS**—My questions follow on from what Senator Ludwig had to say. The ANAO report talks about the legal services market, and you say in your annual report that it has grown and that the volume of legal matters has grown. You also state that AGS remains the leader in attracting government, obviously based on monitoring that you do within AGS. Is that your assessment that you are the leading service provider to government?

**Ms de Gruchy**—It is probably a little bit more than our own assessment. We have a considerable amount of involvement with the market. In a sense some aspect of that is from our assessment, but we have some sources to draw on, including the Tongue report, which was the report that preceded the ANAO report. In that, a statement was made to the effect of AGS remaining a clear leader in this particular market. In addition to that, we have a number of other indications that come from, for example, information published by various departments and agencies about the legal services they acquire. There are a number of organisations that provide information to the press, which also indicates the general volume of AGS in comparison to some private sector firms.

**Senator FIERRAVANTI-WELLS**—Yes, I am aware of the statistics in the Tongue report. Having observed first-hand what the AGS does, I would appreciate if you could take on notice and provide to me some updated statistics following on from the Tongue report. Given that you are an agency that is directly involved in provision of legal services, I would appreciate updated information particularly in relation to market share and where that market share is as far as AGS is concerned. I am aware of the sorts of things that you do out in the marketplace, and I am sure that you can provide that information to me.

**Ms de Gruchy**—I am happy to provide as much information as I can, but I would like to stress to the committee that providing information concerning market share is highly sensitive in a competitive market. To that extent, AGS is not in a position to determine exactly what the size or extent of the market is. We have our own sources of endeavouring to obtain information. It is commercially sensitive information. In a sense, as was indicated in the ANAO report, the amount of information that is available on the entire legal spend of the Commonwealth is itself an evolving issue and one that is being addressed by the department in relation to providing better information around what the legal spend is.

**Senator FIERRAVANTI-WELLS**—The question is, having seen what the statistics are in the Tongue report: has there been any work that has been done subsequent to that? Are you able to provide me with some information about that? We are going back to 2002-03. I would

assume that some work would have been done since then and that you could provide at least some indication in relation to the sorts of statistics that are in the public domain as far as the Tongue report is concerned and which I am sure could equally be made available to this committee along the same sorts of lines.

**Ms de Gruchy**—The most up-to-date information would be the information that was provided through the ANAO report. If it would assist the committee, we are happy to provide as much information as we can that would synthesise the information from the Tongue report period to the ANAO report, in a manner that might be more readable than analysing those reports. Since the ANAO report, I am not aware of any reliable independent or external material that would be available to the committee.

**Senator FIERRAVANTI-WELLS**—The point that I am making is that, in the Tongue report, it was clear that you were still up there on top but the percentage was decreasing. I think that is what Senator Ludwig is also getting at. You were still the leading provider but at a decreasing rate, and I would like to know how much that rate may have decreased. Also, you say there is a continuing increase in demand. How many of your lawyers are now working in an outsourced area? Can you provide us with some information in relation to the number of your lawyers who are now working in government departments?

**Ms de Gruchy**—The number of people at any one time varies quite considerably—

**Senator FIERRAVANTI-WELLS**—I appreciate that. Just a variation would be appropriate.

**Ms de Gruchy**—I would estimate that, probably over the last 18 months, we would have on average somewhere between 40 and 50 lawyers working within client agencies.

**Senator FIERRAVANTI-WELLS**—Have you done any monitoring as to how much that may or may not have assisted in terms of your market share increasing or decreasing?

**Ms de Gruchy**—It would not have a direct bearing on market share. It would certainly give us a better understanding of what our clients' needs are. It would provide us with greater sensitivity to the needs of our clients, which in a sense enables us to ensure that we are developing the kinds of capability and service orientation that would be appealing to our clients.

**Senator FIERRAVANTI-WELLS**—I take you to your financial performance. I notice that if you compare the figures from 1999 to present, there is an increase in terms of legal service revenue. You might need to take this on notice. If you look at your increases in revenue over the time, have they been achieved through an increase in market share or through staff reductions and increasing charge-out rates? I would be grateful if you could look at that. I can tell that your revenue is increasing, but I would like to get a better picture on whether that has been achieved through increasing charge-out rates and/or reduction in staff numbers.

**Ms de Gruchy**—I might comment that there have been no reductions in staff numbers over that period of time. Our staff numbers have increased consistently over all of those years. In relation to an increase in charge-out rates, there would be an increase in our prices on a number of occasions during that period. There would be the price effect that comes from the increasing cost of providing legal services that are reflected in that revenue growth, and to a



certain degree there will always be a mixture between revenue growth and volume growth—which will itself vary considerably. For example, two of the years that are featured there, where there has been a significant rise in revenue, were years when we were running some very large matters, including two royal commissions running at the same time. So you will get some significant variations in revenue in relation to that progression from one year to another.

**Mr Riggs**—I think the broad shape is that in 1999-2000 there was a little continuing fall following the untying of litigation, where other panellists were appointed by Commonwealth agencies. But since then there has been a steady growth in AGS's revenue, supplemented and decremented later by the effect of the two major matters to which Ms de Gruchy referred. But gradually there has been an increase in volume. There is a different nature, sometimes, in services provided from our offices and sometimes in respect of services directly in client offices.

**Senator FIERRAVANTI-WELLS**—I am aware of that. And it varies from office to office and year to year. In terms of staff breakdown, you seem to have quite a high number of senior managers. How many of those are directly involved in business development roles?

**Ms de Gruchy**—Being a legal business, we have quite a variety of people who perform management roles. Their background quite often is a legal background. For example, a number of our senior managers would be practice managers. Their role is to ensure that we are developing our legal service capability and that we are developing the right training programs for our lawyers. So, to a certain degree, while it may appear that we have quite a number of managers listed in the note to the accounts on page 64, those can often be people who are performing some legal services as well as providing management services. So we have a number of people who come within the definition that is required to be used. Senior managers incorporates people who have a sort of officer role within AGS as an organisation.

**Senator FIERRAVANTI-WELLS**—I am aware of that, Ms de Gruchy. I am also aware of the number of officers that you have around Australia. My concern is the number. You do have a lot of senior managers. The question I am asking is: how many of those are in business development roles? I would like to understand the direct correlation between the number of senior managers that you have and whether that has actually translated for you in increase in revenue terms. That is what I am getting at. I am happy for you to take it on notice, but I would appreciate if you could have a look at that and provide me with an answer.

**Ms de Gruchy**—In relation to business development roles, or perhaps market development roles, one of the things that we monitor quite closely is how AGS's support systems compare to, for example, some of our private sector counterparts. In relation to the level of support required to run a legal business, our benchmark information to date suggests that the number of people we have, whether in market development or supporting other aspects of our business, is very consistent with that of our private sector competitors.

**CHAIR**—Thank you very much, Ms de Gruchy and Mr Riggs.

[9.08 pm]

**Australian Institute of Criminology (AIC)  
Criminology Research Council (CRC)**

**Senator LUDWIG**—On page 16 of the annual report I note there was a budget overrun in the policy advice section for 2004-05. Are you able to indicate what caused the overrun?

**Dr Makkai**—It is not actually an overrun in that sense. We have a lot of soft money that we raise during a year for outside work. At the time we set the budget for the portfolio budget statements, we do not yet know what might come in during the year. Our estimate was the lower figure, but during the year we then did some outside work which meant that we then spent more money in that area.

**Senator LUDWIG**—How do you break that down? Was your estimate off or did you gain more money than you thought you were going to get?

**Dr Makkai**—We gained more money. We traditionally always get more money than we estimate. It is to do with the nature of that soft work. We might bid for a tender, for example, but we might not know whether we are going to get it. We may get a state government department asking us to do some specific work for them. So of course we have no idea necessarily when we start to set the portfolio budget statements what might happen during the year. So we have this amount of soft money and for that year it came out at \$1.8 million, which is quite a substantial proportion of the budget.

**Senator LUDWIG**—How much of the budget is soft money?

**Dr Makkai**—\$1.8 million.

**Senator LUDWIG**—What is that percentage-wise?

**Dr Makkai**—The total budget was \$7,113,903. It is on page 73 of the annual report.

**Senator LUDWIG**—Your budget amount seems to be decreasing.

**Dr Makkai**—Do you mean the core appropriation?

**Senator LUDWIG**—Yes.

**Dr Makkai**—It went up from 2004 to 2005, if you look at the figures for revenue from government. For the forthcoming year, I think there is a slight decline, but it is small.

**Senator LUDWIG**—Does that necessitate a cut to your budget? Revenue fell from other sources as well.

**Dr Makkai**—We are unsure about the revenue from other sources. We are always conservative when we start off at the beginning of the year.

**Senator LUDWIG**—It seems like it fell a lot.

**Dr Makkai**—We are very conservative because, obviously, we do not want to take on staff and then find that we do not have the soft money coming in. It makes it difficult for us. That is why the staffing numbers throughout the year actually go up and down quite a lot; and from year to year they can go up and down.

**Senator LUDWIG**—Are you bad estimators?

**Dr Makkai**—No, it is the nature of research. You are bidding for contracts. That is one thing: you do not know if you are going to get them. The rule of thumb is that for every 10 contracts you bid for, you might get one. Also we do not know who is going to come knocking on the door to ask us to do specific work. We have no idea of where that might come from. That would be driven by the priorities of other Commonwealth agencies and state and territory governments in terms of the kinds of policy issues that they might have on their agenda and might want some research done for it.

**Senator LUDWIG**—There was a 66 per cent fall in revenue from policy advice and publications—a fall of \$1.2 million.

**Dr Makkai**—Which page in the annual report?

**Senator LUDWIG**—It is on that page we were looking at earlier.

**Dr Makkai**—Do you mean for the budget estimate for 2005-06?

**Senator LUDWIG**—Yes. For policy advice and publications there is a fall of about \$1.2 million, which is about 66 per cent.

**Dr Makkai**—That is the revenue from other sources. That is all the soft money.

**Senator LUDWIG**—That is an underestimation by 66 per cent.

**Dr Makkai**—What we are estimating for 2005-06?

**Senator LUDWIG**—Yes.

**Dr Makkai**—That is right.

**Senator LUDWIG**—Soft money is a really good description.

**Dr Makkai**—It is soft money, and it is very hard in the research world. For the budget estimate, we put in what we absolutely know we have coming into the bank from contracts for that year. We absolutely know we have the \$626,000, but we also know that there will be soft money coming in, so that number at the end of the year will be much higher than that. But, at the point where we do the budget estimates for 2005-06, we do not know where it may come from. It is very confusing for our board as well.

**Senator LUDWIG**—It is hard to make sense of your annual report and the figures that you provide. Is there another way that can be reflected? ‘Soft money’ is a terrible term to use in the money-laundering world. It is not a good description, I suspect.

**Dr Makkai**—We could call it ‘contract money’, I suppose.

**Senator LUDWIG**—It is a matter of being able to reflect the true, irregular nature of the revenue source.

**Dr Makkai**—The difficulty would be that we would not want to put in a figure that we then did not meet, because then we would run in to a deficit.

**Senator LUDWIG**—I suppose I would be asking you about that next, but your explanation would be that it is soft money’s fault.

**Dr Makkai**—Yes, that is right.

**Senator LUDWIG**—Are there positions tied to the specific grants?

**Dr Makkai**—Yes.

**Senator LUDWIG**—Sources of revenue is perhaps a better way of putting it. What happens to those people if the money does not come in?

**Dr Makkai**—We would not renew their contracts.

**Senator LUDWIG**—Do they have annual contracts?

**Dr Makkai**—Yes, some of them have annual contracts. Some of the \$626 million is money that we know we are going to have coming in over a couple of years, so we would then be able to have someone on a two- or three-year contract.

**Senator LUDWIG**—Then you create insecure employment.

**Dr Makkai**—I came out of the research world—out of universities—and that is the nature of research work to a large extent, because you work on specific research projects. You obtain money for that project—it may be a one-year project; it may be a three-year project. That is the nature of doing research.

**Senator LUDWIG**—There was a review commissioned into the AIC's ICT services. That is on page 67 of your annual report relating to the management review of ICT services by Ascent Audit and Governance Services Pty Ltd. What was the nature of the review?

**Dr Makkai**—Basically, the idea was to try and work out the best model for us to manage our information technology and also our helpdesk services—whether we should continue with the model we had or whether we should look at other models. That was in preparation for going to the tender, which we are in the middle of at the moment, for our IT services and what configuration they would take. It was to provide us with expertise, because obviously we are not an IT operation and so we wanted to get outside help on what would be the best model for us.

**Senator LUDWIG**—Is that review available to the committee?

**Dr Makkai**—It is an internal review.

**Senator Ellison**—We will take that on notice and see whether we can provide the report to the committee.

**CHAIR**—Thank you, Minister.

**Senator LUDWIG**—You said the review has been finalised. Are you now in the process of tendering for the work?

**Dr Makkai**—Yes. We are now tendering for an IT contract to provide our IT services for the next three years.

**Senator LUDWIG**—Can you explain what that entails?

**Dr Makkai**—It entails providing a helpdesk service, looking after our servers, looking after the infrastructure of our network internally and also how that will link to the FedLink system.

**Senator LUDWIG**—What was the contract price for the review?

**Dr Makkai**—I do not have that detail here. I can take it on notice.

**Senator LUDWIG**—Was that detailed in the annual report? Do you recall if it was a small or a large amount?

**Dr Makkai**—It was relatively small.

**Senator LUDWIG**—Was it \$10,000 or \$20,000?

**Dr Makkai**—Yes. It was not a large amount.

**Senator LUDWIG**—Less than those two figures? I will not get you to guess. If you could just provide that on notice it would be helpful. It certainly was not over \$100,000.

**Dr Makkai**—No, definitely not. We are too small for that.

**Senator LUDWIG**—I am looking at your annual report on page 16. Do those staffing levels change because of the types of contracts that the researchers are on?

**Dr Makkai**—Yes, they do.

**Senator LUDWIG**—Are there ongoing employees who are part of the AIC?

**Dr Makkai**—Yes, there are. There are some ongoing employees in corporate services, some in information services and some in research as well, of course.

**Senator LUDWIG**—How many ongoing employees in total are there as distinct from those on contract?

**Dr Makkai**—I will have to take it on notice.

**Senator LUDWIG**—Looking on page 119, there seems to be a cluster of staffing at the top level of the organisation. There are 24 employed at the level AO2 to AO5, out of a total of 49. So is half of your staff employed in management?

**Dr Makkai**—No. They are specialist researchers.

**Senator LUDWIG**—What does that mean?

**Dr Makkai**—They have specialist skills. They would be experts in a particular area in criminology.

**Senator LUDWIG**—In terms of the overall number of staff, there seems to be a slight decrease. In the last 12 months have contracts come up or been finalised where the employees have then left the organisation?

**Dr Makkai**—Yes, they have.

**Senator LUDWIG**—Thank you.

**CHAIR**—Have you completed questions here?

**Senator LUDWIG**—If I have any more questions I will put them on notice.

**Mr Cornall**—We were just discussing that, in relation to the money for contracted services, if the revenue is not generated then expenses will not be incurred doing the work either. So, if the revenue goes up because of a contract, the expenses will go up because of the staff employed to do the work. To some extent, there is a balancing effect. It is not as if the agency is running at a deficit because the money is not being generated. If the money is generated, expenses will come with the money as well.

**Senator LUDWIG**—That is providing that the contracts expire, are not renewed, relate to the same project or people are not put onto a contract in expectation of an outcome and that expectation falls over and, therefore, you have a contract, a person and no project.

**Mr Cornall**—All of that. But there still should be some counterbalancing expense and revenue.

**Senator LUDWIG**—It seems to be that the organisation is, in my words, top-heavy with people but they are all researchers. There seems to be a lot of chiefs in there, but they are all specialists doing specialist work. Then you do not require admin staff?

**Dr Makkai**—No. There are some admin staff—research assistants.

**Senator LUDWIG**—It seems to be about a one-to-one ratio. For every researcher there seems to be about one admin person.

**Dr Makkai**—Yes, if you count corporate services and information services in the numbers. People often work on a project on their own and they will have a research assistant who comes in and out and helps at peak times.

**Senator LUDWIG**—Is the information that is prepared by the researchers made public?

**Dr Makkai**—It depends. If we do it for a particular department then we hand them the report. Most of the time that report becomes available. They publish it through their own series, as opposed to us publishing it through our series.

**Senator LUDWIG**—On what basis is research not public?

**Dr Makkai**—If we were to do an evaluation for, say, a state government and they wanted a confidential evaluation of a particular program that they wanted a report on.

**Senator LUDWIG**—So it depends on where the money comes from as to the nature of the report and whether it is public or private?

**Dr Makkai**—Yes.

**Senator LUDWIG**—Is there any way of detailing that?

**Dr Makkai**—The numbers?

**Senator LUDWIG**—I look at your website occasionally and some of the reports you do are very valuable and interesting. Sometimes it indicates that there is someone doing a project on X, Y or Z, yet you do not hear from them again and you do not seem to be able to obtain the report. It could be one of those that disappears into the ether because someone else owns it. Is there a way of advising on your website what projects people are working on? In other words, you promote the knowledge of it. You indicate that it is private research, where you can get the end product if you want it or who might hold the copyright or the rights to it.

**Dr Makkai**—Can I take it on notice?

**Senator LUDWIG**—Yes.

**Dr Makkai**—My only concern is that if a contract is written in a particular way, it may preclude us from doing that.

**Senator Ellison**—There might be a confidentiality clause.

**Dr Makkai**—Yes.

**Senator LUDWIG**—Then it would not be on the web.

**Dr Makkai**—No. You might be able to put something up in general terms.

**Senator LUDWIG**—You could say that it is not available; that it is precluded, it is private research. ‘We are sorry we put it on the web and told you about it.’

**Dr Makkai**—It very rarely happens.

**Senator LUDWIG**—Yes, but it does happen. Thank you.

**CHAIR**—Thanks, Dr Makkai.

[9.27 pm]

### **CrimTrac**

**CHAIR**—Good evening, Mr McDevitt. Thanks for your patience. It is good to see you in this incarnation.

**Senator Ellison**—I point out to the committee that this is Mr McDevitt’s first estimates in this role.

**CHAIR**—Welcome.

**Mr McDevitt**—Thank you.

**CHAIR**—I hope it is a mutually enjoyable experience.

**Mr McDevitt**—I am sure it will be.

**CHAIR**—That makes one of us!

**Senator LUDWIG**—If I could think of an AWB question, I would ask it.

**CHAIR**—But of course, you would be asking it at the wrong time. As you pointed out to me, they would not be asked until Friday.

**Senator LUDWIG**—But if I could think of one I would. Turning to question on notice 224 and a copy of the ANAO report, are you able to provide an update of the implementation of the action plan for the ANAO report?

**Mr McDevitt**—There were 11 recommendations, as I understand it, that came out of the report and each of those recommendations has got a number of action items attached to them. A number of those actions have been considerably advanced. Would you like me to work through each of them?

**Senator LUDWIG**—Yes.

**Mr McDevitt**—Out of the first recommendations, which was to clarify roles and responsibilities, there were four action items arising. The first was to draft a discussion paper for stakeholder input, which was to then be channelled through the SIG. I think it was completed at the end of September 2004 and it was subsequently circulated. The second was to collate the responses and issues that arose from stakeholders and then to workshop those issues. As I understand it, those responses were received by 31 October 2004. The third action item was to develop a draft MOU for all jurisdictions to consider. I am advised that that draft

MOU has been completed and circulated to all jurisdictions. The fourth item was to update a charter of governance. As I understand it, that action has also been completed, following endorsement of the MOU. The MOU has been finalised and agreed by the strategic issues group and the documents are with the police commissioners for consideration and signature. Those were the actions out of recommendation No. 1.

Out of recommendation No. 2, which was to develop a framework for resolution of key issues, there were two action items. The first was to establish the strategic issues group itself, with representation from all jurisdictions, and of course the SIG has now been established and has met on several occasions. Even from the 16 days that I have been with CrimTrac, I can see that the SIG does actually add a lot of value, particularly in terms of governance of projects. The second was to provide a secretariat and support to the SIG, and that capability has now been provided.

Recommendation No. 3 was to strengthen project management, and there were a number of action items which came out of that. I am sure you are aware, Senator, that there were two separate reviews into project management within CrimTrac. In the first week that I took up my tenure, in late January, I had a meeting with one of the persons who conducted the first review and we had lengthy discussions about governance and project management and the way that business had been done and opportunities for improvement. The CPRS program has been reviewed. A project coordination committee has been established and will be advised of any changes and progress to the various projects. The second action item to come out of that recommendation was to have CrimTrac's principal IT contractor, KAZ, perform formal independent quality assurance on its work. That has been completed for the ANCOR project and for the CPRS project. Another of the action items was for the chief financial officer to review the PRINCE2 templates so as to expand on the financial analysis to be included in business plans—and the same for IT security and architecture.

**Senator LUDWIG**—Sorry to interrupt you, but I am just trying to relate them back to the recommendations of the ANAO report and then move forward with the action plan. Is there a way of trying to tie those together?

**Mr McDevitt**—As I understand it, each of the action items was developed specifically to try to meet the recommendations which came out of the report. So that recommendation was about strengthening the project management, and the actions that I am outlining to you are actions that have been adopted by the agency and, I understand, approved by the board to actually ensure that the project management is strengthened.

**Senator LUDWIG**—So which—

**Mr McDevitt**—So project management, for example—the last one that I just explained to you—was about reviewing the PRINCE2 templates to see if that is the right sort of formula and procedure that we should have in place. The same with the one before that—it was about formal independent quality assurance reviews on projects as they are undertaken. And then there is the project coordination committee, which has been established to monitor all the projects at regular intervals.

**Senator LUDWIG**—Perhaps we could do it a different way then. Is a copy of the action plan available to the committee?



**Mr McDevitt**—Yes, I am comfortable for the action plan to be passed up.

**CHAIR**—Mr McDevitt, to clarify, will you provide that on notice, or do you want to provide it now?

**Mr McDevitt**—I could provide it on notice.

**CHAIR**—Thank you.

**Senator LUDWIG**—With regard to recommendation 1, was the draft of the memorandum of understanding considered by the strategic issues group at the June 2005 meeting?

**Mr McDevitt**—As I understand it, that has occurred.

**Senator LUDWIG**—Was it adopted by the SIG?

**Mr McDevitt**—It has been circulated. To the best of my knowledge—and I will correct this if it is incorrect—it has been signed off by the majority of jurisdictions already. If my memory serves me correctly, I think it is only South Australia that has not signed that MOU at this point, and my advice is that it is on the commissioner's desk.

**Senator LUDWIG**—It is about a consultative outcome. This is emanating from recommendation 2. Could you indicate how many times the strategic issues group, the SIG, has met since its formation and the dates of those meetings?

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

**Senator LUDWIG**—It would be helpful to understand who is on the SIG. Are they the same people, or are they representatives from different agencies?

**Mr McDevitt**—As I understand it, the group is made up of a senior representative from each of the jurisdictions. The way it works is that that strategic issues group does a sense-check and value adds to each of the projects and papers, which are now channelled through that group prior to going to the board of management.

**Senator LUDWIG**—Recommendation 3 called for CrimTrac to provide more support in terms of procedural guidance for project managers. Is that in train, or is that now being undertaken?

**Mr McDevitt**—There are a number of actions which have been undertaken in relation to that, although I have to say that I intend to have a very strong and close personal interest in the way that the various projects are managed by the agency and the degree to which the projects are separated as subsets of overall programs.

**Senator LUDWIG**—On its third item, the table indicated that the review of the PRINCE2 templates was due to be completed by September 2004. However, under the status paragraph, it is indicated that the review of templates was then expected to be completed by September 2005. Can you indicate what it was that caused the delay for a year in the implementation of that point?

**Mr McDevitt**—I personally do not know what caused that slippage. I will take that on notice.

**Senator LUDWIG**—Is the review of the templates now complete?

**Mr McDevitt**—I am advised that that is complete.

**Senator LUDWIG**—Recommendation 4 called for CrimTrac to more clearly define and set out in its overall management framework roles of various parties involved in CrimTrac and how they intend to interact with each other. There are a number of aspects of CrimTrac's response detailed in the recommendation 4 table. Could you indicate whether the requirements for new and existing projects—that is, the development of a communication plan and the provision of overall elements by the SIG—have been followed?

**Mr McDevitt**—Are you addressing recommendation 3?

**Senator LUDWIG**—Recommendation 4.

**Mr McDevitt**—As I understand it, the ANAO review was consistent with the other two reviews in terms of ANCOR about some key issues about project management that needed to be addressed. One part of that was about the roles and functions of the various parties and stakeholders, and also about the communication plan being created for every project. My understanding is that there is action in place to go through each of the outcomes and recommendations, with a view to ensuring that they are implemented. I am advised that a communication plan is being created for each project. I have just been advised that the CPPMF, which is the project management tool, now has a requirement for that communication plan built into it for each of the projects.

**Senator LUDWIG**—Looking at recommendation 6, it calls for CrimTrac to develop its business continuity plan and disaster recovery plan and accompanying procedures. CrimTrac was due to complete this in 2005. Could you indicate whether or not the disaster recovery procedures have been completed?

**Mr McDevitt**—To the best of my recollection, I think that a proposal was submitted last year in terms of a disaster recovery plan. As I understand it, now it has come back to the agency in terms of funding options.

**Ms McLay**—There are actually two components of our business continuity and disaster recovery capability. The first component is the production of the disaster recovery plan, which is the action relating to this recommendation. That has been completed, so we have disaster recovery procedures for our existing systems and services. The second component is introducing improved disaster recovery capability for systems. That is subject to funding consideration at the moment.

**Senator LUDWIG**—What does that mean?

**Ms McLay**—The second component is a business case to acquire additional IT hardware to improve our disaster recovery capability—for example, additional equipment for the NAFIS system. It is in the form of a business case at the moment and will be put forward to the CrimTrac board to consider for funding.

**Senator LUDWIG**—How much funding is required?

**Ms McLay**—In the first year of that project, to cover all CrimTrac systems, it would be \$4.4 million in project and first-year costs.

**Mr McDevitt**—I might add that a disaster recovery steering committee has been established to specifically address these issues, and disaster recovery procedures have been completed for all of the systems.

**Senator LUDWIG**—Where is the \$4.4 million going to come from?

**Ms McLay**—That is a matter for our current business case to go forward to the board. One option is for the CrimTrac reserves to be utilised for that purpose.

**Senator LUDWIG**—How does the board fund it? Do they make a business case to you, Mr Cornall, or do they draw on the \$50 million that has been floating around?

**Mr McDevitt**—The last of the \$50 million was drawn down in the last financial year. So it would now require that the disaster recovery business case would go to the board of management and it would need to be assessed against the business cases for other projects for enhancements to other systems and so on. Ultimately the board would make recommendations to APMC.

**Senator LUDWIG**—Does that become a budget issue?

**Mr Cornall**—It could. I cannot remember the exact amount but we had something in the order of \$9 million or \$11 million remaining in our budget—didn't we?—from the unexpended \$50 million. Was it that much, Nicole?

**Ms McLay**—It is \$5.575 million.

**Mr Cornall**—The amount we transferred across?

**Ms McLay**—Remaining of the \$50 million allocation is—

**Mr Cornall**—Yes, but how much was the amount we transferred last year?

**Ms McLay**—You transferred \$11.5 million to us last year.

**Mr Cornall**—That is what I thought. We had this money still in our account and there was no purpose in us continuing to hold it seeing CrimTrac was significantly up and running. So we arranged to transfer \$11 million, being the balance of the \$50 million—

**Senator LUDWIG**—Which was your contribution to kickstarting CrimTrac originally.

**Mr Cornall**—Now CrimTrac is expected to be self-funding but there are issues about its ongoing funding, which will no doubt be discussed from time to time in the budget context.

**Senator LUDWIG**—That is where we were going in terms of its ongoing funding. Your revenue then is how much? It is not meeting your expenditure at this point, is it?

**Ms McLay**—Yes, it is. It is covering our expenditure at this stage.

**Senator Ludwig**—I am sorry; if you include the disaster recovery items.

**Ms McLay**—Our revenue projections at the moment would cover our expenditure, including the recurrent costs of the disaster recovery capability. As our CEO points out, that business case must compete against others for funding and it is a matter of what proposals are adopted as to what our total recurrent budget will be in the future. However, the board would not obviously approve a business case that would result in our operating expenditure exceeding our operating revenues. We are forecasting for this financial year to generate approximately \$35 million in revenues.

**Senator LUDWIG**—Recommendation 9 calls for CrimTrac to establish MOUs with member jurisdictions to assign responsibility for monitoring compliance and security

standards. CrimTrac has indicated that they intend to present a workable model for data security to the board. Was this model presented to the board?

**Mr McDevitt**—I will just look at the actions that I have been advised of in relation to that particular recommendation. The first was to designate and recruit an IT security adviser. That has been completed. The second was to develop an IT security plan in accordance with IT security policy. That, I am advised, is in draft. Documenting security skill and knowledge requirements in specific duty statements is an ongoing process. With regard to a skills audit to identify gaps and training priorities for staff involved in development, management, support or use of the various systems, liaison has occurred with the PSCC to arrange for appropriate security training for CrimTrac staff and contractors. An ongoing action item is the development of a skills review maintenance program. I do not think that answers your question in terms of—

**Senator LUDWIG**—It is helpful but I do not think it does, no.

**Mr McDevitt**—I will need to take that on notice.

**Senator LUDWIG**—When you are doing that, could you also take on notice if it was finalised when it was presented to the board and if it was agreed to by the board or rejected by the board.

**Mr McDevitt**—Yes, Senator.

**Senator LUDWIG**—When was the extension of SAGEM's original \$4.9 million contract to April 2006 done, and why was it done?

**Mr McDevitt**—The original licence agreement for SAGEM, I am advised, was for a period of three years—2001 to 2004—with the option to renew the support agreement on an annual basis. That option has been exercised for 2004 and 2005-06, and the agreement is due for review again in April of this year.

**Senator LUDWIG**—It seems to be that there was an extension, though, to April this year. It was a one-year extension.

**Mr McDevitt**—I am advised at the moment that there have been several one-year extensions. I asked this question when I first started at the organisation as to the continued engagement of SAGEM, and everything I have heard is extremely positive about SAGEM. Other agencies, like agencies overseas, have also gone through processes and have taken up SAGEM. Everything that I am hearing at the moment is that, if you were to be locked in with anybody, this would be a frontrunner organisation in lead technology to be locked in with. As an example, when CrimTrac responded in support of the DVI effort in Phuket, that was totally supported by SAGEM at no cost. They made no charge at all to the organisation. As I say, I have only been in the organisation 16 days. I have asked quite a few questions about SAGEM and everything I am hearing is very positive. Insofar as the specific reasons why we have engaged them for another 12 months, you may want me to take that on notice and try to provide some more detail to you.

**Senator LUDWIG**—The nature of the questions is that I am concerned that (a) you are locked in and (b) there seems to be a series of ongoing yearly renewals. It was not an open competitive tender that was utilised to secure SAGEM in the first instance, and now you seem

to be locked into this one-year extension process. At some point—gratuitous advice, I know—it seems to be that it should be reviewed as to whether or not you are getting value for money, whether it should go to an open competitive tender and whether it is sensible to continue a one-year extension for each year, for the last couple of years or ongoing into the future without a review of some description to say whether or not this is the best in the market, or whether it should not be looked at in greater detail as to whether there have been newer or different technologies implemented or other competitors have entered the market. Otherwise, you end up in a process where sometime down the track it gets overtaken, you find that you do not own the rights to it and you do not have any interest; it is proprietary software owned by SAGEM. You then have to start again with another at, I suspect, double the \$4.9 million.

**Mr McDevitt**—I understand exactly where you are coming from, and I have asked exactly the same questions over the last couple of weeks. There are a couple of issues there. One is, as it is explained to me, that when you make a choice, which was made after a very rigorous initial tender process in 2001, you enter into that sort of an arrangement with eyes wide open to the fact that your hardware and your software are inextricably linked and that to move away could have significant resource implications for you. The second issue that I think is probably important to advise you of is that as of August 2005 the Commonwealth has sought to move the help desk, hardware maintenance and first- and second-level support into the Commonwealth area of responsibility. Part of the logic behind that is that it is a process which is designed to provide a higher level of ownership of the system and less reliance upon SAGEM, along with a reduction in the recurrent costs associated with maintaining the national fingerprint system.

**Senator LUDWIG**—Are you able to then say what the current cost of the upgrade is?

**Mr McDevitt**—I will need to take that on notice.

**Senator LUDWIG**—Is there is a time frame for completion?

**Mr McDevitt**—The CEO has the answer to that question.

**Ms McLay**—The budget for the upgrade is \$4.926 million.

**Senator LUDWIG**—And the time frame for completion?

**Ms McLay**—It was scheduled to finish in June 2006 but will be completed in April 2006.

**Mr McDevitt**—Senator, just to give you a little more detail on what I was saying about Sagem's reputation as a provider, it has recently been selected as the preferred supplier of AFIS technology for the United Kingdom and was also recently ranked as the most accurate matching system, during an RCMP AFIS replacement tender process.

**Senator LUDWIG**—If you are that wedded to it, why is this statement in your annual report:

CrimTrac continues to rationalise the system support services to reduce dependence on SAGEM for system support functions ...

Could you indicate what the intended end result is? Do you want to be completely free of Sagem or are there just certain functions you want to shift?

**Mr McDevitt**—I have not been long enough in the organisation to be able to answer that at this point. For me, it comes down to the value in the dollar that we get out of any engagement with any organisation, Sagem included. I think we need to constantly scan the environment, constantly look at what else is available and ensure that we maintain ourselves at the leading edge. But also, when we buy a complete package or enter into an arrangement for a complete package, if as time evolves we are able to actually take on some of that work ourselves or there is a better way of doing it and there is a cost-benefit opportunity there, then we should look at pursuing that.

**Senator LUDWIG**—Perhaps you could take this on notice, but it seems you are taking steps to reduce your dependency on Sagem. Is that a fair statement?

**Mr McDevitt**—If there are aspects of the agreement that we have with Sagem, if there are items within that bucket of deliverables that they provide to us, that we think we could actually handle ourselves and save money, then I think we should explore those opportunities. These decisions were obviously made before I arrived at the agency, but it seems to me that this would be quite logical.

**Senator LUDWIG**—One of the problems with that, of course, is that Sagem has the intellectual property rights to the software and it would be difficult to extricate yourself in part without finding yourself in a position where you would have to start again.

**Mr McDevitt**—At the moment we are not looking to extricate ourselves from the relationship with Sagem—hence the series of one-year renewals—but if there are elements of that which we can take without endangering our relationship with Sagem then I think they are worth looking at.

**Senator LUDWIG**—Perhaps you could look at page 17 of the annual report, where that statement is made:

CrimTrac continues to rationalise the system support services to reduce dependence on SAGEM for system support functions ...

That is obviously about elements of the Sagem program which go to system support functions. Can you indicate whether that is actually intended and, if so, when is it likely to happen; and what part of Sagem is that?

**Mr McDevitt**—I do not have intimate knowledge of that so I will need to take that on notice.

**Senator LUDWIG**—At the last estimates, Mr Oliver said:

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.

If you start walking away from parts of the relationship, they might choose to say that it is not viable anymore to in fact support you overall. So they pick up the system and are happy to end the contract, and you are left high and dry.

**Mr McDevitt**—I understand what you are saying. I am assuming that what has occurred here is a process of negotiation and engagement with Sagem in relation to components of the overall package that they delivered to us. There has obviously been an agreement arrived at

whereby parts of that component package could actually be taken on by us without endangering our overall linkage with Sagem.

**Senator LUDWIG**—Just moving to another topic, are you able to indicate the current cost of ANCOR, one of the databases of CrimTrac?

**Mr McDevitt**—The information that I have in front of me at the moment quotes an original budget estimate at \$3.14 million. As you are acutely aware, that has now been readjusted to a total of \$4.326 million upon completion of all the approved functionality.

**Senator LUDWIG**—I thought the original budget amount was \$2.987 million.

**Mr McDevitt**—The information I am briefed on is \$3.14 million.

**Ms McLay**—Which included the moneys that had already been spent on NCSOS, the National Child Sex Offender System, which was, by that business case to APMC, converted to an ANCOR project. The \$3.14 million, which is the original budget that we work from, included the moneys put forward in that business case plus the spend to date on NCSOS, its predecessor.

**Senator LUDWIG**—You corrected that in *Hansard* on 1 December 2005; I think that was when it came in. In our Senate estimates hearing on 31 October 2005, on page 78, I asked the price of ANCOR. You indicated it was \$3.140 million. Then there was a correction that Mr Oliver signed which said that Mr Burns's response of \$3.140 million included a spend of \$152,890 on early work on the National Child Sex Offender System specified in the CrimTrac intergovernmental agreement.

**Ms McLay**—That is right. ANCOR overtook NCSOS.

**Senator LUDWIG**—ANCOR was X, but the original total build, if you include the sex offender system, then takes it to \$3.1 million. I am just trying to avoid another correction letter.

**Ms McLay**—I think we are on the same page.

**Senator LUDWIG**—Has the additional \$997,000 been spent?

**Mr McDevitt**—I am advised that the \$997,000 is for a separate stage of work on ANCOR that has been approved but is not yet implemented.

**Ms McLay**—It has not yet commenced.

**Mr McDevitt**—Not yet completed.

**Senator LUDWIG**—Is it on budget to be completed? What will it do?

**Ms McLay**—Stage 6 is three remaining pieces of functionality: the investigative analysis tool, advanced mapping and advanced searching and reporting.

**Senator LUDWIG**—Is that new functionality or existing functionality? In other words, were they planned?

**Ms McLay**—It is planned. It is functionality identified in the business case.

**Senator LUDWIG**—When the business case was first modelled?

**Ms McLay**—It is functionality that had been planned.

**Senator LUDWIG**—So it is not new, in that sense. You are meeting the original business case that was developed. You just have not completed it to date.

**Ms McLay**—Correct.

**Senator LUDWIG**—So you needed another \$997,000 to move it along to complete the business case model that was put forward originally.

**Ms McLay**—Correct.

**Senator LUDWIG**—Will that complete all the functionality or are there still bits that remain?

**Mr McDevitt**—It seems to me that with all of these systems there will always be opportunities for additional enhancements, so additional business cases will need to be put up. It will be a constant process of evolution and improvement.

**Senator LUDWIG**—I am not talking about that. I am talking about what the original business case said, what you need to complete it and how much that will cost. Then I can ask you questions about additional functionality, improvements or matters that you might want to address to tweak it.

**Mr McDevitt**—Okay. My point is that I do not think any of the systems should ever remain static and should ever be curtailed as being complete items. It will need to constantly evolve.

**Senator LUDWIG**—I agree with you, and I think the immigration department could learn a lot from that statement. Sorry, it is an in joke.

**CHAIR**—You had to be there.

**Mr McDevitt**—To answer your question, I think what you are saying is correct: the additional funding will bring us up to speed with what was originally proposed, plus it will give the three additional areas of functionality that were described by the CFO.

**Senator LUDWIG**—And is there additional functionality planned now?

**Mr McDevitt**—There are three additional enhancements which are in prospect, if you like, for ANCOR. The first is the inclusion of additional categories of offenders such as, for example, when the victim is an adult rather than a child. The second is a transition from a stand-alone system to a system which is fully integrated with jurisdictional systems. The third is an ability to generate automated alerts when information relating to a registered person changes. For example, if a person moved jurisdictions, an automatic alert would be generated. I hasten to caution that those additional enhancements will require a business case, which will require approval through the BOM. There will need to be options for funding and it will have to be approved by AMPC.

**Senator LUDWIG**—I guess I did not finish this question: does the additional \$997,000 finalise the original business case model or is there still functionality that requires additional expenditure to get to that original business case model?

**Mr McDevitt**—As I understand it, it will finalise the original business case, but I would like the opportunity to be able to correct that if that is not the case.



**Senator LUDWIG**—I am only too pleased to give that. Another \$713,333 was allocated to CrimTrac for the completion of the ANCOR project out of the proceeds of crime.

**Ms McLay**—That is correct.

**Senator LUDWIG**—Is that from the \$997,000 or is it additional money?

**Ms McLay**—No, that is within that.

**Senator LUDWIG**—That was within the \$997,000?

**Ms McLay**—That was a portion of funding for the \$3.14 million budget, so it is within that \$2.9 million.

**Senator LUDWIG**—That formed part of the original money?

**Ms McLay**—Yes, that was funding for the original business case.

**Senator LUDWIG**—What date was that grant provided?

**Ms McLay**—The APMC meeting in November 2003 approved the business case and budget for ANCOR.

**Senator LUDWIG**—The one I am looking at is the answer to question No. 51, in which I asked how much had been recovered under the Proceeds of Crime Act. The answer to my question was that total receipts as at 30 September 2005 were a large figure of \$13 million. It then indicated that the CrimTrac ANCOR program received \$713,333. What date does that relate to?

**Ms McLay**—The date that we received that funding?

**Senator LUDWIG**—I guess that is all you can provide, unless you know when the grant was made.

**Mr McDevitt**—I think we will need to take that on notice. We will get you the dates that it was approved and the dates that the money was transferred across.

**Senator LUDWIG**—All right. That amount formed part of the original outlays—is that right, Mr Cornall?

**Mr Cornall**—It is the balance of the original Commonwealth seed grant.

**Senator LUDWIG**—So you did not fund it all? You found money in the Proceeds of Crime Act to support it—is that right?

**Mr Cornall**—I am not sure, Senator. I do not understand the details of the CrimTrac budget.

**Ms McLay**—The \$3.14 million was made up of \$1 million from the seed funding, \$713,000 from the Commonwealth from proceeds of crime, and the states and territories contributed \$1.4 million.

**Senator LUDWIG**—That is helpful. Thank you.

**Ms McLay**—That resolution was taken in November 2003. I do not know the date that we received the funding.

**Senator LUDWIG**—I just did not have that piece of information; that is helpful.

**Senator Ellison**—The only way you can get them moving is to use an injection of funds and to say to the states, ‘You have to stump up some money as well.’

**Senator LUDWIG**—I think they did.

**Senator Ellison**—But only because the Commonwealth did, so I made the decision. I remember the APC meeting well.

**Senator LUDWIG**—You did have to find something from the proceeds of crime, which also would have been from states.

**Senator Ellison**—The only way you can get them going is to put up some money.

**Senator LUDWIG**—Do you say that the proceeds of crime is federal proceeds?

**Senator Ellison**—Yes. In fact, funnily enough, if you look at the state proceeds of crime, they do not have an ability to share with the Commonwealth under their legislation. It is quite different to the Commonwealth legislation, where we do have an ability to share with the state and territories because we recognise that sometimes you can have a joint operation and you share the proceeds. They do not have it in their legislation. It is something that I am pushing, too, because it is very unfair. We are very unselfish.

**Senator LUDWIG**—And you expect me to say anything about that? The administration fee paid to ITSA—I just noticed on that question No. 51, Minister. Why would you fund administration fees paid to ITSA for 2003, and again for 2004 and 2005?

**Senator Ellison**—Because ITSA manages the proceeds of crime fund.

**Senator LUDWIG**—So they take their costs of managing that?

**Senator Ellison**—Yes. I would have to check but I think that is how it works, because ITSA manages the account.

**Senator LUDWIG**—That would make sense. I might come back to that. Given the time, I might put some of the rest of those questions on CrimTrac on notice and may move to—

**CHAIR**—The DPP?

**Senator LUDWIG**—Yes, please.

**CHAIR**—You have a limited selection otherwise, Senator. Thank you very much, Mr McDevitt and Ms McLay.

[10.13 pm]

#### **Commonwealth Director of Public Prosecutions**

**Senator LUDWIG**—I see you are getting extra money, Mr Bugg. Not you personally, but the DPP.

**Mr Bugg**—I got quite excited there, Senator, for a moment.

**Senator LUDWIG**—I thought at this late hour I would tempt you with that.

**Mr Bugg**—You have got me quite awake now.

**CHAIR**—Do you mean you weren't?

**Senator LUDWIG**—There was an issue that was raised by the *SMH* on 6 February that the DPP is reluctant to prosecute crimes by individuals working for corporations. That seems to be the nub of the issue. I am happy to provide it to you or you may have read it, I suspect. It says, ‘The law hunts dole frauds as rich cheats go free.’

**Mr Bugg**—No, I am more than aware of that.

**Senator LUDWIG**—How will the new money that the DPP is going to get be spent? At the moment, from answers to questions, I think about 20 per cent of your work goes to Centrelink or that type of area for prosecutions.

**Mr Bugg**—Yes, I think you asked a question on notice last year—No. 158, I think.

**Senator LUDWIG**—I was warming up to this issue.

**Mr Bugg**—It shows that, in a resource sense, it is about 16-18 per cent. You asked that question having prefaced it with a comment about the article. I suppose there are two issues there. If you want to hear my response to what was said in the article, I am quite happy to provide it. I could then respond to the second question—that is, how will the funds be expended that have been allocated to us.

**Senator LUDWIG**—I am happy with that.

**Mr Bugg**—From the answer to question 158 we gave you last year, you would have seen that the percentages, in a resource sense, are not the percentages which Professor John Braithwaite rather sadly confused the debate with in the proposition that he put to the author of that article in the *Sydney Morning Herald*. It is wrong to compare just bald numbers of cases dealt with by my office and draw some conclusion from that without looking at what each of the cases involves. And obviously it overlooks the fact that my office is not an investigative agency. It prosecutes matters that are referred to it, if the material that is contained in the referral satisfies the prosecution test which we apply consistently across the board, whether it is a minor social security fraud by comparison with a large tax fraud or corporations fraud. I found the suggestion contained in that article attributed to some rather strange analysis by Professor Braithwaite to be both offensive and very wrong.

**Senator LUDWIG**—Are you satisfied with your capacity to deal with and respond to requests for prosecutions?

**Mr Bugg**—Yes.

**Senator LUDWIG**—Are they a request for prosecution or are they a brief handed to you to examine?

**Mr Bugg**—In most cases, they are briefs referred to us by the agency. We have protocols across the board with the 40 or so agencies that refer matters to us. The matter is examined. If there is sufficient evidence with the brief to establish reasonable prospects of conviction and there are no significant public interest factors which would militate against a prosecution, then the prosecution will succeed. If there is not sufficient evidence but in the view of the person who examines the file there is an opportunity to gather further evidence, then we will make that suggestion and give that advice to the referring agency. With other agencies such as ASIC where we work more closely in the build-up of a matter, where we get a better understanding

of the direction ASIC wants to take the matter in terms of its regulatory imperative, then obviously we will be giving some advice and input as the matter develops.

In terms of resourcing, if you say the bottom line of that suggestion of Professor Braithwaite's was 'to keep our statistics we chase the weak and the poor and we ignore the rich and the strong', then that is not so. Every matter that comes to the office is given the same consideration with the same test consistently applied. Obviously greater resources go to the bigger matters. When something new comes across the horizon like Wickenby, then we are resourced to deal with what is anticipated will come our way in Wickenby. That is the money you are talking about.

**Senator LUDWIG**—Yes.

**Mr Bugg**—That is a specific-purpose allocation to Wickenby.

**Senator LUDWIG**—You cannot use it for anything else. It will be used for the prosecutions that are referred to you.

**Mr Bugg**—That is correct.

**Senator LUDWIG**—Will they only come from the ATO, ASIC and ACC or do I drop out ASIC?

**Mr Bugg**—You would drop out ASIC, although ASIC is working in the Wickenby exercise. It could be the AFP, ACC or the ATO, but it is a joint exercise and my office has already been involved in it. We are looking, in terms of our resourcing, at using it. I heard Mr Milroy give you a similar answer—

**Senator LUDWIG**—I was hoping you had not heard him.

**Mr Bugg**—I have been here all night.

**Senator LUDWIG**—I know.

**Mr Bugg**—It looks at two aspects of it. One is proceeds of crime, primarily prosecution, and secondly asset recovery. That is where the resourcing will go. Obviously we see them as large matters. How large can you estimate? I can give you an indication of the sort of thing you might expect as a top of the range exercise. We have just finished, in the last 12 months, a prosecution where the defendants were found guilty of tax fraud. In their plea of guilty to the court, their counsel—they had changed counsel by then—put to the court that the three defendants had spent \$13 million on their defence. We did not spend anything like \$13 million prosecuting it, but we have got to be resourced to meet, in this new area of activity and investigation, that sort of response to a prosecution.

If you have taken from that newspaper article the suggestion that we are either under-resourced or under-resolved, my response to both propositions is no, we are not. We have the resources to deal with the work that we are dealing with on a day-to-day basis already, and we have the resolve to deal with them, as we deal with all of these matters: to prosecute when the evidence is there, whether it be the big end of town or other smaller regulatory matters that obviously come our way. That is a rambling answer, but I wanted you to understand and be reassured that the office is not putting up a white flag.

**Senator LUDWIG**—All right. I am part-way there, but in terms of discussions with ASIC or other agencies, like ACC, do you build a working relationship with them? Do you look at what their requests or briefs are and then give them feedback? I am just unsure of how you determine the work priorities with the various competing agencies—is it right to call them ‘competing agencies’—for your time and effort.

**Mr Bugg**—It is not like, let us say, a suburban legal practice where you have got two people in your litigation branch who are doing everything and therefore trying to cope with demands from a number of directions. With ASIC, for instance—and it is a good example to give you—the work there is done by specifically dedicated branches in the regions, so that you have a commercial prosecutions branch in, let us say, Melbourne, staffed by people who effectively deal with work that comes to the office from ASIC. There are regular liaison meetings, and those liaison meetings forecast, from ASIC’s point of view, what is coming across the horizon. Those liaison meetings anticipate and prepare for the access of those files to the office.

**Senator LUDWIG**—Do you have discussions with them and feedback about whether or not they are satisfied with the way you say you are handling it?

**Mr Bugg**—Yes, we have regular liaison meetings and we have national liaison meetings. I meet regularly with the chairman, and other members of the commission, to also discuss those issues.

**Senator LUDWIG**—That is the ACC, is it?

**Mr Bugg**—ASIC. I might tell you that when that article appeared in the *Sydney Morning Herald*, the chairman telephoned me as he was about to board a flight from this country to New Zealand. He said that he was unaware of the article, he was troubled by it, he did not agree with it, and that we would speak when he returned from New Zealand. That is the level of liaison we have.

We also have a memorandum of understanding, which is currently being reviewed. It is almost completed. I think we indicated when we were before you last time, which was towards the end of last year, that there was a review of that memorandum. I have seen the latest draft, and it is almost finalised. That sets out the parameters of information exchange, liaison and activity between the offices. We have similar arrangements with other larger agencies, but it is covered in a broader general document which covers our relationships with the smaller agencies.

**Senator LUDWIG**—I understand that you have discussions and feedback with ASIC, but is there a formal appraisal system by agencies that deal with you, including ASIC, in terms of whether—

**Mr Bugg**—Whether we are performing?

**Senator LUDWIG**—I hate the words ‘satisfaction’ and ‘survey’, because I do not think they tell you much other than whether a person is disgruntled or happy. They do not tell you much in between those two parameters. I was looking for a way that you can judge whether the work that you are doing and the briefs that you receive are being dealt with in the way that

the agencies want. They might want you to prosecute every one of them to the hilt, but that is not the point of the question; it is about ensuring that they get a service that is gold plated.

**Mr Bugg**—It is a robust relationship. If we are seen as being offside, then the word will be said. If we think that a brief is not as good as it should be—in other words, there are statements missing from it or other work should have been done on it and it has just been dumped on the desk in a stockpile fashion—then we will say so. Let us be frank about it, we are all human beings. There will be occasions when that happens, but we are all strong enough and robust enough to exchange those views and get on with it and learn from it and improve the way we go about our business.

I had a communication from the Chairman of ASIC not that long ago over a sentencing matter where he understood from his region that we had indicated an acceptance of a lesser sentence than his regional office was prepared for. When I looked into it, the person from the regional office of ASIC had agreed to that outcome but had gone on leave. In his absence, a misunderstanding developed. We are all at the pointy end of the pencil. Criminal litigation is not for the faint hearted, and it does require people to trust one another and have those exchanges, and we do.

**Senator LUDWIG**—I understand that. I was interested, though, in whether there was a formal arrangement with ASIC or other agencies about (a) how they can indicate to you whether they are gaining satisfaction and (b) whether you have a feedback mechanism to them—a more formal arrangement to indicate that you are satisfying their needs, for want of a better word.

**Mr Bugg**—I will go back to what I said. Yes, we do. We have regular, monthly liaison meetings in all the regions with the ASIC offices. Then we have national liaison meetings. One is taking place in Melbourne tomorrow, and my deputy from head office will be attending that, and there will be a full review of the performance and relationships across the regions. Then, taking it to another level, the chairman and I meet on a regular basis and discuss those issues. We like to think that if there are difficulties they will be sorted out regionally. If they are not, then they are sorted out at a national liaison level. Then, ultimately, it comes to me. Since Mr Lucy has been in the chair, there has not been an instance where we have had to be brought in to resolve anything. As I said to someone recently, I think that the phone call he made to me when that article appeared in the *Sydney Morning Herald* is an indication of the level of, shall we say, satisfaction to date, because he was saying to me, ‘I don’t agree with what’s in that article.’ I know that from the conversations I have had with him.

**Senator LUDWIG**—Let us try to get it a little bit tighter. Have you formally requested feedback from client agencies about your performance?

**Mr Bugg**—Yes, and I repeat what I said. We expect through the memorandum of understanding that at a regional level we get feedback from the client agency. Then at a national level we expect that we get feedback because of the protocols and understandings we have in that memorandum. Then I expect the same at the chairman level. I have formally asked that I be notified if there is any level of dissatisfaction reported to the chairman. We have regular meetings. We meet six-monthly with the secretary. It is called the committee of

corporate wrongdoing and we report to the secretary every six months. I think since the secretary has been secretary of AGD, there has not been a problem reported to him when we formally meet. That is at a HOCOLEA meeting, which is in May and November each year, so we have got one coming up in about three months. I think you are asking the question: do we have occasional client surveys? The answer is: yes, we do. It is only something we do off our own bat but that is quite different. We have similar arrangements with other agencies.

**Senator LUDWIG**—To be blunt, I am going a little bit further than that. What I was interested in was whether you had any formal arrangements to understand your performance vis-a-vis other agencies, and is that measurable by (a) the number of complaints or (b) as the library in this place sometimes says, the number of brickbats they get or the number of bouquets they get. It is a shocking way of describing it, in my view, but be that as it may. What I was looking for was whether, in your area, there is a formal arrangement or procedure in place between the DPP and your clients—whether there is a mechanism in place that allows complaints to be raised or feedback to be given both ways. You might have complaints with agencies; agencies might have complaints with you. You referred to an informal review or various meetings—

**Mr Bugg**—No, they are no informal; they are formal. Minutes are taken of the meetings and I see them. Because I say it is a liaison meeting, you think there is an informality about it.

**Senator LUDWIG**—Yes, I do.

**Mr Bugg**—There is not. It is quite formal. Minutes are taken and I am made aware very quickly from the region and then from a national level if there is a problem. That is when the feedback occurs.

**Senator LUDWIG**—Have there been any complaints? We will start with that. From ASIC? Who else are your agencies?

**Mr Bugg**—There will occasionally be complaints. We will say, ‘This brief’s not good enough. Take it back,’ or they may say, ‘We don’t agree with the view you’ve taken of this particular matter,’ but we sit down and work it out. Their role is to investigate; our role is to prosecute. There is an overlapping of that in the sense that, as an investigator, they are also a regulator. We have to understand, and that is why we liaise with them.

**Senator LUDWIG**—I am going broader than just ASIC, though. You have got a memorandum of agreement with ASIC but there are other agencies as well. There is Centrelink—

**Mr Bugg**—We have got understandings with other agencies and we have regular regional liaison meetings and we get feedback from other agencies as well but we do not get a scoresheet back. We know whether we are providing an appropriate level of satisfaction because, as I say, we are a robust—

**Senator LUDWIG**—I accept that you might know. I am trying to work it out, that is all. Unfortunately, I do not reside with any of the agencies and I certainly do not reside in your office, so, if you can for a minute put yourself in my shoes, what I am trying to understand is: what formal arrangements are in place to deal with complaints, to deal with feedback, to deal with all of these issues that go between standard memorandums of agreement? This is

standard questioning for Senate estimates for agencies to indicate their performance and how others view them.

**Mr Bugg**—I can only repeat what I have already said. You do not just close a case because it is finished; you will go back over it and review it. Sometimes there has been an acquittal or a discharge of a jury or a hung jury, and you will go back and review that to determine what you do before you go on with the trial. But there are reviews of cases on a regular basis with agencies, particularly those where we have the larger end of town cases—the long and complex trials. The one I mentioned earlier lasted 12 months.

Let us go to Centrelink, for instance. We have Centrelink branches in each of our offices through the regions. They have regular liaison with the Centrelink people, they have regular meetings both regionally and nationally, and there is a Centrelink enforcement annual conference where there is feedback. I attend those meetings and I meet the senior staff from Centrelink and find out how things are working. Cooperatively those agencies—that is, my office and Centrelink—have produced a Centrelink prosecutions manual which assists the staff at Centrelink to more readily compile briefs to a standard that can be easily processed; hence you see the lesser level of resource application to that sort of activity.

Now, we know from those regional reports and the national liaison meetings, also with Centrelink, whether there is a lack of satisfaction. Are we dealing with matters expeditiously? Are we dealing with matters that they feel we should be prosecuting which we are not? We work on almost a daily basis with these people, and the mechanisms are there to indicate dissatisfaction. If they are not happy, it goes further up the ladder and it is dealt with. You may not see that as a formal arrangement, but I do. Quite candidly, if you implement anything more formal than that, where you are going outside that and adding another level of activity, then you are starting to impinge on the resources that you are applying to these particular matters. These people are busy enough as it is.

**Senator LUDWIG**—Are the minutes of those meetings available to the committee?

**Mr Bugg**—Available to you?

**Senator LUDWIG**—Yes.

**Mr Bugg**—I should think not, because they are all about operational matters, in the main.

**Senator LUDWIG**—All right. Put yourself in my shoes again: you tell me that everything, within reason, is going along swimmingly. In terms of figures—without going into the operational matters, because I accept that they are operational matters and I think the committee has had a longstanding view that it should not intrude on those—I want to know whether, for the agencies you have MOUs with and the agencies that you do not have MOUs with that then refer you briefs, there is a mechanism whereby I can see that, if there are complaints raised about you, they are being adequately addressed, and, if you have complaints about them, they are likewise being adequately addressed.

**Mr Bugg**—I am starting to repeat myself a bit.

**Senator LUDWIG**—I know.

**Mr Bugg**—Let me give you an example.



**Senator LUDWIG**—I think I have been as well.

**Mr Bugg**—It is probably late in the day. Let us just look at one matter.

**Senator LUDWIG**—With respect, I did not want to chew up time by looking at one matter. What I want to look at is whether there is a formal structure in place.

**Mr Bugg**—No, I just want to give you an example from that one matter.

**Senator Ellison**—It could help illustrate the matter, Madam Chair.

**Mr Bugg**—The CEO of a particular agency, which is not a high-volume case agency, contacted me and said, ‘Look, there’s a matter that seems to have been a long time in your office without any movement towards a prosecution or a rejection of the file.’ I inquired of the deputy of that region what the problem was. He was already aware of it: the particular case officer had had some personal problems—and that is life in any walk of life—and had not been able to attend as efficiently to the matter as both the client agency and we would have liked, and steps were taken to remedy that. It was quite an important matter to that agency. But that is the level of feedback that I encourage. As informal as it may appear to you, it is comfortable to me because the people I deal with on a regular basis, the heads of all these agencies, know that they can pick up a phone and contact me if they have a problem. But, as we all say, if it gets to that level then there is a real problem. And it has got to be resolved in the regions. I ask them, ‘Are there any problems for the regions?’ and they say no. You will get hiccups and bumps from time to time. You practised law yourself, Senator Ludwig; you know there are occasions when not everything runs smoothly. Witnesses do not turn up, witnesses are unavailable on the day you want them, cases are adjourned. It happens. It is unavoidable.

**Senator LUDWIG**—I accept all that. It is the mechanisms in place that I am keen to explore with you. Perhaps you could take this on notice and reflect upon the transcript that we print tonight. The issue that I wanted to look at was about complaints made or raised, issues that come to you or the DPP more generally, how you respond to them or meet those complaints and, likewise, if there are complaints that you raise with agencies. So let us depack that, put it on notice and see if we can obtain some data.

**Mr Bugg**—I would rather not take it on notice. I would rather deal with it. Is there something that is troubling you? If there is then articulate it but, if you are asking me what the mechanisms are, I have told you what the mechanisms are and that is how we operate.

**Senator LUDWIG**—How many complaints do you get?

**Senator Ellison**—Chair, I think Mr Bugg has taken it as far as he possibly can. He has outlined the mechanism.

**Senator LUDWIG**—It is a simple request.

**CHAIR**—All Senator Ludwig has done is to ask Mr Bugg to look at the *Hansard*, on notice. If Mr Bugg thinks he can add to the matters that he has already discussed this evening in response to Senator Ludwig’s particular concerns, the committee would be grateful if he would do that. I am not sure whether the discussion is occurring at some degree of cross-purposes. If it is, that may assist in clarifying it. I do not think that that is an unreasonable request, Minister.

**Senator Ellison**—I think tonight it cannot be taken any further.

**CHAIR**—I agree with that.

**Senator Ellison**—I think the matter has been adequately canvassed.

**CHAIR**—I have enjoyed the seven incarnations of it so far but I do not think it can be taken any further.

**Senator Ellison**—Exactly. We can all look at the *Hansard* and see if it needs to be canvassed any further.

**CHAIR**—I think I may leave that to others, as it happens.

**Senator Ellison**—I met with the Baroness Scotland, who is the Justice Minister in the United Kingdom. When I met her at the UN congress in Thailand, she reckoned 50 per cent of cases fell over. She cited the very instances that Mr Bugg has mentioned, such as witnesses not turning up and all sorts of problems happening, which are just absolutely attendant on the criminal justice system. To try to be prescriptive about it—to say that there is a benchmark—is very difficult. It is much like the Australian Crime Commission saying how much money they seized and what the tonnage of drugs was. Each case is different. I think it is very hard to get a prescriptive answer to what Senator Ludwig is trying to ask. I can appreciate what he is pursuing there but I think Mr Bugg has outlined the mechanism very clearly.

**Mr Bugg**—I will just say this. You asked whether the minutes of the liaison meetings would be available to this committee and I said they would not because they deal with operational matters. I will just stay with ASIC for a moment because that is a good indication because of the nature of the cases that are prosecuted. There are case reviews at those meetings. They do not just sit down and talk about the weather and who won the football. They actually look at the cases—

**Senator LUDWIG**—Mr Bugg, do not insult me. I really do not think they do that.

**Mr Bugg**—I did not mean it as an insult. I wanted to perhaps give you a better indication of the content of what went on at those meetings.

**Senator LUDWIG**—I would have hoped you have got to a stage where you were not sitting down at meetings and doing that, and I have never thought that you do.

**Senator Ellison**—I think Mr Bugg has answered the question. It will be taken no further.

**CHAIR**—I think we have taken it as far as we can. Do you have any further questions, Senator Ludwig? I know Senator Macdonald has a couple.

**Senator LUDWIG**—I am happy that Senator Macdonald has a couple.

**Senator IAN MACDONALD**—I thought you answered the questions very well, I might say. I have been listening to this downstairs and did not really intend to come here, but I thought a change of direction might have been appropriate. In my former life as a minister, I had indirect dealings with the DPP. There is a case which puzzles me. When Senator Ludwig talks about dissatisfaction, I do not think AFMA ever had dissatisfaction. I am not sure if you are personally aware of the celebrated *Viarsa I* trial, which I am still smarting at having lost. I am not sure if you are personally aware of it, but there was a mistrial after a hung jury in the first instance. I never had any contact with the DPP. I always intended to, but I was sacked

from the job before I got around to it. Perhaps that is why. The retrial took on a major case again. There were 16 jurors. As I understand it, at the end of the trial, the jury came back and told the judge they were hopelessly divided. The judge then indicated to them—and I have to say that this is only fifth-hand information—that they had to stay there and make a decision. After being locked away for nine weeks, I suspect the jury were anxious to get home. They came back in half an hour and acquitted. In instances like that, do you conduct investigations into the jury and jurors?

**Mr Bugg**—I am very much aware of the case and the outcome of it. As much as we are allowed to be disappointed and show some feeling about the outcome of a case when you are prosecuting, that was certainly my view about that outcome. We were troubled by some aspects of it, which I will not go into other than that, obviously, they were observations from within the courtroom, not a criticism of the way the judge directed the jury at all. The judge gave the jury what is called a Black direction, which goes back to the High Court's decision in *Black* as to how a trial judge, when it looks as if a jury may be deadlocked, should encourage them to go away and try to resolve that deadlock without telling them what to do but by encouraging them to see one another's views and what have you.

As you have suggested, that is pretty much the way in which the timing of the case occurred. We were a bit troubled about how quickly the jury then came back. There are a number of constraints upon going behind what occurs in a jury room. One of them is that most states have a juror's oath, which is a binding oath to not disclose to any person other than a fellow juror anything touching on or concerning the deliberations of the jury. That is not just until you have returned your verdict; that is forever and a day. In some jurisdictions, jurors are actually prevented by their oath and could be at risk if they discussed what occurred. It is only reports we had from counsel as to such things as facial expressions, body language and what have you and whether the balance of the jury, who may have had a particular view about a guilty verdict, in the end thought, 'There is no way we can persuade these other people, we might as well go along with them,' or whether it went the other way.

**Senator IAN MACDONALD**—I did not sit through the trial and, apart from two or three reports during the course of what I think was a nine-week trial, I really had little involvement. I thought the result was quite perverse though, as I did with the first hung jury. Having read that book called *The Runaway Jury* by John Grisham, one always wonders whether those sorts of things could possibly happen under the English system.

I want to make it very clear that I have had no suggestion made to me that any of the jurors acted improperly. I want to make that very clear. But this was a case in which big money and international criminal gangs were involved. There was a hung jury in the first case. I do not know if they disclose which jurors were for or against, do they?

**Mr Bugg**—No. When a jury comes back and says 'not guilty' for any Commonwealth offence—

**Senator IAN MACDONALD**—I mean in the first trial, in which the jury was hung.

**Mr Bugg**—No. We had no idea what the deadlock was and what the numbers were. Under section 80 of the Constitution, the High Court has ruled in *Cheatle's* case, which was about 13

years ago now, that with all prosecutions on indictment for Commonwealth offences there must be a unanimous verdict of 12-nil.

**Senator IAN MACDONALD**—I appreciate that. My people who wandered in and out of the court thought, anecdotally, that most of the jurors were pretty well convinced, as much as you can ever say that. Many years ago I was a solicitor and occasionally I was involved in instructing in a jury trial. How you can ever tell what a jury is thinking I am not sure, except in a small city like Townsville where the jury panel is pretty small, and then all the barristers seem to know all the idiosyncrasies of every juror. But I am sure that does not happen in Perth. I am not suggesting that any of your people involved at the time had any suspicions, but if they did is there any way that any law agency could investigate whether the sorts of things that fictionally happened in *The Runaway Jury* could possibly ever happen in Australia?

**Mr Bugg**—If there was some indication of tampering with the jury. I know there has been one instance since I have been Commonwealth director in which a trial judge in a jurisdiction—and I will keep it as anonymous as that—indicated that he had a concern about the jury verdict and wanted to refer the matter out for investigation. So there has to be some indication. As you have already said about juries, who can pick which way they are going to go and who can determine what the numbers are when there is a dispute or disagreement? But, from my point of view, if there was an indication that what you had was either tampering or interference with the balanced deliberation of the jury in a way that constituted some perversion of the justice system then it should be investigated. But you have to have some fairly clear-cut indications that that is the case.

**Senator IAN MACDONALD**—Did those involved from your side—and I have no idea who they were—feel that the balance of coincidences were running against them, with the hung jury the first time and what was clearly a hung jury on the second occasion until the judge, quite properly, again directed the jurors and not long after they came back with an acquittal?

**CHAIR**—I will leave it to Mr Bugg's discretion as to how and whether he wishes to answer that question, but I think we may be straying to a point where the DPP is in a position in which he is unable to put that sort of information on the public record.

**Mr Bugg**—I was going to say that we had discussions with the legal team that ran that prosecution and asked them to express views. They are certainly views that you call for in the confidence of a review of a matter and I will respect that confidence and not go into it in detail. But, certainly, we were disappointed and therefore asked for comment. I will not go so far as to disclose what that comment was.

**Senator IAN MACDONALD**—I am just always concerned that this was an issue involving an international criminal gang.

**Senator Ellison**—If it is of interest to the committee, the Commonwealth's view on double jeopardy is that one of the exceptions to the double jeopardy rule should be a tainted verdict. That is where it is shown that there was interference with a jury or a witness and the verdict is tainted and the person can be charged and tried again for the same offence for the very reasons Senator Macdonald is alluding to. In this modern day when we are dealing with

organised crime, I am not complacent that this is quite impossible. That is why the Commonwealth is putting it to the states that there should be reform of double jeopardy where you have a tainted verdict.

**Senator IAN MACDONALD**—Perhaps I am wrong in saying that this is organised criminal activity, because the Perth court showed that there was no criminal activity in this case and the defendant was acquitted, as they are entitled to do. I have one last question. Again, I should have followed this through before now, but there was to be a witness returned from Uruguay. The last I heard, there was some difficulty in getting him. Do you know if he ever turned up? Perhaps I am asking for a detail in this case that is beyond your capacity.

**Mr Bugg**—No, he did not come back. In terms of the time that that took dealing with the crew and then dealing with the more senior people on board the boat—

**Senator IAN MACDONALD**—Perhaps it is a question I should then direct to the foreign minister.

**CHAIR**—That opportunity will arise on Thursday, Senator Macdonald, if you are very keen.

**Mr Thornton**—For the record, we have prosecuted seven boats in relation to patagonian toothfish and have been successful in six of them. Unfortunately, it seems that the one that was not successful might have been one of the ones that it would have been better to succeed in. There have been quite successful prosecutions in relation to those matters. The other comment that I would make is the fact that there was a hung jury the first time is always difficult to interpret but, obviously, you then have two juries who look like they were going to have some doubt about the outcome, which may have been a reflection on the evidence that could be omitted in a criminal trial, so I think in some ways, whilst it might give you reason for disquiet, in other ways, it might actually say something about them.

**Senator IAN MACDONALD**—I am conscious more than most, apart from you and perhaps Senator Ellison, that the evidence that could be presented is of a form that perhaps did raise some difficulty in meeting the standard of proof required. I am conscious of that, but I am a poor loser. I should have followed this through before, but Senator Ludwig continuing on with that made me think that perhaps this was a time to find out what happened from your point of view. Thank you very much, and thanks for the good work you do. I can acknowledge that the DPP does a fabulous job in the small area I was involved with. Your success rate is great and you handle things with great professionalism.

**Senator Ellison**—There is some feedback.

**CHAIR**—From a stakeholder.

**Senator LUDWIG**—With regard to issues like perjury, how many cases have been referred to your agency on that issue in the last 12 months?

**Mr Bugg**—I could not say. It is rare. In terms of what constitutes perjury, sometimes you are disappointed because a witness cannot recall or their recall is not consistent when they get to the witness box with statements they may have made when the incident first arose. I would have to take that on notice.

**Mr Thornton**—To clarify, if you are talking about perjury in the courts themselves—and that is an offence under, I think, the Crimes Act, or it might be under the code now—there are actions that we take in relation to the ACC hearings. There have been a number of cases which are before the courts in relation to examinations by ASIO where people have either failed to answer or allegedly answered or given false or misleading information. Are you looking right across the board or just in relation to—

**Senator LUDWIG**—The various iterations. That is why I broadened it from perjury and the like.

**Mr Thornton**—You would really be looking for the perjury provision in relation to the courts, the ACC and the counter-terrorism cases.

**Senator LUDWIG**—That is probably the breadth of them, as I can recall. There is another matter. There was the Kaye case, which was referred to the DPP. How long did that take to resolve?

**Mr Bugg**—That is now before the courts. I could not tell you exactly when the brief was referred. The matter is before the court. I am happy to talk to you about that in circumstances other than on the record. It is before the court. It is being progressed now through the court process and I really would not want to talk about what went on before charges were laid.

**Senator LUDWIG**—You cannot indicate when it was first brought into your office or when the brief was referred?

**Mr Bugg**—I would like to talk to you about a couple of things when I am in a position to do so but some of those issues relate to the case itself, which is currently before the court. I know the newspaper article from which your question is raised.

**Senator LUDWIG**—Perhaps you could take it on notice and at some point provide an answer or contact the secretariat about how we might be able to obtain an answer.

**Mr Bugg**—I know within the weeks of how long it was in the office and I know what happened with it when it came to the office and later as it developed but to give you the times needs an explanation, and it is not an explanation I can give at the moment.

**CHAIR**—I just note for the record that any material provided to this committee in the estimates process must be made available publicly. It cannot be made available on a confidential basis. It is after 11 o'clock and the committee is due to adjourn. Senator Ludwig, are there further questions you wish to place on notice for the DPP?

**Senator LUDWIG**—We can continue on Friday with the DPP.

**CHAIR**—That is a matter for you. I understood you wished to examine the ACS and the AFP on Friday in particular.

**Senator LUDWIG**—I might be able to squeeze the DPP in as well. It is probably only for 15 minutes, which I lost unfortunately.

**CHAIR**—I encourage the participation of all senators in the committee so I do not regard it as a lost 15 minutes—

**Senator LUDWIG**—Perhaps I do.

**CHAIR**—but I take the point. Mr Bugg, we will be reconvening on Friday morning at 9 am.

**Mr Bugg**—It will create some personal difficulties for me but I will see what I can do about that.

**Senator LUDWIG**—I will see what I can do between now and then anyway but at this stage—

**CHAIR**—Indeed, we will all see what we can do.

**Senator Ellison**—If anything can be put on notice, it would be greatly appreciated.

**CHAIR**—We will see what we can do. Mr Bugg, if your office could communicate with our secretariat in relation to that, that would also be appreciated. Senator Ludwig, just to clarify in relation to our resumption on Friday at 9 am, am I correct in indicating that principally you wish to examine the Australian Customs Service and the Australian Federal Police, notwithstanding this matter with the DPP?

**Senator LUDWIG**—Yes.

**Senator Ellison**—Just so the agencies can have some idea, because people might need to catch planes and such, is there any indication as to the time of finishing that we can have for Friday?

**CHAIR**—The committee is hoping to have matters concluded on Friday by 2 pm.

**Senator LUDWIG**—We did not really want to tell you that, though, Minister!

**Senator Ellison**—It is for the benefit of officers.

**Senator LUDWIG**—I knew that the chair would.

**CHAIR**—That is why I asked you, Senator Ludwig. May I also say that Senator Stott Despoja has been unable to attend these estimates due to illness and has been in Adelaide so she has a number of questions she will also be placing on notice, which of course have a return date of the 31st of whatever I said this morning. We will discuss the return date, I suspect, with officers.

**Mr Bugg**—Madam Chair, is 11 o'clock a curfew time? I would prefer to go on if that is possible, purely and simply because I have to fly to Sydney tomorrow. I have to speak at an ASIC summer school conference on Thursday.

**CHAIR**—We have such a good friendship, Mr Bugg. Please do not stretch it by suggesting we stay here until 20 past 11.

**Senator Ellison**—If it is only a few questions—

**CHAIR**—These things have a habit of growing.

**Senator LUDWIG**—It may take half an hour. I do not know the responses I will get, unfortunately. That is the difficulty. We can shift around the time between nine and two. It does not necessarily have to be—

**Mr Bugg**—It takes my day out because I had commitments in Hobart and if I am not on a flight—

**Senator LUDWIG**—Do you have time between now and Friday? When else are you in Canberra?

**CHAIR**—Not to reconstitute this committee because we are group A, and group B meets in the next two days.

**Mr Bugg**—I would certainly seek an indulgence. Mr Thornton is in Perth; I am supposed to be in Hobart. I got up at 4 am so I could be here today, which probably explains the shortness of some of my responses to Senator Ludwig, for which I apologise.

**CHAIR**—There is no need for an apology.

**Senator LUDWIG**—You do not need to apologise.

**Senator Ellison**—The fact is, there is the administration of justice, which has to take its course, and the DPP is an essential part of that.

**CHAIR**—What I would like to suggest is that I discuss these matters further with Senator Ludwig and Mr Bugg's office talks to our secretariat. We will see if we can come to a meeting of the minds on that and determine what matters can be placed on notice. If it proves fruitless and there is no alternative but to reconvene the committee in estimates form then we may suggest that we do that briefly in a sitting week for the purposes of pursuing the DPP questions, if that cannot be done on Friday.

**Mr Bugg**—I do appreciate that. I am sorry to cause that difficulty for you.

**CHAIR**—It can be done on a sitting night and you would just get another special visit to Canberra.

**Committee adjourned at 11.07 pm**