



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT  
LEGISLATION COMMITTEE

ESTIMATES

**(Budget Estimates)**

TUESDAY, 23 MAY 2006

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**

**RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION**

**COMMITTEE**

**Tuesday, 23 May 2006**

**Members:** Senator Heffernan (*Chair*), Senator McEwen (*Deputy Chair*), Senators Ferris, Milne, Nash and Sterle

**Senators in attendance:** Senator Heffernan (*Chair*), Senator McEwen (*Deputy Chair*), Senators Allison, Bernardi, Carr, Ferris, Hogg, Hutchins, Johnston, Joyce, Lundy, McLucas, Nash, O'Brien, Siewert and Sterle

**Committee met at 8.58 am**

**TRANSPORT AND REGIONAL SERVICES PORTFOLIO**

Consideration resumed from 22 May 2006.

**In Attendance**

Senator the Hon. Ian Campbell, Minister for the Environment and Heritage representing the Minister for Transport and Regional Services and the Minister for Local Government Territories and Roads

**Department of Transport and Regional Services**

**Departmental Executive**

Mr Mike Mrdak, Deputy Secretary  
Ms Susan Page, Deputy Secretary  
Mr Andrew Tongue, Deputy Secretary

**Corporate Services**

Mr Jeremy Chandler, Executive Director, Corporate Services  
Mr Simon Ash, Chief Financial Officer, Corporate Services  
Ms Sharon Field, General Manager, People and Planning  
Mr David Banham, Chief Information Officer

**Portfolio Strategic Policy & Projects**

Mr Phil Potterton, Executive Director, Bureau of Transport and Regional Economics  
Dr Andy Turner, General Manager, Regional Research and Statistics  
Dr Anthony Ockwell, General Manager, Strategic Transport Policy Development  
Mr Roger Fisher, Strategic Services

**AusLink**

Ms Leslie Riggs, Executive Director, AusLink  
Mr John Elliott, General Manager, AusLink Planning  
Mr Robert Hogan, General Manager, AusLink Road Investment  
Ms Joan Armitage, General Manager, AusLink Systems and Regional Investment  
Mr Jim Wolfe, General Manager, AusLink Rail Investment

Mr Simon Atkinson, Acting General Manager, AusLink Systems and Local Roads Investment

**Maritime and Land Transport**

Mr Andrew Wilson, Executive Director, Maritime and Land Transport  
Mr Alan Gascoyne, Acting General Manager, Vehicle Safety Standards  
Mr Michael Sutton, General Manager, Maritime  
Mr Stewart Jones, General Manager, Transport Integration and Reform

**Australian Transport Safety Bureau**

Mr Kym Bills, Executive Director, Australian Transport Safety Bureau  
Mr Joe Motha, General Manager, Road Safety  
Mr Alan Stray, Deputy Director, Information and Investigations  
Mr Julian Walsh, Deputy Director, Aviation Safety Investigation  
Mr Kit Filor, Deputy Director, Surface Safety Investigation

**Aviation and Airports**

Mr Neil Williams, General Manager, Airport Planning and Regulation  
Ms Marilyn Chilvers, General Manager, Aviation Operations  
Mr Stephen Borthwick, General Manager, Aviation Markets  
Mr Stuart Sargent, General Manager, Office of Airspace Management

**Civil Aviation Safety Authority**

Mr Bruce Byron, Chief Executive Officer  
Mr Bruce Gemmell, Deputy Chief Executive Officer and Chief Operating Officer  
Mr Rob Collins, Group General Manager, General Aviation Operations Group  
Mr Peter Boyd, Head of the Planning and Governance Office  
Mr Patrick Murray, Group General Manager, Air Transport Operations Group  
Dr Graham Edkins, Group General Manager, Personnel, Licensing, Education and Training Group  
Mr Greg Vaughan, Head of Manufacturing, Certification, and New Technologies Office  
Mr Peter Ilyk, General Counsel  
Mr Christopher Farrelley, Chief Information Officer  
Ms Betty Edwards, Chief Financial Officer  
Mr Gary Harbor, Head of Human Resources  
Ms Julie Fox, Acting General Manager, Corporate Relations  
Mr Kim Jones, Manager, Airways and Aerodromes  
Dr Jonathan Aleck, Manager, Enforcement and Investigations  
Mr Richard Purdie, Manager, Air Transport Field Office Brisbane

**Australian Maritime Safety Authority**

Mrs Dianne Rimington, Acting Chief Executive Officer  
Mr David Baird, General Manager, Emergency Response  
Mr Mick Kinley, General Manager, Maritime Operations

**Office of Transport Security**

Mr Paul Retter, Executive Director, Office of Transport Security  
Mr Darren Crombie, General Manager, Aviation Security Operations  
Mr Jeremy Parkinson, Acting General Manager, Maritime Security  
Ms Sue McIntosh, General Manager, Critical Infrastructure and Surface Transport Security

Ms Cheryl Johnson Acting General Manager, Regional Aviation and Air Cargo Security

Mr Richard Windeyer, General Manager, Aviation Security Policy and Legislation

**Inspector of Transport Security**

Mr Mick Palmer, Inspector of Transport Security

Mr Bill Ellis, Adviser, Office of the Inspector of Transport Security

Mr Peter Pearsall, Section Head, Office of the Inspector of Transport Security

**Airservices Australia**

Mr Greg Russell, Chief Executive Officer

Mr Ken McLean, General Manager, Air Traffic Control

Mr Jason Harfield, General Manager, Safety Management

Ms Claire Marrison, Acting General Manager, Corporate Affairs

**Regional Services**

Ms Carolyn McNally, Executive Director, Regional Services

Dr Gary Dolman, General Manager, Regional Partnerships

Mr Daniel Owen, General Manager, Regional and Indigenous Policy

Ms Karen Gosling, General Manager, Sustainable Regions and Networks

**Territories and Local Government**

Mr Barry O'Neill, Acting General Manager, Local Government and Natural Disaster Relief Branch

Ms Anna Clendinning, General Manager, Territories

**National Capital Authority**

Ms Annabelle Pegrum, Chief Executive Officer

Mr Lindsay Evans, Managing Director, Business

Mr Graham Scott-Bohanna, Managing Director, Design

Mr Todd Rohl, Managing Director, Planning and Urban Design

Ms Alison Walker-Kaye, Director, Corporate

Mr Geoff Britt, Chief Finance Officer

Mr Phil Wales, Director, Executive Governance

Mr George Lasek, Director, National Capital Estate

Mr Andrew Smith, Director, National Capital Projects

Mr Peter Byron, Manager Events and Outreach

**CHAIR (Senator Heffernan)**—I declare open this hearing of the Senate Rural and Regional Affairs and Transport Legislation Committee. The committee will continue its consideration of 2006-07 budget estimates with the Department of Transport and Regional Services. As I stated yesterday, answers to questions on notice and additional information should be received by the committee no later than Thursday, 13 July. I also remind officers of the Senate's resolutions relating to the expenditure of public funds and claims of commercial-in-confidence. If no-one wants to make a statement, we will get straight into it.

[8.59 am]

**Department of Transport and Regional Services**

**Senator O'BRIEN**—Table 2.4 at page 18 of the PBS shows that more than \$2.5 million in funding for airport noise amelioration in Adelaide and Sydney will be unspent in 2005-06. Why haven't those funds been expended?

**Mr Mrdak**—Those funds relate to the Adelaide noise attenuation program. The Adelaide program is currently expected to finish in the next financial year. Expenditure, both anticipated and the current levels of the Adelaide program, has come in considerably under what our initial estimates were at the time that the program was established. Therefore, the budget has been revised downward by \$2.9 million. We have now completed all of the residential insulation in Adelaide and are completing the last of the public buildings to be done in Adelaide. I can provide the committee with a summary table which has the status of the work under both programs. Essentially, it reflects the fact that we had had some initial overestimate of cost and the project has been completed at a lesser cost.

**Senator O'BRIEN**—What you are saying is that the reason you are not rephrasing in Adelaide is that you have done all the work and it has come in under budget. You are not proposing to rephrase anything.

**Mr Mrdak**—We have rephased a portion of the moneys. We have moved some funds into 06-07 and a small amount to 07-08 to finalise the program, but there is also a budget reduction of the order of \$2.9 million based on current levels of expenditure which are no longer required on current estimates. As I say, I can table for you a summary table which has the status of work, both in Sydney and Adelaide, across each of the categories of buildings being insulated.

**Senator O'BRIEN**—I would appreciate that. Will that cover details such as how many private homes will be insulated this financial year in both Sydney and Adelaide?

**Mr Mrdak**—Yes, it does. I will provide that.

**Senator O'BRIEN**—And how many public buildings?

**Mr Mrdak**—Yes.

**Senator O'BRIEN**—And what the cost of these works are?

**Mr Mrdak**—It does not have the cost of the works. I can provide that for you, though, if you would like the breakdown of costs to date against each category.

**Senator O'BRIEN**—Yes, that would be good.

**Mr Mrdak**—I will take that on notice, if that is okay.

**Senator O'BRIEN**—And could you also let us know how much will be expended on the administration of the programs as opposed to the work itself in each case, for Adelaide and Sydney?

**Mr Mrdak**—The administration in terms of departmental costs?

**Senator O'BRIEN**—Yes.

**Mr Mrdak**—Yes, certainly.

**Senator McEWEN**—Has the department contributed anything to the soundproofing of the new IKEA building on airport land in Adelaide?

**Mr Mrdak**—No. That would have been a matter between the builders of the building and the owners of Adelaide Airport at the time the building was designed and approved.

**Senator O'BRIEN**—Can you tell us how the department surveys the recipients of the work to find out if it is effective?

**Mr Mrdak**—The department issues a survey to all those who have agreed to have their homes insulated under the program. Those surveys have now been issued. We have now received scores from those who have responded. I think we have now received the majority of returns of the questionnaires, which go to all of those who are eligible for the installation. At this stage my advice is that we have an overall satisfaction rate of 80 per cent in both Sydney and Adelaide, with people rating either 'very good' or 'excellent' the work that has been done in noise attenuation thus far. It is a survey which was handed out at the time that people had the works undertaken.

**Senator O'BRIEN**—Has the department commenced negotiations with United Arab Emirates on a new air services agreement?

**Mr Mrdak**—No. We have had an initial approach. Mr Borthwick and I met with the ambassador a week or so ago when he outlined to us the desire of his government to see an expansion of services by Etihad Airways. We have also had some mention by Emirates Airlines, in the media, of their desire to expand services, and we have had a general approach from Emirates looking to have negotiations perhaps later this year. We have not had an official approach from the UAE government in relation to an expansion by Emirates, but we have had an approach in relation to Etihad.

**Mr Borthwick**—UAE has written to the department requesting talks in the second half of this year and we are working through that process now.

**Senator O'BRIEN**—So there are two airlines involved?

**Mr Mrdak**—At this stage, we are aware of two airlines from the UAE that are seeking additional capacity. Etihad Airways is looking to commence services to Australia and obviously there is Emirates.

**Senator O'BRIEN**—I think it was last year that Qatar Airways made an approach as well.

**Mr Mrdak**—We have recently had discussions with the government of Qatar. Those discussions were held last week. The discussions were not successful. There remain outstanding issues between the two governments in relation to that. We remain hopeful that we can settle those issues very quickly, which would enable Qatar Airways to commence services to Australia. They have indicated their desire to operate to Melbourne. We would hope to be able to facilitate that through an agreement very soon. But we were not successful in concluding an agreement last week.

**Senator O'BRIEN**—Given the time the government took to make up its mind on access by Singapore Airlines to the transpacific route, what is the expected time frame for the negotiations with UAE?

**Mr Mrdak**—We have not at this stage had an opportunity to brief the minister in relation to the request from UAE, nor to consider when we might be able to schedule discussions with them. That will be a matter for the minister to consider.

**Senator O'BRIEN**—I now want to return to the dispute between the City of Belmont and Westralia Airports Corporation over rate equivalent payments. What information was given to prospective lessees at Perth airport about the obligation to make rate equivalents payments?

**Mr Mrdak**—Prospective lessees in terms of the purchasers of the airport?

**Senator O'BRIEN**—Yes.

**Mr Mrdak**—The information memorandum at the time the airports were put out for sale outlined the Australian government's policy in relation to competitive neutrality and the intention to provide for essentially a rate equivalent payment through an ex gratia arrangement which continued—and actually confirmed and strengthened—some of the arrangements that were in place under the former Federal Airports Corporation. At the time of the sale, purchasers were provided with a draft lease and, in the information memorandum, information detailing how the Australian government proposed to handle the issue of rate equivalent payments.

**Senator O'BRIEN**—Were they advised they would be required to make full rate equivalent payments?

**Mr Mrdak**—They were provided with the terms of the draft lease, which is the lease that is now in effect, at the time, so they bid on the basis of the lease that the Commonwealth was proposing for the airport. As we discussed at the last hearing of the committee, the wording of the lease—and I am happy to table the wording of that lease with the committee—essentially provides that, because it is Commonwealth land, where the council applies the rating required in that jurisdiction to the areas of the airport that are, under the lease, rateable, which is the non-aero areas—

**Senator O'BRIEN**—What does 'non-aero areas' mean?

**Mr Mrdak**—We exclude areas such as runway, apron, movement services and vacant land from the rates.

**Senator O'BRIEN**—So some parts of terminals will be rateable?

**Mr Mrdak**—Some parts of terminals are rateable where they are clearly commercial operations, because the intent of these clauses in the lease is to ensure that competitive neutrality takes place between businesses locating on airports and those which are operating off the airport site. In some cases, areas of terminals are clearly aero facilities such as aprons, movement areas and the like.

**Senator O'BRIEN**—Passenger lounges and gates?

**Mr Mrdak**—That is right. They are clearly aero facilities. They are clearly part of the airport development as an operation and we would regard them as non-rateable. The lease sets out the categories which are not subject to the definition under the clause as payable for payments equivalent to rates.

**Senator O'BRIEN**—'Rate equivalent payments' seems to be saying that rates would be payable for that land if it were not protected under Commonwealth ownership.

**Mr Mrdak**—That is correct. The intention was to provide a mechanism by which land which is held by virtue of being Commonwealth land is not subject to state and local

government taxes. There is a rate equivalent payment—an ex gratia payment—in lieu of rates and taxes which is payable by the airport lessee and its by sub-tenants to the local government authority.

**Senator O'BRIEN**—If the prospective lessees knew they had the ability to negotiate down the rate equivalent payments, could the Commonwealth have extracted a greater return for the 99-year lease?

**Mr Mrdak**—It would depend on how they built this issue into their financial models for the way in which they bid for the airport. So I do not believe this is one of those issues that would have been a determining factor in the financial models of the airports.

**Senator O'BRIEN**—Are you saying that it was not the Commonwealth's intention that there would be the ability to negotiate down?

**Mr Mrdak**—To put this in context, at that time the former Federal Airports Corporation operated with a government policy position established at the time of the formation of the Federal Airports Corporation in 1986 which was that ex gratia payments would be made by Commonwealth-owned airports through the Federal Airports Corporation to local authorities, to ensure there was a competitively-neutral position. But it was the case at that time that most airports—in fact all, I think at the time—had arrangements in place with local government with an understanding of what would be paid at that time.

It was always the understanding that some of those arrangements would continue on, and that has been the case. It is my understanding that the majority of airports, post-privatisation, have negotiated arrangements with the respective local governments which provide some form of discount, reflecting the level of service being provided by that local authority to the airport operator.

We have two airports which have been prominent publicly which have not been able to reach an agreement in the last year or so with airports. They include Perth Airport and the Belmont City Council, and the West Torrens council in Adelaide. My understanding is that the other—at least Commonwealth airports—have all had longstanding agreements with local governments which provide some form of agreement, including some form of discount in many cases provided by that local authority. It is not an issue which is specified in respect of the terms of the lease but it is something which has continued as a historical arrangement which has been renegotiated in many cases since privatisation between the parties.

**Senator O'BRIEN**—Is it the case that the so-called administrators' versions of the leases for our major airports were created to ensure consistency in interpretation?

**Mr Williams**—Yes.

**Senator O'BRIEN**—I understand these administrators' versions contain commentary on the way the lease documents are to be interpreted. Is that correct?

**Mr Williams**—Yes.

**Senator O'BRIEN**—Can the department table the administrator's version of the Perth Airport lease?

**Mr Williams**—I will take that on notice. I do not, in principle, see a problem with that. I do not think there is much commentary, from memory, in relation to this issue.

**Mr Mrdak**—We will come back to you on that one.

**Senator O'BRIEN**—Okay. In answer to question AAA08 from Senator Carr, the department says—and I quote: 'It does not accept that shopping centres and private landholders are rated in the same way as the airport corporations and receive the same services. I have personally asked the City of Belmont about this matter and the city asserts that Westralia Airports Corporation receives the same services as a shopping centre.'

**Mr Mrdak**—I think that is an issue of contention between them. The airport, to my understanding, would argue that they, for instance, maintain the roads on the airport site and they receive no other services. I am aware that they would claim that are being provided by the council that they are not paying for either directly through fees and charges. So there is obviously an issue there between the parties.

**Senator O'BRIEN**—Does the Commonwealth believe it has any obligation as lessor to enforce the terms of its own lease with Westralia Airports Corporation in respect of rate equivalent payments?

**Mr Mrdak**—The Commonwealth has never taken a different view to that. The Commonwealth has always taken the view that the lease provides obligations on both us as the lessor and on the lessee. We would obviously take steps to ensure that the lease is complied with.

**Senator O'BRIEN**—Has the minister received any requests from the City of Belmont for a meeting to discuss these issues?

**Mr Williams**—My understanding is that he has.

**Senator O'BRIEN**—What has been the minister's response?

**Mr Williams**—I do not think he has met with them at this stage.

**Senator O'BRIEN**—Why won't the minister meet with the City of Belmont?

**Senator Ian Campbell**—He did not say that he would not meet with them; he said we have not met with them at this stage.

**Senator O'BRIEN**—How long ago was the request made?

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

**Senator O'BRIEN**—Has the minister indicated anything to the Belmont City Council about whether he is prepared to meet with them?

**Mr Williams**—Again, I would have to take that on notice. I am not aware.

**Senator Ian Campbell**—Could I just say that I would hope that he does not meet with them, because this is a commercial dispute between the Belmont City Council and the corporation that runs the airport. To go back to a previous question, you asked: had the lessees and sublessees known about the chance to negotiate what are effectively outgoings, would you have got a bigger base rent? I think the answer to that is probably no. The reality is that, with all major commercial buildings in any city anywhere in the world, the outgoings to a

large extent are in fact matters that can be made more efficient. It is very often the case that major commercial building owners do negotiate with the city in relation to rates and taxes. They negotiate with the Valuer-General's office on valuations. They negotiate and arbitrate and would sometimes take legal action on not only the rating level but also the valuation. So these are very normal commercial disputes, and I think it would be wrong for the Commonwealth, as a head lessor—the lessor of a 99-year lease, which in valuation practices is effectively the same as freehold—to interfere in a dispute between a sublessee or lessee and the council.

**Senator O'BRIEN**—Has Mr Truss met with representatives of the Westralia Airports Corporation since his appointment as Minister for Transport and Regional Services?

**Mr Williams**—Yes.

**Senator O'BRIEN**—So he has met with one side of the dispute but not the other?

**Mr Williams**—Can I clarify one thing: in relation to requests, I think the request—from memory, although I will check the records—was from the Australian Mayoral Aviation Council, not directly from the City of Belmont.

**Mr Mrdak**—To add to that, the minister in his role is the Commonwealth minister responsible for the Airports Act. The issue of rates on Perth Airport is one of a number of matters which the minister would discuss with the operators of Perth Airport.

**Senator O'BRIEN**—But he apparently will not discuss them with the council.

**Senator Ian Campbell**—We have not said that. Do not verbal us—the officers or me.

**Senator O'BRIEN**—He has not, and the request has been—

**Senator Ian Campbell**—I am saying that if I were him I would not meet with them. It is up to him—he is a cabinet minister and he may choose to. He may decide it is a good idea and I am totally wrong.

**Senator O'BRIEN**—You jumped in before you really knew what was going on.

**Senator Ian Campbell**—If I were the minister I would say no, but he has not refused to meet with them, so do not verbal us.

**Senator O'BRIEN**—He is taking an awful long time to respond.

**Senator Ian Campbell**—You are taking a long time to ask your questions. Why don't you get on with your next question?

**Senator O'BRIEN**—You are petulant child sometimes. When Mr Truss has met with representatives of the Westralia Airports Corporation, has the matter of the dispute over rate equivalent payments been discussed?

**Mr Mrdak**—I do not know if it is appropriate for us to be commenting on discussions that take place between the minister and the parties. I am happy to take that on notice, but certainly the minister discussed a whole range of matters in relation to the operation of the airport.

**Senator O'BRIEN**—Has the department received any requests from the City of Belmont for a meeting to discuss these issues?

**Mr Williams**—Yes.

**Senator O'BRIEN**—How has the department responded?

**Mr Williams**—I responded either last week or the week before and said that I was prepared to meet with the council but that at this stage we were in the process of providing advice to the minister in relation to the issue and, once that had been considered, we would be in a position to meet.

**Senator O'BRIEN**—Do you know what sum of rate equivalent payments is being sought by the City of Belmont as outstanding?

**Mr Mrdak**—My understanding is that the City of Belmont has invoiced Perth Airport an amount of \$2,102,519 for the period 2005-06.

**Mr Williams**—The amount outstanding from the City of Belmont's point of view is \$409,145.

**Senator O'BRIEN**—That is this year's rate amount?

**Mr Williams**—Yes.

**Senator O'BRIEN**—You told us that the minister has received a request from the Australian Mayoral Aviation Council for a meeting to discuss the issue of rate equivalent payments.

**Mr Williams**—Yes.

**Senator O'BRIEN**—Do I understand you to say that the minister has not responded to that request?

**Mr Williams**—I am not sure. I would have to take that on notice. I am pretty sure it was a recent request.

**Senator O'BRIEN**—Okay. Do I read the answer to AAA01 to mean that the Commonwealth last sought legal advice about rate equivalent payments in 2000?

**Mr Mrdak**—That was correct at the time of answering that question. We have now recently sought senior counsel advice on the matters raised by the parties. We have recently received that senior counsel advice and, as Mr Williams has indicated, we are now in the process of providing advice to the minister on this matter.

**Senator JOHNSTON**—Would you be able to table that advice for the benefit of senators?

**Mr Mrdak**—The advice is from the Australian government's solicitor. I am not in a position to table that at this stage. I am happy to take that on notice. That would be a matter for the minister after he has considered it. We have not had the opportunity at this stage to brief and discuss the advice with the minister. The minister may choose to not release the information based on legal privilege and the like in the advice involved, but I will take that up with the minister.

**Senator JOHNSTON**—The reason I ask is because the advice concerns a lessee and the obligations of a lessee pursuant to a lease. The Commonwealth is not exposed to any liability whatsoever with respect to rates by the contract or in its position as the Crown in right of the Commonwealth, so legal professional privilege arguably would not apply to that advice. It is

simply looking at the position of the lessee pursuant to clause 24 and an interpretation of that clause from the lessee's perspective. In other words, what is the liability of the lessee? I would have thought that it was a document which is able to be tabled because it is not a matter going to the position or liability of the Commonwealth, to my understanding, unless you can tell me any different.

**Mr Mrdak**—It is a very comprehensive, broad ranging piece of advice which has examined the Commonwealth's position from the time at which we drafted these clauses and the like. I understand the point you are making. I have to take it on notice and seek advice in relation to this matter from my minister and from counsel.

**Senator JOHNSTON**—Could you also take on notice the question as to whether it deals with the Western Australian context—that is, the legislative framework of the state of Western Australia in the administration of commercial leases in that state.

**Mr Mrdak**—In seeking this senior counsel advice we specifically sought advice on the operation of the WA and South Australian legislation with respect to the airports that are in dispute with those councils. The senior counsel advice does cover those issues.

**Senator JOHNSTON**—Very good. I trust that the lease also deals with the clause that relates to land tax, because the lease sets out that the minister can direct that land tax is not payable, in stark contrast to the rates clause. That would suggest that the rates clause is legally in a different context completely to the discretion able to be exercised by the minister on land tax. Can you tell me whether the minister has made such a direction with respect to the Westralia Airports Corporation?

**Mr Mrdak**—In relation to land tax?

**Senator JOHNSTON**—State land tax.

**Mr Mrdak**—I am not aware of any such position.

**Mr Williams**—Land tax is payable to the Commonwealth, not to the state. We receive land tax equivalent payments from all the airport lessee companies. The advice did not look into land tax.

**Senator JOHNSTON**—Has the minister directed that the sublessees pay land tax or that the airports corporation pay land tax?

**Mr Mrdak**—The provisions of the lease provide for land tax or an equivalent payment to be made by the airport lessee company.

**Senator JOHNSTON**—Do you know if it is being paid?

**Mr Mrdak**—Yes, it is.

**Mr Williams**—Yes. There is an amount in the budget papers.

**Senator JOHNSTON**—Good. You say that the past practice across Australia with respect to other airports—say, Adelaide and Perth—is that there be some form of discount. Are you aware that shires and cities have a restriction on the level of intensive development they can carry out? There is an index applying to the area surrounding the runway that restricts the level of development in local authority areas. Are you aware of that?

**Mr Mrdak**—Is that the Australian Noise Exposure Forecast and the recommended land use practices?

**Senator JOHNSTON**—I think it is.

**Mr Mrdak**—I am certainly aware of that. That is Australian Standard AS2021, which sets out recommended land use practices, which some councils apply better than others.

**Senator JOHNSTON**—Technically there is a restriction on zoning and the capacity for the level of intensive development of housing blocks underneath the flight paths of airports.

**Mr Mrdak**—There are, in effect, two provisions. Firstly, there is an obstacle limitation surface clearance process, which ensures that buildings of a certain height are not put in the way of airports preventing operation of those airports. Secondly, as I have outlined, Australian Standard AS2021 sets out recommended land use practices around airports based on the Australian Noise Exposure Forecast system. That is a recommended land use practice. As I said, some councils apply it better than others.

**Senator JOHNSTON**—Yes, but, if you do apply it, there is a substantial reduction in the amount of rates that a council can recover from the area of land, because developers cannot develop the land to its full potential because of the airport. Are you aware of that?

**Mr Mrdak**—There are a range of arguments about the development that takes place around airports. Some would argue that, because of the commercial opportunities driven by the airport, the land around an airport is much more valuable than it otherwise would be.

**Senator JOHNSTON**—Sure. Are you aware that a number of the roads that can be used to access Perth Airport run through the City of Belmont, such that the traffic load in the City of Belmont is increased substantially by having the airport there?

**Mr Mrdak**—Most communities and local government authorities around Australia recognise that the airport is the significant economic driver in the region—it is a major employment centre and it is the major reason for the commercial activity in the area. I think most communities in Australia appreciate that the airport is the economic driver for the region.

**Senator JOHNSTON**—Belmont is a bit different from most places. There are other economic drivers in Belmont and the airport is not necessarily the largest economic driver. In any event, the airport is also part of another local authority area. The City of Belmont incurs expense in maintaining roads, in flood mitigation and in adhering to the requirements of the standard that we have been discussing. There is a hidden cost to the ratepayers of the City of Belmont in having an airport within the city's boundaries. Is any accommodation made for that in the clause?

**Mr Mrdak**—There are a range of issues around what you have outlined, not least of which is the economic benefit driven by the airport, which benefits the whole region, including the City of Belmont. I am not too sure that that is relevant to the issue of this clause. This clause is about the competitive neutrality position we are placing on businesses on airport and off airport. The issues you have raised run into a whole range of economic issues around the operation of these airports. As I have said, most councils in Australia recognise that airports are critical pieces of national infrastructure which have enormous local benefit.

**Senator JOHNSTON**—They are. But, now that they have been privatised, they are commercial operations and they compete directly with businesses in the shire which pay rates. If you do not enforce rates, you have no competitive neutrality, you have unfair competition and you have what is effectively a tax haven.

**Mr Mrdak**—I do not think there is any suggestion the department has not enforced the provisions of the lease. What we have said—and I think the minister outlined it earlier—is that there is an expectation by the Commonwealth that if the council has correctly applied the approach to the way in which the rates are determined and levied then the rates are payable. That is clear under the clauses. What we have said consistently in our advice to airports and to councils is that we expect the airport operator and the council to reach an arrangement. It is open to the parties to reach an agreement which reflects the level of service which is being provided.

That is a judgment being made by most councils around Australia in the way in which they have negotiated the way forward with these airports. We have a situation, as the minister outlined, where we have two parties here that have not agreed on these matters. I think the issue is one of how we progress that. I would be surprised if there were any suggestion the department has not fully applied the lease. What we have said is we have two parties who have, up to this year, been able to agree on a process. They have not been able to for the year we are currently in.

**Senator JOHNSTON**—I appreciate that and I thank you for the way that you have approached your assessment of how the situation should work because I think you are right. The rates are payable and then there is an agreement as to what the parties commercially can agree, whether it be services in kind, flowing one to the other, and how they can get along together. But the rates are payable. So how is it that \$400,000 is still outstanding?

**Mr Mrdak**—As I say, the parties have yet to reach an agreement. I think Perth Airport had reached a judgment at a certain point that the rate equivalent should be a certain amount. Belmont has a different view. I think the issue really is that they have yet to agree. They had a process in place which has not been followed this year about what if any discount should apply to those rates. I think this matter still needs some negotiation between the parties, but the issue of the application of the clause I do not think leaves anyone in doubt. But we have been clear in our advice to councils, and we have tabled that advice for the committee. I will read it: ‘We have resiled from the notion that the airport operator should only be obligated to pay local councils for the cost of services actually provided by them.’ But we would want to see scope in the agreements for some recognition of services provided. I think that is not unusual in most jurisdictions for any large ratepayer.

**Senator JOHNSTON**—Why would you just restrict it to services? Why wouldn’t you analyse the overall cost to council and ratepayers of having an airport within the local authority boundary?

**Mr Mrdak**—If I were an airport operator, I would also want to have a calculation of the benefits flowing to the community from having that airport there, which should also be recognised in the way in which the council approaches this matter. I do not think it is as simple as perhaps you presented there from the perspective of the council as cost. There is

also a whole range of benefits flowing from these airports. These are the major employment generators and major economic centres of activity for most of the regions in which they are located. I accept your point about Belmont, but I do not think too many other local government authorities in Australia would argue about the opportunity to have an airport like Perth's sitting in their area.

**Senator O'BRIEN**—I think that is a little bit of a fallacious argument. What the council is saying is that these airports take a large chunk of land which would otherwise be rateable land so far as the council is concerned which they could organise for other industry, for residential development et cetera, which would be a rate base that would allow the council to provide services. It may not be a great boost for jobs in the council area, but the council's rate base would in all likelihood be significantly greater. So they do not see it in the same way as you are putting it forward. But the question arises: if there is no agreement, the councils being a third party, how is the matter resolved? Does that mean that the Commonwealth becomes the arbiter, or has the Commonwealth got a method of determining the dispute between its lessee and the third-party council, which is supposed to be a beneficiary?

**Mr Mrdak**—The reason we have now sought senior counsel advice is to clarify some questions in relation to the sorts of issues you have raised and about the provisions which Senator Johnston has raised—the operation of the provisions and how they relate to WA legislation and the like. We have now got that senior counsel advice. The next stage for us is to prepare advice for and brief the minister on what this advice contains and also options for taking this matter forward. That is the stage we are at at the moment, and until such time as we have had an opportunity to discuss it with the minister I am not really in a position to talk about what may or may not be the Commonwealth's options in going forward with this matter. But it remains our view that there is still scope for the parties to come together and determine an outcome themselves.

**Senator O'BRIEN**—I guess, theoretically, that is always possible, but given the period of time that the matter has been in dispute—and it has been in dispute in Adelaide for more than one year—

**Mr Mrdak**—True. I think the Adelaide situation is a bit different—

**Senator Ian Campbell**—Can I just intervene. These are not unusual disputes. What is unusual here is that the Commonwealth signed a 99-year lease about 10 years ago. The Commonwealth has to tread very carefully in these matters. It is a very big organisation. I can see that both sides of this sort of dispute would want the Commonwealth to come in and fall on their side, and that is obviously why you are getting both sides lobbying the Commonwealth. The Commonwealth has to tread very carefully in this. In most of these negotiations, which would occur all around the country on any given day between large landowners and councils, the Commonwealth will not be involved. We have to tread very carefully. There are substantial interests on both sides of the argument and you have to look very carefully at whether the Commonwealth has much of a role here at all.

**Senator O'BRIEN**—I would have thought that the Commonwealth's role was pretty obvious. The Commonwealth is the lessor. The Commonwealth has set itself up as the guardian of the interests of the community—in this case the local council body—by

protecting their rate rights. Where there is a dispute, if the Commonwealth simply says, ‘You sort it out,’ it may leave the council in a position where it has no standing and therefore no enforceable right and the only body with an enforceable right is the Commonwealth. That is the way the Commonwealth has set up the lease arrangements, and I am sure the community will argue the Commonwealth has a responsibility to help resolve the issue.

**Senator Ian Campbell**—Yes, and I say we have to handle that right very carefully.

**Senator O’BRIEN**—Prudence is obviously required, but in the case of the South Australian dispute the argument that they would put is that it is taking a long time for that prudent response from the Commonwealth to occur.

**Senator Ian Campbell**—These disputes can take a long time.

**Senator JOHNSTON**—Can you tell us when you got the advice from counsel?

**Mr Mrdak**—We received the advice last week.

**Senator JOHNSTON**—Can you tell us when you anticipate the department having that advice in a form suitable to go to the minister?

**Mr Mrdak**—It is currently being finalised. I anticipate that advice going to the minister very soon for his consideration.

**Senator JOHNSTON**—Good.

**Senator O’BRIEN**—Has the minister reconsidered his decision to keep the report of the review of the Airports Act a secret?

**Mr Williams**—We provided an answer to that question on notice at the last hearing.

**Senator JOHNSTON**—Perhaps you could refresh our memories.

**Mr Williams**—I will just find it for you. It is question on notice No. AAA 03. To your question, ‘Can the committee be provided with a copy of the review report?’ the answer was: ‘It is viewed as inappropriate to provide a copy of the report on the review of the Airports Act, as this document formed part of the internal deliberations of the government. The report also included the opinions of third parties, a number of whom advised that their views were not intended for broader release.’

**Senator O’BRIEN**—So the parliament cannot test Mr Truss’s statement when he says the review found the current regime was working well.

**Mr Williams**—That was in his press release at the time of announcing the review?

**Senator O’BRIEN**—Yes. How many individuals or organisations that made submissions to the review requested confidentiality?

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

**Senator O’BRIEN**—Did the minister accept all the recommendations in the report?

**Mr Williams**—Again, I would have to take that on notice.

**Senator O’BRIEN**—In November the minister said:

I will now seek to introduce legislative amendments to the Airports Act in the first half of 2006 to ensure the Act keeps pace with the changing domestic and international requirements.

Is that legislation the subject of a drafting instruction?

**Mr Williams**—Yes, it is. The bill is currently being drafted, with the aim of introducing it in the current sitting.

**Senator O'BRIEN**—So in the next few weeks.

**Mr Williams**—Yes.

**Senator O'BRIEN**—Turning to Canberra airport, Ministers Truss and Lloyd released a joint statement on 27 April this year, entitled 'Canberra airport to be placed on equal footing with other leased airports'. In this statement the minister revealed the government will pursue: ... legislation amendments to remove the requirement for Canberra Airport to comply with the National Capital Plan and to seek works approvals from the National Capital Authority ...

The minister says the change will do away with 'the unnecessary duplication and regulatory burden on the airport'. Can you outline the current planning requirements and describe in particular the regulatory burden Minister Truss and Minister Lloyd find objectionable?

**Mr Williams**—Under the Airports Act there was a requirement relating to Canberra airport and its master plan under regulation 5.02(3)(c):

... if the development proposed in the plan relates to Canberra Airport—comply with and otherwise not be inconsistent with the National Capital Plan prepared under Part III of the Australian Capital Territory (Planning and Land Management) Act 1988.

Therefore, Canberra airport was subject to the National Capital Plan. There was a particular part of the National Capital Plan which placed restrictions on the type of development that could occur at the airport. Also, any developments that took place at the airport required NCA works approval. I suppose the regulatory burden that the minister was talking about is that, in relation to all the other federal leased airports, there is no requirement to be subject to any other planning regime other than the Airports Act, so the government took a decision to place Canberra airport on an equal footing.

**Senator O'BRIEN**—So this proposed change will have Canberra airport subject to the same planning regime that is in place at the other privatised airports.

**Mr Williams**—Yes. Canberra airport is currently subject to two planning regimes, the Airports Act and the National Capital Plan. It will now just be subject to the Airports Act.

**Senator O'BRIEN**—The ACT government reacted negatively to the announcement. How was the ACT government consulted on this change of policy?

**Mr Mrdak**—It was a decision of the Commonwealth. I am not aware that the ACT government was formally consulted.

**Senator O'BRIEN**—How was Mr Snow and his Capital Airport Group consulted?

**Mr Mrdak**—There has been no doubt that the owners of the airport have, from the time of taking up the lease—and even before taking up the lease—raised the overlay of the second planning regime as a major issue for the airport. They have made no secret of their views. They have said publicly they believe that the NCA overlays place them in a different position to the other airport owners, and they have sought to be placed solely under the Airports Act for some time.

**Senator O'BRIEN**—I take it there was no consultative process with the National Capital Authority.

**Mr Mrdak**—Over many years, since the time the airport has been leased, there have been ongoing discussions between the department, the airport operators and the National Capital Authority in relation to the best way to handle the planning regimes and the requirements of the NCA. I think that all parties were well aware of the NCA requirements. The NCA have made a great deal of effort in the past to try to ensure consistency and speedy processes, but there remained an additional regulatory overlay in place. The NCA was well aware of the issues involved and the issues being considered by government.

**Senator O'BRIEN**—What checks and balances would be put in place to ensure that development at the airport under this new regime does not have an adverse effect on the existing town centres in the ACT?

**Mr Mrdak**—The airport development would be subject, as other leased airports are, to the provisions of the Airports Act through the master planning process, the major development plan process and our airport building control process. The master plan and major development plan processes contain statutory provisions for consultation. Those comments have to be considered by the airport operator and responded to in bringing forward their proposals for government consideration. Those types of issues would be addressed in any development plan brought forward.

**Senator O'BRIEN**—When the legislation goes through, will the National Capital Plan be disregarded entirely when it comes to planning decisions at the airport?

**Mr Williams**—I suppose in a formal sense, yes but, as Mr Mrdak outlined, certainly there would be an opportunity for the ACT government and the NCA to provide their views in relation to the master plan or major developments. Certainly, the minister is not limited under the act in what he can take into account in approving such plans. Also in the master plan and major development plans for all airports they have to state the extent to which the plan is consistent with the local planning regime, so they would have to state to what extent the master plan or any developments are consistent with the territory plan and the National Capital Plan.

**Senator O'BRIEN**—The Airports Act will not require that though, will it?

**Mr Williams**—The act requires them to state the extent of consistency but it does not have to be entirely consistent. Certainly, the extent of consistency is an issue for consideration when looking at these plans.

**Senator O'BRIEN**—This is a big win for the lessee, isn't it? It removes obligations and limitations on development with no change in cost.

**Mr Mrdak**—There is certainly the removal of a regulatory process under the National Capital Plan and the National Capital Authority processes but that is not to say that they are not subject to a regulatory regime which imposes costs on them. If you talk to the airport operators, they would say—

**Senator O'BRIEN**—I did not say that. I said this is a win because it removes an element of cost and an element of restriction on the development that now exists.

**Mr Mrdak**—It certainly places them on the same footing as other airports there is no doubt.

**Senator O'BRIEN**—But they signed the lease on a different footing didn't they?

**Mr Mrdak**—They did.

**Senator O'BRIEN**—There is no change in the cost of the airport to the lessee? Are they getting the benefit at no cost—is that how I should understand it?

**Senator Ian Campbell**—What is the benefit, Senator O'Brien?

**Senator O'BRIEN**—The benefit is what I have just described which is that they have a level of regulation, to which they agreed when they signed the lease, removed at no cost. They have limitations removed—

**Senator Ian Campbell**—We changed the level of regulation environmentally for everyone in Australia when we aligned the federal environmental law and brought in an alignment of federal and state environmental law to try to get rid of what occurred in Australia under the previous Labor regime of local, state—

**Senator O'BRIEN**—That is just a furphy, we are talking about a specific lease and a lessee of the Commonwealth.

**Senator Ian Campbell**—No, it is not. This government is focused on reducing regulation in this country, we are trying to cut red tape and we have actually done it for the whole of Australia. What you are saying is that people should all pay higher taxes because we reduce regulation. This government is pro reducing regulation and seeing the economic benefits from it.

**Senator O'BRIEN**—If you were listening you would have heard that I was talking about a specific lease that the Commonwealth entered into with Canberra airport, not the whole of the Australian people who have a relationship with the Commonwealth through other means but a lessee of the Commonwealth.

**Senator Ian Campbell**—This is an example of reducing one level of regulation and we would like to do that for all of Australia and we are doing that for all of Australia.

**Senator O'BRIEN**—I will just persist if you want to waste time, we will just persist.

**Senator Ian Campbell**—You are suggesting that we should renegotiate a lease because we have actually done some regulatory reform. It is a stupid suggestion.

**Senator O'BRIEN**—I think that, if you focus on the question, you will find that I am asking about an arrangement which has freed up a lessee from certain obligations and arguably made the value of the lease greater with no cost to the lessee.

**Senator Ian Campbell**—So the proposition that we have from the Labor Party now is that we are going to put the rent up on Canberra airport, therefore putting up the price of tickets for everyone flying into Canberra, that we are going to put up the cost of travel in Australia because we have reduced regulation. What a stupid suggestion.

**Senator O'BRIEN**—In fact the cost of travel has gone up because of the way the airports are administering the leases with the light-handed regulation that you impose. So you are already responsible for that.

**Senator Ian Campbell**—Your proposition is that we should put up the price of Canberra airport because we have reduced regulation. What we want to do is reduce regulation in this country to create greater economic output and better living standards. But Labor's idea is: increase regulation and increase taxes. Next question?

**Senator O'BRIEN**—Mr Mrdak, the reality is that there will no longer be a requirement to approach the—

**Senator Ian Campbell**—No wonder Mr Keating is just shaking his hands and nodding his head and saying, 'Where has the old party gone to?'

**Senator O'BRIEN**—So, Mr Mrdak, the reality is that the arrangement now will remove from the lessor the obligation to take matters to the National Capital Authority to seek their approval?

**Mr Mrdak**—That is correct. They will no longer be required to seek works approval from the National Capital Authority once the legislative amendments are made. As Mr Williams has outlined, they will no longer be subject to the planning restrictions of the National Capital Plan.

**Senator O'BRIEN**—In terms of the approach that they will now be required to take, other than that, how is it different from the arrangement which will exist once these changes are made?

**Mr Mrdak**—That essentially is the arrangement. They will then simply operate through the Airports Act development approval process.

**Senator Ian Campbell**—Which applies to every other airport in Australia.

**Mr Mrdak**—That is right.

**Senator O'BRIEN**—And which every other airport signed up to quite differently from Canberra. When will the airport be required to develop its new master plan under the Airports Act?

**Mr Williams**—I will just take a step back, it requires legislative change. We intend to put that through in the same bill—the Airports Amendment Bill—that I talked about earlier. The minister has requested a new master plan within 180 days of that legislation being proclaimed.

**Senator O'BRIEN**—Mr Lloyd says, 'The decision in no way diminishes the role of the NCA.' Is it not true that, with respect to airport planning, it diminishes it in every possible way?

**Mr Mrdak**—I think the minister's comment really reflects that this is not a reflection on the NCA and its overall planning for the national capital land. What this is really suggesting is that we are, in relation to the airport, placing it on the same regulatory footing as other places. It does not in any way diminish the role of the NCA in relation to other national capital land.

**Senator O'BRIEN**—In relation to the issue we were discussing earlier—the Perth Airport-Belmont council dispute about rates-equivalent payments, can you inform the committee of the arrangements for paying these charges in the case of Canberra airport?

**Mr Williams**—I would have to take that on notice, Senator. They do have an equivalent clause in the lease but I am not sure how the rates system in the ACT operates.

**Mr Mrdak**—They do have an agreement with the ACT government, but we will get some details of that.

**Senator O'BRIEN**—Thank you. So that would be subject to further development of the airport or further negotiation with the ACT?

**Mr Williams**—It would very much depend on the way in which the ACT government determines its rateable amounts for the airport, depending on what type of development takes place at the airport. They would be subject to ACT legislation in the way in which their rates are determined.

**Senator O'BRIEN**—How much funding is the lessee of Canberra airport contributing to the runway strengthening project announced by Minister Truss on 27 February and which has been funded in the budget?

**Mr Williams**—Canberra Airport is undertaking an extension to the runway of up to 600 metres. It is contributing in full to that extension and making sure that the strength of that extension is the same as the rest of the runway which has been strengthened. So the Commonwealth is paying for the strengthening of the existing runway 17/35.

**Senator O'BRIEN**—They are extending the length, which presumably in other circumstances would give the airport a greater value for that lessee. So you would expect them to pay for that. What is the rationale for the Commonwealth's funding the strengthening of the rest of the strip with the works necessary to accommodate heavier aircraft? Why is the department funding it? Perhaps you could answer that.

**Mr Mrdak**—The rationale is that it is being funded by the Australian government and managed by the department because the demand for use of the airport by heavy aircraft is largely driven by government, military and VIP requirements. There is no expectation of a significant level of commercial interest from heavy aircraft operators in operating to Canberra; therefore, these strengthening works would not be undertaken by the owners of Canberra airport on a commercial basis.

The demand is largely driven by visits by heads of state and military visits by heavy aircraft utilising RAAF facilities and utilising Canberra airport. On that basis, the Australian government has decided that it wishes to provide for ongoing access by heavy aircraft for those purposes. Hence it is funding the strengthening of the pavement on runway 17/35. As Mr Williams has indicated, the airport has undertaken its own commercial risk for the extension. They have, in line with our commitment, decided to strengthen that extension up to the same level that we would want to see for heavy aircraft, but their view—with which we concur—is that, in the absence of VIP and military operations, there would be no commercial benefit from strengthening this pavement.

**Senator O'BRIEN**—There would be no benefit?

**Mr Mrdak**—Very little. I do not think anyone envisages a significant level of commercial demand to operate large four-engine heavy aircraft to Canberra.

**Mr Williams**—Based on the master plan forecasts Canberra airport is unlikely to attract many international flights for some time, up to a period of 10 years. So there is no commercial reason, as Mr Mrdak outlined. In any case, a number of international flights that it might seek to attract, for instance New Zealand, do not necessarily require heavy aircraft.

**Senator O'BRIEN**—Why isn't this work the responsibility of the Department of the Prime Minister and Cabinet or the Department of Defence?

**Mr Mrdak**—The judgment was reached that, as our department has responsibility for managing the airport lease, we should also manage this contract. This is consistent with previous funding to the airport for widening and the like some years ago, where it was done through our department because it had responsibility for managing the airport leases, although the principal purpose of this strengthening is to assist access by VIP and military operations.

**Senator O'BRIEN**—Aircraft of what size will be able to land once all this work is done? Will it be up to the A380?

**Mr Mrdak**—No, it will now allow the A380. This would provide for—

**Senator O'BRIEN**—What about a 787?

**Mr Williams**—Up to what is determined as a code E aircraft, so 747s and equivalents.

**Senator O'BRIEN**—Almost everything except the A380?

**Mr Mrdak**—Yes.

**Senator O'BRIEN**—Which other runway strengthening projects of the Commonwealth's are funded at a privatised airport?

**Mr Mrdak**—None.

**Senator O'BRIEN**—Was the Canberra runway damaged in any way during the 2003 visit to Australia by President George W. Bush?

**Mr Mrdak**—I would have to check damage as such. Certainly, any operations by heavy aircraft do have an impact on pavement, hence dispensations are required to exceed pavement runway strength. My understanding is that the airport has not issued pavement concessions to permit large aircraft since 2003—

**Mr Williams**—August 2003.

**Mr Mrdak**—because of concerns that the pavement had reached its limitations. I am not sure if its related to that particular visit but—

**Senator O'BRIEN**—It is pretty close to the time, isn't it?

**Mr Williams**—I think the issue has been around for some time, in part due to heavy aircraft and military aircraft landing on the—

**Senator O'BRIEN**—There were regular landings. My understanding is that the pavement flexibility allowed a certain number of landings, but it is interesting that after the Bush visit

the dispensations have been discontinued. Are you saying you do not know of any ongoing issues created by the landings at that time?

**Mr Mrdak**—Not for that particular one, but I think, as you have outlined, there is a point at which the surface limitations come into effect and the airport operators do not wish to see further damage on that pavement. That decision was reached from that time on.

**Senator O'BRIEN**—There were occasional landings before that time from a number of wide-bodied aircraft.

**Mr Mrdak**—That is correct. As Mr Williams has outlined, there have been occasional operations. Some of them around some major visits have been a large number of operations and the airport has always carefully looked at those to see what concessions they are prepared to make for pavement damage and what that then does to the life of the pavement. Each visit by one of these large aircraft, be it military or VIP, does have an impact on the pavement.

**Senator O'BRIEN**—Is it reasonable to assume that the pavement damage cumulatively reached its limit in 2003, hence the need to restrict landings after that?

**Mr Mrdak**—That is the advice we have received from the airport, yes.

**Senator O'BRIEN**—In his media statement of 27 February, Mr Truss said that the strengthening project will enhance Canberra's capacity to 'host visits by VIPs, dignitaries and guests of the Australian government.' Which VIPs, dignitaries and guests of the Australian government have avoided Canberra due to the runway?

**Mr Williams**—I think that would be a question you would have to ask the Department of the Prime Minister and Cabinet. I do not think—

**Mr Mrdak**—I was just going to say that I think that where there have been official visits in the past, there was quite a bit of work involved from the Prime Minister's department on a number of them to see if alternate arrangements could be made through changing aircraft and the like. I am not familiar with the exact details, but my understanding is that they have been required to make changes such as with dignitaries changing to a smaller aircraft in, say, Sydney before travelling to Canberra because of pavement issues. PM&C would probably be the best people to give you those details.

**Senator O'BRIEN**—When the Bush visit was taking place, did the airport raise any concerns about the capacity of the runway to handle the large aircraft required to carry the large presidential party?

**Mr Mrdak**—My understanding is, yes, it did. I think every such visit by such an aircraft raises issues for the airport operations.

**Senator O'BRIEN**—So they did raise it then?

**Mr Mrdak**—Yes. It has been raised continually both by the former Federal Airports Corporation and by the airport lessee.

**Senator O'BRIEN**—Did the Commonwealth give any undertaking to make good any damage?

**Mr Mrdak**—I think arrangements were put in place, but you would have to seek information from the Prime Minister's department as to what arrangement were made. We are

not a party to those discussions. That takes place between the Prime Minister's department, Defence and the airport on those official visits.

**Senator O'BRIEN**—Who did the negotiation with Canberra airport about the funding for the runway strengthening? Was it this department or PM&C?

**Mr Mrdak**—It was done by this department in consultation with PM&C.

**Senator O'BRIEN**—Did the airport operator have a clear expectation that the Commonwealth would fund the runway strengthening arising from the occurrences of 2003?

**Mr Mrdak**—No, I do not think they had a clear expectation. I think that this issue, as Mr Williams has said, has been around for a number of years and we have sought to find ways to address it. In the end, after discussions and negotiations, the Commonwealth government took a decision to make this funding available to ensure that it can guarantee access for larger aircraft to the airport on an as needed basis.

**Senator O'BRIEN**—Was the airport in a position to refuse larger aircraft such 747s the right to land?

**Mr Mrdak**—Yes, as the people responsible for the pavement they could at any time refuse to issue a concession for the use of that pavement because of the likely damage.

**Senator O'BRIEN**—Has the funding approved in the budget been provided to the airport operator yet?

**Mr Williams**—It is to be provided by the end of May.

**Senator O'BRIEN**—Will the \$28 million be paid to the airport operator?

**Mr Mrdak**—That is right, subject to the appropriation process.

**Senator O'BRIEN**—The appropriation cannot be passed by then surely?

**Mr Williams**—It is subject to the budget process.

**Senator O'BRIEN**—When does the work commence?

**Mr Williams**—It has already commenced.

**Senator O'BRIEN**—It is to conclude this year as I understand it. Is that at any specific time?

**Mr Williams**—By the end of February next year.

**Mr Mrdak**—It has been opportune to do this work while the airport is doing the runway extension because it enables them to dovetail the work into that other project which has given us the opportunity.

**Mr Williams**—The extension is the work that is under way at the moment.

**Senator O'BRIEN**—What is the life of the runway as strengthened before it will have to be restrengthened or remade?

**Mr Mrdak**—It depends on the pavement but I think the asset life normally is 20-plus years generally of this type of the heavy pavement. It depends very much on the maintenance that is put in place as to what the asset life will be but that is the order that we generally talk about.

**Senator O'BRIEN**—In the absence of a spill over airport in the Sydney basin, is Canberra airport the best placed airport to take spill over?

**Mr Mrdak**—Canberra airport certainly has capacity for the future, but I do not think that, at this stage, we have contemplated Canberra being part of the issue of Sydney. Certainly traffic is growing in Canberra. I know Canberra Airport Group has in the past talked publicly about potentially becoming a freight operation and the like to capture some of the unmet demand in the Sydney basin if that occurs.

**Senator O'BRIEN**—Is Canberra considered one of the eastern seaboard airports for the purposes of the Pacific route?

**Mr Mrdak**—I would have to check. Is this under the Australia-US agreement?

**Senator O'BRIEN**—Yes.

**Mr Mrdak**—I think it provides for all points in Australia. I would need to check.

**Senator O'BRIEN**—I thought the Commonwealth said it would not consider eastern seaboard airports for a future Singapore operation but left open access to other airports. I am asking because I am not sure where Canberra stands in that regard.

**Mr Mrdak**—I am not aware of a statement which is definitive about not providing access on that basis.

**Senator O'BRIEN**—Perhaps I misunderstood it.

**Mr Mrdak**—I am not aware of it.

**Senator O'BRIEN**—Can you explain the item 'Airport lessee companies—reimbursement of parking fines' in the PSAES on page 6, table 1.4.

**Mr Williams**—A number of the airports collect parking fines in managing the airport site. There are particular regulations under the Airports Act which govern this. That money initially comes into the Commonwealth and there is a reimbursement within a formula that was agreed with the Minister for Finance where that money is channelled back to the airport lessee companies. I think that \$2 million comes in and \$1.5 million goes back to the airport lessee companies. It only applies to a few of the airports—about seven I think from memory—page 44.

**Mr Mrdak**—It is a reimbursement of the costs incurred in providing that arrangement, so not all the revenue is returned.

**Mr Williams**—The amount going back reflects some internal costs to the government of administering this scheme. It relates to Sydney, Melbourne, Brisbane, Perth, Gold Coast, Townsville, Hobart and Launceston airports. That is on page 44 of the portfolio additional estimates statements.

**Senator O'BRIEN**—Can we get a breakdown of the amount collected for each of those airports?

**Mr Williams**—Yes, we can take that on notice.

**Senator O'BRIEN**—I do not have an interest as I have not been fined at any of them, so far! What does the item 'Compensation for sale of airport land' in the same table relate to?

**Mr Williams**—The \$3,000?

**Senator O'BRIEN**—Yes.

**Mr Williams**—That is for a very small portion of land at Hobart. It is a land transfer for some road-widening works. Money comes in from the Tasmanian government and there is some compensation paid back to the airport lessee company. As I said, it is a very small portion of land.

**Senator O'BRIEN**—So it has been paid out this year and it will be paid back next year.

**Mr Williams**—I think there have been some delays.

**Senator O'BRIEN**—It is a reduction in appropriation transferring to the coming financial year—is that it?

**Mr Williams**—Yes.

**Senator STERLE**—I will put some questions to the minister while he is here. I want to talk about a brickworks proposal in Western Australia. Can you tell us who has the power to make the decision to approve a brickworks on Perth airport?

**Senator Ian Campbell**—Are you asking me?

**Senator STERLE**—Yes.

**Senator Ian Campbell**—I think it would be the minister for transport.

**Senator STERLE**—Sorry, I am asking you, representing the minister.

**Mr Mrdak**—Senator, the provisions will be governed by the Airports Act, which deals with major development proposals. That provides for the lodgment of a major development plan with the Minister for Transport and Regional Services. It then triggers processes within the Department of the Environment and Heritage under the Environment Protection and Biodiversity Conservation Act. But the decision at the end of the day in relation to the major development plan will rest with the Minister for Transport and Regional Services.

**Senator STERLE**—Mr Mrdak, if it is decided to approve a brickworks on the Perth airport site, does the Western Australian government have any power of veto over that decision?

**Senator Ian Campbell**—It is a decision that is before the government at the moment. The question is: does the state government have a role in this decision?

**Senator STERLE**—No, I actually asked: do they have any power of veto over the decision?

**Senator Ian Campbell**—Over this decision they do not have a power of veto. I think that is the answer. They have a range of relevant powers, though, over the establishment of any brickworks. You have to have access to and egress from the site, and I think the state government have said they are not going to allow trucks into and out of the site. I think they would have to issue licences to extract the clay to make the bricks. I think there is a range of relevant state laws which any brickworks proposal on the airport land would have to be ticked off against. I think it would be impossible for the Commonwealth to effectively say, 'Yes, you can build a brickworks.' You have to get a range of other approvals.

**Senator STERLE**—But ultimately if the decision is made to go ahead with the brickworks it cannot be overturned by a state government?

**Mr Mrdak**—Not the specific decision in relation to the major development plan.

**Senator STERLE**—Has a decision been made regarding the establishment of a brickworks on the Perth airport site?

**Mr Mrdak**—No.

**Senator STERLE**—Is there a time line for the decision-making process?

**Mr Mrdak**—There are statutory processes under the act which provide for periods under which the minister can consider an MDP. I think that period is now 90 days.

**Mr Williams**—Ninety days from the receipt of advice from the Minister for the Environment and Heritage.

**Senator STERLE**—I was reading an article about 12 months ago that said 90 days. Are we no closer to a decision?

**Mr Mrdak**—The matter is now under consideration. We are now in the process of providing advice to the minister. We are trying to finalise that as quickly as possible. I cannot put a definite time on it, but we certainly would like to take a decision as soon as possible within that 90-day period, subject to the minister's consideration of the advice.

**Senator STERLE**—Would I be right in assuming that this decision could go on for another 18 months?

**Mr Mrdak**—No.

**Senator Ian Campbell**—We have just said there is a time frame. The process, in broad terms, is that the proponent, which is the Westralian Airports Corporation, comes to the government—I think that is the minister for transport—

**Mr Mrdak**—That is right.

**Senator Ian Campbell**—and says, 'Here's a proposal.' That then comes to the department of the environment. We make an assessment, we provide that information to the minister for transport and then that forms part of his decision-making process. We have gone through that process and it is now before the minister.

**Senator STERLE**—What environmental evaluations have been done on the proposal for a brickworks on the Perth Airport site?

**Senator Ian Campbell**—The transport minister and the transport department have before them advice from my department.

**Senator STERLE**—Are you able to tell us what your advice is?

**Senator Ian Campbell**—No. It is an entirely relevant question for someone to ask of the Department of the Environment and Heritage. It is a complex proposal.

**Senator STERLE**—Would a negative assessment of the potential health or environmental impacts of the proposed brickworks on the Perth Airport site be binding on any decision made by the minister for transport?

**Senator Ian Campbell**—I think the law would say that he needs to take into account my advice.

**Senator STERLE**—Minister, are you aware that your good self, Minister for the Environment and Heritage, wrote to the former Western Australian Minister for the Environment, Racing and Gaming in March 2005 and said: ‘I agree that it would be appropriate for any standards applied to this proposal to be at least equivalent to those applied by the WA government.’

**Senator Ian Campbell**—I am aware of that.

**Senator STERLE**—Is the minister for transport aware of that?

**Senator Ian Campbell**—I think it is inappropriate for advice within government to be expanded upon, because the minister will make a decision. I am just being cautious here, because this is obviously a decision that is before the government. I think it is fair to say that the reality in Western Australia, having read the advice I have received, is that the level of monitoring and compliance of brickworks in Perth is well below adequate. Broadly speaking—let’s put aside the decision that you are talking about—the quality of monitoring and compliance for that sort of industrial installation needs to be substantially improved.

**Senator STERLE**—I take it that you certainly will make those representations to the minister for transport?

**Senator Ian Campbell**—As I understand it, the level of, for example, pollutants that are coming out of existing brickworks are in the order of three, four or five times above the level of the proposal by the WA Airports Corporation, and that is clearly not in the best interests of that broader community.

**Senator STERLE**—While we are on that issue, is the minister for transport aware that a study by the Western Australian Department of Environment in 2002 and 2003 into the impact of the three brickworks already in the Swan Valley stated:

... it is clear from the weight of evidence over many years that exposure to acid gas emissions ... have caused demonstrable adverse health effects ...

**Senator Ian Campbell**—That is a report from the department. That is information that is fed into our process. I think that reinforces the point that I just made.

**Senator STERLE**—So the minister for transport is aware of that?

**Senator Ian Campbell**—He would be fully aware of that.

**Senator STERLE**—Would the minister approve of brickworks on the Perth Airport site, knowing that the Western Australian Department of Environment has already found—I am sorry, I just read that before. It is just that you are being so pleasant, Minister. You have a vested interest here.

**Senator Ian Campbell**—I lived in the Swan Valley; I am very close to the area and I have looked at what has spewed out of some of those brickworks over a long period. It is an important matter to ensure, regardless of this proposal, that the industrial activity in that area—let’s call a spade a spade: the brickworks—the monitoring and compliance of pollutants from those existing brickworks is substantially improved. As the report from the state

department that you have just quoted states, it is less than adequate. But it should equally be on the record—I do not have the figures in front of me—that the proposal by the Westralia Airports Corporation uses technologies that are generations ahead of what applies to the existing brickworks. These proposals have to create outputs. What has been missing in the past is proper monitoring and compliance, and I think most of the residents in the Swan Valley would agree with me on that. The level of pollutants out of the Westralia Airports Corporation proposal is a tiny fraction of the level of pollutants coming out of the brickworks that are there at the moment. Quite frankly, if you applied the same technology and standards that the proposal is putting forward to the existing proposals you would see a massive reduction in air pollution in Perth. That is really what we all want to get to, I would think. We want the total level of pollutants to come down.

**Senator STERLE**—Yes, we do. But, in all fairness to those who are not familiar with the area, it is not a great distance between the proposed brickworks and the airport to the Swan Valley brickworks? They are next-door neighbours.

**Senator Ian Campbell**—I think you and I could literally throw a stone, if we practised a bit. They are very close together.

**Senator STERLE**—Is the minister for transport aware that the Western Australian state government has offered Mr Buckridge and BGC a number of alternative sites for the proposed brickworks, including Neerabup, north of Wanneroo?

**Senator Ian Campbell**—I think he would be aware of that.

**Mr Williams**—I think that was in the WA government's submission on the proposal.

**Senator O'BRIEN**—Going back to Mr Truss's press release of 27 February about the strengthening of the airport runway, Mr Truss's words were, 'The strengthening will enhance Canberra's capacity to host VIP dignitaries and guests of the Australian government.' I want to find out the basis for the statement. If you do not know, can you get an answer from Mr Truss which VIPs, dignitaries and guests of the Australian government have avoided Canberra due to the runway?

**Mr Williams**—As I said before, I think that is a question best addressed to the Department of the Prime Minister and Cabinet.

**Senator O'BRIEN**—It may be, but the minister's own press release makes that point. That is why I think the minister needs to answer that question.

**Mr Mrdak**—We will take that on notice. As I say, there have been occasions to my knowledge where it has created difficulties for Australia's official hosting of certain dignitaries and alternative arrangements have had to be made, but I will seek further information on those matters.

**Senator O'BRIEN**—Thank you. I am ready to ask questions of the Civil Aviation Safety Authority.

**Proceedings suspended from 10.23 am to 10.45 am**

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**Civil Aviation Safety Authority**

**Senator O'BRIEN**—I want to begin by going to the email that the former Minister for Transport and Regional Services, Mr Anderson, sent to the head of CASA, Mr Toller, on 3 April 2003 relating to the reform of the of National Airspace System. Before I go to the detail of the email, can you tell me why it took almost seven months—that is, from 31 October 2005 to 16 May 2006 for CASA or the department to respond to my question about this correspondence?

**Mr Byron**—That is one for the department, Senator. The matter was under consideration as to whether the documentation would be released. That was a decision which had to be taken by the minister.

**Senator O'BRIEN**—On what date was the draft answer provided to the minister's office?

**Mr Mrdak**—I would have to take that on notice, Senator.

**Senator O'BRIEN**—In October, Mr Gemmell, you told us that the email did not constitute a direction from the minister. It might not constitute a formal direction but it delivered a pretty blunt message to Mr Toller to toe the minister's line on the National Airspace System, did it not?

**Mr Gemmell**—There is no question it was not a direction in accordance with the act. That would have to have certain processes around it for it to be such a direction. It was an indication of the minister's view of how CASA was performing.

**Senator O'BRIEN**—Pretty blunt?

**Mr Gemmell**—It was fairly blunt, yes. And it was not a particularly happy one.

**Senator O'BRIEN**—No. Let me take you to these statements: 'Recent events reduce my comfort level with the way CASA is handling my airspace reform agenda,' and 'I am getting the strong impression that some of your middle ranking people are still opposed to the changes,' and 'I will hold you personally responsible for ensuring that CASA provides the appropriate level of cooperation,' and 'Those responsible for making the changes are beginning to look more than a little ineffective and beginning to look a bit ridiculous,' and 'I am not impressed. I want action and I want it fast, Mick,' and finally 'We are all spending too much time on this.' I guess I should ask you, Mr Byron: do you get many emails from Mr Truss telling you to skate around your statutory responsibilities and do what he wants?

**Mr Byron**—I have never had an email or a phone call from Minister Truss along those sorts of lines.

**Senator O'BRIEN**—I am pleased to hear that, but I have to say I am alarmed by the tone of Mr Anderson's email. At the very least it represents a bullying of this authority by the minister, which is quite unacceptable. CASA's role in the national airspace reform process has been to ensure its safe implementation. That was its role, was it not?

**Mr Gemmell**—Senator, we had a few roles. The minister had made it clear that this was a government agenda and we were to assist in the process of its implementation, which we were doing. We had certain resources available to us to do that. CASA had things like the lists of all pilots who might want to receive educational material about all this. We had all sorts of data

and information to assist. We had all sorts of expertise in relation to this issue. But our ultimate responsibility was to ensure the safety of whatever was to be implemented.

**Senator O'BRIEN**—It was not CASA's job to impress the minister, was it?

**Mr Gemmell**—Well, Senator, I would like to think it is our job to impress the minister about how we are going about our task and certainly not to unimpress him about the way we went about the task of ensuring the safety of the implementation. The essence of the problem that we had struck was that, in what we thought were our efforts to ensure safety, we had done certain things that had led the minister and others to gain the impression that we were in fact opposed to the changes and not supportive of them. We were in fact supportive of them but had managed to give the impression that we were not, and that was something we needed to address.

**Senator O'BRIEN**—We will come to that. Did Mr Toller ignore the email?

**Mr Gemmell**—Certainly not, Senator.

**Senator O'BRIEN**—Did he respond to Mr Anderson in writing?

**Mr Gemmell**—Yes, he did.

**Senator O'BRIEN**—Can we have a copy of that correspondence?

**Mr Gemmell**—I would like to refer that to the minister.

**Senator O'BRIEN**—Will we wait seven months for an answer to that one? Do not answer that. Has CASA ever sought legal advice on matters related to its statutory independence?

**Mr Byron**—The question asked about 'ever'; are you referring to a particular time?

**Senator O'BRIEN**—Let me put it this way: since the time of the minister's email, has CASA sought legal advice related to its statutory independence?

**Mr Byron**—I can only answer in respect of the time that I have been with the authority, which commenced in December 2003. When I started up, I did seek some legal advice on the interpretation to make sure I had an independent view of my responsibilities, particularly under the new governance arrangements. I was familiar with arrangements under a previous board, but I wanted an opinion as to my position under the new governance arrangements. I had better take the question on notice to see if we have sought any legal opinion about CASA's statutory obligations since then. Nothing comes to mind.

**Senator O'BRIEN**—Mr Gemmell, before Mr Byron's commencement, did CASA seek such legal advice.

**Mr Gemmell**—Nothing comes to mind. I need to go back and check whether we did seek such advice.

**Senator O'BRIEN**—If it obtained such advice, is it possible for the committee to be supplied a copy? I am not sure why advice about CASA's statutory rights would need to be protected.

**Mr Gemmell**—If we received such advice—

**Senator O'BRIEN**—Similarly, Mr Byron, is there any reason why we cannot see the advice you did seek?

**Mr Byron**—If I have received any formal advice subsequent to my initial interpretation, I would not have any problems with that. It would simply be an interpretation of the statutory requirements.

**Senator O'BRIEN**—I want to turn to the meeting in the office of the secretary of the department on 4 April 2003, which is the day after Mr Anderson sent his email to Mr Toller which was copied to the then secretary, Mr Matthews. Mr Gemmell, did you record the details of the meeting with Mr Matthews electronically?

**Mr Gemmell**—I am not sure what you are asking. If you are asking if I eventually wrote down what I was told, then yes.

**Senator O'BRIEN**—Is the record we have received an unedited version of your original record?

**Mr Gemmell**—The record you received is a copy of the note that Mr Matthews read from when talking to me. I asked him early in the piece when I realised what he was telling me whether he would give me a copy of the notes he was reading from, otherwise I would have to write it down furiously. He agreed to give me a copy of the notes.

**Senator O'BRIEN**—So they are Mr Matthews's notes from which he conducted the meeting?

**Mr Gemmell**—That is correct—and he conducted the meeting in accordance with those notes.

**Senator O'BRIEN**—As far as you are aware, that is a faithful recollection of what he said?

**Mr Gemmell**—Absolutely.

**Senator O'BRIEN**—But not quite complete. Are you saying that it was a bit stronger than that?

**Mr Gemmell**—No. I was very alert to what he was saying and he said pretty much what was in the notes. That is my recollection.

**Senator O'BRIEN**—Mr Gemmell, you told us that you did not know about the email when you attended this meeting. Is that right?

**Mr Gemmell**—That is correct. If you read the record, there is a reference that states:

He has sent a blunt message to Mick by email.

That was the first I heard of it. I think Mr Toller was on leave; he was not there. In fact, he must have been on leave as I was acting director at the time. It was only then that we were aware of the email and were able to come back and find it on Mr Toller's system.

**Senator O'BRIEN**—So Mr Matthews told you about the email. Did he show it to you and Mr Shirley?

**Mr Gemmell**—No, we came back and went searching for the email.

**Senator O'BRIEN**—So after the meeting you did see it?

**Mr Gemmell**—Yes.

**Senator O'BRIEN**—What did you understand Mr Matthews note to mean, which he apparently put to you in the meeting in some form, in that he thinks CASA and the individual senior staff who were personally involved have got away lightly with their behaviour?

**Mr Gemmell**—That referred to some actions that CASA had taken, where we inserted a document into a letter that had been sent to all pilots. We failed in our process in that the key players on airspace were not aware that we had produced that document or were going to put it into the package that was being released. There was at least some thought that we had done that to try to subvert the intent of the changes that were being made. Mr Toller and I both looked at this issue and satisfied ourselves that that was not the case—that it was not well done, but the intentions were good. Apart from talking to the individuals concerned, that is what we did.

**Senator O'BRIEN**—So you should have done something much harsher?

**Mr Gemmell**—You can read it. Perhaps we had not done enough to the individuals concerned for what they had done.

**Senator O'BRIEN**—What about this statement:

The minister has said to me that he will make executive changes in the various agencies if necessary.

It means, 'Do what I tell you or I'll sack you,' doesn't it?

**Mr Gemmell**—I took that to be an expression of dissatisfaction. If you manage to dissatisfy someone such as the minister, your longevity is probably at risk and you have to lift your game.

**Senator O'BRIEN**—It means he will sack you. That is what you meant when you said that your longevity is at risk. You did not mean that he was going to terminate your life; he was going to terminate your employment.

**Mr Gemmell**—I was talking about employment.

**Senator O'BRIEN**—I thought you were. But we are skirting around the word. He was giving you the message that people would get sacked if he did not get what he wanted.

**Mr Gemmell**—We took it to be that if we continued to perform in the way we had been some changes would have to be made. Therefore we had to get on with it.

**Senator O'BRIEN**—The records have Mr Matthews making a note for himself to say, and apparently he did say, that the minister has every right to exert his will in this way. What happened to CASA's statutory independence?

**Mr Gemmell**—We continue to maintain it, as we are legally obliged. The minister and the government were seeking to make some changes in airspace they thought was sensible and appropriate, as indeed did we if done correctly. It was a complex process that we all had to be party to. It was certainly within the minister's right to set down the strategic policy direction that should be pursued, with the expectation that all parties would cooperate with that occurring. The balance became difficult when we had differing views about the safety of what was going on and we had to apply our judgment to that, which we did.

**Senator O'BRIEN**—I will come to that.

**Mr Gemmell**—And we are obliged to. If we think something is happening that will create an unsafe situation, we have no choice under the act but to take action.

**Senator O'BRIEN**—Mr Byron, do you agree that the minister can demand that CASA toe the line on safety matters? Is it appropriate for those demands to be accompanied by threats of sackings?

**Mr Byron**—Under the current governance arrangements, the act says that I manage CASA under the minister. Obviously I need to be aware of the minister's views. I certainly need to be responsive to the minister's requirements, but I have a very clear understanding with the minister that the extent to which I will need to be responsive to his requirements is more to do with the broad management of CASA than with the individual safety outcomes.

Certainly I have had a number of discussions with Minister Truss through our regular meetings, which last some hours, where I express my view about a particular safety issue that I am likely to deal with. He will normally explore the reasons for it, but it is very clear in my mind that, when I make a particular decision about a safety issue, that is the end of it. I certainly have never experienced any issue where my safety requirements are overridden. In terms of CASA's involvement with national airspace, certainly in my time in CASA we have been involved at various stages. When our advice has been sought, or when we have felt the need to make a position, we have put our position very firmly as the safety regulator, and it has never been challenged.

**Senator O'BRIEN**—Certainly, from reading this, you would have a different view of the past.

**Mr Byron**—I can only speak with my experience.

**Senator O'BRIEN**—Mr Mrdak, Mr Gemmell's record—or Mr Matthews's record, as it turns out to be—shows that he intended to speak to Airservices Australia on the Monday after that meeting. Did that happen?

**Mr Mrdak**—I am not aware of the events involved. I would have to take that on notice.

**Senator O'BRIEN**—Thank you. At the estimates round subsequent to Mr Anderson's email and the meeting called by Mr Matthews to read the riot act, this committee considered the matter of the national airspace reform. Mr Mike Smith, from the NAS Implementation Group told the committee:

Some components of the NAS, because they are directly lifted from the US FAA practice and rules, will not require a design safety case. That is the advice that CASA has given us.

However, in February 2004 Airservices Australia told us that it got the implementation of NAS wrong. One of the areas it got wrong was the failure to undertake a design safety case of the full NAS implementation. Was CASA's advice to Airservices influenced by Mr Anderson's demand?

**Mr Byron**—In my time, no.

**Senator O'BRIEN**—You were not there then, so I would have to ask that of Mr Gemmell.

**Mr Gemmell**—No. We had taken a view that we could pick up all the features of the US airspace—a well-proven and well-known airspace design. It was a design that was proven in

action, and you did not really need to go through a design safety case for it. The problem we struck, though, was that the plan to do it was incremental—in stages—and, whereas you could argue that the overall design was well-proven with the whole bit operating together, when you took some pieces of it, we started to have some difficulties from then on in trying to do it. In many ways, with the benefit of hindsight, the only way we could have got away without doing the design safety case was if we had tried to implement the whole thing at once—at the same time, in a sudden death sort of way. But that would have had considerable risk attached to it because it would have been a major change program being applied once. So the logic of doing it in stages was good but it meant that, at any point in time, we had a hybrid design in place in Australia. It was causing us difficulty trying to understand what was there and take a safety judgment about it.

**Senator O'BRIEN**—But isn't the very point that, as soon as the minister demands that he gets what he wants or there will be sackings, we are seeing a step in the process removed—the design safety case—and subsequently Airservices has told us that they got it wrong. One would have to say the connection between the pressures and getting it wrong are too great to be ignored.

**Mr Gemmell**—No. Our position on the need for a design safety case was set down well before any of this stuff occurred. We had said that quite early in the piece, because it was an important issue for further development.

**Senator O'BRIEN**—But Airservices did not necessarily agree, did they?

**Mr Gemmell**—They can speak for themselves. I think at the time they agreed. Over time we started to have differences actually doing it because we were not doing the US airspace in one fell swoop; we were doing pieces of that. Therefore, we started to concern ourselves about questions such as: what sort of hybrid design did we have, and how well does that work?

**Senator O'BRIEN**—Over what time?

**Mr Gemmell**—I beg your pardon?

**Senator O'BRIEN**—You said you discovered that 'over time'.

**Mr Gemmell**—As the program rolled out. There were certain elements of it that were relatively easy to do. They were done quite quickly. They did not particularly affect the design; they were procedural matters. But then, as we tried to roll out the airspace design, we started to fall over questions of having only parts of the US system in place.

**Senator O'BRIEN**—I am concerned that in a number of places in Mr Matthews's notes from his meeting with you and Mr Shirley he uses the phrase 'make it happen' repeatedly. It is couched in the language of, 'We will observe the law, but make it happen.' There is an absolute inconsistency in there which can only have had the effect of driving the pace of the change and driving the agencies past the consideration of the safety issues at the time.

**Mr Gemmell**—You will see in the document that the minister believes he sees clear evidence of 'CASA foot-dragging'. What was being said to us there is that we were using our safety role to delay things.

**Senator O'BRIEN**—So ignore it; that is what he is saying—move it along.

**Mr Gemmell**—The task for senior management is to determine, if that is true, at what point we are legitimately using our safety role and appropriately making people go through processes, loops, safety cases and so on, and at what point we are actually just being obstructive to the whole process. It was clear the minister felt that we had moved past the point of legitimate safety concerns to the point of being obstructive. If that was not the case, we certainly had not presented the CASA insert terribly well to the minister.

**Senator O'BRIEN**—I am concerned that the safety of Australian air travellers is compromised by the Minister for Transport and Regional Services bullying this agency to approve the implementation of his—that is his word—airspace reform agenda.

**Mr Gemmell**—The minister always made it clear that he relied on CASA to ensure the safety of what was being implemented. He took that very seriously—

**Senator O'BRIEN**—And if he did not have officers who did what he wanted, he changed them.

**Mr Gemmell**—We had a very serious presentation problem convincing the minister that what we were doing was in the interests of safety as distinct from being obstructive and foot-dragging. There was a body of people who thought that we were just being obstructive and difficult.

**Senator O'BRIEN**—When the minister effectively says, according to Mr Matthews's notes, that he will make executive changes in the various agencies if necessary, how can that be construed as anything other than a 'do what I want or I'll put people in there who will do it' comment?

**Mr Gemmell**—We take the view—and we certainly took this view at the time—that we have statutory obligations in respect of this and if we felt it was necessary in the interests of safety we just had to do that. If that incurred the wrath of the minister, then so be it. That is what we are doing. However, we had done some things at the time that were not well done on CASA's part and we had to try to ensure we did not repeat that performance. All the things we did had to be well based on safety analysis and well justified. We put in a lot of steps to ensure that we did not lay ourselves out again for a terrible beating because of actions that we had taken.

**Senator O'BRIEN**—So we rushed ahead with the NAS and then it was found that we got it wrong.

**Mr Gemmell**—No.

**Senator O'BRIEN**—We did not do the safety case. We got it wrong.

**Mr Gemmell**—We did implementation safety cases and there was not—

**Senator O'BRIEN**—You did not do the design safety case, so you got it wrong.

**Mr Gemmell**—It was not the design, but that had been CASA's position from the commencement of NAS. He did not need a design safety case for a system that was in operation in the United States.

**Senator O'BRIEN**—With respect, we did not need CASA cheering on the minister's needs, which is what the minister was trying to obtain. We needed a CASA sitting back dispassionately assisting those changes without undue pressure from the minister, surely.

**Mr Gemmell**—We certainly attempted to assist the changes and to ensure that the safety of the changes was preserved at all points in the process.

**Mr Byron**—Senator, you mentioned the interests of the travelling public there. Certainly at the moment and for the last two years, while I have been here, I have never had any challenge to any decisions I have taken, and I hold the interests of the travelling public at the highest level.

**Senator O'BRIEN**—I am pleased to hear that there has not been any bullying recently. I want to ask some questions about CASA's restructure that was announced some hours before our last meeting. Mr Byron, you told us that 50 existing Canberra based staff would be affected directly by the announced changes. Have all of those staff now been redeployed?

**Mr Byron**—No. If you recall, at the time I advised the committee that the announcements made in February this year flagged an intention to relocate positions more to the front line, and I gave a time frame of up to June 2007 as being the time required to effect that change. The provisions of the certified agreement with the majority of staff provide a need to give plenty of time for these processes to be followed through. So we have started the process but we have a way to go to finish it.

**Senator O'BRIEN**—Is it only Canberra based staff affected by these changes?

**Mr Byron**—No. The major group of people affected are certain Canberra based staff. There are also staff affected in some of our field offices, but to a large degree they are mainly administrative staff. In fact, I had a couple of approaches from a few administrative staff over the last month and we are engaging in detailed consultation with those individuals now. There are some additional positions being created in the field offices—field safety advisers and that type of thing. They will impact on total staff in the field offices, but the majority group that are affected by those announcements are certainly in Canberra.

**Senator O'BRIEN**—Can you give us the locations of the other positions?

**Mr Byron**—To give you the full detail I will need to take that on notice, but there would be some administrative staff at some of the field offices—for example, in Adelaide, Perth and places like that—that may be affected. I do know that in some cases we are bolstering the administrative team. We are forming management groups. Brisbane is going to be a centre for administrative groups for the general aviation operations group. I will give you the full detail on notice if that is acceptable.

**Senator O'BRIEN**—Thanks for that. Has CASA fully complied with its certified agreement notification and consultation provisions?

**Mr Byron**—My understanding and my advice is that we have.

**Senator O'BRIEN**—When was the certified agreement ratified?

**Mr Byron**—Earlier this year. It was formally ratified on 16 February.

**Senator O'BRIEN**—Is CASA's conduct in relation to redeployment consistent with the provisions of the government's Work Choices act?

**Mr Byron**—I will need to ask Mr Harbor to answer that.

**Mr Harbor**—With regard to the changes we put in place, they comply with the requirements of the certified agreement. With regard to Work Choices, we are looking at getting advice with regard to the implementation of Australian workplace agreements.

**Senator O'BRIEN**—Are redeployed staff being forced to sign Australian workplace agreements?

**Mr Harbor**—No staff have been redeployed at this stage and that matter is still to be resolved.

**Senator O'BRIEN**—So have CASA indicated that that is their wish?

**Mr Harbor**—We have indicated that where possible our preference would be to employ people under AWAs, and certainly preliminary legal advice indicated that was appropriate. But at this stage we are still resolving a few matters.

**Senator O'BRIEN**—So you have got advice that the Workplace Relations Act does not protect existing employees against being required to sign an AWA?

**Mr Harbor**—That matter is still being resolved at this stage.

**Senator O'BRIEN**—Is that the advice you are seeking?

**Mr Harbor**—That is the advice we are seeking. We have been in receipt of correspondence from two of the staff associations that have queried that and we are seeking advice with regard to those matters.

**Senator O'BRIEN**—So what do you say about section 400(5) of the Work Choices act, which says:

A person must not apply duress to an employer or employee in connection with an AWA.

**Mr Harbor**—With regard to that, we are seeking advice. I need to take that on notice.

**Senator O'BRIEN**—So you are checking whether you can go ahead and require people to sign AWAs without breaching the act?

**Mr Harbor**—That is correct. There is no intention of our breaching the Workplace Relations Act with regard to this matter. Preliminary advice suggested that we could offer AWAs in a range of circumstances, but the complication here is the restructure.

**Senator O'BRIEN**—That is an interesting way of putting it. When you say 'offer AWAs', are you saying that they would be the nature of the contract of employment between CASA and the employee being redeployed?

**Mr Harbor**—With regard to redeploying employees, that is a matter that we are seeking advice on. With regard to more employees coming into the organisation, certainly we have made it clear that our preference would be to employ people under AWAs rather than under the CA.

**Senator O'BRIEN**—Why?

**Mr Harbor**—We believe it is a more appropriate means of remaining competitive in the marketplace. The CA basically operates as a paid rates award. With regard to that, given the nature of the markets that we operate in, we believe an AWA provides more flexibility.

**Senator O'BRIEN**—So you can pay less in some markets with an AWA?

**Mr Harbor**—That is not where we are coming from.

**Senator O'BRIEN**—What do you mean by in certain markets?

**Mr Harbor**—In terms of our technical staff, for example, we are openly recruiting people with different sorts of backgrounds. In particular, we have been to the market recently for a particular category of employee, a safety systems specialist, which is not envisaged within the CA. It is a new beast that has been created. It is part of the restructuring announcements of 9 February. We have been to the market, we do not have a classification range for those employees and we have elected to operate those employees under AWAs.

**Senator O'BRIEN**—I understand section 77 of the certified agreement deals with redundancy arrangements. Is the signing of an AWA made under a condition of redeployment in this or any other section of the certified agreement?

**Mr Harbor**—At this stage we have issued letters of potential excess to employees over the last week or so. No employees have been redeployed at this stage and we are seeking advice with regard to whether we can or cannot offer AWAs in those circumstances.

**Senator O'BRIEN**—Do you have a standard AWA that you use?

**Mr Harbor**—We do.

**Senator O'BRIEN**—Could the committee have a copy of that, please?

**Mr Harbor**—I would need to take that on notice but I do not see why not.

**Senator O'BRIEN**—Does the department of workplace relations play any role in this process?

**Mr Harbor**—We sought some advice from them initially and we are continuing to seek some advice from them. We were in contact with them on Friday, and we will be seeking formal advice from them as well as from other sources.

**Senator O'BRIEN**—Mr Byron, the restructure is proceeding. Could you tell us precisely where you are up to and what the next steps are?

**Mr Byron**—As Mr Harbor mentioned, we are now at the stage of notifying—I believe we have notified—all affected staff in Canberra whose jobs are to be abolished and working through the way in which those individuals need to be advised and what support should be given to them. I did make it clear in February that I was aware of the impact this would have on some individual employees of CASA and that we wanted to ensure that they were handled fairly and appropriately. Certainly, that has been the firm advice I have been giving our human resources and our line management people. That is the process that is happening with our Canberra based staff: identifying the positions that are affected.

My objective for the organisation, as I have briefed the committee, bearing in mind the need to deal with these important issues—is to have, as soon as practicable, additional staff at

our front-line offices. I think we are at the stage, from the recent briefings I have had, of offering employment to a number of safety system specialists—which are the new type of person we are bringing into the authority—early in the next financial year, so a few months away. I see that as a positive step. We are moving forward to bolster some of the additional skills that I believe the authority needs in the front line.

The recasting of the total number of staff in some of our field offices, particularly the increasing of our technical staff—that is, the increasing of our existing number of inspectors in certain areas—will need to follow the process with respect to handling our Canberra based staff. The priority in Canberra is to ensure that people are dealt with appropriately and fairly. I would hope that, certainly by the end of the year, we will start to see some people apply for a field office job who are successful and that they are redeployed by the end of the year. We need to take that process through. But certainly my objective is, by June 2007, to have the whole exercise completed, the reduction in staff numbers in Canberra effected and, most importantly, the increase in those staff numbers at our field offices.

The restructure also involves, within the General Aviation Operations Group, a consolidation of some of our support activities into a lesser number of offices. We have earmarked a number of offices, particularly in the Northern Territory—we have nominated Darwin as a management office—and I think that sends a good signal to the very large number of passenger-carrying operations that are conducted in the Northern Territory that, rather than being a remote outstation, that is a central point, with a manager located there with appropriate support staff. I would really like to see those sorts of changes happen by the end of the calendar year, but I have given the organisation until June next year to be affected.

**Senator O'BRIEN**—Do you know yet how total staff numbers will be affected by the restructure?

**Mr Byron**—Not yet. It will depend on a number of issues. It will depend on what the Canberra based staff choose to do, whether some of them wish to apply for other jobs and whether they are successful. The exercise of defining precisely the amount of administrative support we need in these general aviation offices located in the field is being worked through and I think the precise number will need to remain fluid until the exercise is a bit more mature.

**Senator O'BRIEN**—It seems that there is massive uncertainty in this. How is morale affected?

**Mr Byron**—Of course, there is a potential morale issue with some people. Whenever I get an inkling through CEO feedback through the email system—and some of those come directly to me—I ask our senior managers to deal with it straightaway. My experience with this exercise, and in previous exercises within the private sector, has been that, as long as people have clarity about what is going on, generally their morale does not suffer to the extent whereby they are not effective. I think we have had a couple of cases where the communication exercise has not been as good as I would like. The timeliness of it is something that frustrates some staff, but we have tried to tell staff that the process has to be run properly.

We have been focusing on our Canberra based staff and, as I mentioned earlier, over the last month or so I found some pockets out in the field where there are some administrative staff who are a little bit uncertain, so I have asked that that be dealt with as a matter of priority. I believe last week the group general manager of that area, Rob Collins, started touring those offices to speak individually to the staff.

So there is the potential for morale issues. Some staff that are affected will not be happy with the change—I do understand that—but my experience and the advice that I have is that it is not significant. One of the metrics that I have always looked at is unplanned absences at work, and in fact in the last six to eight months there have been less than in the previous financial year. I am told that, because of the professionalism and the dedication to the job of a lot of our people, even though they may be affected they are still getting on with the job.

There will be underlying morale issues, but I am watching that carefully and I certainly do not think it affects the effectiveness of the organisation. It is certainly not at the front line. In one example I can give you, I spoke to a team leader of the administrative area of one of our front-line offices about two weeks ago and he advised me that he understood that he was personally affected by the changes and that he would be made redundant, but he understood where the organisation was going and I was quite surprised and pleased that he fully supported the corporate changes and was just getting on with the job and it was not affecting the way in which things were happening. There may be individuals who do not feel the same and I accept that. But it is a focus that I have the moment.

**Senator O'BRIEN**—Has the principle of 'acceptable means of compliance' resulted in any change to CASA's procedures?

**Mr Byron**—Not at this stage, no. The acceptable means of compliance concept, as I briefed the committee, will become effective once we are successful in introducing new aviation safety regulations, which will be based on safety outcomes. It is something that I am personally particularly keen on. As an industry operator for many years, I felt that we needed that sort of clarity in the regulations and to give the flexibility to the industry so that things can be done differently but with the understanding that there has to be a bottom-line safety issue. The acceptable means of compliance is a procedure that is applied in other regulatory regimes in aviation safety overseas. I would expect to see us start to roll those out in a proposed form for the maintenance regulations by the end of this calendar year.

**Senator O'BRIEN**—So we will not see that. You told us that you planned to publish, but we will not see the publication until the end of the year.

**Mr Byron**—The industry already have access to the drafts of that, and that is all the information. There is a roadshow currently being undertaken by the joint CASA industry maintenance regulations team that are drafting the acceptable means of compliance along with the regulations. They are touring the country at the moment trying to engage industry people with the detail of exactly what this means. We have a job to do there to take industry with us, and part of that is explaining what this is all about.

Last week I had two forums where I invited representatives of the aviation industry associations across the board. There was one in Sydney and one in Melbourne. I attended the AOPA annual general meeting the previous weekend and I had the opportunity to explain to

these groups of people, who are going to be the users of this sort of stuff, what it actually meant. At the time those people present, including representatives of sectors that are very interested in this area to do with maintenance organisations, indicated full support for the concept but they wanted to be taken along. They wanted to have each step explained to them, and that is certainly what is happening at the moment with these roadshows.

**Senator O'BRIEN**—Can the committee have a copy of the material supplied to the roadshows?

**Mr Byron**—Certainly.

**Senator O'BRIEN**—In February Mr Gemmell confirmed that CASA would implement extra checks on RPT operators on large passenger aircraft. Have those actually started to happen?

**Mr Gemmell**—Yes.

**Senator O'BRIEN**—Can you quantify those extra checks since our last hearing?

**Mr Byron**—If I may provide a little history: it was in late 2004 that we flagged that we were going to do additional surveillance, particularly of the fare-paying passenger sector, which was from the large RPT down to charter operators. We rolled out the fare-paying passenger priority policy. My requirement was that from July 2005 we start to deliver additional surveillance. The way in which additional surveillance was to be effected was to take a step back from the previous surveillance procedure of only doing two audits on a large operator per year to doing a larger number of operational surveillance activities.

In different parts of the country that started to be effective from about July 2005 but certainly in the airline sector—the large RPT, which is the area you are talking about now—we are doing more surveillance of industry, mainly achieved through doing one scheduled audit and a larger number of operational inspections. As an example, in a six-month period in the course of this financial year, Virgin Blue Airlines had 24 operational surveillance activities, which is significantly greater than the two annual audits they would have had in the past.

**Senator O'BRIEN**—So in the past, it would be two annual audits or nothing and now it is 24 occasional inspections?

**Mr Byron**—It is one annual audit—a full system audit—on an RPT operator or a maintenance organisation supporting RPT, supplemented by a larger number of operational surveillance items, which will vary depending on the complexity of the operator. Taking a look at the fare paying passenger activities in the area of the general aviation operations group—the charter companies—we have developed a matrix which categorises different classes of operators, with large charter operators at the top and small aerial work operators—say, aerial agriculture—at the bottom. Within that matrix we specify the different types of surveillance activity that we will conduct and that are available. There is a greater number of surveillance activities conducted on the fare paying passenger operators. By providing a matrix, it enables us to say: 'For this class of operator we are going to do this number of surveillance activities. There is a resource requirement for each of those. Multiplied by the

number of operators for the office, that gives us a good way of planning our resourcing activities.’

**Senator O’BRIEN**—So you have a matrix which would, if we saw it, tell us what sort of intensity your inspection program would be by class of operator?

**Mr Byron**—Yes. For the general aviation operations group, that matrix is there and it is being applied. In the air transport sector, I suppose the precise detail of the number of oversights for each operator is being defined, with a minimum of one audit plus a range of operational surveillance activities. That would depend on the requirements of the group general manager and his managers on site for each one. It would be my intention that, over the next six months or so, we define that as a similar matrix, but I will naturally have to discuss that with the operational managers to see whether they think it is the right way to go.

**Senator O’BRIEN**—Can you supply us with some documentation which shows us the matrix as you described it?

**Mr Byron**—Certainly.

**Senator O’BRIEN**—When was Mr Arthur White appointed the Industry Complaints Commissioner?

**Mr Byron**—It would have been during the month of February this year. Do you require a precise date?

**Senator O’BRIEN**—We might as well get that if you can provide it.

**Mr Byron**—We will take that on notice.

**Senator O’BRIEN**—What was the selection process?

**Mr Byron**—I took responsibility for that myself. It being something new, I wanted to make sure that I covered off what I had experienced in the previous 18 months as the concerns of industry people who had come to me. Mr White expressed an interest in doing it. I wanted to make sure that I had a person in that position who was capable of being independent from the line area but, most importantly, who understood the operational and regulatory issues associated with CASA’s functions. So it was not appropriate that I canvassed more widely for a lawyer or someone like that. I felt that I needed an operational person. Mr White was available in the organisation with the restructure.

**Senator O’BRIEN**—He was within the organisation to start with?

**Mr Byron**—Yes.

**Senator O’BRIEN**—What is the classification and remuneration level of the Industry Complaints Commissioner?

**Mr Byron**—His remuneration would be the substantive position that he was in a previous management position. I would have to take the precise details on notice.

**Senator O’BRIEN**—How was the commissioner’s service charter developed?

**Mr Byron**—I tasked Mr White and an officer in my office with coming up with a proposed charter, making sure that we sought advice externally. They visited the office of the Ombudsman. My preference was to call the position ‘ombudsman’, but we were told that they

had the copyright on that name so we had to come up with a different name. In developing the charter, we had the advice from the Ombudsman's office, which, incidentally, was very supportive of the concept.

**Senator O'BRIEN**—The Commonwealth Ombudsman?

**Mr Byron**—Yes. I suppose the challenge here was to develop a complaints mechanism with someone who was seen to be independent so that people in the industry would have confidence in the function. I do understand that that is something I had to deal with. Particularly over the previous 18 months I had had a lot of complaints coming personally to me, into my office, quite separate from line management. I felt that the office at the time had a certain degree of confidence from the industry in being able to be impartial in terms of individuals within CASA and the decisions that they had made. I felt that setting up the Industry Complaints Commissioner within my office, independent from line management, was the best I could do to give the independence from those other managers in CASA making decisions that affected industry. That was the concept. To date, in my view, it has been quite successful.

**Senator O'BRIEN**—I see that the commissioner can bring recommendations to the attention of the original decision maker and, if appropriate, the chief executive. Does he simply ring up and contact the decision maker or is there a formal procedure to be followed?

**Mr Byron**—It is pretty well documented. I had an email that I was copied in on yesterday about a complaint that had been made. Last week, in my regular meeting with the complaints commissioner, he had briefed me on all the ones on his list, and this one was there. I saw that he had gone back to the operational line management area, the group general manager, and suggested a way to deal with it. If he does not get satisfaction, if he believes that it is not being dealt with properly, he then brings it to me.

**Senator O'BRIEN**—Is it appropriate to bring it to your attention when he is not getting satisfaction?

**Mr Byron**—I get to know of everything he does.

**Senator O'BRIEN**—Do you know how many complaints he has received since he started?

**Mr Byron**—I would have to take the detail on notice. If you include a number of them associated with the recent issuing of ASICs, it is considerable. But in terms of substantive complaints against CASA's other core functions it would be about 20. I will give you the precise details on those.

**Senator O'BRIEN**—How is the development of the operator risk model progressing?

**Mr Byron**—Fairly slowly at the moment. I might ask Mr Gemmell to give an update from his perspective.

**Mr Gemmell**—A lot of work has gone on with the tool, which is designed to assist managers with the risk judgments they have to make. The work in the GA area has been led in our Perth field office. I understand that they pretty well completed that work and they are now training people in its application. Let me caution you before it gets out of hand, because it has before: all this is is a tool designed to take certain sets of information—not every piece of information we might have—and assist managers to make sense of it and assess whether there

are trends or whether anything happening there is out of the norm and those sorts of things. The information sets include things like the accident and incident reports that we get out of ATSB and Airservices and service difficulty reports that we get through our service difficulty reporting system.

**Senator O'BRIEN**—I would hope you would factor those in to how you view operators. Have the data sets used to inform the model improved?

**Mr Gemmell**—No, I do not think the data sets in particular have improved. One of the main data sets is the ESIR, which comes out of Airservices, which is quite a strong and consistent data set. Similarly, the ATSB data sets have been there for some time. They have not changed. We are seeking to get more information into the SDR system—that is, service difficulty reports. That would be people reporting the problems they have with aircraft, engines and things like that. We put articles in our *Flight Safety* magazine trying to encourage people to put the data in so that we can pick up any trends that might occur. It is one of those classic situations where you do not know what you do not know. If people do not send it in, we just do not know about it and cannot respond to it.

**Senator O'BRIEN**—Mr Byron, in February you told us the model was one of the tools used to assess risk, but, re-reading the *Hansard*, it is not clear to me how you use it. Can you clarify that for me?

**Mr Byron**—The tool is very immature, from my point of view. Certainly compared to risk modelling and risk assessments that I have done in industry organisations it is immature, mainly because of the amount of information that it does not provide us with. It does enable us to review all sorts of information, so I am not comfortable at the moment with using it as a significant risk tool to look at the different sectors of industry. We are still at the stage of needing to increase the amount of data. Really, at the end of the day we are going to have to get that from industry because industry organisations—particularly large, mature ones—have an enormous amount of information. I have discussed with CEOs of airlines the ability to tap into that somehow. It is something we are exploring. But at the moment, for the way we actually assess risk—relative risk and the risk associated with our activities at the front line—that work is very immature.

**Senator O'BRIEN**—Are you still putting dummy information into the operator risk tool?

**Mr Gemmell**—The dummy information was inserted as we were trying to develop the tool so people could look at what it might produce. They are now at the stage of feeding in real, live information and starting to train people in how to use it and how to understand what the product is. At the moment it is intended to be used pretty much at the field office level to assist them in making the decisions about who they will look at and what they will look at in their programming, particularly of operational surveillance.

**Senator O'BRIEN**—As you would expect. If you have a tool that is assessing risk, it is pointing you in the directions you should be looking, one assumes.

**Mr Gemmell**—Yes, together with all the other information that might be relevant to that. For example, we might have a thing that could be described as intelligence.

**Senator O'BRIEN**—Someone rings up or whatever, yes.

**Mr Gemmell**—Stuff we hear is not well incorporated into that tool. So you have tool information and stuff you hear, and the manager has to fit that in their head and work out what all that means and what to do with it.

**Mr Byron**—When you have a tool, there is a danger that you rely on it excessively on the assumption that it covers everything. At the moment, as you hear, we are not confident that it is at a reliable stage of development. So we continue to rely fairly extensively on the quality of the decisions of our field office staff—our field office team leaders and managers—who have access to some of that other less tangible and less formal information. The front-line staff, who are the people in this organisation who protect from those front-line risks, play a very important role.

**Senator O'BRIEN**—In the absence of whistleblowers, tip-offs and observations by your officers of apparent problems, I would assume that your targeting would be based on your assessment of risk.

**Mr Byron**—That is correct. It would be from formal data that is available, which may come from the information provided during a recent operational inspection or from formally recordable information like ESIRs. Again, this is part of the concept that, by having more of our resources in the front line, hopefully we can develop a better system.

**Senator O'BRIEN**—CASA had issued 710 ASICs as at 11 February, according to the *Hansard* of 13 February. How many have you now issued?

**Mr Gemmell**—Up until 18 May, which is the latest report I have, we have issued 13,099.

**Senator O'BRIEN**—How many applications has CASA received in total?

**Mr Gemmell**—Up to 18 May, we had received 15,236.

**Senator O'BRIEN**—Did you meet the 31 March deadline for all applications lodged before 31 December?

**Mr Gemmell**—Do you mean: did we issue ASICs for all applications lodged before 31 December?

**Senator O'BRIEN**—Yes.

**Mr Gemmell**—No, not all applications lodged before 31 December received their ASIC.

**Senator O'BRIEN**—What were the consequences for applicants who had not received them?

**Mr Gemmell**—They did not have their ASIC. They would have had to take action with respect to where they went. They may have had to be accompanied if they were in security areas. Some of the reasons that they did not get them were to do with such things as proof of identity. They have to prove their identity, and if they do not prove it they are not getting an ASIC—it is as simple as that. However, there were some examples of people who did not get through the checking process: they had to pay, they had to give us sufficient documentation, they had to sign all the relevant forms and so on. There were a few hundred who did not get through. It is possible that some of those will never get through, because they may never be able to prove their identity. If they do not prove their identity, their application will simply not proceed.

**Senator O'BRIEN**—I regret to say that my office has received some advice about appalling mishandling of ASIC applications. What is the average processing time?

**Mr Gemmell**—I cannot tell you off the top. During the ASIC processing, we sped up significantly the handling time in the course of moving through to 31 March, and we have the benefit of that from now on. Before 31 March, we were able to turn around an application that had everything filled in, had everything correct and had gone through the AFP and ASIO systems as clean within a month. The turnaround time for something that is completely clean is about a month. If, however, there are complications or problems, it can extend significantly beyond that.

**Senator O'BRIEN**—How long is the longest?

**Mr Gemmell**—There are still some applications that were lodged with us before 31 December that have not got their ASIC.

**Senator O'BRIEN**—Excluding those that have not passed security, what would the longest be?

**Mr Gemmell**—I would have to go and check. They were some examples, unfortunately, where we did not handle it as well, so we may have lost a piece of documentation that they had sent to us or at least alleged that they had sent to us. From my understanding of the system, it was possible. We got a bit overwhelmed in the early stages and did not have our processes quite down pat, so it was possible. I regret to say there may have been a few individuals that got the bad end of the stick from our end but, having said that, there is a whole bunch who simply do not seem to be capable of sending us the documents that are required to be seen.

**Senator O'BRIEN**—How many got the bad end of the stick, as you put it?

**Mr Gemmell**—I cannot say. I know the numbers of how many people applied before 31 December and have not had their application finalised.

**Senator O'BRIEN**—One pilot has approached his local Labor member, Mr Danby, to complain about a refusal to issue an ASIC. He says he was not told why his application was refused and also could not get advice from CASA on how to appeal. Is that a common story, Mr Byron, when you are hearing about complaints?

**Mr Byron**—I missed a part of that question.

**Senator O'BRIEN**—A pilot has approached Mr Michael Danby, who is the Labor member for Melbourne Ports, to complain about a refusal to issue an ASIC. He says he was not told why his application was refused and he could not get advice from CASA about how to appeal.

**Mr Byron**—It is troubling to hear that. Certainly, if someone has not had the ASIC issued, I would expect them to know why. If we have particular cases, we can follow that through. But certainly from a policy point of view, as soon as we know people are experiencing problems, we try to chase them down. I think this exercise has shown that need for us to look very carefully at our service delivery requirements. The part of our organisation that deal with this have really had an enormous job on their hands to turn a fairly small service area into a very large service area. They have worked tirelessly to do it. It has not been perfect but we have learnt a lot from the exercise. Certainly, we have learnt how to do this sort of exercise a

lot more efficiently. Where there are individuals who are still not satisfied, and I occasionally get complaints directly to me, we do chase them down as quickly as we can.

One extra thing that I would like to add is that it has been my observation in talking to people in industry that our problem has been in dealing with the vast numbers. In some cases there has been difficulty in dealing with individual ones, but I think there have been an unspecified number of people who have applied but may not actually need ASICs for the conduct of their normal activity. I have come across at least three private pilots who would never need to go near a secure area at an airport who applied before December on the assumption that they thought they might need ASICs. Those sorts of extra numbers in the system have obviously contributed. They have a right to apply; they are paying for it. But it has caused us a bit of a problem. We are focusing on streamlining the process.

**Senator O'BRIEN**—If I provided you with details confidentially of the complaint that Mr Danby received, would you look at it for me?

**Mr Byron**—Certainly.

**Mr Gemmell**—There are not masses of concerns about refusals, which I take to be a positive, and that is a quite unusual complaint. Most complaints we get would be about the initial delays rather than an application that leads to a refusal. If there is a refusal, that would tell you that there are some issues there.

**Senator O'BRIEN**—There may be. On the person's statement of their case, it is not easy to understand why it would be refused, but there may be issues. That is why I asked that it be looked at. I want to now move to some questions about CASA's relationship with TransAir before and after the Lockhart River air tragedy. First, I want to refer you to answer CASA 01 to a question from Senator McLucas. It purports to show the elements of CASA's audit of TransAir shortly before the May 2005 disaster, including load sheet reporting. You would be aware that the ATSB could not establish the gross weight or load distribution of the aircraft at the time of impact because no load sheet could be located. According to ATSB, no load sheet relating to the accident flight could be located at Bamaga, and current and former employees of the operator reported it was not routine practice for the load sheet to be left at Bamaga. Why wasn't this established during your audit?

**Mr Byron**—I may start with that, and I might ask Mr Gemmell to come in on the operational detail. I did mention that I am keen to move the authority away from purely auditing an operator as the sole means of surveillance to more frequent and more diverse forms of surveillance. Under the activities that were approved within CASA at the time, which consisted of conducting an audit, the audit leader would have identified a number of elements that they were going to target. That audit also included observing a number of flight sectors. In fact, under the rules and the guidance that existed at the time, there were a larger number of route sectors flown than would normally have been the case.

My advice is, and I am confident because of the diligence of our staff, that if there had been any examples during those flights that were observed of people not leaving a load sheet then it would have been identified immediately. I say that with confidence because I am advised that, during a previous audit on a previous sector, that actually happened and the organisation was

issued with a request for corrective action, so when they were there and they observed it they took action at the time on a previous audit.

The concept of the audit is like an audit of any activity: it is a sampling exercise. I am keen, as I have briefed the committee, to increase the opportunities for us to sample particularly operators in the fare-paying passenger category, including an operator such as TransAir. But, at the time, under the guidance available for conducting surveillance of purely audits, the audit was conducted in accordance with that so that they were sampling only certain aspects of the operation and certain sectors that they flew on. In other words, they did not see everything that happened in that airline that week and that is normal. It is quite normal when the audit activity is the only surveillance technique. That would be the reason that they did not detect that problem.

**Senator O'BRIEN**—The answer CASA 02 shows that the pilots who lost their lives at Lockhart River were not aboard the Bamaga to Lockhart River Cairns flight subject to CASA's pre-disaster audit. Were they among the six randomly selected pilots that were otherwise checked and found to be correct?

**Mr Byron**—No, they were not.

**Senator O'BRIEN**—How many pilots did TransAir engage at that time?

**Mr Gemmell**—I am informed somewhere between 20 and 30.

**Senator O'BRIEN**—The pre-disaster audit included an examination of pilot training—is that correct?

**Mr Byron**—The records we have show that there were some elements of training that were checked during the audit, but they mainly relate to the training of ground personnel in ports and dangerous goods.

**Senator O'BRIEN**—Under the heading of the answer we have been given, which is 'pilot licence qualification surveillance', it says:

With reference to pilot licence records, samples of six pilots were randomly selected from the company's flight crew employee list and were examined for medicals, dangerous goods training, base and route checks, emergency procedures training, instrument ratings, flight and duty hours. All were found to be recorded correctly and current. In addition, the pilots' type conversion examination records were checked and found to be satisfactory.

The audit did not include human factors training mandated in the company's operations manual. Clearly that is what I should take from that answer, isn't it?

**Mr Byron**—Yes.

**Senator O'BRIEN**—It is indisputable, isn't it, that the operations manual mandated human factors training?

**Mr Byron**—The operations manual contained a syllabus for human factors training. The reason, I am advised—and I can understand it—why human factors training would not have been subject to the audit prior to the tragic accident would have been that human factors training is not a mandated activity in the regulations. In other words, if an operator at the moment chose not to do it, they would have a legal basis for not including it in their operations manual.

**Senator O'BRIEN**—Yes, but once it is in the operations manual it is obligatory to do it, isn't it? That is what the regulations require.

**Mr Byron**—If it is in the operations manual, I would be very disappointed if it was not conducted.

**Senator O'BRIEN**—Whether you are disappointed or not would be irrelevant. Isn't it the case that, if it is in the operations manual—and it is, because it said at the relevant time that 'all new company pilots shall complete the human factors management induction course within six months of joining the company and all company pilots shall complete a recurrent HFM course every 15 months,' although it is indisputable that the pilot in command had not completed this training—the regulation requires that the training be completed?

**Mr Byron**—Certainly from the point of view of achieving the best safety outcome, I would see all operators of this classification doing this type of training, properly constructed. There is no question of that. Again, I would be disappointed with the behaviour, because behaviour of operators is a significant contributor to safety outcomes. I would be disappointed if operators put it in their operations manual and did not do it, which certainly is the case here. The legality of it, as to whether they breached a regulation, is something that I have different advice on.

But for actually achieving a safe outcome, as I think I have briefed this committee, my very firm view is that there are two ways of achieving it. One is to satisfy what is in a regulation with prescribed activities such as the sorts of things that were audited, and there are additional issues where the operator satisfies their duty of care to provide a better way of managing their risks, such as human factors training. Putting it in the operations manual would ideally indicate a way of doing it. Whether or not they have strictly speaking actually breached the regulation by putting it in their operations manual and then not doing it—and therefore whether or not CASA should take some enforcement action—I think is a slightly separate question. But I understand your pursuing that.

**Senator O'BRIEN**—I would have to say that, having asked ATSB the same question and getting an unequivocal answer, 'Yes, it's a breach of regulations,' I find your answer difficult to understand.

**Mr Gemmell**—I guess the problem comes from trying to understand the role of an operations manual and what we should do about the situation. If it is in the operations manual, they are supposed to do it. So, yes, you would have to say that if it is there and they did not do it then they are in breach of that. The next question, though, is: what should we do about that? The fact is, if we then proceed to take enforcement action, whether that be a request for corrective action or prosecution of any form, a very reasonable response to that would be to simply cross it out of the operations manual, because it is not a regulatory requirement. We in fact were supportive of and encouraging to this operator to put that in the operations manual, as indeed we encourage all operators to put in safety enhancements well above the minimum safety regulatory requirements.

**Senator O'BRIEN**—Why, if they are not going to do it? Why would you encourage them to put it in there if you were not going to say, 'Look, you put it in there: you're obliged to do it'? Why put it in there? Is it just words in a manual?

**Mr Gemmell**—Indeed, if it is just in there, that is true. The question I am trying to get to is whether we should then strictly police the fact and prosecute them for not doing it, and the answer to that is, ‘That would be rather silly, because then they just cross it out.’ So I am trying to get you to think of it in terms of safety outcomes that are achieved. The safety outcome is best achieved by certainly putting it in and, indeed, doing it, but to prosecute it would be, I suggest, counterproductive.

**Senator O’BRIEN**—They supply the manual to you; you sign off the manual?

**Mr Gemmell**—We accept the manuals. We do not approve a manual; we accept it.

**Senator O’BRIEN**—As part of their air operating certificate?

**Mr Gemmell**—Yes.

**Senator O’BRIEN**—That is part of the process to get the certificate? You sign the certificate because they have supplied you with a manual that you approve of? It has in it certain things that they will do. In this case, it requires them to leave load sheets and it requires them to have their pilots undergo human factors training. Frankly, if they do not do that, they have breached civil aviation regulation 213. What action has been taken against Transair with respect to these clear breaches? ‘Nothing’ is what you are now telling us.

**Mr Gemmell**—I am saying nothing, Senator, and I am asking you to think about the consequences for safety if we were to actually proceed down the path of prosecuting.

**Senator O’BRIEN**—The consequences for safety might have been that those pilots would have been trained, because you would have said, ‘We’ll prosecute you,’ or ‘We will reprimand you.’

**Mr Gemmell**—And they do not write the requirement into the operations manual, and we cannot get anybody in the industry to operate at other than the minimum safety regulatory level in their ops manual. We want them to operate at a better level. We encourage them to do that.

**ACTING CHAIR (Senator Nash)**—With respect to pilots and safety, what is the current situation with drug and alcohol testing?

**Mr Byron**—The minister has made an announcement that he wants CASA, in consultation with his department, to bring forward some draft regulations so that we can provide a regulatory regime where drug and alcohol testing and selective testing of safety sensitive people in aircraft operations is a mandatory requirement. His expectation is that we have it up and running by the end of 2007.

**ACTING CHAIR**—It is not carried out at all at the moment?

**Mr Byron**—Some larger operators may have their own company procedures where they do it, but it is not mandated under the aviation safety regulations.

**ACTING CHAIR**—Is there anywhere in the world it is mandated? Where else does it take place?

**Mr Byron**—I believe it is a mandated requirement in the United States and they sample there.

**ACTING CHAIR**—Who does the testing and who is responsible for it?

**Mr Byron**—At the moment it is not mandated, so if operators choose not to do it, it is not done but, under the proposal that we are developing, the onus would be on the operators, particularly the larger organisations, to have a system where they organise the testing themselves, which I understand is a fairly common practice in some other transport modes. CASA would obviously be required to ensure that each organisation has a drug and alcohol testing program, and we would oversight the conduct of that to ensure they are doing it in accordance with the regulations which are yet to be developed.

**ACTING CHAIR**—Have proposals been put forward on what penalties would apply?

**Mr Gemmell**—No. We have received advice on the government's policy decision about the levels that were acceptable—.05 for alcohol and I think no tolerance on certain drugs. But as to the actual penalties that might be applied for non-compliance, that is something that we would have to work out in the course of developing the regulations.

**ACTING CHAIR**—Who would be responsible for that—the department, in consultation with the minister? How does that process work?

**Mr Gemmell**—We are in a process, in consultation with industry, to develop a set of draft regulations and, indeed, with the department and the minister, that will settle that down through our established processes for the development of regulations.

**ACTING CHAIR**—What is industry's response to the introduction of this?

**Mr Gemmell**—Industry seem to me to be fairly accepting of this. There is a certain inevitability about its application to the aviation sector. In some cases some of the individuals were surprised and concerned at the level of prevalence there seems to be of drug and alcohol-taking in the community and some expectation there might be some similar sorts of things in the aviation industry. They are concerned about how it might work and what the costs might be, but I think they accept that it is a logical safety enhancement and, if done sensibly, will enhance safety and hopefully minimise cost to the operators.

**ACTING CHAIR**—It certainly seems sensible. Why the date—I think you said the end of 2007 it is to be implemented?

**Mr Gemmell**—That is correct.

**ACTING CHAIR**—Why is the date for implementation at the end of 2007? Why is it 18 months away before we get to the point at which we can implement this?

**Mr Byron**—Hopefully, it will not take that long. That is the maximum time frame that the minister has given us, and I understand that he is keen for us to get on and do it earlier if we can.

**ACTING CHAIR**—Do you have any aim of your own? If that is the end date, is there a date by which you would like to see this implemented which is closer? I guess I am asking whether you have your own target.

**Mr Byron**—I would like to see the draft regulations out of CASA by the end of this calendar year. They are regulations so they need to go before the parliament, and it is really

out of our hands then. But, ideally, my objective would be to get the draft regulations out of CASA by the end of the year.

**Senator O'BRIEN**—I thought your intervention was more relevant to the line I was following, Madam Acting Chair. I understand those matters and they are not unimportant—

**ACTING CHAIR**—I am sorry, Senator O'Brien, you are mumbling and I cannot quite hear you.

**Senator O'BRIEN**—I understand the matters that you raised, and they are not unimportant. I just thought that you were following the same path that I was—that is, the ATSB.

**ACTING CHAIR**—I thought that pilots and safety was a pretty good link, Senator O'Brien. You do not want to give me a moment, do you?

**Senator O'BRIEN**—Pilots and safety fit anywhere with CASA.

**ACTING CHAIR**—That was exactly my thought, Senator.

**Senator O'BRIEN**—Can you explain what you mean in answer to CASA 18 when you say, 'Enforcement action related to CAR 215 is discretionary, subject to the heavy-handed test'?

**Mr Gemmell**—Senator, I am sorry, I am struggling to find it. What was the reference number you gave?

**Senator O'BRIEN**—CASA 18.

**Mr Gemmell**—I guess that is another way of saying what I was trying to say before. When we come across breaches of the rules, there are issues we have to think about, such as the appropriate enforcement action. And undertaking appropriate prosecution action will always have regard to the interests of safety. You would probably support the fact that there would not be a lot of support for us to pursue significant prosecution actions for technical breaches of rules without great safety effects. On the other hand, for breaches of rules with significant safety implications people would expect us to take serious action.

**Senator O'BRIEN**—What do you call 'serious' consequences? Is a crash serious?

**Mr Gemmell**—Of course, Senator.

**Senator O'BRIEN**—So I go back to my question: what action have you taken against Transair for not observing the regulations?

**Mr Gemmell**—Senator, is there any information that tells you that the absence of a load sheet contributed to the accident?

**Senator O'BRIEN**—We do not know.

**Mr Gemmell**—No, you do not know, Senator.

**Senator O'BRIEN**—No, we do not know. But we do know that there was a crash and we do know that there was no load sheet.

**Mr Gemmell**—I agree, Senator, that you do not know that there is any relationship between the two.

**Senator O'BRIEN**—And we do not know that human factors training was not an issue, but we do know that there was not any given and we do know that there was a crash and that we possibly are still waiting for the reason. But there is a set of circumstances, which means that this is not simply about observing something where nothing has happened. This is something that has been pointed out by ATSB but on which CASA has not acted.

**Mr Byron**—Senator, if I may. The major question I asked following this accident was, 'How do we stop this sort of accident happening again with this operator or anyone else?' In terms of this operator, there are a number of issues in that the factual information provided by the ATSB in their interim factual report indicated that there should be an improvement in the way that certain things are done, not necessarily linked to the outcome on the day but certainly things that need addressing. One was the fact that they have human factors training specified in their operations manual and they did not do it.

The reasons CASA did not pick that up, I believe, we have explained. Certainly, it is a significant issue behind the reason why I am keen to increase the amount of surveillance on these sorts of operators—and we have been flagging that since the end of 2004. After the accident, with a requirement in the operations manual and the operator obviously with the ability, if they wish to, to pull it out of the operations manual—because we could not mandate it—we made sure that they then conducted human factors training for all their people.

Human factors training is something that I am quite familiar with. I have been on the receiving end of it and I have given it to a large number of pilots. It is not a magic solution in the whole system of aviation safety. It is part of a number of things that you would expect a mature operator to do. I have indicated that I am personally disappointed that someone had it in their operations manual and did not do it. I am also disappointed that we were not able to pick it up prior to the accident. As to whether or not that would have had any impact on the outcome on that tragic day, I am certainly not going to draw that link.

In preventing this sort of accident from happening, there are a range of things that CASA has done and can do. We have looked at this operator. We are taking a more targeted look at that whole sector. CASA has taken a number initiatives over the last six to 12 months in that sector. We have recently sponsored, together with a simulator centre, some simulator training with Metro operators, and it was conducted the other week.

I would have to say that, if there had been one magic bullet around prior to this accident that hopefully would have given a different outcome, it would have been the mandating of EGPWS. CASA did that a couple of years before this accident. Leading up to the 1 July deadline for that requirement, which was after the accident, we had numerous people in the industry fighting us to give them exemptions from it. We have not given exemptions to anyone on that. So we have done a range of things in terms of prevention.

**Senator O'BRIEN**—There are a number of questions that arise, but I want to know where the heavy handed test that you referred to in the previous answer that I was referring to Mr Gemmell appears in the civil aviation regulations.

**Mr Gemmell**—Where it appears?

**Senator O'BRIEN**—Yes.

**Mr Gemmell**—I do not think you will find language like ‘heavy handed’ in the civil aviation regulations. It is more commonsense. I suspect it is also supported by guidelines issued by the Director of Public Prosecutions on the way we should bring forward prosecutions which have to meet certain tests before they will be pursued.

**Senator O’BRIEN**—Can we have a copy of those guidelines?

**Mr Gemmell**—The DPP guidelines?

**Senator O’BRIEN**—Yes. If you could point to where they are publicly available, I would appreciate that.

**Mr Gemmell**—Yes.

**Senator McLUCAS**—I have one question, Mr Gemmell. Can you tell me what other elements appear in operations manuals generally that you do not enforce because you are fearful that they are going to be withdrawn? You might want to take that on notice.

**Mr Gemmell**—The operations manual sets out everything the pilots—

**Senator McLUCAS**—I am aware of the time—

**Mr Gemmell**—It could include things like the uniforms they wear. That is not a safety requirement; that is a company desire. That is the sort of thing that will be in the operations manual. Strictly speaking, if they do not wear the uniform as prescribed, they are in breach of their operations manual. It is a classic where we are unlikely to strictly police things like that. But the operations manual is what it says: it is the manual that sets out all the things they will do when they are operating, some of which derive from the regulations and others which are simply the procedural things that the company wants to do for their own reasons.

**Senator McLUCAS**—Could you take on notice a list of the safety elements that appear in operations manuals that you do not enforce compliance with because you are concerned that they will be withdrawn from the manuals? It goes to the ‘heavy handed’ answer. When do you take a light hand in enforcing compliance with safety elements that appear in operations manuals?

**Mr Gemmell**—In a general sense I can answer you. We enforce the things that are in the regulations. If they do not do things that are set out in their operations manual that are regulatory requirements then we will seek to enforce them. If they put in their operations manual activities that were in excess of the regulatory requirements, we would have a much deeper look at those things as to whether we were being heavy handed if we were to police them.

**Senator McLUCAS**—I wonder whether you could take my question on notice?

**Mr Gemmell**—We will do our best. But every company has their own operations manual. They are all different. So there is not ‘an operations manual’ that covers aviation in Australia.

**Senator McLUCAS**—Sure.

**Senator O’BRIEN**—Going on, the answer to CASA 46 related to the post-incident review. Fifteen people died, but CASA’s post-incident review was a desktop review only. Is that right?

**Mr Gemmell**—Yes. Of course, that was immediately that we were hearing that the accident had occurred. There was little choice for us. When an accident like this occurs there are various sorts of things a regulator has to do. One of our more significant responsibilities is to worry about the ongoing operation and safety of the airline that is still able to operate out there, so you have to sit back and try and work out what has happened and whether there is any reason we should take action—whether, for example, the issue was to do with the Metro aircraft itself, which might mean we take action in respect of the Metro fleet. At the time, you might recall, there had been a Metro accident in New Zealand a few weeks earlier, so was that a potential contributing factor? We have to think about that. Once we are able to satisfy ourselves that it did not appear to be relevant, we then have to look at the operators. Is there something systemic in that operation that might suggest to us ‘That’s it—that operator is on the ground while we work out what the issues are.’

That is obviously desktop, because we are trying to respond. We have unfolding elements of information. Early on you do not know what has happened and you are having a bit of a guess at it. Gradually you become aware of more information and can continue the process. We move on, of course, to look particularly at the operator, and that is not desktop but with people there, hands on, seeing what is actually happening in the operation.

**Senator O’BRIEN**—You said in the answer: ‘No issues were identified to warrant immediate suspension of the AOC.’ Were any issues at all identified at that time when you did the desktop?

**Mr Gemmell**—The stuff we were doing was to look at whether we could see anything that would warrant suspension of the AOC.

**Senator O’BRIEN**—So you are saying you did not find anything?

**Mr Gemmell**—Nothing obvious, but there had been an accident and we knew something had gone wrong. But, no, there was nothing that any of us saw that would suggest to us that that was an appropriate response or necessary at the time.

**Senator O’BRIEN**—The answer also says: ‘The North Queensland accident coordination group will oversight the ongoing safety of the affected operator.’ Can you detail this oversight, including the time frame? What oversight continued after the desktop and over what period?

**Mr Gemmell**—We set up the North Queensland accident coordination group immediately. I think that was the Monday after the accident, which occurred on the weekend. I would have to look at when we terminated it, but it was months later before we formally decommissioned that particular group.

**Senator O’BRIEN**—The answers to CASA 49 and 50 relate to post-disaster action taken against Transair. The details in the answer are very condensed. I would like the full detail of the three audit observations and the 12 requests for corrective action, please. On what dates were the requests for corrective action issued?

**Mr Gemmell**—We can provide that.

**Senator O’BRIEN**—And when did Transair respond?

**Mr Gemmell**—We will try and provide that.

**Senator O'BRIEN**—Details of an enforceable voluntary undertaking relating to Transair appear on the CASA website. It concedes that the operator has:

... organisational structural problems, systemic documentation and reporting problems impacting on its maintenance procedures, and quality control and review.

When were these problems discovered?

**Mr Gemmell**—As you would understand, we have been keeping a close eye on this operator. These issues were discovered in recent audits that have been done. These are concerns we have on the maintenance side with this operator. I cannot recall the dates of the audits, but they were more recent audits we have done of the operator.

**Senator O'BRIEN**—Could you check that and let us know, please.

**Mr Gemmell**—The audits were done in January and February, and maintenance records are really the issue where we have concern rather than maintenance itself.

**Senator McLUCAS**—Mr Byron, you said in your previous answer to Senator O'Brien that there had been a previous audit of Transair that identified that a load sheet was not left. Can you tell me when that audit was, and where was the port at which the load sheet was not left?

**Mr Byron**—I believe it was Gunnedah. The date of the audit preceded the audit prior to the accident, but we will have to take that on notice.

**Senator McLUCAS**—Can you also explain why, in bringing together a list of things you were going to check when the audit was done prior to the disaster on the route Cairns-Bamaga-Lockhart-Cairns, given that you had an indication that the company was non-compliant with providing load sheets, that was not included as one of the elements of the audit?

**Mr Byron**—I will need to check with the people who conducted the audit, but it would be my view that the eight sectors that were flown by flying operations inspectors would have included a review of all activities and all procedures of the pilots and certainly would have included whether or not they had left load sheets at the ports that they flew into. But I will double-check that.

**Senator McLUCAS**—You said also to Senator O'Brien that there were 20 to 30 pilots employed by Transair. How many of those were in Cairns, and was the sampling of six done of just those stationed in Cairns or not?

**Mr Gemmell**—The pilots who were sampled were randomly selected from the records held at Transair's headquarters.

**Senator McLUCAS**—So that was operation wide?

**Mr Gemmell**—Operation wide.

**Senator McLUCAS**—My next question is tangentially related to this issue. Can you tell me what work CASA has employed Mr Ian Harvey QC to undertake over the last, say, five to seven years?

**Mr Gemmell**—We can. Mr Harvey has done quite a bit of work for CASA. He very commonly represents us. I have come across him representing us in the Federal Court and

indeed in coronial inquiries and various things. So he has done quite a bit, but we would have to check all the details of that.

**Senator McLUCAS**—If you could just give me a list. I hope that is not too difficult to find.

**Mr Gemmell**—No, we could find that.

**Senator McLUCAS**—It would be quite simple to find. Would you describe Mr Harvey as CASA's preferred barrister?

**Mr Gemmell**—No. My understanding is that we have a contractual arrangement with a panel of suppliers who we roll around with. Mr Harvey on occasions would be representing our insurers. It would be a decision about representation coming from both CASA and our insurers, and it depends on who our insurers are. I am not sure the description 'preferred' would be correct, but I can check that to see if any part of the contract does indicate that.

**Senator McLUCAS**—In terms of the Lessbrook enforceable voluntary undertaking, we have established over discussions at many estimates and through very many answers to questions—and I thank you for those answers—that the relationship between Transair and Aero-Tropics is clear on paper but probably less clear in operation. Have there been the same sorts of discussions with Aero-Tropics, trading as Lip-Air, that you clearly had with Transair that resulted in the enforceable voluntary undertaking?

**Mr Gemmell**—To us, they are two different airlines.

**Senator McLUCAS**—Yes, I know.

**Mr Gemmell**—They have two different AOCs, and we treat them as such. Whether they have commercial relations between them is a matter for them. We treat them as separate operating independent airlines. Action we take in respect of Transair does not flow over to Aero-Tropics or vice versa.

**Senator McLUCAS**—Where is the maintenance done of the Transair Metroliners?

**Mr Purdie**—It is Hawker-Pacific. They do it up in Cairns and some is done at Brisbane.

**Senator McLUCAS**—We have spoken at length about the relationship between Cairns Business and Leisure Travel and Lipair. Has the department investigated the possibility that the arrangement between Cairns Business and Leisure Travel and Lip-Air is an arrangement of convenience that has been put in place in an effort to circumvent the requirement to hold an AOC authorising regular public transport operations?

**Mr Byron**—Is that a question for the department?

**Senator McLUCAS**—No, I believe it is a question for CASA.

**Mr Gemmell**—Following the series of questions that we have been asked, we have been given access to and looked more closely at this relationship and whether it remains what we thought it was when we first started answering. We have seen no evidence to tell us anything other than it is still a closed charter in our terms. Nothing has come to us to suggest anything different. I do not know whether the department has received anything that they have not passed onto us, but we have received nothing from them to tell us to the contrary either.

**Senator McLUCAS**—I apologise. I did say the department; I did mean CASA. Finally, the response to the answer that you gave me, CASA 86, I think you have misunderstood the question that I asked. The question refers to mail-run contractors generally. You have looked specifically at Cape York. The intent of the question was to ask how many and what percentage of mail-run contractors in Australia hold RPT endorsements on their AOCs for the ports stipulated in their contracts? With that explanation, would you mind going back and having a look at it?

**Mr Gemmell**—We will go back and answer the question in the way that you would want it.

**Senator O'BRIEN**—On the issue of the Mount Hotham crash last year, ATSB found that CASA's surveillance of the operation was deficient and recommended that you review your surveillance methods 'for the detection of patterns of unsafe practices and noncompliance with regulatory requirements'. Are you concerned that the ATSB has found that CASA failed to fulfil its core responsibilities—that is, to effectively monitor compliance with regulatory requirements?

**Mr Byron**—I am aware that the ATSB made a recommendation. I was not aware that they had found we were deficient in our oversight. If I may, I will address the issue of how we have been conducting our oversight of this operator, and I keep coming back to the issue of dealing with the passenger-carrying operators at various levels of the charter and low capacity RPT. I think CASA can improve its performance by increasing its surveillance, and that is a corporate strategy that has been on the table now for over a year. In terms of this particular operator, my understanding is that there was nothing really that our people could hang their hat on. There certainly was innuendo. Some of our front line staff in the local office, through whatever source, had reason to follow up, and we are following up to the extent of ringing air traffic controllers to see how they felt about the behaviour of the pilot. But there was not anything from the previous 18 months or so that gave our inspectors reason to take firm action.

I think the issue of surveillance of an operator like this, or other operators in that category, is a difficult one. Certainly it is my intention that, for passenger-carrying operators, we do more. Our inspectors have, since July 2005, been doing more than they were previously. I am pleased to report that. But it is not a guarantee that we are going to be able to have enough information or be in a position to intervene when a pilot chooses to deliberately break the rules. Once the door is closed, we are relying on the integrity of an individual pilot in the exercise of their duty of care to do the right thing. From my reading of the ATSB report, that is the significant issue in this case. Where CASA can identify high-risk operators, we are certainly better placed with our changes to do more of that.

**Senator O'BRIEN**—What safety action has CASA taken to improve its performance?

**Mr Byron**—It has been to do more surveillance and to provide more resources at the front line to do more surveillance. With an operator like this there is now more contact time to see what is going on. I was speaking to one of our inspectors from this area last week and he was able to tell me that, in the last week, he had been out flying with operators a number of times, which would not have been available under the previous audit regime.

**Senator O'BRIEN**—I want to turn to CASA's relationship with Polar Aviation, in Western Australia. Mr Wilkie, the member for Swan, has brought to my attention some particular matters related to this company. I have previously noted in the Senate chamber a speech made by Senator Eggleston last December expressing concern about CASA's treatment of this company. First of all, can you confirm that CASA's behaviour towards Polar Aviation has been the subject of adverse findings by the Administrative Appeals Tribunal, which were subsequently upheld by the Federal Court?

**Mr Collins**—From my understanding of what happened I am not sure that is fair to say that we were subject to adverse findings by the AAT. Certainly it is the case that not everything CASA has done has been upheld by the AAT and the Federal Court, but the main substance of the action we have taken against Polar Aviation and some of the principals of Polar Aviation has been upheld by both the AAT and the Federal Court.

**Senator O'BRIEN**—The AAT determined that CASA's decision to cancel Polar Aviation's air operators certificate was wrong.

**Mr Gemmell**—No, Sir, they did not. They upheld CASA's decision to cancel the AOC.

**Senator O'BRIEN**—You were required to pay the legal costs of Polar Aviation?

**Mr Gemmell**—Yes. That was in relation to a Federal Court appeal. That particular appeal involved in many ways Polar Aviation, but the issue was a decision by the AAT against which CASA was appealing and which the Federal Court upheld.

**Senator O'BRIEN**—What was the amount of Polar Aviation's legal cost?

**Mr Gemmell**—According to this document it was \$30,929.

**Senator O'BRIEN**—What has been the quantum of CASA's own costs in the matter to date, including AAT and Federal Court actions?

**Mr Gemmell**—About \$48,000.

**Senator O'BRIEN**—Can you outline to us what actions taken by CASA against Polar Aviation were ordered to be modified or abandoned by the AAT?

**Dr Aleck**—Senator, could you outline which particular proceedings you are referring to?

**Senator O'BRIEN**—There are a number, and I want to find out which actions by CASA against that company have been ordered to be modified or abandoned.

**Dr Aleck**—Starting in August 2005, Polar Aviation sought a review of CASA's decision to cancel its AOC and Mr Butson's chief pilot approval. Mr Butson also sought a review of the decision to revoke his chief flight instructor approval. On August 5 the AAT made the following decisions. The decision to cancel the AOC was affirmed. The decision to refuse to issue an AOC was set aside and remitted to CASA for consideration in accordance with the direction that CASA will, in good faith, do all things necessary, subject to the requirements of the act and applicable legislation to cause to be issued to CASA, by 2 September, an AOC covering charter and aerial work operations including flying training. The decision to cancel Mr Butson's chief pilot approval was affirmed, and the decision to cancel Mr Butson's chief flying instructor approval was set aside; and, in substitution for that decision, the tribunal determined that Mr Butson was, as from 2 September 2005, approved as chief flying

instructor. Subsequent to that, in March 2006, CASA issued an AOC in response to the tribunal's instructions, with a number of conditions imposed upon that.

**Senator O'BRIEN**—So that was six months after the date that was specified in the original order.

**Mr Gemmell**—The AOC was issued by 2 September.

**Dr Aleck**—That is right. But conditions were imposed—

**Mr Gemmell**—There were conditions on that, and Polar appealed against those conditions.

**Dr Aleck**—Those were the last proceedings—

**Senator O'BRIEN**—What effect did the conditions have on the AOC so far as—

**Dr Aleck**—There were two conditions. The first condition related to the requirement that the chief pilot must hold a flight instructor rating. In fact, the tribunal found that that condition should be eliminated because CASA had discretion, in the Civil Aviation Orders, about whether or not to require this approval. The tribunal's finding was that, by placing that condition on the AOC, CASA was in fact fettering its own discretion. Although the finding was consistent with the request of the applicant—Polar Aviation—it was actually in support of CASA's discretion.

Another condition was that Mr Butson not occupy the position of chief pilot or key personnel, other than the reinstated chief flying instructor in the organisation. That decision was affirmed by the tribunal. Finally, there was a very minor modification to a reporting obligation which was imposed as a condition on the AOC. As I recall—I will have to get the details—that had to do with the frequency of reporting. It simply reduced it from a fortnightly reporting schedule to a monthly reporting schedule. So, on balance, those last proceedings resulted in what I would consider to be a fairly strong endorsement of CASA's action in relation to Mr Butson.

**Senator O'BRIEN**—I thought you said, and I understand, that the AAT ordered CASA to use its best endeavours to assist the company back to ordinary operations.

**Dr Aleck**—No, Senator. Because an AOC can only be issued in accordance with the requirements of the legislation, which involve a fairly assiduous range of safety considerations, the tribunal quite prudently felt that they would not step into the shoes of CASA—as they had the power to do—and issue an AOC. What they did was to return the matter to CASA and say, 'Do the best you can, subject to the regulatory requirements, to see that an AOC is issued.' The implication of that was clearly, 'Don't do it, or don't do it without conditions if you feel it would be unsafe to do so.' CASA did it, with conditions; those conditions were challenged, and CASA was effectively affirmed in relation to those conditions. With respect to the one condition the tribunal found CASA should not have imposed, it was because that condition effectively fettered CASA as opposed to imposing a burden on Polar.

**Senator O'BRIEN**—Is it true that the AAT found, on 4 November 2005, that CASA misapplied the law?

**Dr Aleck**—I would have to take that on notice. I do not have that particular decision in front of me. In terms of misapplying the law, I do not know what the language of the tribunal was, but the tribunal looks for the correct and preferred decision. So, in many cases, a tribunal's determination to enter a different decision to the decision CASA came to is not because the law was misapplied but because in the circumstances the tribunal feels, on the merits, a different decision would be more appropriate.

**Senator O'BRIEN**—You have not just got the stuff with you that you think helps you and not the stuff that does not.

**Dr Aleck**—No. I have only a summary of the most recent proceedings. My understanding was that the questions that were to be raised about this would have more to do with the costs involved in those proceedings, so I had the figures. But I am happy to get the answers to these questions on notice.

**Senator O'BRIEN**—Can you explain the basis of CASA's decision to issue Polar Aviation a show cause notice on 20 March this year threatening to cancel its AOC—the one that the AAT had just made decisions; in part, you say, affirming your decision and in part affirming Polar Aviation's Mr Butson's complaints.

**Dr Aleck**—The decision to issue a show cause would have been based on operational assessments and would not have come to the attention of the office of legal services at this point. I think it is matter of if there is to be a response it would be an operational response.

**Mr Byron**—I have asked Mr Rob Collins to respond.

**Mr Collins**—I am informed that the March show was a result of CASA going back to Polar Aviation to ensure that the issues that had been raised in the previous audits had been rectified and that there were no lingering safety issues. As a result of that audit, they found that many of the systemic failures that were evident in those previous audits still existed and that we felt that it was necessary to, again, ask them to show cause.

**Senator O'BRIEN**—Am I correct in understanding that a supplementary show cause notice was issued on 6 April?

**Mr Collins**—I will have to take that on notice.

**Senator O'BRIEN**—Is it the case that these show cause notices concerning matters already considered by the AAT in reaching its findings mean that Polar Aviation would, effectively, keep its AOC?

**Mr Collins**—My understanding is that matters of a general nature were still being found on the most recent audit, and so in our consideration we would again find that these safety matters need to be addressed and they would be part of the most recent show cause.

**Senator O'BRIEN**—Has CASA sought any legal advice on whether its show cause notices might constitute a contempt of the AAT?

**Mr Collins**—I do not know; we would have to ask Dr Aleck.

**Dr Aleck**—I am aware of the allegation that was made by counsel, I believe, representing Polar in that. We are reviewing that contention. Our view is that it most certainly does not represent a contempt of the AAT, but this is a matter in the hands of a particular lawyer.

**Senator O'BRIEN**—Had CASA previously agreed to grant a three-year AOC if Polar Aviation withdrew its action before the AAT?

**Mr Collins**—It gets rather complicated because of the number of actions. My understanding is no. What initially happened was that we were encouraging—this is in the first show cause—

**Senator O'BRIEN**—I do not want you to give an answer that you are not sure of.

**Mr Collins**—In that case, I will take that on notice.

**Senator O'BRIEN**—You will take that on notice.

**Mr Collins**—Yes.

**Senator O'BRIEN**—Has Polar Aviation responded to the show cause notices?

**Mr Collins**—My understanding with the most recent show cause is that they have not. Again, I would take that on notice and stand to be corrected.

**Senator O'BRIEN**—Has CASA withdrawn its show cause notices?

**Mr Collins**—No, not to my knowledge.

**Senator O'BRIEN**—What do you say to the company's claim that CASA is pursuing a vendetta against it arising from a verbal disagreement with a CASA audit team in May 2004?

**Mr Collins**—My information is that the findings of the audit stand alone. To ensure that there is independence in assessing the matters before us, I have asked two other area managers or field office managers to assess the response to the show cause, rather than leaving it in the office, so that the claims of a vendetta can be put aside and the issues can be assessed on the merits of the findings.

**Senator O'BRIEN**—How often has Polar Aviation been audited since May 2004?

**Mr Collins**—I will have to take that on notice.

**Senator O'BRIEN**—Perhaps you can tell us when the audits were conducted. What was the purpose of the February 2006 audit?

**Mr Collins**—My understanding of the February audit was to follow up to ensure that the commitments that had been made by the company had been implemented and there were no outstanding systemic safety issues.

**Senator O'BRIEN**—How many requests for corrective action have been issued against the company since 2004?

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

**Senator O'BRIEN**—Has the company informed CASA that it is willing to work productively with CASA to enhance the safety of its operations?

**Mr Collins**—What CASA was encouraging the company to do in the first instance was to enter into a voluntary undertaking. CASA is always willing to work with operators who are willing and show that they have the capability to work with CASA. There seems to be a level of belligerence here. One of the reasons I have taken it out of the office is to ensure that CASA is not involved.

**Senator O'BRIEN**—Mr Byron, are you satisfied that your officers have dealt appropriately with Polar Aviation at all times?

**Mr Byron**—I have done some checking, starting about six months ago when these sorts of allegations started to surface. I had some personal discussions with some of the managers involved, knowing particularly one of the people involved, and I was confident that they were being dealt with fairly. As happens sometimes with some people in the industry, there certainly was a breakdown in the relationship. Normally when there is a breakdown like that in some relationship, you can possibly look at both sides. The questioning that I did at the time indicated that there might be some attitudinal problems on the part of the operator. That was the conclusion that I formed. In discussions with Mr Gemmell, and subsequently with Mr Collins, I felt that I wanted to make sure there was a degree of independence in the handling of this operator given that there were suggestions that they were not being dealt with fairly. To date, I am quite satisfied that the operator is being dealt with independently and fairly.

**Senator O'BRIEN**—Did the AAT decision affirmed by the Federal Court give you no pause for doubt?

**Mr Byron**—No, in fact I remember discussing this detail at one of my regular meetings with Mr Gemmell and Mr Collins. I asked a number of questions as to our success in having our decisions upheld or overturned or otherwise. Although there were one or two items, as has been discussed by Dr Aleck, certainly I was quite clear that the main thrust of the concerns that CASA had were being upheld through the AAT process.

**Senator O'BRIEN**—Has Minister Truss raised any concerns with CASA about its conduct in relation to Polar Aviation?

**Mr Byron**—Minister Truss mentioned the operator to me once, presumably because of some representation to him. At the time, I was in a position to say that I was aware of concerns that had been raised. I was doing my own checking, and particularly I was making sure that we were having a level of independence over the allegations and the handling of the operator.

**Senator O'BRIEN**—I understand these matters have generated about 3,000 pages of correspondence. Will the matter not conclude until Polar Aviation is shut down, or can it be resolved?

**Mr Byron**—My hope is that it can be resolved but, like in all of these things—and I have seen it in this job and in others—people need to be prepared to come to the table to accept their responsibilities. We need to accept ours and I have confidence in our officers having a clear understanding of what I expect of them. We need to make sure that the operator takes the same approach and, as long as everyone can get to the understanding that there is, if you like, a shared responsibility for delivering safe outcomes—because the operator cannot resile from that obligation; they have to accept that they are delivering the safe outcomes that we require—I would hope that we could get over this and get on with it. But I think it is a good example, and hopefully I have indicated to you that I have taken a personal interest in this because of the level of comment. It is an example of where CASA sometimes needs to put its foot down. CASA sometimes does need to say: 'You're going to deliver a safe operation by various mechanisms. One of them is by obeying the regulations, but another is by having the

appropriate attitude to accept the responsibilities.’ And that is the problem that we have sometimes.

**Senator O’BRIEN**—On another matter related to Polar Aviation, can you confirm that CASA cancelled a flight assessment for a Polar Aviation pilot seeking appointment as chief pilot on 17 March this year?

**Mr Collins**—I am aware that there was an applicant for the position of chief pilot. I cannot recall the circumstances, but I am quite confident that CASA did not cancel the appointment unilaterally.

**Senator O’BRIEN**—Is it the case that it was cancelled because neither the applicant nor the CASA inspector was current for the aircraft that they were going to fly on?

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

**Senator O’BRIEN**—Is it unusual for a CASA inspector to conduct an assessment on an aircraft for which he or she is not current?

**Mr Collins**—CASA inspectors are required to be current on any aircraft they conduct an assessment on where that assessment involves the occupation of the control seat and possible manipulation of the controls.

**Senator O’BRIEN**—I take it, with Dr Aleck here, that Mr Ilyk is not leading the CASA legal team anymore?

**Dr Aleck**—Mr Ilyk is no longer with the Civil Aviation Safety Authority.

**Senator O’BRIEN**—When did he cease with CASA?

**Mr Byron**—Mr Ilyk left the Civil Aviation Safety Authority last Friday. That was his last day with CASA and it was a date of his choosing.

**Senator O’BRIEN**—Was he removed from the position or did he resign?

**Mr Byron**—Technically, he was terminated, but it resulted from a number of market-testing exercises that we conducted in the latter course of last year which led to me discussing with Mr Ilyk the future of the legal services group. I explained to Mr Ilyk and he had an understanding of my requirements and it was then just a matter of determining the time. As I said, the actual day of his departure was his choosing.

**Senator O’BRIEN**—Thank you. I rarely travel to Newcastle Airport, but I have recently and I want to raise an incident that occurred on Friday, 24 March. I am reliably informed that passengers boarding a Jetstar flight were required to remain in a queue at the gate lounge while the terminal was subject to an emergency evacuation. I further understand that a passenger who, quite sensibly in my view, evacuated the terminal was called back into the terminal in the company of a security officer to board the flight while the evacuation alarm was still sounding. Is CASA aware of that incident and has it been investigated?

**Mr Byron**—We were not aware of that until recently but, having become aware of it, we have done some checking. From the information that I have been provided, on the day in question—I do not have confirmation that it was 24 March, but one of the airport officers recalls it being around that time—the fire alarm went off in the terminal. In accordance with their evacuation procedures, the terminal was evacuated at the same time that the Jetstar

aircraft was boarding, and I believe the majority of passengers had already boarded. I am advised that the emergency procedures for evacuating that terminal allows people to evacuate through either door, either groundside or airside. One of the passengers who had been checked in evacuated through the groundside—so they went out on the road, I guess—but others were completing the evacuation process and boarding through the airside.

With the approval of the fire officers present, and I understand there were some RAAF fire officers present, the one passenger who had evacuated groundside was permitted to pass through the terminal in the company of the airport safety and fire officers and board the aircraft. That is the limit of my knowledge of the incident. As to whether we are investigating it, up until now we have not—we were unaware of it. From the information I have been provided with, it sounds like an evacuation of the terminal in accordance with their emergency plan.

**Senator O'BRIEN**—I will bet you that it was not as it has been described to you and that passengers were simply told to remain in the queue. Instead of proceeding straight out onto the tarmac, they were scanned in the usual way and taken to the aircraft.

**Mr Byron**—It was suggested that you were in the terminal at the time.

**Senator O'BRIEN**—I was not, but I know someone who was.

#### **Proceedings suspended from 1.01 pm to 2.00 pm**

**Senator O'BRIEN**—Mr Byron, can you give some details about the initiative taken by cabin safety staff regarding the safety of carry-on baggage?

**Mr Byron**—I was particularly pleased to see the initiative taken by our cabin safety people, our front-line inspectors particularly. I saw it as a sort of reaction to the fact that we want them to be fairly proactive in dealing with what they feel are front-line day-to-day issues.

Certainly from my perspective, carry-on baggage is a potentially serious safety issue that CASA needs to be involved in. From my own observations, I think that the travelling public and the operators themselves can improve. During my days doing a lot of aviation system safety research I looked at two significant accidents, which were both in the United Kingdom, actually, in the late 1980s—the Manchester one and the Kegworth one. In both cases there were large numbers of fatalities, in the order of 50 in each. During the subsequent evacuation of passengers, excessive amounts of cabin baggage spilled into the walkways and collapsed overhead locker bins due to excess weight in baggage. That was thought to impede the safe evacuation of passengers during those accidents. I felt there was a varying degree of interest in that significant issue certainly from an airline operating perspective.

Having done a lot of travel in the last two years, my own observation is that some of the travelling public need to address this issue on a daily basis. Our inspectors, obviously out there doing their surveillance, had picked up a need to look at this. They obviously developed a program. It was an educative program, and it was based on some surveillance that was conducted and observing that people were carrying on too much overhead baggage. The problem of course is that too much being taken on is not only a weight issue but also a structural issue in relation to the overhead bins if something happens.

In one of those accidents that I referred to, in the final stages of the flight, which was a fairly turbulent and rough flight, the bins actually started to break open and bags started to fall out during the deceleration prior to actual impact. I think it is a significant issue that we need to be addressing, and I am pleased to see that our staff are raising awareness of it. I believe it was picked up by the media to a large extent. We were quite delighted to see that because at the end of the day it is an awareness issue.

So I could not say there were one or two incidents that led to it. There was just a trend, and our technical people felt we needed to deal with it.

**Senator O'BRIEN**—So have CASA continued to monitor this issue?

**Mr Byron**—We will continue to do precisely that. We will watch how airlines handle their passengers. On a flight out of Canberra last week, the passenger boarding before me had a bag that was far in excess of the requirements in terms of size and also, judging by the way he was carrying it, weight. The best thing I saw was that, as the passenger was getting on the flight, the flight attendant grabbed the bag and said, 'No, you will have to put that in the hold.' If that is as a result of CASA's recent raised awareness of it, then I am delighted. We will have to continue to monitor it, I believe, because I think there is an attitude, an expectation, that people can carry on what they want. In the interests of safety, the operators cannot allow that to happen, and we need to monitor that to make sure that approach is taken.

**Senator O'BRIEN**—In response to this committee's inquiry into air safety and cabin air quality, the government undertook to establish a reference group. This group was to undertake a range of activities, including the continuing monitoring of cabin air quality issues. When was the air safety and cabin air quality reference group formed?

**Mr Byron**—I will have to take the precise question on notice. I can give you a perspective. I was actually an invited member of industry on that when it was formed. From recollection, it was in about 2002. But I will have to get back to you.

**Senator O'BRIEN**—When did it last meet?

**Mr Byron**—Again, I will have to give you the details on notice, Senator.

**Senator O'BRIEN**—Has the government formally abandoned the commitment it made to the parliament in June 2002?

**Mr Byron**—What commitment was that?

**Senator O'BRIEN**—That it would establish this committee.

**Mr Gemmell**—My recollection—it may be wrong—is this was primarily following incidents to do with the BAe 146 fumes in the cabin.

**Senator O'BRIEN**—And other passenger jet aircraft.

**Mr Gemmell**—Okay. I was going to say that my recollection is that it was primarily the BAe146. They did a lot of work. History now shows they actually eventually found out what the problem was and how to solve it in a technical sense, because in recent years there have been very few reports about fumes issues with the BAe146. I thought that, if they had fixed the problem, that may have been it. But, if their terms of reference were wider, they may be still going.

**Senator O'BRIEN**—I will read from the government response to the committee report:

The Government takes very seriously the issues relating to air safety and cabin air quality in the BAe146 and other passenger jet aircraft. The Government is therefore committed to addressing the matter by implementing the following two measures to address the issues raised in the Senate Committee's report.

The first was:

... the establishment of a 'Reference Group' (comprising Government agencies, key industry representatives and a passenger/consumer representative coordinated by CASA) responsible for following the progress and analysing the outcomes of international research and developments and working cooperatively with other countries, major regulatory bodies and those conducting related research to develop a harmonised view of the cabin air environment ...

That is the government's response to the committee report presented to the parliament.

**Mr Byron**—I think we will have to take the detail of that on notice. I am not aware of anything that has been done in my time at CASA, but we will need to check that for you.

**Senator O'BRIEN**—I look forward to that answer. There has been no announcement that the work has been abandoned. That is why I am interested. Is CASA aware of concerns held by the Australian Air League about the impact of CASA's cost recovery? A number of Labor senators and members have received correspondence from the Air League saying that, without concessions, the league will be forced to shut down its training arm.

**Mr Gemmell**—Yes, we have received from the Australian Air League representations along similar lines.

**Senator O'BRIEN**—What action has been taken in response to those concerns?

**Mr Gemmell**—The first action we took was we wrote back to the Australian Air League basically asking them what particular cost recovery elements were of concern to them, noting that we have been charging for the AOC issue for some years and nothing much had changed there. We asked what particular charges were causing the problem to them so we could make sure we had a look at that. We received a detailed answer which said, 'There is quite a range of them, actually. There is nothing in particular.' A lot of the licensing ones are of concern to them. We are now looking at that correspondence and thinking about what we can do and how we can do it.

**Senator O'BRIEN**—Have any other organisations expressed concern about the impact of the cost recovery on them?

**Mr Gemmell**—Yes, quite a few people have written in to say they are unhappy with the costs or they think they are too much.

**Senator O'BRIEN**—I am not talking about individuals so much as organisations at this stage.

**Mr Gemmell**—Yes, them too, particularly in that I think AOPA, the Aircraft Owners and Pilots Association, wrote to us in an Air League-scouts association style in that not-for-profit, volunteer type role they have. AOPA were concerned about those and, again, we have sought some specifics by asking, 'Are particular charges causing you the problem, or is it just the whole suite of charges?'

**Senator O'BRIEN**—Are we talking about a vast list or a relatively short list of organisations expressing those concerns?

**Mr Gemmell**—It is not vast. We recently received representations from organisations doing particular flyovers or social events and not-for-profit sort of stuff. They were concerned that we charged for the issue of an approval for that. They are doing it for nothing or for themselves and they suddenly have to pay. So we receive representations both in the general sense of concern about the general impact and in specific cases. But often it relates to where charity elements are attached to what they are doing.

**Senator O'BRIEN**—Is it possible to get a list of the organisations that have expressed concern?

**Mr Gemmell**—You are just after organisations? There are quite a lot of individuals as well.

**Senator O'BRIEN**—I am happy if you want to give me the whole list. I was just trying to restrict the amount of work that you had to do, but seeing that you offered.

**Mr Gemmell**—We will certainly give you the organisations.

**Senator O'BRIEN**—You are backtracking.

**Mr Gemmell**—You have caught me. Yes, I am trying to backtrack, get out of work.

**Senator O'BRIEN**—I want to return to an issue we have examined in the past, which is your travel, Mr Byron. Thank you for your apology for failure to answer during the previous estimates the question regarding the May to June trip. After this you may want to review the *Hansard* a little more closely so we do not arrive at misunderstandings again. According to the answer I eventually received, the cost of the trip was \$47,646.11, made up of airfares for you and your wife of \$28,951, European travel of \$8,443, accommodation of \$7,533, and meals and other expenses valued at \$2,418.79. I had to extrapolate the total cost of the airfares for you and your wife from the answer to question on notice 1417. I assume I have got that figure right?

**Mr Byron**—That sounds about right, yes.

**Senator O'BRIEN**—It was two first-class fares?

**Mr Byron**—Yes.

**Senator O'BRIEN**—Did taxpayers get good value from this trip?

**Mr Byron**—I believe they did. Having been in the organisation at that time for over 18 months, in planning that trip I looked at the travel requirements that had been on the previous director and the board and I noted that a number of trips had been conducted in the period of a year, and I tried to consolidate everything into one trip. I have now been in the organisation for two and a half years, and that is the only overseas trip I have done. I did try to incorporate a number of issues, such as the annual requirement to talk to the insurers, the need to start to develop relationships with the directors of civil aviation in other regulatory regimes and particularly, in terms of the changes that I was likely to make in CASA, the need to look at how things were done in other regulatory regimes and how operators operated in those parts. So it was a very broad requirement, I suppose, that I have put on myself that I wanted to do.

Since meeting some of those directors-general, I have established quite regular correspondence with them, the Americans in particular, on a range of issues such as the changes to the regulatory reform program, the targeted way in which we are conducting our surveillance, the considerations of self-administration that we are looking at talking to industry about and developing those links. I correspond on a regular basis in terms of the future of surveillance activities and regulatory reform. So, in my view, the organisation received certainly benefit from my experience.

**Senator O'BRIEN**—How long did you stay at the Champs Elysees Plaza in Paris? It just seems a large account for that accommodation.

**Mr Byron**—I would need to double-check that. I believe it was three nights, but I would need to check.

**Senator O'BRIEN**—During that trip there were 17 nights of private overnight accommodation that the taxpayer did not pay for—you paid for yourself?

**Mr Byron**—I paid for myself.

**Senator O'BRIEN**—Is it fair to say that for that period, whenever it was, you were operating in your own interests and not the government's?

**Mr Byron**—No. I can recall that the Monday after I arrived, for example, I visited the Civil Aviation Authority Safety Regulation Group at Gatwick airport and I paid for my own accommodation that night. Because of the fairly extensive nature of what I wanted to do during this trip and the flexibility that I wanted to visit a range of areas—I was going to be advised by local regulatory authorities—I took the same approach as I had applied in the exercise of my travel requirements in Australia: just because there is an entitlement does not necessarily mean I always exercise that entitlement. No, I thought that was a fair way to approach the conduct of this trip.

On a number of occasions I visited Gatwick. As I said, I visited a number of places throughout the UK, talking to operators. I realised I had the opportunity to charge CASA for the accommodation. But, given the extent of the trip, I just felt I had an obligation to try to strike a balance. I made the decision that I needed the flexibility to talk to people throughout the UK, so I adopted that approach.

**Senator O'BRIEN**—The question that Senator Nash asked earlier—

**Mr Byron**—Regarding drug and alcohol testing?

**Senator O'BRIEN**—Drug and alcohol testing—obviated the need for me to ask a number of questions. Does the government propose to introduce random on-the-job testing?

**Mr Byron**—My understanding is yes, but I will ask Mr Gemmell to provide the detail.

**Mr Gemmell**—Yes, that is right. We have been advised of the government's decisions, which include that random testing should be part of the regime.

**Senator NASH**—As opposed to having set testing?

**Mr Gemmell**—There are all sorts of options. The main one is sort of on suspicion testing, if you like. But on top of that it would just be to pull someone out even though you have no

reason for suspicion and you give them a test. It will be a little like what they do with sports people: they have certain things programmed and then they randomly do it.

**Senator NASH**—One would think that, if it were not random, it would be a little predictable.

**Mr Gemmell**—Yes, I see what you mean: if you knew it was coming, you could prepare for it. Certainly it is a very common element, and some of the airlines have it now. If there is a suspicion, they will give you a test. But the random bit is ramping up from that, saying, ‘We are going beyond that. There does not have to be a suspicion. We can give you a test anyway.’

**Senator O’BRIEN**—Someone could roll into a cabin of a plane before it is loaded with passengers and say, ‘We want samples from the whole group’?

**Mr Gemmell**—How it works we have not worked through yet. The theory of it is, yes, at any point in time someone could ask for samples of whatever it is we are going to collect for testing.

**Senator O’BRIEN**—The media statement talks about random testing for various categories of personnel, including ‘other personnel with airside access at airports’. Does that mean everybody with airside access would be subject to random testing?

**Mr Gemmell**—In the report that is publicly available, you will see it says that this is to be applied to safety-sensitive personnel, and there is a list, which is intended to be indicative but not necessarily comprehensive. The limits of that have not been established and that is one of the things we have to do. But it includes people like baggage handlers and security screeners as well as aircrew, air traffic controllers and so on. It is quite extensive. What needed to be included in the list was put down in the decision, but the limits of it have not been determined.

**Senator O’BRIEN**—For certain occupations you would demand a zero tolerance—zero levels of, for example, alcohol.

**Mr Gemmell**—Again, the report in some spots prescribes that. There are certain proscribed substances they make clear at zero tolerance. That is the government’s decision. My memory is that for alcohol it is the .05 limit, but I would have to go back and check—I have just been advised it is .01 or .02. You will find in the decision the acceptable limits prescribed for some categories. The report is publicly available, so you can read the details of that.

**Senator NASH**—When was it first discussed that this would be an appropriate course of action? It seems quite bizarre that we breath-test car drivers and yet those responsible for aircraft have not been tested.

**Mr Gemmell**—The discussion paper on this was put out last year proposing this for those sorts of reasons, really. The prompt to do it probably came from the Hamilton Island accident, where there was at least some suggestion that drugs and alcohol may have contributed to that. That prompted the movement. Certainly in the rail and road sectors drug and alcohol testing is part of the regime, so why isn’t it being applied to aviation? In Australia there had not been a lot of evidence that it was contributing significantly to any accidents. But part of the exercise that was done mainly by the department was looking at experiences overseas. It produced enough instances of it in the larger countries to worry you that there may be some prevalence,

particularly in society today, that we are just not used to, and that led to a decision to go ahead and do it.

**Senator O'BRIEN**—I hope we monitor fatigue in some of the sectors as well, because of the correlation between fatigue and effectively the symptoms of excessive consumption of alcohol—same symptoms.

**Mr Gemmell**—Indeed. There are rules about fatigue, and, yes, there is evidence that fatigue causes the same sorts of physical effects.

**Senator O'BRIEN**—In view of time constraints, I will proceed to the Office of Transport Security, in the absence of other questions on this division.

**CHAIR**—Thank you very much, ladies and gentlemen. Mr Ash, you want to place something on the record?

**Mr Ash**—I just want to correct something. I made a statement yesterday on page 21 of yesterday's *Hansard*. I had indicated that the measures included in the budget documentation were done on an underlying cash basis. That should have been a fiscal balance basis. It makes no difference to the rest of the answer I provided yesterday.

**CHAIR**—Thank you very much for that clarification.

[2.23 p.m.]

#### **Inspector of Transport Security**

**CHAIR**—I welcome the Inspector of Transport Security to the table. Thank you for your time.

**Senator O'BRIEN**—According to a letter received by the chair on 1 May this year, your contract as the Inspector of Transport Security finished today; is that right?

**Mr Palmer**—Finishes today, yes. That is right.

**Senator O'BRIEN**—Have you signed another one?

**Mr Palmer**—Yes, I have.

**Senator O'BRIEN**—Is it on the same terms and conditions as the previous one?

**Mr Palmer**—It is slightly different. There is a consultancy agreement for the next six months, until I think 31 December. There was no retainer component. There was just a daily rate for the days that I worked, which was an arrangement at my request.

**Senator O'BRIEN**—The same daily rate?

**Mr Palmer**—Same daily rate, yes.

**Senator O'BRIEN**—Did you say it is six months?

**Mr Palmer**—A six-month contract.

**Senator O'BRIEN**—It expires six months from tomorrow.

**Mr Palmer**—Slightly over six months. It expires on 31 December.

**Mr Tongue**—I should add that the reason for that timing is linked to the legislation process for the creation of the office, and no doubt we will come to questions on that issue.

**Senator O'BRIEN**—What amount has been expended on the Office of the Inspector of Transport Security this financial year?

**Mr Palmer**—I am in a position to table a document in that regard, but I might ask Mr Pearsall to talk to it in the first instance.

**Mr Pearsall**—Expenditure as of the end of April for the office is \$422,977. That is \$22,977 over the \$400,000 budget. Supplementary finances were sought and approved by the secretary to cover those expenses.

**Senator O'BRIEN**—How did it come about that the budget was exceeded? Why was that necessary?

**Mr Pearsall**—As a result of the inspector being tasked by the minister to attend to a major land transport security review both within Australia and overseas. The size of that tasking required additional funding. It came late in the financial year, so we had already expended some of our budget, and I had to seek additional funding to cover this tasking.

**Senator O'BRIEN**—Are the details of the expenditure disaggregated on the document you have?

**Mr Pearsall**—For the additional tasking?

**Senator O'BRIEN**—No, for the whole year generally? Is it broken down into areas?

**Mr Pearsall**—Yes, I have broken it down into travel, accommodation—all that, yes.

**Senator O'BRIEN**—Staff?

**Mr Pearsall**—Staff.

**Senator Ian Campbell**—Salary costs.

**Mr Pearsall**—I can table a document that sets all that out, Senator, if you wish.

**Senator O'BRIEN**—If you would, please, that would be good. How many days have you been engaged as a consultant, Mr Palmer, in the last financial year?

**Mr Palmer**—How many days have I worked in actual days worked?

**Senator O'BRIEN**—Yes.

**Mr Palmer**—Fifty two and a half, or 52.46, I think, to be precise.

**Senator O'BRIEN**—What is that in minutes?

**Mr Palmer**—On an hourly basis, if I work part days I claim for hours, and it works out. The accountants are very precise. That amounts to \$133,304 paid this year. That includes my retainer.

**Senator O'BRIEN**—What have you been doing?

**Mr Palmer**—In November last year the Australian Transport Council agreed to a surface transport security review to be headed by me as part of a team comprising members of the Transport Security Working Group to look at surface transport security arrangements in Australia; to make an assessment of our state of preparedness and the gaps and weaknesses that might exist in surface transport security arrangements; as part of that process, to do a domestic familiarisation tour in the first instance; and then to go across and make an

assessment against what are considered to be benchmark countries. We are part of the way through that process now.

**Senator O'BRIEN**—How much more work is to be done?

**Mr Palmer**—We visited quite a bit. We visited London, Madrid, Paris and Israel, and had a whole range of high-level and operator-level meetings in those countries looking at rail, buses and ferries essentially—and trams where appropriate—looking at all those otherwise non-aviation, maritime areas of transport. We are yet to go to Canada, the United States and Hong Kong. We also went to Singapore in that first round.

We are heading off next weekend to Canada and Hong Kong. We were going to the United States at the same time. That has had to be put on hold because of the number of visits that the United States is experiencing at the moment and the fact that we were not likely to get exposure to the people, in the view of the embassy, whom we would need to meet. So we decided to put that on hold.

Then the process is that I will write a draft report. It is being drafted as we are accumulating the evidence, so we are sort of moving towards a draft proposal, which is in a sense a combined report of the TSWG members and me, although it will reflect at the end of the day my opinion of the state of play. I will then talk to the individual states and to members of SCOT about the draft report. It will be tabled or delivered to the ATC at the November meeting. It may well be presented out of session, but the idea is that I will make a formal presentation at the November meeting.

**Senator O'BRIEN**—What is the budget for your office for the coming financial year?

**Mr Palmer**—The ongoing budget is \$400,000 per annum. But, as I think we have mentioned at earlier estimates appearances, that is intended to cover the ordinary administrative costs of the office, with additional funding being sought and supplied with regard to specific tasks directed or requested by the minister or the secretary. That, of course, is what has occurred on this occasion. There was a need for additional money to allow this.

The states paid their own costs. A senior AFP officer accompanied us on the mission. They all paid their own costs. We obviously had the federal costs, plus we paid for a private operator who accompanied us, which I thought was a very important part of the process. One of the key areas of focus is to look at the way in which other countries are engaging with their private industry suppliers, the way they are sharing information and the way they are gaining their commitment, whether we can learn any lessons in terms of the way in which private operators are being involved in that process. I think that is a very successful part of the initiative to date.

**Senator O'BRIEN**—Were there a number of trips at different times? You were not able to make your visits in one particular trip?

**Mr Palmer**—The figures that I think are shown there include the domestic visitations to the various states. I visited most of the states.

**Senator O'BRIEN**—There are two travel figures. There are two airfare figures: one, domestic travel, \$38,727; and another, under the heading 'International travel approximate only to date airfares, \$46,000'.

**Mr Palmer**—That is right.

**Senator O'BRIEN**—They are two separate amounts?

**Mr Palmer**—They are two separate amounts, yes.

**Senator O'BRIEN**—The \$46,000 for international travel indicates that you made a number of trips to and from Australia; is that right?

**Mr Palmer**—No, that covers the one trip paid to date, not including the Canadian trip. I am right, Mr Pearsall?

**Mr Pearsall**—Yes. That is one trip.

**Senator O'BRIEN**—How many people were travelling?

**Mr Pearsall**—There was a group of seven all up. There were three from the Commonwealth; one private operator, which we supported; the AFP officer and the states paid their own way. So the mission was made up of a total of seven people. There was one trip via London, Tel Aviv, Madrid, Paris and Singapore, returning to Australia.

The amounts on the international will be higher. If you look at the figure second last from the bottom, the \$63,508, that is the unacquitted amount that I have not been able to acquit because banks have not issued statements against credit cards for travel expenditure. So a portion of that will go to the international travel.

**Senator O'BRIEN**—So it will be getting up to a quarter of the budget for international travel?

**Mr Pearsall**—At least, yes.

**Senator O'BRIEN**—You still have no legislation. Drafting instructions were issued before Christmas. Where are we up to?

**Mr Tongue**—I am hopeful that we will be able to take a revised consultation draft out to particularly states, territories and industry through June with the hope that, subject to the various legislative processes, we can introduce it in the spring sittings.

**Senator O'BRIEN**—You have a draft?

**Mr Tongue**—Yes.

**Senator O'BRIEN**—Can the committee see a copy of the draft?

**Mr Tongue**—I do not know what the usual processes are, but there is no difficulty in doing that.

**Senator O'BRIEN**—Mr Palmer, in the past the government has not consulted you on its transport security initiatives, including the maritime security identification card regime. Were you consulted on any initiatives funded in the 2006-07 budget?

**Mr Palmer**—I do not think specifically. Mr Tongue might be able to correct me if I am wrong, but I do not think I was spoken to about those particular initiatives—no, about any of them.

**Mr Tongue**—Not to my knowledge.

**Senator O'BRIEN**—I cannot take that any further. Thank you very much.

**Senator HOGG**—I do not know whether you are the right people to ask this question of, but are you responsible for what happens kerbside at airports in terms of security arrangements?

**Mr Tongue**—The next group: the Office of Transport Security.

[2.36 p.m.]

#### **Office of Transport Security**

**Senator O'BRIEN**—I want to start with some questions about the administration or regime of single and continuing voyage permits. In February I wanted to know whether cargo carried under a single voyage permit is ever checked to ensure it matches the details on the permit application. It was Mr Kilner, I think, who told me:

Part of the normal routine is to go back after the voyage has taken place to have a look at whether there are any differences between what has been approved and what has actually been carried.

Answer OTS04 says:

Applicants to whom a permit is issued must complete a Statement of Cargo Actually Carried for each voyage made under the permit ... within 14 days of the sailing date ...

Is it true that 100 per cent of applicants must lodge these statements with the department within 14 days of sailing?

**Mr Tongue**—Mr Kilner is travelling with the secretary at the moment. I will ask Mr Parkinson to handle that question.

**Mr Parkinson**—Yes, 100 per cent of permit holders are required to submit a statement of cargo actually carried.

**Senator O'BRIEN**—But is the cargo itself ever checked?

**Mr Parkinson**—I understand that the Australian Customs Service are forwarded details of permits as they are issued. Given we are talking about foreign ships on international voyages, Customs of course have a strong interest in the cargo carried by those ships and do have some role in checking the cargo carried by permits.

**Senator O'BRIEN**—Do you know whether they check it against the permit, or do they just check the cargo against their own regulations and—

**Mr Parkinson**—They are forwarded a copy of the permit.

**Senator O'BRIEN**—Does anyone check with them to see that they are actually inquiring whether the permit states the type of cargo that was actually carried?

**Mr Tongue**—We will have to take that one on notice.

**Senator O'BRIEN**—Do applicants to single voyage permits ever fail to lodge these statements of cargo actually carried?

**Mr Parkinson**—As far as we are aware, we have received 100 per cent of those statements.

**Senator O'BRIEN**—The answer to question on notice 1599 says that only one foreign vessel operating on a single or continuing voyage permit has carried a cargo of ammonium nitrate since 1 September 2005. Are we certain that that is true?

**Mr Parkinson**—Yes.

**Senator O'BRIEN**—At least so far as the declared cargo is concerned, but I imagine you should know about that. I want to refer to the answer to question on notice 1673 relating to PAN Australia Shipping. The answer to the question on notice says it is not possible to determine vessels that operate under a flag of convenience. Why is that? Doesn't the department know what the term 'flag of convenience' means?

**Mr Sutton**—The problem is that 'flag of convenience' is not an internationally recognised term. It is a term used by the International Transport Workers Federation that has not broader acceptance internationally. We do not use that categorisation at all in administration or in coastal shipping policy.

**Senator O'BRIEN**—If the ship is registered in Greece but flagged in Panama, you still would not recognise it as a flag of convenience?

**Mr Sutton**—As I say, the term 'flag of convenience' is not one that has any role in administration of the permit system. As an example, Australian-licensed vessels can actually have foreign flags. I will give as an example the PAN Australia vessels which have been licensed. Both of those vessels have flags which would be termed by the ITF as flags of convenience. *Boomerang 1* is under the Cypriot flag. I think *Boomerang 2* is under the Liberian flag.

**Senator O'BRIEN**—I am interested in that answer because the then minister for fisheries, Senator Ian Macdonald, knew what the term meant when he issued a media statement on 2 November last year entitled 'New report exposes flag of convenience countries'. Senator Ian Macdonald said this:

Many countries operate what are known as 'open vessel registers'—basically offering their flag to any vessel for a relatively small fee—but exercising no control over them.

He said:

About 1,200 vessels were found to be on open registers in 2005 ...

Is he making that up, or is that not something the government understands?

**Mr Sutton**—I think Senator Ian Macdonald's comments were being made in the context of illegal, unregulated and unreported fishing, and some international activities to control IUU fishing. In the context of commercial shipping, which is the area that we deal with in the department, the 'flag of convenience' terminology is not one that we use. In terms of compliance with safety, environmental and other requirements of the International Maritime Organisation, there is not a strong correlation at all between deficiencies, problems with vessels and whether they are from a register that is termed a flag of convenience.

**Senator O'BRIEN**—There is no correlation at all?

**Mr Sutton**—In the sense that there are some ITF-termed flag of convenience nations which have extremely good safety and environmental records and there are some countries

with traditional registers that have much poorer safety and environmental records. So there is not evidence internationally to support a finding of a correlation between the two.

**Senator O'BRIEN**—You are saying there is no evidence at all. Your terminology is that there is no correlation at all. They were the words you used. I would have thought there is ample evidence that there are many more vessels operating on these open vessel registers that have unacceptable practices than those particularly registered in their own nation but registered in well recognised and reputable registers.

**Mr Sutton**—The information we have available to us is that that is not in fact the case. As I say, certainly there are some open register countries which have very poor flag state records. There are other open register countries which have very good records. Senator, you may recall the comments last night by the ATSB about the Marshall Islands registry and the support it was giving the ATSB in an investigation that it was doing.

**Senator O'BRIEN**—And no support from the Cypriot registry on another vessel.

**Mr Sutton**—I think that highlights the problem in terms of making a simple division between FOC registries and other registries. It is not a black-and-white issue at all.

**Senator O'BRIEN**—Has the department received any reports of non-licensed vessels using permits issued by this department to carry cargo when the licensed vessel, the PAN vessel *Boomerang 1*, was willing and able to take the cargo?

**Mr Sutton**—There has been only one case, to my knowledge, since PAN commenced services on 17 March when the *Boomerang 1* was both available and suitable for the cargo but the cargo was carried by a unlicensed vessel. That incident happened on I think the first weekend after the PAN service was introduced. It was the *Kota Ekspres*. Since then there have been no incidents—certainly that I am aware of—where those criteria used have been breached.

**Senator O'BRIEN**—Did the department issue any directions to the *Kota Ekspres* to unload the cargo?

**Mr Sutton**—When we became aware of the fact that the *Kota Ekspres* was loading cargo, I advised the company through the operations centre to cease the loading of that cargo. The company complied with that advice. No direction was given to them to unload the cargo. The vessel sailed with the boxes they had already loaded. I think we have had discussions with the company that operated the *Kota Ekspres*, and I think it is fair to say there was a degree of confusion. The company has indicated that it was under the impression that the vessel was able to sail with those boxes on board.

**Senator O'BRIEN**—Has the department taken any action in relation to claims that the vessel *Don Giovanni* has carried coastal cargo without a valid permit or otherwise breached its permit conditions?

**Mr Sutton**—Yes. We were notified of concerns that several vessels had sailed without the necessary permits to carry those cargoes. We, as in the operations centre, investigated those claims and in all cases found that there were permits in place. The claims that we got suggesting those vessels were travelling without permits were not able to give us specific dates or voyages, but we were able to check and ascertain that the *Don Giovanni* did have

valid permits for the relevant period last year and, to the extent that we were able to do so, confirm that there did not seem to be any basis to the claims.

**Senator O'BRIEN**—What about the vessel the *Roberta*?

**Mr Sutton**—That is a very similar situation.

**Senator O'BRIEN**—Can you outline the full range of penalties or sanctions that can be applied for breaching a permit condition?

**Mr Sutton**—The range of penalties under the Navigation Act is extremely limited. For example, you asked earlier in relation to the *Kota Ekspres* about the ability for us to order cargo be unloaded. We do not actually have a power to do that under the Navigation Act.

I should make a distinction. Since the *Kota Ekspres* incident, parliament has passed legislation which has altered the revocation requirements for continuing voyage permits. With the *Kota Ekspres* early in March, the relevant requirement was that the minister had to give six months notice to revoke a continuing voyage permit. Given that CVPs are for a maximum of only three months, the six-month period—which was a relic of old legislation—did not have any practical import. Since that time, the parliament has passed the Maritime Legislation Amendment Bill. The minister now can issue to a continuing voyage permit holder a notice of intention to revoke the permit and to give the permit holder an opportunity to show cause why that should not be the case.

So that is a potential sanction that is available to the minister and to the department now that was not available back in March and April. Apart from that, the main measure we can take is to take the breach of a permit condition into account in considering any future permit applications by an applicant.

**Senator O'BRIEN**—Under which provisions of the Navigation Act or regulations have the ministerial guidelines been issued for granting licences and permits to engage in Australia's domestic shipping?

**Mr Sutton**—The guidelines are not directly covered by either the legislation or the regulations. They were originally developed by the department to assist the department in administering the act and the regulations. So they have no legal status as such. They have been developed obviously to be consistent with the act, with the regulations and with legal advice that the department has received about the interpretation of the act and the regulations.

**Senator O'BRIEN**—What is their legal standing?

**Mr Sutton**—They have no legal standing in their own right. Their role is in assisting the interpretation and administration of the act and the regulations.

**Senator O'BRIEN**—What does the term window of 'three clear days of sailing dates stipulated in the application' in clause 36 of the guidelines mean?

**Mr Sutton**—Section 286 of the act, which is the key section, defines the two key tests for the issue of a permit as being no licensed vessel being available or the licensed service is not adequate to the needs of the shipper. There are no definitions in the Navigation Act for what those key terms of availability and adequacy mean. The guidelines play a role in assisting the interpretation of those provisions of the legislation. As I say, they have developed over time

after issues have arisen and the department has obtained legal advice relating to those incidents.

In relation to the window of three clear days either side in paragraph 36 that you refer to, that is to assist with the interpretation of the availability guideline. It basically means, to give a practical example, if a ship seeking a permit was due to sail on a Wednesday and a licensed ship was going to sail either on the Sunday, Monday, Tuesday or on the Thursday, Friday, Saturday, then it would be considered available and *prima facie* the applicant would not meet the availability criterion.

**Senator O'BRIEN**—Why is there a discrepancy in the requirements applying to permit holders to licensed ships whereby a permit ship is not required to uplift all available cargo if it so chooses, whereas licensed vessels must uplift all cargo or be deemed not suitable?

**Mr Sutton**—In answering that question we need to look at the actual terms of section 286 of the legislation itself where the availability is in terms of the licensed operator. The adequacy requirement is in terms of the needs of the shipper. Precisely, section 286 is in terms of the adequacy of the needs of ports, but legal interpretations have been that it is appropriate to interpret ports as shippers. So we talk about the needs of the shippers.

There is no requirement *per se* for the licensed operator to be able to carry all of the cargo that the shipper is seeking to ship. But, as a practical issue, to be able to find that it meets the needs of the shipper, the licensed operator needs to be able to carry all the cargo. I will give a practical example. If a shipper wants to have 100,000 tonnes of iron ore taken from Port Hedland to Port Kembla and a licensed operator can take only 30,000 tonnes at a time, then we would not regard that ship as adequate to the needs of the shipper because it would need to take four trips to get that cargo around to Port Kembla.

**Senator O'BRIEN**—Can the department advise what changes it proposes to make to the ministerial guidelines as a result of the discussion paper circulated to stakeholders around 4 April?

**Mr Sutton**—That paper that was circulated on 4 April related to clarifying the rules related to availability issues. We are not at this stage planning any changes to the guidelines as such as a result of that paper. The paper is intended to assist in applying the current guidelines. The cause of the paper was some issues that had arisen because of the commencement of operations of PAN Shipping and some issues that had arisen because of some unexpected changes in schedule. The paper was put out, as I say, to clarify the operation of the existing guidelines. It is not intended to amend the guidelines as such.

**Senator O'BRIEN**—Can we have a copy of the discussion paper?

**Mr Sutton**—Yes, we can certainly provide that.

**Senator O'BRIEN**—Can the committee be assured that, when a licensed vessel is available and willing to carry domestic cargo, foreign-flagged ships operating under permit will not be allowed to carry this cargo?

**Mr Sutton**—Getting back to section 286 and the two arms of section 286, if we are assuming that the licensed operator satisfies the availability test and that it meets the adequacy test, then the vessel operating under permit would not be able to carry that coastal cargo.

**Senator O'BRIEN**—The adequacy test is the capacity of the vessel, is it?

**Mr Sutton**—Yes. The adequacy test is spelt out in paragraphs 37 to 39 of the ministerial guidelines. It relates to a range of issues that impact on the adequacy in respect of the needs of the shipper. So it can be the availability of the necessary equipment, it can be the availability of food grade storage on a ship for food cargoes or feedstocks or those sorts of issues. There could be a range of factors that influence the adequacy test, and those are given in paragraphs 37 to 39 of the guidelines.

**Senator O'BRIEN**—What does the term 'reasonable commercial terms' mean?

**Mr Sutton**—The history of that provision is that it was introduced several years ago in relation to a situation where a licensed operator—I forget the precise cargo—had a vessel that was clearly inappropriate for the particular cargo. When an application was put in, the licensed operator put his hand up and said, 'I can carry that,' and claimed something like 10 times the going rate for the cargo. It was considered appropriate and desirable to try to ensure that such a situation could not arise. That led to what is currently paragraph 39 being in the guidelines. It is a provision that has been the subject of dispute, it is fair to say, between shippers and licensed operators as to exactly what it means. We have undertaken to review the terminology that is used in the guidelines relating to that issue.

**Senator O'BRIEN**—Can the department advise the reasons it granted a coastal shipping permit to a non-licensed vessel to carry molasses for CSR on up to 20 occasions over the past two years in circumstances where there is a licensed ship available to carry such a cargo, which indeed in the past has carried that cargo?

**Mr Sutton**—The first comment I would make is that a number of permit applications have been considered by the department in relation to the carriage of molasses over the last couple of years. The actual cases where there has been a dispute from the licensed operator have been much less than 20. If I had to guess, I would say around four or five. The reason for the discrepancy has basically been that the application has been lodged when the vessel *Stolt Australia*—the licensed operator in question—has not been able to meet the availability requirements for various reasons. Those have not been an issue as such directly.

The issues, such as the one that occurred with the *Golden Yuki* recently, relate to situations where the *Stolt* vessel is available. In those situations, in the applications which have been lodged, the department has agreed to the application on some occasions and has refused the application on other occasions. It is very much a case by case matter, depending on the facts relating to the particular circumstances. There have not been any overriding rules or issues which have driven the department's decision on any particular occasion. It has been a case of applying the guidelines to the particular facts of each situation as presented both by the applicant and by the licensed operator.

**Senator O'BRIEN**—Can you tell us the reasons for the permit for the *Golden Yuki* being granted, on or about 5 May?

**Mr Sutton**—The most recent one was on the basis that we looked at the information that was made available to us from the permit applicant, CSR, and the licensed ship operator, *Stolt Australia*, the department reached the view that the *Stolt* service was inadequate for this molasses shipment within the terms of the Navigation Act. In reaching that conclusion, we

assessed that the applicant had made a sufficient case—based on the price differential and the associated impact on the shipper's business in the short and long term—that a requirement to use the licensed operator on this occasion would be a significant burden on the shipper's business operations.

**Senator O'BRIEN**—So poor little CSR could not afford to ship on an Australian ship. On that occasion it had to ship on a ship with a Chinese crew.

**Mr Sutton**—It was a case where the applicant provided us with information about the implications of the terms that were offered by *Stolt Australia*, the licensed vessel, for its business. After considering all the information that was available, we made the decision under the adequacy arm of section 286 that the licensed service was not adequate to the needs of the shipper on this occasion.

**Senator O'BRIEN**—Have those been the grounds for previous granting of permits?

**Mr Sutton**—There have been variations. There was a previous application where there was an issue with the way Stolt planned to carry the molasses, in that it planned to put the molasses in tanks which had been used for fuel oil products within the last three times the tanks were used. CSR provided us evidence that, as the molasses was to be used in feedstocks and input to the feedstock industry, such uses were not consistent with its general operational requirements. That was not an issue for the most recent application.

**Senator O'BRIEN**—How do you make a judgment on the claims that companies like CSR make in terms of, say, economic impact? How do you test those claims?

**Mr Sutton**—It is very much a case of assessing all the information that CSR makes available to us. There are no hard and fast criteria that we have—or, I would suggest, that we can have—for assessing this. On this occasion we considered that CSR had made a credible case that the price differential involved in having to use the Stolt service would have had a significant impact on its business in the short and the long term.

**Senator O'BRIEN**—What was the differential?

**Mr Sutton**—The differential was of the order of \$A40 a tonne of molasses. For a 6,000 tonne shipment, that makes a difference of \$240,000.

**Senator O'BRIEN**—This is an area that has been the subject of a number of disputes. One assumes that Stolt is not putting a price that it knows will put it out of the market.

**Mr Sutton**—It is a particular issue with molasses. It is a low value by-product. It is not expensive. CSR does not get a high return for it so, in that situation, shipping costs can present a very high proportion of the overall costs of the product, and that translates into the users of the product. The circumstances here are specific to the circumstances of molasses in a lot of ways.

**Senator O'BRIEN**— Do you have sources for coastal freight rates for liquid bulk carriers that the department relies on in assessing whether the freight rates offered by a licensed ship are reasonable?

**Mr Sutton**—For liquid bulk carriers there is only one licensed operator on the coast, and that is the *Stolt Australia*. It is difficult to make comparisons of international operators

because the situations facing the companies are very different. In assessing the applications and the information provided by CSR, section 286 is in terms of adequacy for the needs of the shippers. So where the rates become significant is in terms of their impact on the shipper as opposed to the significance of the rates in their own right.

**Senator O'BRIEN**—I suppose CSR will have no-one to blame if eventually there is not a Stolt *Australia* on the coast. They will then take whatever rates are offered, because they will have no other choice.

**Mr Sutton**—I could not comment on that directly.

**Senator O'BRIEN**—What are the skills, experience and qualifications of the officers in the department who make these commercial decisions?

**Mr Sutton**—My area is the maritime branch. I should clarify: the permits are issued by the operations centre within the Office of Transport Security. Our role is to advise the Office of Transport Security operations centre on matters relating to permits—on policy issues. That is the context for all the advice we have given in recent times. In my branch the officers have substantial experience in administration of coastal shipping over a number of years and in shipping policy issues more generally.

**Senator O'BRIEN**—Has the department determined the threshold percentage differential between the foreign flag freight rate and the Australian licensed freight rate to assist in its decision making with respect to clause 39 of the ministerial guidelines?

**Mr Sutton**—That is certainly an issue that we have considered. But, because of the range of factors which impact on whether a freight rate is adequate for the needs of a shipper, we have tended to shy away from coming up with a number. It is too difficult to come up with one that would be generally applicable. To do so would be to take away from the case by case nature which we necessarily have to take to these issues.

**Senator O'BRIEN**—Clause 40 of the guidelines says:

Permits may only be issued where licensed tonnage is not available or is inadequate, and it is in the public interest. The public interest is assessed for each permit application on the merits of the case.

What public interest considerations were taken into account in relation to the recent application with respect to the *Golden Yuki*?

**Mr Sutton**—In section 286 you have availability, adequacy and then public interest. The public interest considerations we generally apply relate to safety and environmental considerations. So there are the issues related to, for example, whether the vessel has been subject to an AMSA detention or has had other issues relating to its safety. General findings of port state control inspections and any history we are aware of relating to the vessel come into play in determining the public interest from that perspective.

**Senator O'BRIEN**—It sounds like CSR has no interest in using licensed shipping vessels because it is seeking a far cheaper rate on each occasion. Is that a fair comment? I do not think they have offered this freight to Stolt in the last four years.

**Mr Sutton**—I think it is probably not appropriate for us to comment on CSR's motivations.

**Senator O'BRIEN**—Has the department ever refused to grant a permit for a request to carry CSR molasses by a foreign flagged vessel, or a non-licensed vessel, I should say?

**Mr Sutton**—Yes, we have.

**Senator O'BRIEN**—When was that?

**Mr Sutton**—I would have to take that question on notice, but we have refused permits in the past.

**Senator O'BRIEN**—Is it the case that the department has created a precedent for the carriage of this cargo type based on a pattern of permit decisions that undermines the legislative intent of part VI of the Navigation Act?

**Mr Sutton**—As I have indicated, it is very much a case by case consideration, depending on the facts of each application. It depends on the quality of the argumentation that is put forward on each occasion and, particularly on an occasion like this where CSR is arguing adequacy, it is clearly something that we scrutinise very closely.

**Senator O'BRIEN**—They have a vested interest in arguing adequacy, haven't they?

**Mr Sutton**—Well—

**Senator O'BRIEN**—Adequacy means adequate to their bottom line. That is what it means, doesn't it?

**Mr Wilson**—I would add that, as Mr Sutton has indicated, the decisions have been made in accordance with the act, which does have a two-part component to it, which is the availability of the licensed ship and that the service operated or offered by the licensed ship is adequate.

**Senator O'BRIEN**—You are rendering the legislation meaningless. That is what your administrative interpretations do. What does 'suitable for the carriage of the cargo' mean? You are saying 'suitable' means it has to be at the right price, it has to be the right size and it has to be the right shape. Next it will be the right colour.

**Mr Wilson**—We are operating within the confines of the legislation and the legal interpretation of the legislation. The department is operating within that legislative framework.

**Senator O'BRIEN**—Could we have a copy of the legal advice the department has about the legislation in that regard?

**Mr Wilson**—I would have to take that on notice and check it with the minister.

**Senator O'BRIEN**—I would appreciate it if you would. There should not be anything to hide if you are confident in your interpretation. Thank you for that. At the last estimates hearing I asked about the proposed changes to regulations making the leaving of unattended baggage at airports an offence. In response Mr Tongue talked about the practical difficulties in legally expressing the Prime Minister's intent. I note that the transport security regulations were amended soon after that. I am interested in the application of these amended regulations, which I believe have been in operation for three months. Who is monitoring unattended baggage at airports?

**Mr Tongue**—I will ask Mr Windeyer to answer that one.

**Mr Windeyer**—At airports there could be any number of people who are keeping a watch on whether baggage is being left unattended. In terms of the actual use of the offence provision which captures leaving baggage unattended, at the end of the day it would come down to the police being involved in making that judgment. But in a general sense the airport operators themselves, I think you will find, are monitoring the issue and hence have put in place a range of announcements, and in some cases signs, around the traps, asking passengers and travellers not to leave baggage unattended.

**Senator O'BRIEN**—How is a bag deemed to be unattended?

**Mr Windeyer**—As you would see from the regulation, that is a judgment call that would have to be made by the officer who is actually making the decision to charge someone with an offence. That would then be tested by the Director of Public Prosecutions. We have consciously not tried to define what 'unattended' would mean in the actual regulation.

**Senator O'BRIEN**—Having made the judgment, the charging officer lays a charge, does he or she?

**Mr Windeyer**—If they believe someone has committed an offence under that provision, yes.

**Senator O'BRIEN**—How many people have been charged for leaving baggage unattended so far?

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

**Senator O'BRIEN**—The maximum penalty of \$5,500 may apply to a person convicted of this offence. Have any penalties actually been imposed?

**Mr Windeyer**—I will have to take that on notice as well; it is obviously tied to the previous question. There have been successful prosecutions under the previous version of that regulation for other types of offence, but not for unattended baggage, obviously, prior to the amendment.

**Senator O'BRIEN**—Have you any idea—it sounds as though you do not, but you may know something—how many people might have been warned rather than charged in relation to leaving baggage?

**Mr Windeyer**—I do not, other than the general comment that there are now warnings made reasonably publicly around airports.

**Senator O'BRIEN**—Has there been a change in the behaviour of travellers since the introduction of these amended regulations?

**Mr Windeyer**—With them having been in place for only a relatively short period of time, I do not have any evidence of a change in the behaviour of travellers. But there is a change, in a sense, in the notification that airports are making to travellers about this issue.

**Senator JOYCE**—Do you expect a change in people's behaviour?

**Mr Windeyer**—I think it is fair to say that one of the intentions behind it is to encourage people not to leave baggage unattended so that, from a security perspective, when it is done with possible cause for concern it is easier to identify.

**Mr Tongue**—Certainly when the new ATSA was introduced there was a period where a number of people were prosecuted for making remarks at check-in. My impression is that there has been a decline in the number of those sorts of—I will call them silly; ‘inadvertent’ perhaps is a better word—remarks being made at check-in. I think that, generally speaking, the move in this direction is a positive one.

**Senator O’BRIEN**—There have been plenty of warnings about making inappropriate comments about safety, security, bombs et cetera. I do not know whether other people want to ask questions in this area, but I have a couple of areas to finish up.

**CHAIR**—There is one page to go on this area, so I am asking him to ask them quickly and you to answer them quickly.

**Senator O’BRIEN**—I have one page of notes, so that is probably a relatively small number of questions. Table 2.4 in the PBS identifies the movement of funds for two security related expense items from 2005-06 to 2006-07. That is on page 18 of the PBS. The first relates to improving international aviation security and the second relates to increased air cargo inspections. The government suggests it is serious about transport security, so, frankly, I am more than a little surprised that aviation security funds are going unexpended. Can you tell me which programs these expense items relate to and why the funds have gone unexpended in this financial year?

**Mr Tongue**—I might handle the first one. In connection with international aviation security, we were given funds to work with partner nations in the Asia-Pacific region. Some of that work is going a little more slowly than we anticipated. That is simply to do with the complex nature of the relationships with those various nations. It is a modest amount of money, but I am confident we can get that back on track. I will ask Ms Johnson to talk about the air cargo funding.

**Ms Johnson**—The second part refers to cargo. It was announced that we would have funding to distribute ETDs, explosive trace detection units, for international outbound air cargo. We have now put in place a mechanism for organisations to make claims upon the purchase. In case they do not get the invoices back in to the department in time for us to reimburse the grants, we have made provision to transfer \$2 million into the next financial year. But indications are that we will have most of those funds expended.

**Senator O’BRIEN**—This financial year?

**Ms Johnson**—Yes.

**Senator O’BRIEN**—Do you have to bring the money back?

**Ms Johnson**—It is provisioned for.

**Senator O’BRIEN**—You just hold the cheque until 1 July? Okay. The thing that we are seeing at airports is the quick check-in facility. Both Qantas and Virgin Blue have introduced QuickCheck and Blue Check kiosks, where travellers issue themselves with a boarding pass after swiping their credit or airline club membership card. If you book and pay online, it is now possible to travel without producing any photo identification. If you want to check in luggage, you take it to the counter where the staff tag it, and off you go. Is it possible to check in luggage without photo ID?

**Mr Tongue**—Certainly for domestic air travel the issue of photo ID has been something that has had a range of public interest. A key issue for us in that policy area is the way the domestic terminals are designed. They are designed in such a way that shops are on the other side of the screening point. In the post September 11 environment, the decision has been made to continue to allow meeters and greeters to go through to the other side of the screening point and into that retail area. As soon as we allow that to occur, with respect to the notion that we then track the identity of the traveller from check-in, we would then have to do it at boarding, to make it look more like international travel, because boarding passes and other things could be exchanged beyond the screening point. The alternative for us would be to demand proof of identity, to force people to carry their proof of identity—passport; drivers licence I will come to—all the way through and to stop meeters and greeters going into that domestic zone, with some significant economic consequences for major airports.

**Senator O'BRIEN**—So we won't do that because the shops inside the security area will suffer?

**CHAIR**—Max has got you bluffed!

**Mr Tongue**—It is a requirement in some overseas countries, but not all. Drivers licences as a form of identity present us with some difficulties. They are not the same standard as, say, a passport. The government has made a judgment at this stage not to change those settings. Down the track, it could be changed.

**Senator O'BRIEN**—Does the Office of Transport Security have concerns about these QuickCheck systems?

**Mr Tongue**—I have certainly, in discussions with the aviation industry, raised an issue with them. We are starting to look at it in the context of our training regime, our competency regime, in that it has the capacity to move the point of judgment about the state of a traveller—I am not going to counterterrorism concerns; I am going to drunkenness, those sorts of things that tend to be the background noise in aviation security—to the screening point. I am certainly talking to the aviation industry under our competency framework about the need to have more senior supervisors, for example, working at screening points, making some of those judgments as the QuickCheck kiosk phenomenon increases.

**CHAIR**—Did you answer the question as to whether you can swipe the thing, get your boarding pass and then take your luggage over without ID and chuck it on the—

**Mr Tongue**—Yes, you can, but the luggage goes into a checked bag screening system and it is treated to potentially five levels.

**CHAIR**—All of them?

**Mr Tongue**—Yes, at the major airports.

**Senator O'BRIEN**—It is a question of identity, and you raised some issues about identity. Is the Office of Transport Security aware of any security breaches resulting from the use of this system?

**Mr Tongue**—None have been drawn to my attention. None that we are aware of, Senator.

**Senator JOHNSTON**—I want to talk about the ASIC—the aviation security identity card. In Western Australia, I believe we had some issues with applications in November, but no cards until 29 March. Five boxes were in the Chubb Security section at Perth airport, with no names, no directions, nothing. What happened with respect to the card Australia-wide? What was the context of the ministerial statements? I think 31 March was the deadline—the three months extension from 31 December. Was there a problem with pilots flying without the card? What happened?

**Mr Tongue**—Particularly focusing on pilots—and this relates to some of the issues that were raised with CASA earlier—when the government originally announced its policy to background check pilots, there was a degree of kickback from the industry about multiple issuing authorities.

**CHAIR**—‘Pushback’ would be a better word.

**Mr Tongue**—Yes, pushback. We approached CASA in that instance about becoming an issuing authority, so that we could try to streamline the process. We found, in the process of asking pilots to apply for ASICs, that people tended to sit on their application, not get the documentation in. We had geared up, particularly ASIO and the Australian Federal Police, around an expected flow of applications. What tended to happen was that the applications came in late. Indeed, my memory of the figures is that, at the minister’s original deadline, which was the end of December last year, I think we had 7½ thousand to 8,000 applications in. When the minister extended it, we got another 4½ thousand applications between December and—

**Senator JOHNSTON**—You had to do a security check in terms of a police record?

**Mr Tongue**—A police record check and what we call a PMV check, a politically motivated violence check, which is done by ASIO, and also an immigration check.

**Senator JOHNSTON**—Goodness me; 7½ thousand of those?

**Mr Tongue**—I think CASA gave figures earlier in the day that they have processed about 15,000 applications; in the pilot community, around 13,000.

**Senator JOHNSTON**—They have processed 13,000?

**Mr Tongue**—Yes.

**Senator JOHNSTON**—What was the cost?

**Mr Tongue**—The cost to the individual applicant was in the order of \$150.

**Senator JOHNSTON**—What did it cost government? Have we got a figure?

**Mr Tongue**—It is a bit of a work in progress, Senator. We have certainly been given some funds by government, principally to pass on to the AFP, around criminality checking. ASIO received extra funds for the additional staff that it needed to process this number of people.

**Senator JOHNSTON**—I bet they did!

**Mr Tongue**—Some millions.

**Senator JOHNSTON**—How many did we reject?

**Mr Tongue**—I will look to my colleagues. My memory is we said no to 35 and we have put another 35 on conditional ASICs.

**Senator JOHNSTON**—Thirty-five out of 15,000?

**Mr Tongue**—Yes.

**Senator JOHNSTON**—Does that tell us something about general aviation? It depends on the 35, I suppose, does it?

**Mr Tongue**—That is particularly to do with a revised test that came out post the Wheeler review into aviation security, which went to the issue of a pattern of criminality. All I can say is that it tells us there were 35 people in aviation that, against the patterns, the government agreed we could not issue an ASIC to.

**Senator JOHNSTON**—Tell me about the pattern. Can you tell me what the main reasons for the rejection were?

**Mr Tongue**—The pattern test goes to principally custodial sentences in the last five years.

**Senator JOHNSTON**—If you went to jail over the last five years for any offence, you could not get a security pass to go to a—

**Mr Tongue**—Not for any offence but for offences related to particular classes of crimes.

**CHAIR**—You are not allowed, surely—and I don't want to go back and revisit the—

**Mr Tongue**—None of that, Senator. I have anticipated your question.

**CHAIR**—You are not allowed to be a bomb carrier or a plane hijacker.

**Senator JOHNSTON**—Well, that is obvious.

**CHAIR**—No, it wasn't obvious, Senator.

**Senator JOHNSTON**—Okay. So 35 had offences within five years or some other reason to be rejected?

**Mr Tongue**—Yes.

**Senator JOHNSTON**—What did we do on the night of 31 March? Did we seek to find out who was flying without a card?

**Mr Tongue**—Because we knew that the cards were still pathing out, we basically allowed some latitude for people, to make sure that the cards were out there, recognising that it is a big country.

**Senator JOHNSTON**—And there were 15,000 applications.

**Mr Tongue**—In any event, people can, if they do not have a card, apply for a visitors card. So it was not a case that people could not fly to a security restricted airport; it was more a case that they would have to make suitable arrangements.

**Senator JOHNSTON**—What is the technical description of allowing latitude? How do we do that in today's world of legislation and regulation?

**Mr Tongue**—Senator, it is a bit like the police can make a judgment to pull you over and book you for speeding or give you a verbal warning.

**Senator JOHNSTON**—In other words, we just don't go looking for breaches?

**Mr Tongue**— No, Senator.

**CHAIR**—Carrying a pocket knife.

**Senator JOHNSTON**—Don't start that.

**Mr Tongue**—We—and I mean the Australian government—seek to look to the outcome we are after. The outcome we are after is an overall improved security outcome.

**Senator JOHNSTON**—So you would not be able to tell me how many prosecutions there have been of people in, say, April who were without the card when they should have had one? Have there been any?

**Mr Tongue**—There have not been any, Senator.

**Senator JOHNSTON**—So we have been flexible enough to acknowledge that the system was so administratively burdensome that we have had to, as you say, show some forbearance. When is the line in the sand being drawn, so that the industry knows? We are into June, almost. I think it is opportune for us to discuss the future.

**Mr Tongue**—Certainly, Senator. In part, that involves not just us but also the Australian Federal Police and the Australian Federal Police Protective Service.

**Senator JOHNSTON**—Are they the enforcement arm?

**Mr Tongue**—As well as the transport security inspector, staff of the Office of Transport Security. We have been working around prosecution type policy issues and enforcement type policy issues with the AFP. Once we have all the various individuals involved in that process on a common footing, we will then provide less latitude in the system.

**Senator JOHNSTON**— Is there going to be some form of announcement as to the provision of less latitude?

**Mr Tongue**— I expect that we will use the usual means of communication with the aviation industry to give them a bit of a heads up that the government is serious about security.

**Senator JOHNSTON**—I think that is right.

**Mr Tongue**—We recognise that we have imposed a quite significant cost and burden on the industry, but there are limits and we will do the decent thing and give them a bit of warning.

**Senator JOHNSTON**— I think that answers all of my questions. As to the usual lines of communication, give me a bit of a snapshot of what those lines are and what you anticipate saying, so we all know what is going to happen.

**Mr Tongue**— Typically, we would go out to the various industry associations representing pilots, airlines, airports. We have the capacity to sometimes put out what is called a NOTAM, a notice to airmen. We sometimes issue press releases that get picked up in the trade press, and we also use our officers out on the ground.

**Senator JOHNSTON**— In the wonderful world of mail merging and databases, why wouldn't we just write them all a letter?

**Mr Tongue**— I have been lucky enough to have to write to pilots now on four occasions. I think they consider me to be a bit like the angel of death. It is an option. It is just a question of whether it is appropriate.

**Senator JOHNSTON**— There are only 15,000. I do not think it is that much of a problem. It should just say that, as of 1 July, if you do not have one and you are caught, you are going to be prosecuted—and here are the fines et cetera. That is a suggestion.

**Mr Tongue**— Certainly, Senator.

**Senator JOHNSTON**— Thank you, chair.

**CHAIR**— Senator Sterle is busting to ask some questions.

**Senator STERLE**— I have a few questions for Mr Parkinson. But, if Michael Sutton is still in the building, could he come back? There is something I want to run past him.

**Mr Tongue**— Certainly, Mr Sutton is just outside.

**Senator STERLE**— I will start with you, Mr Parkinson. Without going over too much of the old ground, there are a few questions I want to ask about the MSIC card. Firstly, how much has it cost thus far and what is it anticipated will be the total for the implementation of the MSIC card?

**Mr Parkinson**— I think the answer is similar to that which Mr Tongue gave in relation to the ASIC card. The cost per card is around \$150 to the applicant. The cost to government is, as Mr Tongue put it, a work in progress.

**Senator STERLE**— I am sorry, I cannot hear.

**Mr Parkinson**— The cost to government in the roll-out of the MSIC card is evolving. As Mr Tongue put it in relation to the ASIC card, it remains a work in progress.

**Senator STERLE**— We would have had a figure to start with. What did we start with? What did we think it might cost?

**Mr Tongue**— To industry or to—

**Senator STERLE**— To government.

**Mr Tongue**— Part of the costs are costs recovered, so costs associated with aspects of the AFP's and ASIO's work are costs recovered.

**Senator STERLE**— How is it cost recovery to government?

**Mr Tongue**— Through a fee. That is part of the application process. Part of the costs are costs recovered. We have been given some funding to set up what we call the BCU, the background checking unit, which will operate in an interim fashion until the new background checking unit that has been set up in the Attorney-General's Department, called AusCheck, is established in the middle of next year.

**Senator STERLE**— I will come in, while we are hot. You mentioned 'part' of it. These brochures are floating all around the country, being handed out.

**Mr Tongue**— We received part funding for that.

**Senator STERLE**— How much? When you say 'part,' how much?

**Mr Tongue**—I think \$2 million. But could I take that on notice, just to get it accurate?

**Senator STERLE**— Please do. What other measures has the government introduced to improve wharf security for the purpose of relaying to the rest of the community?

**Mr Tongue**— The government has in place now the maritime security and offshore protection act. It covers all ports handling SOLAS class vessels, so that is 70 ports. It covers port facilities within those ports and it covers all vessels greater than 500 tonnes visiting or using those ports. It also covers more than 50 offshore oil and gas facilities. All of those facilities have to have approved security programs. Those security programs go to issues of protective security, access control—they are risk based. That has all been implemented. The roll out of the MSIC scheme is, if you like, the next stage in implementing the system.

**Senator STERLE**—How is it anticipated that the MSIC will result in an increase in wharf security?

**Mr Tongue**—One issue that we get concerned about in transport security is what is called the insider threat. There is some evidence to suggest that people with affiliations to particular groups and with the knowledge of how security arrangements work within facilities might use that knowledge against us. Background checking has been for some time now one way that we try to put in place a layer to assure ourselves that we effectively know who is working there and can be reasonably comfortable of the range of their associations, within the limits of the intelligence available to us.

**Senator STERLE**—I heartily agree with the process that has been going down. That brings me to my next question: will foreign seamen from foreign flagged vessels entering Australian wharves on shore leave be required to carry an MSIC?

**Mr Parkinson**—The requirement to hold an MSIC relates to the need to access a maritime security zone without supervision, without being escorted and without being monitored. It does not relate to the nationality or the employment function of any particular person.

**CHAIR**—What he is really asking is this. If I go off at 7 o'clock at night to go into the local bar or whatever, which I might do if I am a desperate seaman, and I come back at 1 o'clock or 2 o'clock in the morning with an armful of something under one arm and an armful of something under the other arm, or dragging someone with me, what is the process for getting back on the ship?

**Senator O'BRIEN**—It would be hard to get up the gangway if you were dragging too much!

**CHAIR**—Do they just say, 'Good evening, sir,' and on you go or do they search you and what you are taking back on?

**Mr Parkinson**—If you are required to have access to a maritime security zone without being escorted then you would be required to have a maritime security identification card. Most foreign seafarers would be escorted or otherwise monitored on that journey.

**CHAIR**—Would you have a look in my bag?

**Mr Parkinson**—That would depend on the security arrangements applicable.

**CHAIR**—Obviously, if I want to traffic a bit of hard stuff about, I could go on, get it, cart it back on the ship and take it to the next port. Wouldn't it be compulsory to have a look in your bag?

**Mr Parkinson**—That would depend upon the security arrangements in place in the particular port.

**CHAIR**—I heard you say that the first time.

**Mr Parkinson**—Going back on board the ship and getting goods from the ship is a matter for customs. It is essentially a border control matter.

**CHAIR**—Yes, well.

**Senator STERLE**—I will come on line. Mr Parkinson, are you suggesting for one minute that, if a heap of foreign seamen left the ship at the same time, they would all return together? Or would they all have their own individual guard or escort?

**Mr Parkinson**—They would be required to have the appropriate escort arrangements. If they all came back one by one then they would probably need escorting one by one, yes.

**Senator STERLE**—I would doubt that. I would think that, if they all went off, some would go to different places, some might party on and some might come back. I cannot think for one minute that there would be 10 or 20 different security guards. What if there were six or seven ships in port at the same time? That would just not be the case.

**Mr Parkinson**—I think it would be more of a matter of the one security guard making multiple trips.

**Senator STERLE**—I think I would have to agree with the chair that we have a gaping hole that we are far from addressing.

**Mr Retter**—I think a clear point needs to be made. There is a difference between background checking, which is what the MSIC is about, and access at a port facility. That is a separate issue and is the responsibility of the port authority. Whatever arrangements a port authority puts in place to control access is a separate issue to the MSIC. In some cases, port authorities are seeking to combine that process, and that is fine and their business. But the specifics about how and when seamen are escorted to and from their ships will vary, I suspect, from port to port and will be up to those port authorities.

**Senator STERLE**—I can guarantee you it will vary, because I have been on wharves around Australia—from Cairns down to Devonport—in the last three weeks and was not even asked who I was. I can quantify that the security levels certainly will vary.

**Mr Tongue**—As we implement the MSIC scheme, part of what ports, and the industry, have had to make allowance for is the new access control arrangements, as they—as Mr Retter describes—choose to attach them to the cards or come up with other measures. Part of the MSIC arrangement is that there need to be measures in place to manage the new MSIC regime.

**Senator STERLE**—Mr Tongue, I appreciate that, because I believe if you are walking around with a card saying 'Stop terrorists, I have got my MSIC' then I understand what you are saying! The minister representing the minister has gone, but I ask you, Mr Tongue: can the

minister confirm what you have already alluded to: that the cost of the MSIC card ranges from \$120 to \$170?

**Mr Tongue**—That sounds about the right sort of money, because various issuing bodies have set prices at different levels. Part of the price has to cover the costs for background-checking agencies, part of the price is the cost of producing the card, and then there is the administration process. So it does vary, yes.

**Senator STERLE**—Okay.

**Mr Parkinson**—We are aware of some examples in which MSIC-issuing bodies are charging more than that. But, as Mr Tongue has explained, that is really up to them to determine.

**Senator STERLE**—Thanks, Mr Parkinson. Before going to my next question, another one has popped up: how many cards do we envisage to be out there, once the MSIC system is in place?

**Mr Tongue**—Our initial estimate, working with industry, was possibly up to 130,000. We have gone out to industry again to try to firm up that number. We have now revised it down to in the order of 95,000 to 96,000. In practice, the total number will, I suspect, depend on the extent to which the ports and the various operators of ports try to capture regular users, as I will call them, particularly truck drivers. That is something that, as we embark on this and we get the numbers in, we will have to monitor.

**Senator STERLE**—Do we know roughly how many foreign seamen visit Australia's shores each year?

**Mr Tongue**—I am testing my memory, but I think it is about 200,000.

**CHAIR**—That is right.

**Mr Tongue**—In connection with foreign seafarers, the immigration department has received funding in the order of \$80 million to introduce a new visa regime. That will mean that the names of foreign seafarers will be run through the various alert lists. Those alert lists are maintained in the same way that relevant background-checking alert lists are maintained by ASIO, the Federal Police and so on.

**Senator STERLE**—I am mindful of the time, Chair.

**CHAIR**—That is good of you.

**Senator STERLE**—Let's talk about cost recovery. I know that ASIO and AFP have costs, and I think their recovery cost is about \$55.

**Mr Tongue**—That sounds correct, yes.

**Senator STERLE**—And it is about \$10 for the cost of the production of the card. Is that right?

**Mr Tongue**—I think the cost of the production of the card number might vary.

**Mr Parkinson**—The cost of the production of the card is really a matter for the issuing body. Again, their costs will depend on the equipment that they invest in and how many cards they issue—those sorts of factors.

**Senator STERLE**—Of course, yes. I just did some quick sums to work it out. If we are talking about \$120 to \$170 per card, taking out the AFP and ASIO cost, one can obviously do some quick sums. I think there are 130,000 out there, so there is a good quid to be made by the people who actually—

**Senator JOYCE**—Balance it.

**Senator STERLE**—I did not quite do those sums, Senator Joyce, but I will get there. I left my computer in my other jeans. But you can work it out—there is a hell of a lot of money.

**CHAIR**—We do not want to find out who is the mathematical genius here.

**Senator STERLE**—There is a new regime of income being created by this, which is a cost to industry.

**CHAIR**—It is \$1.3 million, just for your record.

**Senator STERLE**—That is not bad. I will just ask you this then: why should the issuing body make so much money, if all they are doing is simply forwarding the paperwork and completing the 100-point check?

**Mr Tongue**—They are acting in part as a cost recoverer for the Australian government agencies involved, so part of the cost they are charging is the cost-recovery charge.

**Senator STERLE**—The issuing body?

**Mr Tongue**—The card-issuing body. So they are cost recovering at the front end for the rest of the system at the back end. On the cost of the production of the card, I am not aware of a \$10 cost. Most card costs that I am aware of are higher than that, and then there is administration. I would not think it was a huge profit centre.

**Senator STERLE**—The \$55 for ASIO and AFP is the cost recovery you are talking about, isn't it?

**Mr Tongue**—That is right.

**Senator STERLE**—Then if you take out the production of the card, there is still a large chunk of money per card for forwarding paperwork. We are talking about farmers, truck drivers and all the other people who come in, and it is a true cost to them out of their pocket.

**Mr Tongue**—There is certainly a cost, but it would depend upon the nature of card production to work that out. It is an administratively intensive process at the front end.

**Senator STERLE**—Okay, Mr Tongue. Will passengers on tour or cruise ship tourists or operators be required to be cleared and have an MSIC card?

**Mr Tongue**—Not the passengers, but the operators could be.

**Senator STERLE**—Are the passengers not accessing some maritime security areas?

**Mr Parkinson**—Again, passengers who do need to travel through a maritime security zone—to access the ship, for example—would need to be escorted. On board the ship, you would expect the secure zones to be limited to, for example, the bridge.

**Senator STERLE**—What about the tour operators or the cruise operators? Would they have to be escorted too?

**Mr Parkinson**—They would be covered by the same provisions.

**Senator STERLE**—Under escort?

**Mr Parkinson**—If they needed to transit a maritime security zone without an MSIC card.

**Senator STERLE**—All right. Thank you very much for that, Mr Parkinson and Mr Tongue. I would like to ask Mr Sutton a question. Thanks for coming back, Mr Sutton. When Senator O'Brien was asking you about CSR's little episode and the assistance that was given by a single voyage permit to a foreign ship, I could not help but think this is familiar, because I have had a number of conversations about this. Let us just reiterate it very briefly before we break up. You said that the Australian ship with the Australian crew was knocked back or rejected because it had carried fuel in its tanks within the last three trips?

**Mr Sutton**—Yes. Under the guidelines, the licensed vessel has to meet the delivery requirements of the shipper. If the shipper has, for example, a requirement that the particular containers be food grade containers—in another context, it could be that they need particular types of equipment, say for carrying timber or the like—and if the licensed operator is not able to provide that equipment to the standard that the shipper needs, then it can be determined that the licensed operator is not adequate to the needs of the shipper.

**Senator STERLE**—Is it an uncommon practice for ships to be carting fuel on one journey and then carting molasses or some other food product on the next journey?

**Mr Sutton**—Certainly the *Stolt* is a bulk liquids carrier, with a number of tanks on board. It is certainly my understanding that it can carry a fairly broad range of chemicals and substances like molasses. The particular requirement on this occasion, though, is that the tanks that the vessel was going to use for the molasses should not have been carrying fuel oil in any of the last three trips.

**Senator STERLE**—How long has this rule been in place?

**Mr Sutton**—That is a specification of the shipper. It is not a rule that we put in place. It can relate to a whole range of products where the shipper has particular delivery requirements. CSR provided us with evidence that this was a standard that it expected the vessels carrying its molasses cargo to have.

**Senator STERLE**—How do we know what the *Golden Yuri*, or whatever it was—

**Mr Sutton**—*Golden Yuki*.

**Senator STERLE**—How do we know what that has been carting for the last few journeys?

**Mr Sutton**—We do not. The *Golden Yuki* would have needed to satisfy the CSR that it met those requirements. That would be a matter for CSR.

**Senator STERLE**—Only CSR would be privy to that knowledge?

**Mr Sutton**—That is correct.

**Senator STERLE**—I just wanted to highlight that. This is a common practice in Australian shipping, and it has been for years and years, but all of a sudden CSR is making an application to DOTARS to do checks, to make sure there has been no fuel carried in

Australian ships. Anyone else around the world can cart whatever they want and you guys, with all due respect to the department, would not have a clue.

**Mr Sutton**—Well—

**Senator STERLE**—You would not; you just said that.

**Mr Sutton**—CSR provided us with information about its standard requirements for carrying molasses.

**Senator STERLE**—I think it is very interesting because, if we are going to have these standards in Australia, Senator Joyce and Chair, that is fine, but the majority of wheat, barley and lupins in this country is carried on the back of trucks that also carry fertiliser, clay and sand. It is a practice that has been going on longer than I have been on this planet and it all boils down to how well we clean out those trailers. The shipping industry has operated no differently. I put it to you, Mr Sutton, the CSR are being very devious and it has absolutely nothing to do with what they are carting. It is the lowest common denominator and DOTARS are assisting greatly.

**CHAIR**—Thank you very much for that presentation.

**Senator JOYCE**—I am going back to this card issue. You have about 130,000 cards out there, and they cost about \$55 and about \$10 on top of that. You have a top cost of about \$170, with a \$105 profit. Multiply that by 130,000 cards and that makes something like \$13,650,000. That is a pretty handy return just off the top of my head.

**CHAIR**—That does not take into account the fixed administrative overheads.

**Senator JOYCE**—Going back to the specifics of that, if I am out at an airport and I am on airside, I have to have one of these cards, don't I?

**Mr Tongue**—Yes.

**Senator JOYCE**—But if I am inside the hangar which boundaries the airport, I do not need one of these cards.

**Mr Tongue**—The 130,000 number referred to MSICs. At this stage, I think we will end up with about 110,000 ASICs cards. The regime for ASICs is being altered, because we are drawing in a much wider area of the airport, particularly with the new cargo security measures. In different zones of airports, the regulations allow operators to put in security programs that have different display requirements.

**Senator JOYCE**—Off the top of my head, that is \$11,150,000 in that cost centre, so we can add the two together. We are getting a fair sort of return here. The problem is that a lot of people, especially in regional areas at regional airports, are going to have to have these cards. The secretaries at the offices have to have these cards. It is blatantly ridiculous, because people just wander in and out as they so choose, but there is this administrative thing that they have to walk around with this card because there is this threat that someone might jump in a crop-duster and head off to Sydney—if they ever got there, which they are not going to. Is there any inquiry as to being a bit more realistic?

**CHAIR**—Senator Joyce, you are being very heroic with your predictions.

**Senator JOYCE**—I am just saying that all these people having to get cards is a pain in the neck. People understand that, if you have to walk out to the planes, that is a different set, but having a card just to walk from airside onto groundside, which might be walking from here to the other side of the line, when the planes are out there on the tarmac and we are out at an airstrip in the middle of nowhere is ridiculous. No-one is going to do anything and, even if they did, they are going to jump over the fence and do it with or without a card. It does not worry them. We had one bloke locally who got full as a boot and stole a plane. The card did not stop him. Can we get a bit more rational on how we deal with these things?

**Mr Tongue**—People in a number of regional areas have certainly said to us that they think we are taking it a bit far. We have tried to focus our attention through a series of layers principally to do with airports servicing regular passenger transport and then trying to limit the need for background checking principally to those people who interact with the passenger transport. The government's commitment was that, if you are dealing with RPT, or regular passenger transport, you come into this net. That was because of a fair bit of concern coming out of rural areas that people wanted a bit more security out there. With regard to going beyond that, we have simply said that people who fly GA planes should lock them, so we have a locking requirement. We did not go as far as some countries and say it must be locked in a hangar; we just said it needs to be locked, which, from an asset protection point of view, seems reasonable. Pilots who will not fly to RPT airports are allowed to go into a different regime and have what we call an AVID. That gives them a longer stretch before they are required to get background checking. We are trying to get sensitivity in the system so that, for regional areas, we are definitely not trying to apply the same security at, say, Birdsville, as you would get at Sydney Airport.

**Senator JOYCE**—Is there a mechanism coming in place where you say, 'At this airport or airstrip they might have a commuter that turns up once every three days or something'? There has to be some sort of contingency. They do not have to fork out \$170 for every person who has the potential to walk onto airside, which is everybody who works at the airstrip.

**Mr Tongue**—The other area that my colleague has highlighted is the fact that we have also made some legislative changes that allow us to switch on and switch off the security zone at regional airports such that it is two hours before the flight arrives and then a period after, so that the community that wants to hold drag races on the airstrip—

**Senator JOYCE**—They play golf on Christmas Island.

**Mr Tongue**—can do that. It would not happen at Sydney Airport. We have tried to build some sensitivity in the system.

**CHAIR**—If you paid enough, Max might let you!

**Senator HOGG**—I have a couple of questions that should be able to be answered fairly quickly. With regard to set-down and pick-up at airports, are there regulations that govern the setting down and picking up of passengers kerb-side?

**Mr Crombie**—My understanding is that the arrangements that govern parking and the like at airports are set out in regulations to the Airports Act, which is governed by the airports and aviation division. Within the aviation transport security regulations, there is nothing specific that deals with parking and set-down with regard to either location or time.

**Senator HOGG**—Are those airports navigation regulations?

**Mr Crombie**—Airports Act regulations govern parking.

**Senator HOGG**—Who specifically looks after that?

**Mr Crombie**—It is John Doherty's division in the department of transport.

**Mr Tongue**—Our aviation and airports division.

**Senator HOGG**—Have they gone?

**Mr Tongue**—Yes, but I am happy to take those on notice.

**Senator HOGG**—I will put those questions on notice, then. Are those regulations under the Airports Act very specific as to the regulations that must apply?

**Mr Crombie**—I cannot tell you that.

**Senator HOGG**—I will put my questions on notice.

**CHAIR**—Are there still entry points to airports where they are not manned and you simply swipe the card to get on in your van? Bear in mind what I brought up months ago, that I could be using someone else's card.

**Mr Tongue**—We have written to major airports now and asked them to tighten up that regime. We are working on the aviation industry at the moment on some policy settings that need to come back to government that are tied up with the work coming out of Sir John Wheeler's report to do with CCTV and a range of other things, so it has been significantly tightened and we are working to tighten it further.

I would like to come back to two questions. With regard to MSIC background checking, \$1.2 million was the answer to the question about our funding for a background checking unit.

**Senator STERLE**—Is that per annum?

**Mr Tongue**—It is in connection with the background checking unit situated within the department of transport. That was for this financial year.

**Senator STERLE**—Is it the same for next financial year, or is it a moving feast?

**Mr Tongue**—It diminishes next financial year.

**CHAIR**—You will have to come back next year and ask that.

**Mr Tongue**—With regard to pattern of criminality, the regulations say that an individual is disqualified from holding an ASIC where they have a criminal pattern of two or more non-custodial sentences against the current list of offences in the regulation, with one or more of those convictions occurring in a 12-month period prior to the check or where an individual has two or more non-custodial sentences against a list of offences that are more than 12 months old but with no convictions occurring in the 12 months prior to the check. An ASIC is issued on the condition that the individual undergoes another background check in 12 months.

**Senator STERLE**—I am going to stick with my day job.

**Mr Sutton**—I would like to table a 4 April paper I referred to in evidence earlier to Senator O'Brien.

**CHAIR**—Thank you.

**Proceedings suspended from 4.09 pm to 4.25 pm**

**Airservices Australia**

**CHAIR**—We will resume. I welcome to the table Airservices Australia.

**Senator O'BRIEN**—Earlier today I raised the issue of a threatening email from Mr Anderson to Mr Toller at CASA in April 2003 relating to the NAS reform. A subsequent meeting minute indicated the secretary of the department, Mr Matthews, planned to convey the minister's warning about cooperation to Airservices. Did that happen?

**Mr Russell**—Blissfully, this was before my time in the organisation. I will take it on notice and get back to you, if I may.

**Senator O'BRIEN**—Can you provide us with an outline of the major restructure announced on 1 March 2006?

**Mr Russell**—I came to this organisation in July last year. We made the announcement on the initial part of the restructure in November. It came into effect from 1 December and we have been working our way through that process in the meantime. We expect to have the restructure complete by June.

**Senator O'BRIEN**—How many staff have lost their jobs so far?

**Mr Russell**—So far there are 58 staff who have left the organisation. About half of them are the result of voluntary redundancies. The total program, from commencement until the end of June next year, will see approximately 325 staff leave the business during that period. They have come from areas where, as we have restructured the business and put together our human resource functions, our finance functions and some of our training areas, there is duplication in the first instance.

**Senator O'BRIEN**—What, all 325?

**Mr Russell**—Not all 325, but it has been an effort to right size the organisation. I think there were cost efficiencies that could be made in terms of the way the organisation conducted its business. In my mind there needed to be clearer accountability for the management of certain parts of the business, including safety. It is about creating a climate of stronger teamwork within what is a geographically fairly widespread organisation.

I might say it is not just job cuts. As part of the review we have taken the opportunity to look at our apprenticeship numbers and double the number of apprentices coming into the organisation in this 12-month period. So it is not just a matter of job cuts, it is a matter of right sizing the business for the challenges ahead.

**Senator O'BRIEN**—How will the restructure improve safety outcomes, if at all?

**Mr Russell**—In my view, there were elements of the business where key accountabilities were located in various parts of the business and not in the same management structure with clear accountabilities. The restructure is aimed to reduce some areas of overlap and confusion, perhaps, in some areas of the business. So there are now very clearly accountabilities by the general managers for the groups they administer, safety being one of them.

**Senator O'BRIEN**—With the restructuring of the group responsible for air traffic control training, who will now be responsible for training and where is it envisaged that these resources will be drawn from?

**Mr Russell**—We intend to develop the training function within the organisation. We have had in place an ATC training college based at our facility in Melbourne and the college has, in our view, been in need of some restructuring with a view to making it more effective. As an indication, the amount of money that the organisation spends every year on training is in the order of \$30 million, \$26 million of which is largely spent on air traffic control operations training and fire service training. We think we can get better value for that money.

Our aim is to introduce some new technology into the training process and it goes to issues such as voice recognition in the training process and capital expenditure—we intend to put a new 360-degree tower simulator into the Melbourne facility; we have not had one so far. The plan is to make that organisation, I think, more cost-effective, effective and competitive so that we can sell those services to the overseas markets. There is a lot of demand for Australia's expertise in this area. If we can get it priced appropriately, I believe there is, in conjunction with some Australian universities, potentially a good revenue stream there.

**Senator O'BRIEN**—Is Airservices Australia considering establishing wholly owned subsidiaries as part of the restructuring of the business and moving employers onto Australian workplace agreements or individual contracts?

**Mr Russell**—No. We have looked at the reorganisation of the company from a number of viewpoints. One particularly has been the question of our fire service. We expect that, based on government policy, the fire and rescue service will be made contestable at some stage. We have taken steps to what we have called 'ring-fence' that business—not to make it a subsidiary but to ring-fence it—on the basis that we believe that costs and the transparency of those costs in that business can be more clearly identified and position that element of the business well to manage competition.

In terms of the reorganisation that is in prospect for our air traffic control group, we are in the process of developing a consultation program with our unions. Our aim is to move over a period of time—and we have not worked out all the details yet—from a geographic base where we have looked at sectors across Australia to a service delivery line that looks at the sorts of demands that our airline customers are making for us. That goes to, for instance, the high density operations down the east coast of Australia, which have different sets of demands and criteria than some regional operations or some oceanic operations, so we are adjusting the business in that way.

**Senator O'BRIEN**—You may have told me this earlier but I did not pick it up: the 325 staff to go obviously means there are a number of iterations of the restructuring. What is the next phase?

**Mr Russell**—We have worked through the top-level management of the business. That started with the appointment of a new general manager structure, then the people that report to those general managers, and so on. We are into finalising the fourth level of that structure, so we will fundamentally have the management team completed by the end of June. As part of

the process, we conducted a voluntary redundancy program. As I mentioned, about half of the 58 people who have left us so far have come from that area.

The remainder of the total number of 325 will largely come from work in our finance area. We are looking at outsourcing some functions and a reorganisation of the training area. At this point, the 325 does not include any outcomes from the review of air traffic control. We just do not have a feel for what that review means at the moment.

**Senator O'BRIEN**—Do you have an updated organisational chart?

**Mr Russell**—Yes. I do not have one with me, but there is one available on our website, and I can certainly get one to you.

**Senator O'BRIEN**—If the latest one is on the website, that is the information we need. How much is being spent on consultancies?

**Mr Russell**—I do not have that detailed information with me to date, but I can get it to you. Do you mean in relation to the restructure?

**Senator O'BRIEN**—I think generally.

**Mr Russell**—If you do not mind, I will take that on notice and report back to you.

**Senator O'BRIEN**—Could we have an itemisation of the consultancies by consultant and the amount of money involved in each?

**Mr Russell**—Yes. That can be made available.

**Senator O'BRIEN**—Do you expect that consultancy activities will increase as a result of the restructure?

**Mr Russell**—I do not. I think we are over the hump in that sense. We had consultants come in to the business and review the previous structure and make recommendations on how the structure could be improved. That was a fairly intense period of activity. It has been tailing off over the last couple of months. We have a number of people in the business at the moment who are helping us with a business improvement program. It aims, for instance, to improve our procurement activities, and over a period of time I expect some fairly significant savings there. We have also got people assisting the business in terms of change management and, more particularly, how we manage the company, lead it, and basically make business-like decisions. The short answer is that there have been consultants there, and we will provide you with a detailed breakdown, but their activities are tailing off.

**Senator O'BRIEN**—I suppose the reverse of that is: what consultancies are Airservices Australia providing? Can we have a breakdown of that?

**Mr Russell**—Provided by our organisation?

**Senator O'BRIEN**—Yes.

**Mr Russell**—Yes, we can do that.

**Senator O'BRIEN**—And the income earned from those consultancies?

**Mr Russell**—Approximately, yes. I can give you that information.

**Senator O'BRIEN**—Can you tell us what aviation and rescue firefighting services exist at Avalon now?

**Mr Russell**—We have put in place a rescue and fire service. You would be aware that the CASA requirement relates to an annualised passenger number. When that number is exceeded, the fire service is required. We put a fire service in place last year. It is not as yet quite up to category. It operates 16 hours a day, seven days a week, as I understand it. We have put a safety case together and made an application to CASA for an amendment to operate our certificate. We are hoping to have that finalised by the end of this month.

**Senator O'BRIEN**—What does that mean?

**Mr Russell**—We have had a sort of service in Avalon. It is not up to a category. We are working toward bringing it up to category, and there need to be some amendments made to the fire service facility there.

**Senator O'BRIEN**—How many passengers use that facility each year?

**Mr Russell**—I would have to come back with the detail. It has grown fairly rapidly, as you would know, over the last 18 months or so. We have noticed that Jetstar have been opening a number of new services to Perth and back. I will see if one of my colleagues might be able to dig that information out while we are talking.

**Mr McLean**—In the Bureau of Transport Economic statistics, there were 489,195 passengers in the year 2004-05.

**Senator O'BRIEN**—That is a year old.

**Mr McLean**—That is in 2004-05, yes.

**Senator O'BRIEN**—So it would be considerably more now?

**Mr McLean**—Yes. The growth rate was quite high. It would be more than that now.

**Senator O'BRIEN**—Would it be getting up to a million passengers?

**Mr McLean**—I would not expect so, but it would certainly be over half a million passengers.

**Senator O'BRIEN**—How far short of category is the current service? I am not sure what that means.

**Mr Russell**—This would be a category 6 operation under our standards. I think we are at 5 at the moment. I need to confirm that issue but I think it is around that.

**Senator O'BRIEN**—Is that because of the number of staff or because of the machinery?

**Mr Russell**—Facilities more than anything else, yes. I may need to take some further advice on that issue.

**Senator O'BRIEN**—If you can clarify that on notice, I would appreciate it. Can you outline all airports where the ADF provides aviation and rescue services? Newcastle, Townsville and Darwin I know of. Are there any others?

**Mr Russell**—Yes. They are the ones I am familiar with. Correction: in Darwin and in Williamstown the ADF provide those services. We provide the ARFF services in Townsville and Darwin.

**Senator O'BRIEN**—‘ARFF services’ means?

**Mr Russell**—The fire and rescue service. So in Darwin and Townsville but not in Williamstown.

**Senator O'BRIEN**—At all those three, ADF provide ATC—air traffic control?

**Mr Russell**—Yes.

**Senator O'BRIEN**—Tower services, perhaps.

**Mr Russell**—Yes.

**Senator O'BRIEN**—In terms of Airservices’s international activities, can you give us an update on what you are doing internationally?

**Mr Russell**—Yes. The organisation, I should say first of all, has a good reputation internationally as being a leader in terms of what we would call an ANSP—air navigation service provider. When I first arrived, I got the impression that we were acting fairly widely throughout the world. We took the view—and the board ratified this late last year—that we would become more focused in terms of our activities. The markets we are working in now are, first of all, the Australian market, where there is quite a lot of activity in terms of airport developments. We have some particular expertise in airfield lighting, for instance, and we have done a lot of work in Sydney and a number of other airports throughout the country. We see us increasingly working closely with the defence department—particularly the RAAF—in some of these areas. Perhaps we could talk more about some of those.

The other areas overseas are specifically what we would call our neighbourhood, where we think Australia has a very strong national interest, from a strategic viewpoint and from a safety viewpoint, in ensuring that civil aviation in countries such as Indonesia and Papua New Guinea is as safe as we can help those countries to make it. For instance, we are working in Indonesia to help improve the standard of training of air traffic controllers. Part of the rationale for that is that 90 per cent of the aircraft movements that fly to and from this country pass through that airspace. We are helping the Papuans to rebuild their civil aviation capacity, which has been largely destroyed over the years.

The other key markets for us on a more commercial basis are the Gulf, where there is very significant airport and airline growth, and, over a period of time, to further develop the very good linkages that we have in China. Again, it is airport and airspace development issues and also the experience that we have had throughout the organisation in terms of the management of the Olympic Games. The Chinese are particularly interested in some of that expertise. The other remaining large growing aviation market is India. We think the activities of Airservices closely align to either Australia’s national interests or our trading interests. That is fundamentally where we are operating.

**Senator O'BRIEN**—The only Pacific operations are Indonesia and PNG.

**Mr Russell**—We also administer upper airspace for Nauru and the Solomon Islands.

**Senator O'BRIEN**—That is done from Australia, is it?

**Mr Russell**—Yes, from our Brisbane centre.

**Senator O'BRIEN**—That is different from the work with Indonesia and PNG, is it?

**Mr Russell**—Yes, it is. The Indonesians have got a similar air traffic control platform to the one we operate. We have been assisting them to train their capabilities in that area, whereas the air space management in upper air space across the Pacific is done from Australia using our own equipment.

**Mr Dudley**—We are also doing commercial work in some other countries, if that is where your question was coming to.

**Senator O'BRIEN**—I just want to know what you are targeting.

**Mr Dudley**—We are currently looking at air traffic management work at Bacolod in the Philippines and we are also looking at safety management training and documentation work with Taiwan. We are pursuing other opportunities in the three stated markets of the Gulf, China and India that are currently being qualified or pursued at the moment.

**Senator O'BRIEN**—That is a pretty full picture.

**Mr Dudley**—As you are aware, Senator, we have the contract provision of tower services for five towers for the FAA in Hawaii, Guam and Saipan.

**Senator O'BRIEN**—Does the revenue from those contracts appear in the budget papers or in the annual report?

**Mr Russell**—In the annual report—it is listed under other commercial revenues. Just as an indication, it is a relatively small amount of our revenue so far; I would think in the order of \$30-plus million dollars this year.

**Senator O'BRIEN**—What sort of investment does Airservices have to make in underpinning the provision of those services?

**Mr Russell**—A fairly small investment. It has been getting our people and using our knowledge more than anything else.

**Senator O'BRIEN**—It is basically selling it, is it?

**Mr Russell**—Yes, using our intellectual property.

**Senator O'BRIEN**—Who is responsible for that within Airservices? Have you got a special division trying to on-sell?

**Mr Russell**—Yes, we do. It is the business development group within the Airservices group.

**Senator O'BRIEN**—What is the staffing of that?

**Mr Russell**—From memory—I probably do not have the exact numbers—it is in the order of 40 persons. That includes our aeronautical publications area, so there are a number of other activities in there. In terms of direct involvement on overseas selling of our business, it would be less than 20.

**Senator O'BRIEN**—Thank you for that. I am told that ADF provides some services at Katherine airport. Is that right?

**Mr Russell**—I do not know the answer to that.

**Senator O'BRIEN**—Can you check that?

**Mr McLean**—They possibly do during the exercises. There is an exercise about to start there and they possibly provide that, but we can take that on notice.

**Mr Russell**—I am not familiar with it. We will take it on notice.

**Senator O'BRIEN**—Perhaps you can check that, because there may be a few things that have slipped through the net.

**Mr Russell**—We are happy to do so.

**Senator O'BRIEN**—Senator Hogg is telling me that it is right; he has been there.

**Senator HOGG**—I think that is right. That is my understanding from defence estimates, but it may well have changed recently, so I would be interested to find out.

**Mr Russell**—Okay. We will take it on notice.

**Senator O'BRIEN**—I am not getting biblical, but I want to discuss Project Genesis. That was especially for you, Senator Hogg.

**Senator HOGG**—That is very good.

**Senator O'BRIEN**—Can you explain that project to us, please?

**Mr Russell**—First of all, I did not give it the name.

**Senator O'BRIEN**—Your excuse is accepted.

**Mr Russell**—I think it is a significant national interest issue. It has been talked about for a long time and it is about how the defence department, the RAAF and Airservices can work more closely together. We established a working group last year to progress it. There has been some change within the upper echelons of the command of the RAAF and some change within Airservices. The timing, in our view, was right, and we have agreed to work towards the establishment of a joint training program for air traffic controllers and the acquisition, over a period of time, of a joint air traffic control platform. In a country of this size, to operate two air traffic systems is unnecessarily costly. We think that this project can lead to cooperation on other joint capital purchases where we get some cost efficiencies and, in time, on some maintenance programs with which Airservices, with its spread of people throughout the country, can support some of the RAAF activities.

We have not, as yet, quantified the savings. They will largely be to the defence budget, but I can assure you that they will be substantial. The first tangible evidence will be the changeover of the Pearce air base in Western Australia. The approach from Pearce will come to the Perth terminal control unit that we operate at Perth Airport. That will be commissioned in June, and we are working to a program that early in the new year the approaches from Darwin and Tindal bases will be moved to our operations centre in Brisbane. We think that through better cooperation with defence personnel being located physically in our facilities we will be able to improve access to military airspace by civilian aircraft. If you look at the

advantage in Western Australia of the Pearce airspace directly north of Perth, it will mean quite substantial savings for civilian operations.

**Senator O'BRIEN**—Senator Hogg says Tindal is Katherine.

**Senator HOGG**—Tindal is Katherine.

**Mr Russell**—We know it as Tindal; I am sorry.

**Senator HOGG**—Tindal is one side of the tarmac; Katherine is the other side.

**Mr Russell**—Okay. Tindal is certainly what you are referring to.

**Senator HOGG**—We have cleared that up. I am glad I came.

**Senator O'BRIEN**—You have been invaluable.

**Mr Dudley**—To give you an example, there are estimates of around a six-minute saving in time for the regional operator Skywest, for example, going into or coming out of Perth in a northerly direction, should we be able to pass on the benefits.

**Senator O'BRIEN**—What impact will this have on air traffic controller positions in Airservices? Does that mean there will be fewer of them?

**Mr Russell**—I do not think it is going to have a major impact. We have been looking at assisting RAAF in terms of their recruitment requirements for their own air traffic control responsibilities. RAAF are particularly keen to ensure that somehow they keep that capability for deployment to different theatres. In order to do that, we are looking cooperatively at how we can work together to give career streams to younger people that perhaps want to start out in the RAAF and then come to us over a period of time. We have not worked through the full implications of it, but in my view there are win-win opportunities for both parties in this. I do not see it being a threat to the jobs of air traffic controllers within Airservices.

**Senator HOGG**—I have a defence interest in these things. I want to get this clear in my own mind. Are you saying that the current RAAF air traffic controllers at Pearce will physically move into Perth?

**Mr Russell**—Yes, those involved in approach services will move into our terminal control unit that is based at Perth Airport.

**Senator HOGG**—And they will work alongside of your air traffic controllers?

**Mr Russell**—Yes.

**Senator HOGG**—Will they handle commercial aircraft as well or simply RAAF traffic?

**Mr Russell**—I defer to Mr McLean on that issue.

**Mr McLean**—Primarily military aircraft. If commercial aircraft do go through the Pearce airspace then they will be handled by Pearce.

**Senator HOGG**—Getting into the Pearce airspace is another thing.

**Mr McLean**—Yes. It is primarily military aircraft.

**Senator HOGG**—The second issue is Darwin and Tindal going to Brisbane. That means, again, the personnel that are physically in those places will be removed to Brisbane—

**Mr Russell**—Yes.

**Senator HOGG**—for air traffic control movements in the Darwin and Tindal region. Is that correct?

**Mr Russell**—Yes, those involved in approach services into both those centres will be relocated. It is important to say we are not talking about tower services in both those locations; we are talking about approach services.

**Senator HOGG**—Roughly how many people will be involved? Do we know?

**Mr Russell**—I think we would have to take that one on notice. I do not have that detail with me.

**Senator McEWEN**—I had a few follow-up questions on answers to questions on notice that Airservices Australia gave me from the February additional budget estimates. Thank you for those answers. In reply to one of my questions about whether or not the new terminal at Adelaide airport is being built out of line of sight of the airport control tower, your response was that, no, the new terminal is in direct line of sight from the tower. However, a freight hangar, part of the terminal and parked aircraft block the view of some of the apron area on which other aircraft manoeuvre and park. Was that also the situation with the old airport, the old terminal, or is this a new issue?

**Mr McLean**—That is a new issue at the new terminal, but it is not unusual for parts of the apron area not to be visible from the air traffic control tower. But the air traffic control siting does comply with the regulatory requirements in terms of visibility on the airport. The consequence of not been able to see all of the apron is the requirement for pilots to call when they are pushing back, to notify the air traffic controllers.

**Senator McEWEN**—Are the aircraft that are occasionally out of view domestic and international passenger aircraft that are—

**Mr McLean**—Passenger aircraft at the new airport terminal on the apron area—not on the operational manoeuvring area but on the apron area attached to the terminal.

**Mr Dudley**—You will probably find that there is an area towards the front of the new terminal where I think at the moment they are parking some of the regional type aircraft. I think that is one of the areas you are referring to

**Senator McEWEN**—Yes.

**Mr Dudley**—There are also some areas in the general aviation section, right around the other side of the airport, where there is not direct line of sight.

**Senator McEWEN**—That is because the aircraft are already on the ground.

**Mr Dudley**—Yes.

**Senator McEWEN**—Also in response to one of my questions to do with this issue, AA said that procedures have been documented for use by air traffic controllers in temporary location instruction for processing aircraft into and out of the new terminal area. Were those procedures developed specifically to deal with the situation at the new terminal?

**Mr McLean**—Yes. They were temporary local instructions to deal with the restricted visibility at the new terminal.

**Senator McEWEN**—Why temporary?

**Mr McLean**—That is a nomenclature we use for temporary local instructions where they are issued on a three-month basis. After that, they go into the permanent publication. That is the instruction, which is temporary until it becomes part of the established documentation.

**Senator McEWEN**—You told me that AA and Adelaide Airport Ltd were investigating if there is a need for a new tower to be built as part of Airservices Australia's national towers project planning process. Can you give me an update on where that investigation is up to, please?

**Mr McLean**—We are in the process of developing the priority list for the replacement or upgrading of towers around the country. That program is to the point of developing the criteria for the investigation. We have done a preliminary prioritisation of upgrades. The next stage will be a physical inspection of all the locations to determine whether or not there are any other issues we need to include. This program does not have our board approval for the expenditure yet, but we expect to be in a position to seek that towards the end of this year.

**Senator McEWEN**—Can you tell us where Adelaide comes on your initial list of priorities?

**Mr McLean**—At this stage Adelaide comes fairly high. I think, from memory, it is in the top quarter of the towers to be replaced, mainly because of the siting of the tower but also particularly the construction of it, with a stairway.

**Senator McEWEN**—When would a final decision be expected about whether or not Adelaide Airport's control tower will be replaced?

**Mr McLean**—Could we take that one on notice, please?

**Senator McEWEN**—Yes. Thank you. You said the air traffic controllers will be consulted about that process. Can you explain exactly how you go about consulting the air traffic controllers?

**Mr McLean**—The siting of a tower, if the location is to move, needs to comply with the regulatory requirements and the international standards for visibility around the aerodrome. Then the fitting out of the tower and the infrastructure that goes into the tower is dependent on the local situation, number of operating positions, the configuration of the tower and the manoeuvring area. It is at that point that we will consult the air traffic controllers for their input—these are the supervisors—on the best way to configure the equipment.

**Senator McEWEN**—So you speak to the supervisors; you don't survey all the ATCs individually?

**Mr McLean**—We don't survey each of them individually but each of them will have an opportunity to provide input into the development of the final solution for their tower.

**Senator McEWEN**—Is one of your criteria for determining how far up the ladder of priority Adelaide Airport is the fact that there are so many retail developments on

Commonwealth land surrounding the airport, which have limited the number of places where an airport control tower could now be built?

**Mr McLean**—No, it is not a factor.

**Senator McEWEN**—Have you done any work at all about whether proposed locations for a new air traffic control tower have been restricted or eliminated because of commercial developments on Commonwealth land surrounding the airport?

**Mr McLean**—Not that I am aware of.

**Mr Dudley**—Some of those considerations are included in the airport's master plans, which we have input into for operational considerations such as the siting of a new tower.

**Senator McEWEN**—So it will be taken into account?

**Mr Dudley**—Yes.

**Senator O'BRIEN**—Unfortunately, although I have a number of questions, we have had to allocate times to different areas and we have reached the time when we will have to call on the Regional Services area if we are going to deal with all of the groups in this estimates process, because we do not have a spill-over day on Friday. I apologise that we will have to put more questions on notice. Thanks for coming, but we have just run out of time.

**Mr Dudley**—We are happy to take those on notice, should you still have any questions.

**Senator O'BRIEN**—Yes, we do, and you will be getting some on notice.

[5.07 pm]

### **Regional Services**

**ACTING CHAIR (Senator Nash)**—I call representatives from Regional Services.

**Senator O'BRIEN**—Can someone explain why no regional overview was provided on commitments to regional Australia during the budget, such as last year's *Building stronger communities 2005-06* statement?

**Mr Mrdak**—It was a decision of the government not to produce that this year.

**Senator O'BRIEN**—That was a not a priority this year?

**Mr Mrdak**—I think it was just a government decision about the way they wished to transmit the budget information this year.

**Senator O'BRIEN**—It certainly was not the department's decision?

**Mr Mrdak**—It was a government decision as to how the budget papers would be handled.

**Senator O'BRIEN**—Why has there been such a massive underspend in the Regional Partnerships program, with \$111.625 million allocated but only \$68.17 million spent? That is a 39 per cent underspend.

**Ms McNally**—In terms of the underspending, I think I heard you say that \$111.6 million was allocated. We are expected to spend \$84.7 million in 2005-06, which includes \$16.6 million for area consultative committees. The 2006-07 figures do not include the \$16.6 million as part of the overall amount. It has been separated out. In terms of the \$26.9 million lower than the original budget figure, \$16.9 million of that has been shifted to the forward

estimates and \$10 million has been returned to the budget, reflecting the slow take-up of the Rural Medical Infrastructure Fund. That pretty much sums up the difference.

**Senator O'BRIEN**—So \$16 million has been carried forward.

**Ms McNally**—That is correct.

**Senator O'BRIEN**—And \$10 million is an underspend of the Rural Medical Infrastructure Fund.

**Ms McNally**—Given the slow take-up.

**Senator O'BRIEN**—What is happening to the \$10 million—is that being carried forward as well?

**Ms McNally**—It has been returned to government.

**Senator O'BRIEN**—So it will no longer be available?

**Ms McNally**—That is correct.

**Senator O'BRIEN**—The Wide Bay ACC chair said in his ACC newsletter of spring 2005 that he is very concerned that there are buckets of money in Canberra but they are not being applied for for regional projects. Can you outline why this is the case and why so much money is not being allocated to the projects?

**Ms McNally**—I am not aware of that particular statement. I am not clear about what he is referring to.

**Senator O'BRIEN**—He says it is not being applied for.

**Ms McNally**—Not being applied for by applicants?

**Senator O'BRIEN**—Yes. That is what he means, I presume. He says:

There are buckets of money in Canberra and we want to see them in the Wide Bay Burnett.

“I am very concerned that funds are available but not being applied for when we have a region that is desperate for community and business development projects”

**Ms McNally**—I could not comment on why people are not applying for the funds. The funds are available. We have a large number of applications come in each year. We assess the applications according to the guidelines and we spend the funds according to that process.

**Senator O'BRIEN**—But not all of the funds you have had carry forward for a variety of reasons.

**Ms McNally**—That is correct. In terms of the Rural Medical Infrastructure Fund, we had a low number of applications. We have been looking at what that means in terms of the guidelines. We are pretty much spending the funding according to the guidelines, in accordance with the sorts of projects that come in and the decisions made by the ministerial committee.

**Senator O'BRIEN**—In the PBS, it is clear that there is rephasing into 2007-08 as well as 2006-07. It is about \$10 million in 2007-08. What is the reason behind that rephasing? You mentioned the \$16 million for 2006-07.

**Ms McNally**—Some of that money has been rephased to meet underexpenditure of some of the election commitment projects, which we expected to spend this financial year, but the funds will need to be expended in the next financial year or beyond.

**Senator O'BRIEN**—Underexpenditure of the election commitments—is that it?

**Dr Dolman**—Some of the election commitment projects in particular have been delayed—I imagine you have some questions on the detail of those. As you know, a majority of those projects involve significant amounts of construction in regional parts of Australia and there are delays in getting builders for that work. There have been some delays in some development approvals and things like that. Essentially, we are reallocating that money from the last financial year and spreading it across 2007-08, 2008-09 and 2009-10, which is when we expect the majority of those funds to be spent.

**Senator O'BRIEN**—You have rephased \$16.9 million over 2007-08, 2008-09 and 2009-10 from Regional Partnerships. From Sustainable Regions you have rephased \$16.383 million next financial year and \$4.3 million the following financial year. Are there similar reasons for all those rephasings?

**Ms Gosling**—With Sustainable Regions, there are similar sorts of reasons for the initial eight regions, in which we are at the difficult stage of helping some projects that are close to coming to fruition to finalise what they need to do to claim their final payments. Also, with the Sustainable Regions Program, some of that relates to projects and funding for the two new regions, Darling Matilda Way and Northern Rivers North Coast.

**Senator O'BRIEN**—How much new funding is there?

**Ms Gosling**—It is not new funding; it is funding for the two regions announced in 2004. We call them new regions.

**Senator O'BRIEN**—I am looking at table 2.4, which talks about administered funds between years.

**Ms Gosling**—Yes. Some of that funding would relate to the allocation of up to \$33 million for the two new regions announced in 2004.

**Senator O'BRIEN**—There is \$20.683 million rephased from 2005-06 to 2006-07 and 2007-08. Is some of that for those two new regions?

**Ms Gosling**—Yes.

**Senator O'BRIEN**—Is there a reason that it has to be rephased for those regions?

**Ms Gosling**—For the two new regions?

**Senator O'BRIEN**—Yes.

**Ms Gosling**—The committees for those two regions are still working very closely with stakeholders in the regions trying to develop quality project applications and recommendations to put forward to the minister, so they are still in the phase of bringing possible partners together on projects. The Darling Matilda Way particularly is a large region; some parts of it are quite remote. It is quite a complex process to bring those partners together to have the quality of recommendations that the committees are happy to come forward to the minister with.

**Senator O'BRIEN**—How much of the \$16.383 million in 2006-07 is allocated to the Darling Matilda region?

**Ms Gosling**—I do not have the breakdown per region but \$9.3 million of the \$20.683 million would have related to the Darling Matilda Way and Northern Rivers North Coast regions. We have allocated that across 2006-07 and 2007-08—\$5 million in 2006-07 and \$4.3 million in 2007-08 for the two new regions.

**Senator O'BRIEN**—So all the 2007-08 funding is for the two new regions. I would appreciate you giving me a regional breakdown of those rephasings on notice.

**Ms Gosling**—We will have a go at it, but that bucket of money was one allocation of up to \$33 million. Obviously, there is a notional allocation across the two regions, but if one region comes forward with more recommendations than the other in 2006-07 then the government may apply that money to that region, so there is a level of flexibility there. It would be very hard to say that there was a certain amount in one year for one region.

**Senator O'BRIEN**—So there is a notional amount but there is a practicality being applied to it?

**Ms Gosling**—Yes.

**Senator O'BRIEN**—Perhaps you could set it out in some way that explains that; that would be appreciated.

**Ms Gosling**—Certainly.

**Senator O'BRIEN**—Has the funding for ACCs to be funded on a three-year cycle from 1 July this year been redirected for Regional Partnerships?

**Ms McNally**—It has. There has been a new appropriation set up. That is on the first line item on page 31 of the PBS.

**Senator O'BRIEN**—So there is only a minor increase in ACC funding to \$16.94 million for 56 ACCs. This committee heard in February that the 56 ACCs would receive \$16.6 million. How will this very minor increase in funding assist them to deliver more in a broader range of programs?

**Ms McNally**—Deliver more?

**Senator O'BRIEN**—More activity, more service—do a better job.

**Ms McNally**—We have been working with the ACCs and we have developed a revised charter, and that charter sets out the sorts of roles and activities that the ACCs will undertake. We are currently working with the ACCs as they develop and finalise their business plans. Through those business plans they identify the sorts of activities that are relevant to their region that they will be involved in. We work closely with the ACCs through a chairs reference group and an executive officers group. Through those activities we identify priorities and issues that are facing regional Australia and so on.

**Senator O'BRIEN**—Yes, but across 56 ACCs that is an increase of \$360,000, which is not going to go very far. I am looking for a rationale for that limited increase. Have they made a case for that level of increase and no more, does the government have some report which suggests that that should suffice for them to do their job or is this an arbitrary figure?

**Ms McNally**—That figure was based on the previous year's figure, the 2005-06 figure, with some level of indexation where the parameters were set by the department of finance. We kept the operational funding for ACCs at a similar level to this year, as that funding comes out of the overall Regional Partnerships bucket. Government is interested in making sure that projects can be funded through Regional Partnerships to meet the actual needs of regional communities. In terms of the business planning process and the three-year contracts, we are still in the process of identifying what the budget would be for each ACC.

**Senator O'BRIEN**—It is a bit hard to understand. If the projects are not getting out there, and the ACCs seem to have a key part in getting the projects out there, not having a close look at whether they needed substantially more funds seems to be a bit short sighted. But that is not a matter for you; it is a matter for government, obviously. In the minister's statement last November, he said that the government would make more use of the ACCs and engage them in the delivery of a broad range of programs. Clearly, that has not been expressed in the budget. In your earlier answer, you suggested that it was simply a matter of capacity development in the ACCs.

**Ms McNally**—One of the issues we have been looking at is the priorities that government would like ACCs to focus on. As part of revising the charter, the government did identify four priority areas that it particularly wants ACCs to focus on, and those four priority areas were: small and disadvantaged communities, youth and Indigenous people, economic growth and skills shortages. So part of the approach to trying to get ACCs to maximise their role in regional Australia is to focus on what sorts of issues are emerging in terms of broad community groups, and those were the four areas that were identified.

**Ms Gosling**—But certainly, Senator—if I could just add to that—the charter that the government has set for the ACCs does have a whole-of-government role. And, obviously, as other portfolios want to engage with the ACCs, some of that would be negotiated on a case-by-case basis in terms of what funding or return the ACCs might get from other portfolios for some of those specific tasks. So that charter exists in terms of their whole-of-government role, and we are certainly working closely with other portfolios to see whether ACCs can provide input on regional issues in other aspects of the government's work.

**Senator O'BRIEN**—It is interesting that skill shortages is one of the areas they are to work on. It is a limited budget in an environment where there are limited skills available and perhaps better-paid jobs in the labour market for people with skills. It might be difficult for the ACCs to pick up the people with the skills they need with only a limited indexation of their budget.

**Ms Gosling**—Certainly, one of the aspects of the priorities is for the ACCs to work within their regions and within regional stakeholders to try to develop projects for which they could apply for funding under the Regional Partnerships program and that actually address some of those issues—projects that might target skill development or youth leadership et cetera.

**Senator O'BRIEN**—But the point is that, if they do not have the money to attract the skills they need to provide that basic service because of their budgets, it is a bit self-defeating in a sense. They want to encourage skills in a market where you have to pay a bit more for

skills and they have not been provided with those resources. It is a bit of a contradiction in terms of priorities with the resources that they have.

**Ms Gosling**—The allocation that they have been set in the budget was a government decision in terms of that level of appropriation.

**Senator O'BRIEN**—In terms of the implementation of the change strategy for ACCs, presumably the department is fairly hands-on in working with each of the ACCs as they work on this new approach to their role.

**Ms McNally**—Yes. We had an ACC conference in early April and the minister made it quite clear that he expects our regional offices will be working closely with ACCs as we move through the changes to the RP program and also as we implement priorities and support the development of good projects.

**Senator O'BRIEN**—Does that mean that the Regional Services area have more staff travel and spend more on travel to get to these meetings with the ACCs and to do the capacity building work that the department needs to do?

**Ms McNally**—The regional offices are now no longer undertaking the assessment function that was built into the Regional Partnerships program. That function has been brought into national office. That does free up some resources within regional offices to have a more hands-on role and work with ACCs. They are doing that through a variety of mechanisms. That does involve them going to some ACC meetings and meeting jointly with ACCs at community meetings. It also involves telephone contact and use of the email system and a range of other channels for contact and communication.

**Senator O'BRIEN**—The regional departmental offices will not have a role in approving or vetting projects. Is that correct?

**Ms McNally**—They will not be involved in the assessment of projects. The decisions are made by the ministerial committee. They will not be involved in the process of making recommendations and undertaking the assessments for that committee.

**Senator O'BRIEN**—In the ministerial statement in November there was a promise of a review of ACC boundaries. When will that review be complete?

**Ms Gosling**—The minister is currently in a consultation phase with ACCs in relation to that and he is expecting comments back by 26 May. On that basis the government will be able to make a final decision in relation to the boundaries review, taking into account anything they have heard through during the consultation phase.

**Senator O'BRIEN**—Who is participating in the review? Are the ACCs making submissions and is any other input being sought from the community?

**Ms McNally**—The review was undertaken by the department based on submissions that were provided by ACCs. We have provided some initial findings to the minister. He has sought further comment from ACCs. He has also written out to local MPs and to senators to seek their views on the boundary issues.

**Senator O'BRIEN**—When did he write out to members and senators?

**Ms Gosling**—I will have to take on notice the date. We do not have that information.

**Senator O'BRIEN**—Thank you. Will the review take into consideration the performance of all ACCs?

**Ms McNally**—The review has looked at a range of issues. It has looked at what is happening, for example, in capital cities with metropolitan ACCs—whether there was a need to actually have an ACC in a capital city where there are a lot of other services available. It has looked at local government areas and some of the alignment issues with local government areas. It has looked not so much at the actual performance but at the fact that, for example, some of the metropolitan ACCs, particularly, absorb a higher level of funding overall out of the ACC pool and that results in fewer Regional Partnerships projects. We looked at some of those sorts of issues.

**Senator O'BRIEN**—Is the review looking at all ACCs, including underperforming ACCs who are not meeting their targets?

**Ms McNally**—Looking at all ACCs?

**Senator O'BRIEN**—Yes.

**Ms McNally**—It was not a review of performance; it was a review of boundaries—whether the boundaries were the right sorts of boundaries and the results that were being achieved in terms of the number of ACCs that were there and where the ACCs were located.

**Senator O'BRIEN**—How was the proposal to amalgamate all Melbourne ACCs determined?

**Ms McNally**—How was that arrived at?

**Senator O'BRIEN**—How was the decision arrived at, yes?

**Ms McNally**—With the examination of the five Melbourne ACCs, we looked at what was happening with other ACCs in capital cities. In all other capital cities, there was only one ACC. We looked at the numbers of Regional Partnerships projects that were being developed through each of the ACCs and we looked at the level of operational costs in comparison to other metropolitan ACCs.

**Senator O'BRIEN**—Have local councils been consulted in relation to the proposal to amalgamate Melbourne ACCs?

**Ms McNally**—No. I do not think they have.

**Senator O'BRIEN**—Were members and senators in relevant jurisdictions consulted about the proposal to amalgamate Melbourne ACCs?

**Ms McNally**—The consultation currently being undertaken following the minister writing out to relevant ACCs and senators and so on covers the five Melbourne ACC areas.

**Senator O'BRIEN**—Do these ACCs in Melbourne play other roles in their regions, apart from administering Regional Partnerships?

**Ms McNally**—They play a role in terms of supporting whole-of-government initiatives; they play a role in terms of working with local communities to develop projects; identifying the right sources of funding—not necessarily Regional Partnerships funding—for interested

parties who are seeking government support; and they play a role in coordinating and connecting initiatives across their area.

**Senator O'BRIEN**—Has there been any indication of funding levels for an amalgamated Melbourne ACC? Will they get more because it is an amalgamation?

**Ms McNally**—At this point in time we have looked at a process of transition—that, if we were to change from having five Melbourne ACCs, there would be a process of transition where we could examine what needed to happen in respect of funding and what would be the impact on the relevant ACCs.

**Senator O'BRIEN**—How was the review of the Sydney ACC known as GROW undertaken?

**Ms McNally**—That was undertaken as part of the overall review, with similar sorts of issues being examined.

**Senator O'BRIEN**—I take it you are proposing to reduce the funding for Sydney and Melbourne ACC resources and they will be spread around all of the others.

**Ms McNally**—That is correct.

**Senator O'BRIEN**—What you are suggesting is that the rationale for that is that the government has other resources which can do the work the ACC does in the Sydney and Melbourne regions.

**Ms McNally**—There are a number of issues that we considered, including, as I said earlier, the number of Regional Partnerships projects that are generated from the area, the range of other support services that are available to the area and the overall cost in terms of funding those ACCs' operational costs in respect of the overall ACC bucket of funding. If you compare some of those issues, it emerges that those areas are paid a much higher amount of ACC funding but there are fewer projects generated in that area. There are a number of reasons for that. One is that there are a number of other services, a number of other ways of getting funding and a lot more access to government services and support.

**Senator O'BRIEN**—Why have them at all?

**Ms McNally**—The review, as it currently stands, found that there still is a valid role and that they still play some role in connecting local development initiatives. In terms of having one ACC in a metropolitan area, the review found that the role that they play in respect of working as part of the overall network was a valid one.

**Senator O'BRIEN**—So how will the changes to GROW that are proposed improve its efficiency?

**Ms McNally**—The changes that have been proposed relate to their overall annual funding. There are a number of areas that could be considered for efficiency and that would need to be negotiated with the GROW ACC if that proposal goes forward. They may include the size of the board, the number of officers that are employed, the range of committees that they have in place and so on.

**Senator O'BRIEN**—I ask that question because the summary of recommended changes to ACC boundaries includes the statement, under the heading 'Sydney', that a reduction in

operational funding is recommended to GROW Sydney ACC to achieve improvement in the organisation's efficient operation. I still do not understand how taking money away will achieve efficiency. It will make it smaller, if being smaller is more efficient. If that is what you mean, I can understand that, but otherwise I cannot.

**Ms McNally**—As I said earlier, one of the issues we looked at was the number of Regional Partnerships projects that are generated out of the ACCs in respect of the level of operational funding that they receive. The GROW ACC receives a fairly high level of operational funding compared to the number of projects that are generated. We would be looking to work with them to see how that could be addressed. They have a large board structure. They operate five subcommittees. We would be looking to work with them on some of those issues.

**Senator O'BRIEN**—In February this committee heard that a response to the Senate inquiry into regional programs would be tabled shortly. We have not had one, but can we expect one soon?

**Ms McNally**—That is a matter for government. I cannot comment on when they will make that available.

**Senator O'BRIEN**—Ms Page told us in February that the government was considering its response to the Senate inquiry. She said:

I imagine it will be tabled shortly.

Has the department prepared any draft responses?

**Ms McNally**—I cannot comment on that.

**Senator Ian Campbell**—It is entirely a matter for the minister.

**Ms McNally**—It is a matter for government.

**Senator O'BRIEN**—I am not asking what the nature of it is; I am asking if the work has been done on preparing the draft.

**Senator Ian Campbell**—I think the fact that Ms Page said that she expects it to be tabled shortly probably gives you a clue. But it is entirely a matter for the minister. Delving into the department and saying, 'Have you prepared a response; how many pages is the response; have you got some photos in it?' is all fun but the government is responsible to the parliament for responding to it. We will clearly have input from the department, and the minister will make the decision. He will be held responsible for when the response is tabled. You may think that he is taking too long and that it should not be a well-considered response and that we should rush and get it in. Susan Page said that in February; it is only May now.

**Senator O'BRIEN**—Oh, it is only a few months. How long is long enough?

**Senator Ian Campbell**—We have been waiting for a Labor Party regional services policy for 10 years.

**Senator O'BRIEN**—No, you have not.

**Senator Ian Campbell**—Are you thinking of having one soon?

**Senator O'BRIEN**—You regularly see our policies at the appropriate time.

**Senator Ian Campbell**—We do. We see Mr Tanner saying we will get rid of Regional Partnerships and then the Natural Heritage Trust, and we do not know what it is going to be replaced with. I am sure it will be a very well-considered policy by the time it finally comes out.

**Senator O'BRIEN**—So, with all the resources of government, you cannot respond to the Senate inquiry in a reasonable way.

**Senator Ian Campbell**—We can, and we will have a very considered response.

**Senator O'BRIEN**—It will be well considered—it will be so long considered! The single assessment process for projects through the national office was implemented on 13 March; has that actually worked yet?

**Ms McNally**—Yes.

**Senator O'BRIEN**—Something has gone through that process?

**Ms McNally**—Yes, we have gone through that process. All projects are now being assessed in our national office. There are no projects left in the regional offices. The number of assessments has increased quite significantly in recent months, and we think the process is working quite effectively. There have been a number of meetings with the ministerial committee, and projects are moving through the process.

**Senator O'BRIEN**—In February we discussed the average time for Regional Partnerships applications to be assessed by the department. At the time it was taking 19.9 weeks for the department and 3.3 weeks for the ministerial approvals. Your annual report said you hoped that 75 per cent of applications would be assessed in 12 weeks. Has that been achieved?

**Ms McNally**—We have significantly reduced our time frames. We do have a backlog from prior to 13 March. We are working through that very quickly and we hope to be on track to meet those time frames by the end of this financial year.

**Senator O'BRIEN**—What is the average now?

**Ms McNally**—I would have to take that on notice. I do not think I have that.

**Dr Dolman**—I think we can take that on notice. But I can say that no projects that have gone through the new process have taken longer than 12 weeks.

**Senator O'BRIEN**—How many projects have gone through the new process entirely, from start to finish?

**Dr Dolman**—I can take that on notice.

**Senator O'BRIEN**—A lot or a few?

**Dr Dolman**—About 10 or 20, something like that.

**Senator O'BRIEN**—In February this committee heard that new guidelines on project approval would be issued to ACCs by the middle of this year. Is the department on track to issue these new guidelines?

**Ms McNally**—Yes. We have drafted a set of revised guidelines. We provided those in late March through to about the middle of April to all ACCs for comment. We received quite positive comments from at least half of the ACCs and we incorporated a lot of those

comments. We have also sought comment from some other agencies. The draft guidelines are currently with the ministerial committee for consideration.

**Senator O'BRIEN**—How many times has the committee of ministers met to approve funding applications for Regional Partnerships since February?

**Ms McNally**—Five times.

**Senator O'BRIEN**—We established during the last Senate estimates that the Strategic Opportunities Notional Allocation guidelines were still in place. Have they been used since?

**Ms McNally**—No.

**Senator O'BRIEN**—The Senate inquiry into Regional Partnerships also recommended a review of the grants based approach to regional development to see if it in fact achieves regional development outcomes. Has any such review been carried out?

**Ms McNally**—Can you repeat that question?

**Senator O'BRIEN**—The inquiry also recommended a review of the grants based approach to regional development to see if it in fact achieves regional development outcomes. I wanted to find out if that had been done.

**Ms McNally**—That issue will be addressed, I think, through the government's response to the inquiry. There has not been anything—

**Senator O'BRIEN**—There has been no such review to date?

**Ms McNally**—Not to this point, no.

**Mr Mrdak**—That is a matter that will be covered by the government's response.

**Senator O'BRIEN**—In February we heard that the second stage of the evaluation of the Sustainable Regions Program was in the process of being finalised. Where it is up to now?

**Ms McNally**—It is still being finalised.

**Senator O'BRIEN**—Does that mean there has been a delay for some reason? In February, Ms Gosling said:

In relation to the evaluation strategy for Sustainable Regions, we are in the process of finalising stage 2 of the evaluation of that program.

Finalising it seems to be taking a long time.

**Ms McNally**—I think that is fairly reasonable: it probably has taken a bit longer than expected. Since I took up the position as executive director at the end of January, one of the things I have been doing is getting across all of the subject matter. I had a look at the Sustainable Regions evaluation, and that has added a bit of extra time to the process. But we are working through it.

**Senator O'BRIEN**—You gave us some information earlier about the two new sustainable regions, Darling Matilda Way and North Coast, New South Wales. In a general sense, are they progressing at a pace which is satisfactory—that is, the establishment of their committees and the process of pursuing and procuring applications?

**Ms Gosling**—I think it would be fair to say that they are progressing. There were some delays, which I think we have discussed in the past with you, in the appointment of the committees. That meant that at the front end of the process we probably lost a little bit of time. We are at the point with both of those committees where they are now well and truly in the process of looking at expressions of interest and detailed applications in terms of considering recommendations for the minister. They are working very solidly within their regions. They have conducted a number of stakeholder meetings. They have met with a number of regional development boards locally. They are going through that process of trying to bring people together within the regions to get together some quality projects to recommend.

In terms of whether it is within a time frame that is acceptable, from the department's point of view it is important that we get quality recommendations from these committees and this level of work at the front end of the process, if you like, is very valuable, particularly with the Darling Matilda Way region. As you can appreciate, is a large area. As I said before, parts of it are very remote. Finding the sorts of projects that are acceptable for the committee to come forward to the minister with is a complex process of bringing parties together within the region.

**Senator O'BRIEN**—I suppose that raises the question as to why the region's boundaries were chosen.

**Ms Gosling**—That was a matter for government, as we have discussed in the past.

**Senator O'BRIEN**—Exactly. In February, this committee heard that the department was carrying out a project audit to assess those projects in eight regions affected by the program coming to a close at the end of June 2006. How has that audit progressed?

**Ms Gosling**—That work is under way. In a sense, it is ongoing work. Since February, there have been a number of site visits to projects in the eight initial sustainable regions. These projects develop on a week-to-week basis. We are constantly monitoring it and trying to assess how they are tracking in terms of their time frames. Our regional offices, with the support of national office, are in regular contact with the funding recipients in trying to help them conclude the projects so the communities can get the benefit of the services.

**Senator O'BRIEN**—How many projects are likely to be affected by the expiration of the program? Will any projects seek extensions?

**Ms Gosling**—We are working through that now. It is possible that a number of projects will not claim all of their payments by 30 June 2006. We are at the point where essentially the government has contractual commitments with those funding recipients and we are working very closely with them to help them get over the line and understand the nature of the paperwork and the milestone reporting that we need to be able to process payments for them. It is possible that there will be some projects going into 2006-07, hence the rephasing, the movement of funds, in the PBS. The majority of projects going into 2006-07 will probably have smaller payments, some of them linked to final audit reports. But we are still working with proponents to try and see that as many as possible complete by 30 June 2006.

**Senator O'BRIEN**—Has provision been made to carry over the necessary funds?

**Ms Gosling**—Yes. That movement of funds you referred to at the beginning of our discussion relates to ensuring that the government meet the commitments they have to those funding recipients.

**Senator O'BRIEN**—We heard in February that 32 of the 37 Regional Partnerships funded election commitments had ministerial approval. Dr Dolman, you probably expected questions on this, and I am asking them now. Give us a bit of an update on where we are.

**Dr Dolman**—Now 35 of the 37 election commitments have funding agreements signed. Six of the projects have been completed. Those figures include Bank@Post but not the Rural Medical Infrastructure Fund. The two remaining projects that need to enter into funding agreements are the George Town Memorial Hall development, where they are still developing concept plans and architectural drawings, which we expect to be submitted later this month, and the Tamar Woodworkers Guild building, where they have just completed their concept plans and we are working through the risks associated with that project.

**Senator O'BRIEN**—When would you expect that to actually be a signed commitment or contractual arrangement—however you would describe it?

**Dr Dolman**—I expect that we will enter into funding agreements with those last two projects probably in the next couple of months. But it will depend on negotiations with the proponents.

**Senator O'BRIEN**—It has taken a long time—more than 18 months now. Can you give us a reason why we have not been able to sign off on these projects? Is it because of the proponents, the department or the difficulty of the project?

**Dr Dolman**—Essentially we have been in contact with the proponents since the election and working through the details with them. With those last two projects, as I said, it has really been because of the proponent taking time to develop the proposals to a point where we can enter into a funding agreement with them.

**Senator O'BRIEN**—How many Rural Medical Infrastructure Fund applications have been approved and funded?

**Dr Dolman**—As at 16 May, which was when we collated these figures, nine applications had been received and five of those had been approved. Three are still undergoing assessment and one application was deemed not eligible as it was seeking funds outside the guidelines.

**Senator O'BRIEN**—How much in total has been expended on the five approvals?

**Dr Dolman**—I do not have the total with me, but I can read out the five amounts.

**Senator O'BRIEN**—If you could, that would be good.

**Dr Dolman**—A project in Boyup Brook in Western Australia received \$105,000; a project in Wyalkatchem in Western Australia received \$200,000; a project in Mandurama in New South Wales received \$23,162; a project in East Gippsland in Victoria received \$175,350; and a project in Tennant Creek received \$175,663. That is the amount that was approved.

**Senator O'BRIEN**—And \$10 million has been paid back to consolidated revenue?

**Dr Dolman**—\$10 million was not moved in total funds, on the basis that the rate of uptake of the Rural Medical Infrastructure Fund has been a lot slower than we expected. You would

be aware the election commitment was for \$15 million over three years. We are now a fair way into that process. It commenced on 1 July last year, and we are still a fair way short of a million dollars. Our expectation is that there will not be uptake of \$15 million.

**Senator O'BRIEN**—We are halfway through the three years, \$600,000 has been expended and you have three applications to assess and five have been approved, at this stage. You are struggling to get to \$1 million, let alone \$15 million.

**Dr Dolman**—What we are doing is looking to further promote the program, particularly amongst local councils, who are the only eligible applicants at the moment. The minister is also looking at whether there is a need to modify the criteria that have been applied to the Rural Medical Infrastructure Fund to assist with the uptake of projects.

**Senator O'BRIEN**—Clearly, it was not well thought out. Can we get a current list of Bank@Post facilities? I want to find out how many of the 266 facilities are up and running—that is, providing services to their communities. Do you have that list?

**Ms Gosling**—I have a list that I can table.

**Senator O'BRIEN**—That would be great. The *Investing in stronger regions* statement, which outlined the budget election promises, said that Regional Partnerships would create 3½ thousand new jobs over four years. Can someone tell me how many jobs have been created over the life of the program to date?

**Ms McNally**—We would have to take that on notice.

**Senator O'BRIEN**—Could you also find out how many jobs have been created so far in 2005-06.

**Ms McNally**—We will take that on notice.

**Senator O'BRIEN**—Perhaps also on notice, could we get a breakdown of the Regional Partnerships grants made in the current financial year, by electorate.

**Ms McNally**—We will take that on notice.

**Senator O'BRIEN**—How many grants have been made this financial year?

**Dr Dolman**—So far this financial year, 189 applications, to the value of \$32.1 million, have been approved for funding.

**Senator O'BRIEN**—In February this committee heard that there was no funding agreement in place for the RM Williams centre in the seat of Hinkler and it remained to be approved. Has progress been made on that?

**Dr Dolman**—Yes, there has been some progress on this project. On 21 March this year, the ministerial committee approved partial funding to progress this project. They approved up to \$67,000 to prepare a comprehensive business plan for the project.

**Senator O'BRIEN**—So \$4 million was committed during the election but \$67,000 has been approved to date.

**Dr Dolman**—\$67,000 has been approved to do that planning work to start the project—that is correct. That is conditional on matching funding from the local government and the state government.

**Senator O'BRIEN**—Are two other amounts of \$67,000 required or one other amount?

**Dr Dolman**—There have to be two other contributions of roughly that amount. I do not think it is that prescriptive, but there is an expectation that the state government and the local government will contribute similar amounts so that there will be about \$150,000 to \$200,000 available to do the business plan.

**Senator O'BRIEN**—The local member, Mr Neville, said it was 'a red-letter day for Eidsvold' because they could get cracking on getting the job done, and work was due to start in late November, but there has been no progress for almost two years. What is the reason why almost no progress has been made in that period of time?

**Dr Dolman**—In essence, the ACC and the department have been working with the applicant to develop a feasible proposal that could use the funding, and we have had a formal risk analysis undertaken by an external provider, WalterTurnbull. They have identified a number of risks associated with the original proposal and they have recommended combining it with the agroforestry complex nearby that was funded previously. So there have been a number of changes in the overall nature of the project that is coming forward, and now that they have developed the concept they are at the point of needing to develop a full business plan before they can move forward.

**Senator O'BRIEN**—Will the public, local business and the tourism industry be involved in the consideration of this project?

**Dr Dolman**—They have established a steering committee, which does include members of the council and some members of the public and local business, I understand.

**Senator O'BRIEN**—Who was the funding promised to in the first place?

**Dr Dolman**—Funding is for the Eidsvold Shire Council.

**Senator O'BRIEN**—So we are part of the way to funding some sort of feasibility study. Is that as far as we have got?

**Dr Dolman**—No, there has been an agreement to release funding for a business plan.

**Senator O'BRIEN**—So we are part of the way to funding for a business plan, because it requires two matching contributions which will bring it up to it about \$200,000?

**Dr Dolman**—I understand that the state government have given a commitment to provide their part of their funding and I understand local government have available funds to contribute their part as well.

**Senator O'BRIEN**—Local government have committed funds as well, have they?

**Dr Dolman**—Yes, at least verbally.

**Senator O'BRIEN**—The local member, Mr Neville, defended the delay, saying: It's unfortunate that we've got to this stage and have to go back to the plannings ...

What plannings have taken place? I am not sure what he means so I am asking you.

**Dr Dolman**—I am not sure either.

**Senator O'BRIEN**—You do not know what he means either. Okay. He indicated that the project would be restructured to ensure it is capable of working at a lower level. Does that mean a lesser project, a smaller centre, down the bottom of the hill instead of the top?

**Ms McNally**—I do not think we have any information on that.

**Senator O'BRIEN**—I am not sure what it means either. You do not know?

**Ms McNally**—I do not think we have any information on what he means by 'a lower level'.

**Dr Dolman**—What we are concerned about is that the project, when constructed, is sustainable. That is where we have gone into it.

**Senator O'BRIEN**—So it looks like the RM Williams Australian bush centre will be incorporated into the Eidsvold Sustainable Agroforestry Complex, does it?

**Dr Dolman**—Yes. That was the recommendation from the formal risk analysis that was undertaken, and I understand the council has agreed to that recommendation.

**Senator O'BRIEN**—The agroforestry complex received \$496,000 in Sustainable Regions Program funding in 2004.

**Ms McNally**—It did receive funding under the Sustainable Regions Program.

**Senator O'BRIEN**—And \$110,000 under the Regional Solutions Program, according to Ms Page's answer in estimates in February. Do we know whether progress has been made with the Sustainable Regions and Regional Solutions money for the agroforestry centre?

**Ms McNally**—The agroforestry complex is now complete.

**Senator O'BRIEN**—Has the government revised the level of its commitment to the RM Williams Centre because of its possible incorporation in an already funded complex?

**Dr Dolman**—Essentially, my understanding is that the \$4 million election commitment still stands. However, the ministerial committee has indicated that they will look at the business plan that comes forward, which they have agreed to fund, before releasing further funds.

**Senator O'BRIEN**—The Mackay science and technology precinct in the seat of Dawson was promised \$8 million in the last election. In February, the committee heard that \$200,000 had been approved by a ministerial committee meeting on 30 November for the development of the business plan. Has that money been paid to the proponent?

**Dr Dolman**—I do not have the details of how much has been paid for that project. What I am aware of is that tenders have been called for to prepare that business plan and a tenderer has been selected. The business plan is expected to be completed by the end of July. I can take on notice whether or not any funding has been paid so far.

**Senator O'BRIEN**—Thank you. The timetable has slipped a bit since February. I think we were expecting it to be provided in June. It is now the end of July, is it?

**Dr Dolman**—Yes.

**Senator O'BRIEN**—The Buchanan Park rodeo at Mount Isa, in the seat of Kennedy, had \$5 million committed to it for redevelopment in the last election. How much has the project received to date?

**Dr Dolman**—Ministerial approval was provided for this one on 2 November. The first payment of \$1.76 million GST exclusive was made on 26 May last year. A first milestone report was received on 7 October 2005. That was not linked to a milestone payment. A second progress report was received on 26 April, which was linked to a \$1 million payment processed on 28 April, so \$2.76 million has been paid to that project so far.

**Senator O'BRIEN**—That is the money they have got. What have they achieved?

**Dr Dolman**—This project is now progressing. There was an initial delay as they did not receive a competitive tender when they first went out to tender. Subsequently, they decided to tender that in five parts, separately tendering for the earthworks, the structural steel, the electrical work, the construction and the landscaping. They have finalised the tender process and have let tenders for the earthworks and electrical contracts. They have completed site works and have begun the earthworks. They have conducted a feasibility study. They have worked through details of the costings. They have gained administrative and development approvals, including building approvals, statutory approvals and planning approvals. They have engaged a project manager, they have prepared pre-budget estimates and they have completed their design.

**Senator O'BRIEN**—The Dalby showgrounds in the seat of Maranoa: in February this committee heard that there were some delays due to concerns that this project is not financially viable, as identified by Ernst & Young. Have those concerns been alleviated?

**Dr Dolman**—Yes. Essentially, there was an initial viability analysis of the project concept plans conducted by Ernst & Young which, as you say, identified a number of risks. The recipient then went on to conduct a feasibility study and, as part of that, they made changes that mitigated the risks identified by Ernst & Young. The feasibility study was then independently assessed by Ernst & Young again. They identified just a few remaining risks. The recipient has subsequently gone through and developed a final proposal which addressed those risks. The project was then approved by the ministerial committee for funding on 28 March and we are in the process of finalising a funding agreement, once they have got the final development and building approvals.

**Senator O'BRIEN**—The Tamworth equine centre in the seat of New England: I think we all know the history of election promises on that. In February we heard that there were delays with this project due to a necessary traffic impact study and that the second milestone payment would be made in August. Have we any update on the likelihood of future delays?

**Dr Dolman**—Yes. We have provided some detail to an answer that we took on notice last time, that the funding agreement was varied slightly. As you say, this project was delayed slightly because they were awaiting completion of a number of studies that were required for the development approvals: traffic impact, heritage and environmental impact studies. Those studies have now been completed and the development approval was lodged with council on 26 April. It is expected to be considered by council in June. The earthworks are scheduled to

commence in August, with construction beginning in September. So the project is largely back on track.

There is one other thing I can add. The partnership project for this project has also been strengthened, with an additional \$1 million being pledged, \$500,000 each, by the Tamworth Pastoral and Agricultural Society and the New England TAFE. Also on 16 March the New South Wales government confirmed their contribution of \$3.35 million to this project.

**Senator O'BRIEN**—Thank you.

**Senator NASH**—Just briefly on the rural medical infrastructure fund, obviously that was really well received when the funding was announced for that terrific initiative. But what do you see as the impediments? You say it is slow in terms of take-up but what are the impediments? Apologies if this was asked when I was out of the room. Looking at the guidelines, what have been the impediments to the take-up, do you think?

**Ms McNally**—We are working through with the Department of Health and Ageing at the moment on how we could actually make the program broader. We are looking at issues about whether we could broaden the funding recipients—so go beyond local councils. We are looking at issues around the size of towns; we are looking at issues around the distance from centres. There are a couple of issues we are examining at the moment—working through with the Department of Health and Ageing—to identify if that would make an improvement to the attraction of the program.

**Senator NASH**—Is there currently a population cap—a cap on per capita per town?

**Dr Dolman**—There is. The specific guidelines for the rural medical infrastructure fund limit it to towns of 10,000 or less.

**Ms McNally**—Yes. One of the things that has been raised is perhaps lifting that cap. Broadening that criterion might be helpful in terms of people accessing the fund.

**Dr Dolman**—That is one of the things that the minister is looking at. There is also a cap of \$200,000 on project size, which is also being examined as to whether or not it is appropriate.

**Senator NASH**—If you are going to broaden out from local councils, what other sorts of groups do you think you would take into account—or is that something that is being worked through at the moment?

**Ms McNally**—It is currently being worked through. We are taking advice from the Department of Health and Ageing on that. One of the issues we have to look at is what other sorts of funding programs fund similar sorts of things—so we are not looking at duplication of funding—and where we can provide the best opportunities and so on.

**Senator O'BRIEN**—In 2004 the then minister for regional services, John Anderson, said in respect of the Bert Hinkler Hall of Aviation—which is in the seat of Hinkler, apparently—that the government would spend \$2.5 million in 2004. We heard in February that only one payment of \$1 million had been made to this project. Have there been any further payments made?

**Dr Dolman**—There have been no further payments made to date. We have a first milestone report—I think we probably told you this last time—which was received on 30 January.

**Senator O'BRIEN**—Yes.

**Dr Dolman**—The reason for the delay with this project is that they were expecting a contribution from the Queensland government for this project as well. They had planned to do the works on the basis of the larger project if they were successful in getting the funding from the Queensland government. There has been a delay in a decision from the Queensland government and, as yet, they still have not received confirmation about whether or not they will get that additional funding. However, in discussions with them, they are now working on a plan to develop the project in a staged way, so that they can progress the part that would be funded by the Australian government and build on that later if they are successful in getting further funding from the Queensland government. The project is now expected to be completed by 30 April 2008.

**Senator O'BRIEN**—The budget papers show that the \$1.5 million committed in 2002-03 has been rolled over again to 2006-07. Does that mean that it is likely to be rolled over yet again to 2007-08?

**Dr Dolman**—That will be a matter that will be considered for the next budget. As you said, there are actually two appropriations for this project. There is the separate \$1½ million, which has not been drawn upon yet. Our estimate in preparing advice for this budget is that we are hoping that that will be spent next year. There is a further \$2½ million that is available through Regional Partnerships, to take the total Australian government contribution to the project to \$4 million.

**Senator O'BRIEN**—The Jimbour amphitheatre built on the property of the Queensland National Party's president using Regional Partnerships funding of \$173,146 is technically owned by the president's pastoral company. The amphitheatre was under construction at the same time as an exemption permit submitted to the Heritage Council was rejected. Has the Heritage Council given approval for the amphitheatre?

**Dr Dolman**—We checked this in the last few days and our understanding is that the heritage listing process is still in progress.

**Senator O'BRIEN**—Is it possible that the amphitheatre will need to be pulled down or returned to its original state?

**Dr Dolman**—Our advice is that that would very unlikely.

**Senator O'BRIEN**—If approvals are not granted, will the department seek to recover grant moneys paid to the National Party president's pastoral company?

**Dr Dolman**—The grant funds were actually not paid to the pastoral company. The grant funds were paid to the council, which was the applicant. Essentially, the council has a deed of agreement in place with the owners of Jimbour Station to secure access for 99 years for any events that are organised on the site and also for maintenance of the site. I think we answered last time the question about whether or not it would be possible to obtain funding back from this project. The funding has actually been completed in that the work is completed and there is a final acquittal. From the department's perspective, this project is now completed. I guess if it does eventuate that the heritage approvals are not granted—and, as I said before, our

advice is that that is very unlikely—we would take legal advice, I guess, about whether or not there is any possibility of recovering the funds. But I think that would be very unlikely.

**Senator O'BRIEN**—I guess we will just have to keep a watching brief on the Jimbour amphitheatre and the Heritage Council. I hesitate to ask this: is there any movement on the Beaudesert rail matter?

**Dr Dolman**—No.

**Senator O'BRIEN**—In February our last advice on the primary energy grant was that a final payment was to be made to the proponent in March. Was that payment made?

**Dr Dolman**—That payment has not yet been made. The proponent has provided a tax invoice and the final progress report, but we are still awaiting from them a final acquittal of funds.

**Senator O'BRIEN**—Our last advice was that negotiations were taking place with potential funders to actually build the ethanol plant and an announcement was to be made 'shortly'. Has any announcement been made?

**Dr Dolman**—No, there has not been an announcement made.

**Senator O'BRIEN**—How does the proponent become eligible for the last payment? I thought they had to establish finance for the project going ahead.

**Dr Dolman**—I would have to check the detail of the funding agreement, but that is my understanding as well. I think the situation is as we described it last time. They are still negotiating with financiers and also with a number of oil companies, as I understand it. It still is our expectation that there will be an announcement.

**Senator O'BRIEN**—To date no progress has been made. This project has received \$1.1 million. There has not been one single litre of ethanol produced or confirmation that it will be. Why do you have the confidence that it will go ahead?

**Dr Dolman**—This project was never about the construction of the ethanol plant. This was about raising the capital to fund the working venture. There has been—

**Senator O'BRIEN**—We have not had one therefore constructed. It might have been that you get to the point where you have the money to build it, at which point the Commonwealth would say, 'We have achieved our aim.' The point is that you have not got to that aim yet and \$1.1 million has been paid.

**Dr Dolman**—But the \$1.1 million has been spent on the activities specified in the funding agreement. For instance, they have produced a CSIRO lifecycle analysis report. Umwelt Environmental Consultants have produced a report for them which details the project description and plans of the ethanol plant should it go ahead.

**Senator O'BRIEN**—I am sure there are a lot of businesses which would have loved that support and no-risk approach to developing a business. The Newman town centre revitalisation was to be completed in June this year. Is that likely to be the case?

**Ms McNally**—We are still expecting that that project will be completed by 30 June. The advice we have is that the project is progressing well and that earthworks, taxi rank relocation and upgraded fencing have been completed as part of that project.

**Senator O'BRIEN**—Thank you. We managed to establish since February that no separate due diligence checks were carried out by the department into the viability of the Coonawarra Gold Facilities project which was provided with \$433,000 of Regional Partnerships funding in February last year. What role, if any, did the relevant ACC play in assessing the project for risk?

**Dr Dolman**—I do not have any specific information in front of me on that, so I can take it on notice. My expectation would be that it would be the normal role that ACCs play in terms of commenting on projects.

**Senator O'BRIEN**—I am glad you have taken that on notice. What is being done to ensure that due diligence is taken seriously in the assessment of projects before they are funded with large sums of Regional Partnerships funding?

**Dr Dolman**—I think we have been through this a number of times with you. We have a risk based approach to undertaking due diligence. In the case of Coonawarra Gold, we accepted the due diligence study that was undertaken for the South Australian government—that is not uncommon for us to do. We have provided a table and a whole range of information that gives you the detail of the approach that we have adopted in terms of undertaking external financial viability assessments and how we make decisions about when they are warranted. The other lesser forms of assessments that we undertake are as part of the due diligence process.

**Senator O'BRIEN**—Has the department further considered recovering funds from this failed venture?

**Dr Dolman**—Essentially, this project was completed and has been acquitted. The work that we funded was to provide the special air filters. That work was completed, paid for and the project was acquitted. Unfortunately, subsequently, the company has gone into receivership. I sought some further information about the project today but I understand that there are negotiations under way for the receiver to sell the facilities, so it may well become operational.

**Senator O'BRIEN**—Is the Commonwealth a creditor?

**Dr Dolman**—No.

**Senator O'BRIEN**—The minister said in September last year that 30 full-time jobs would be created in the Barossa thanks to this project and cited the project as an example of a good commercial project. I take it to date no jobs have been created.

**Dr Dolman**—No, not as a direct result of funding the project.

**Senator O'BRIEN**—What happened to those who have lost their jobs in the process of this failed venture?

**Dr Dolman**—I understand that nobody has lost their job.

**Senator O'BRIEN**—So there was no-one working there before it failed.

**Dr Dolman**—No, that is correct.

**Senator O'BRIEN**—In February we heard that the project to establish collocation facilities in Hopetoun, Western Australia, had only received \$88,000 of the \$220,000

promised by the then parliamentary secretary, De-Anne Kelly. What does this project hope to achieve?

**Dr Dolman**—I will have to take that question on notice.

**Senator O'BRIEN**—Has the project received a second payment of \$132,000 as provided for in the timetable of payments?

**Dr Dolman**—I would have to take that on notice as well.

**Senator O'BRIEN**—I have a number of other questions but, because of the limitations on time and no spill-over day, we will be placing for this area a number of questions on notice and excusing the officers now.

**Dr Dolman**—Before we break, I have an answer to one of the questions I took on notice. You asked about payments to the Central Queensland Science and Technology Precinct. I understand a first payment of \$16,500 was made on 8 May 2005.

**Senator O'BRIEN**—Just sneaked in.

#### **Proceedings suspended from 6.30 pm to 7.32 pm**

#### **Territories and Local Government**

**CHAIR**—We are now onto Territories and Local Government. Senator Carr, I welcome you to our committee.

**Senator CARR**—Thank you very much. I welcome the officers. Could you advise the committee on what you understand to be the status of a High Court challenge to the proposals that have been advanced by the minister regarding Norfolk Island?

**Ms Clendinning**—The plaintiffs in the matter have lodged their statement of claim, and the government is still awaiting the date for submission of its defence statement.

**Senator CARR**—What is the nature of the action that has been taken against the Commonwealth?

**Ms Clendinning**—The challenge is to the validity of the Norfolk Island Amendment Act 2004 in relation to the provisions on electoral matters—that for electoral enrolment a person has to be an Australian citizen, as one of the foundation issues.

**Senator CARR**—What deliberative action of the Commonwealth are they challenging?

**Ms Clendinning**—That the electoral laws made under the Commonwealth Norfolk Island Act 1979 and amendments by the Norfolk Island Amendment Act 2004 are beyond the power of the Commonwealth, in that they make Australian citizenship the qualification for the right to vote or to be a candidate in elections for the Legislative Assembly of Norfolk Island.

**Senator CARR**—I see. Has there been an expense so far in terms of the proceedings?

**Ms Clendinning**—For the Commonwealth?

**Senator CARR**—Yes.

**Ms Clendinning**—Not that I am aware of. We are still getting internal legal advice.

**Senator CARR**—Is there any public money involved in the challenge to the Commonwealth?

**Ms Clendinning**—No. The minister has written asking that the Commonwealth is given an assurance that Norfolk Island government money is not being used for the challenge. As far as I am aware, the principal proponents have been a group of residents on the island, who are funding it.

**Senator CARR**—I read in the *Norfolk Islander* that litigation is being funded from non-government sources, and an appropriate written arrangement has been put in place to confirm this and public money will not be spent nor risked by the proceedings. Is it the case that Mr Geoffrey Bennett has indemnified the government of Norfolk Island as to the costs involved in this case?

**Ms Clendinning**—I am not aware of that.

**Senator CARR**—Can we establish whether or not that is the fact?

**Ms Clendinning**—I will have to take that question on notice.

**Senator CARR**—I would have thought it an interesting circumstance whereby a government takes action in the High Court and it is funded by a private citizen to do so.

**Ms Clendinning**—I think the Norfolk Island government was added to the action that was taken initially by a group of private citizens.

**Senator CARR**—However, it says ‘Administration of Norfolk Island’ on the documents.

**Ms Clendinning**—The writ?

**Senator CARR**—Yes. I take it the administration of Norfolk Island does not refer to the Administrator, does it?

**Ms Clendinning**—No, that would be the Norfolk Island government administration.

**Senator CARR**—So if the Norfolk Island government is on the list of plaintiffs and, as I understand it, according to the *Norfolk Islander*, it has been indemnified by a private citizen, I would think that that is a most unusual circumstance.

**Ms Clendinning**—I think it would be most unusual also but, as I say, I do not have knowledge of that.

**Senator CARR**—I would ask that that be established.

**Ms Clendinning**—Yes, I will take that on notice.

**Senator CARR**—I think it is an appropriate issue for this committee to be aware of. Mr Chairman, are you aware of Mr Bennett indemnifying the government of Norfolk Island?

**CHAIR**—No.

**Senator CARR**—It is certainly unusual in my experience. Mr Bennett is a former minister, isn't he, in the assembly there?

**Ms Clendinning**—I do not know. My knowledge does not go back that far.

**Senator CARR**—He obviously has considerable means if he is able to indemnify a government when it launches a High Court challenge against the Commonwealth of Australia. I am surprised that the department would not be more aware of who was behind a legal challenge.

**Ms Clendinning**—As I understand it, it is a group of people. That is all I know.

**Senator CARR**—It says on the front page of the statement of claim ‘Mr Bennett, Mr Christian, Mr Walker, Ann Walker, Richard Kleiner and the administration of Norfolk Island’. That, to me, means the government of Norfolk Island, which I think you have confirmed.

**Ms Clendinning**—Yes.

**CHAIR**—I would like to know who is funding it. I think that is a reasonable matter for us all to be made aware of. How long will that take to find out, do you think?

**Ms Clendinning**—I would probably be able to manage that very shortly.

**Mr Mrdak**—We will try and do it as quickly as possible.

**Senator CARR**—I would appreciate that, if you could. I would hate to have to wait for a long period of time.

**CHAIR**—Us worn-out old farmers are pretty slow.

**Senator CARR**—When it comes to money, particularly public money, you are quite quick on the uptake. In relation to the work that is being done on Norfolk Island with regard to the government’s current initiatives, what is happening with the Grants Commission and the Bureau of Statistics? I understand they visited recently. Is that the case?

**Ms Clendinning**—Yes. The Commonwealth Grants Commission has nearly completed its initial stages. I will remind the committee that Mr Alan Morris, the Chairman of the Grants Commission, visited the island from 8 to 11 March and had discussions with the government and other groups and individuals on the island. There was a public meeting, where he explained what the process was going to be. Staff from the Grants Commission visited Norfolk Island from 3 to 6 May to collect information from the various government agencies to further their inquiry.

The Grants Commission has also received some 40 submissions from the Norfolk Island government and other interested parties, and its preliminary report is expected to be completed by the end of June 2006. The Grants Commission is going to be holding a public conference on the island on 17 and 18 August to discuss their preliminary report with the Norfolk Island government and other parties.

**Senator CARR**—The public meeting, I take it, will have a draft report available for circulation.

**Ms Clendinning**—Yes. They are going to discuss the preliminary report and they will be circulating that draft report.

**Senator CARR**—Is it your expectation that this report will go to the question of the need for equalisation payments?

**Ms Clendinning**—I am not exactly sure what they are going to report on. I do not have the terms of reference in front of me. They are looking at the likely costs of extending legislation and all that sort of stuff, and their final report is expected to be completed by September.

**Senator CARR**—I take it that if there is a draft report available for public release on Norfolk Island—

**Ms Clendinning**—Public release is public release.

**Senator CARR**—that means it is available to the committee.

**Ms Clendinning**—Yes.

**Senator CARR**—Is the health department or DIMIA doing any work in relation to the reform proposals that the Commonwealth has advanced?

**Ms Clendinning**—All departments of the Commonwealth have been asked to assess their legislation to see how it could be extended to the island. The government's decision was that all Commonwealth legislation would be extended unless there was a specific decision not to, so along with all the other departments of the Commonwealth we have asked that ministers, or the departments, write to us providing information as to how they would be proposing to extend the impact of their legislation. I have not got details yet. They are still coming in.

**Senator CARR**—I take it the territories department is the lead agency here in terms of coordination.

**Ms Clendinning**—Yes, drawing on other sources like Finance.

**Senator CARR**—When do you expect the process to have concluded?

**Ms Clendinning**—The whole examination?

**Senator CARR**—Yes, the review.

**Ms Clendinning**—Towards the end of the year.

**Senator CARR**—You do not have a specific date?

**Ms Clendinning**—Not at the moment. There are a number of other studies that have to be completed. You asked about the Australian Bureau of Statistics also.

**Senator CARR**—Yes.

**Ms Clendinning**—They have done a lot of visiting as well. Do you want those details?

**Senator CARR**—Please.

**Ms Clendinning**—ABS first went to the island between 28 March and 1 April to hold preliminary discussions on the statistical survey of Norfolk Island businesses. They returned to the island on 26 April to consult with the government, business organisations and individuals about the content of the survey. The business survey was officially conducted between 1 and 12 May. That involved the experienced ABS officers calling on the 300 or so businesses on the island and engaging in personal interviews, explaining the survey questions as they went along so that people knew what they were being asked and why. They asked for information about businesses' incomes, some selected expenses and employment levels. We expect those results from mid to late June but I understand that they got a high degree of cooperation from businesses on the island.

**Senator CARR**—It is a pretty basic survey, is it not?

**Ms Clendinning**—It is very basic but there is absolutely no base data to compare anything with.

**Senator CARR**—I mean basic also in terms of its importance, its fundamental—

**Ms Clendinning**—It is a fundamental sort of baseline to try and work out.

**Senator CARR**—Again, do you expect that the survey will be able to provide some guidance for policy makers with regard to future funding arrangements?

**Ms Clendinning**—Yes, all these elements: the ABS survey, the Commonwealth Grants Commission report. The department is also going to commission—we probably foreshadowed this last time—an economic impact assessment and we will be letting a tender for that shortly. All those elements will go into the mix of looking at how to deliver the government's outcome.

**Senator CARR**—At what point do you think you could give us an indication of the areas of government that seek an exemption in terms of the application of Commonwealth law?

**Ms Clendinning**—It would at least be a couple of months, because we have to get the returns in, assess them; possibly the minister would have to go back to ministers to refine approaches.

**Mr Mrdak**—I think it is to be part of a full package of information we will put before government. We would probably like to get a full, comprehensive picture for ministers before we start to look at individual elements and progressing them, because the government wants to see the full picture, as Ms Clendinning has indicated—the economic study, the CGC work and all of that, as well as the legislation reviews and what the impacts of implementing Commonwealth legislation will be. That is probably something which will be happening towards the third quarter of this calendar year.

**Senator CARR**—Are you under any policy directions in terms of your preference to exclude or include areas of administrative responsibility?

**Mr Mrdak**—It is as Ms Clendinning has indicated: the Australian government's position is that Australian laws should be applied unless there are explicit and agreed reasons why that should not take place into the future.

**Senator CARR**—Publicly stated reasons.

**Mr Mrdak**—Publicly stated reasons. We are starting with the presumption that as many as possible of the Australian and Commonwealth laws will apply to the island in the future.

**Senator CARR**—Fair enough. Are you expecting that the time line that the minister announced with regard to the legislative response on these matters will still be met?

**Ms Clendinning**—Yes. There may be a little bit of slippage, given that some of the economic studies are taking longer than expected, but we are hoping to put something to government by the end of the year.

**Senator CARR**—Is there any chance I can get a schedule from you as to what studies are actually being undertaken? You have said all departments. Can we get a schedule of what the nature of their inquiries is? I do not expect fine detail but just want to get a feel of the breadth of program.

**Ms Clendinning**—A feel for what is going on.

**Senator CARR**—I am concerned, as you know. Publicly I stated the view that we generally critically support the government's direction on these matters; however, we are concerned at the delay, given the urgency of the tasks. If there is any slippage in the legislative program, I would be anxious to find out what the reasons were, because there is an election coming next year. You would not want these matters to be delayed in the legislative program in the second half of the year, would you?

**Ms Clendinning**—No, but that does always depend on drafting of legislation.

**Senator CARR**—Yes. You have to get it right.

**Ms Clendinning**—Yes.

**Senator CARR**—I appreciate that.

**Ms Clendinning**—When I say 'slippage', it is possibly a month at the most.

**Senator CARR**—So what, in rough terms?

**Ms Clendinning**—Towards the end of the year.

**Senator CARR**—Towards the end of this year?

**Ms Clendinning**—This year, but not for legislation, no. Legislation would have to be next year.

**Mr Mrdak**—We would be aiming to get a package of material which the government could consider to take forward by the end of this year. We are really looking for, most likely, a legislative schedule which is in the autumn session of next year.

**Ms Clendinning**—Spring at the earliest, yes. No, autumn, you are right.

**Mr Mrdak**—In response to your question, we will look at getting you a position on which agencies are being consulted and what work is under way in relation to these matters.

**Senator CARR**—Thank you very much. I appreciate your cooperation.

**Senator Ian Campbell**—We will look forward to your great support when the legislation gets to the Senate.

**Senator CARR**—Senator Campbell, you may find that there is a fair bit I have to say about what has gone on on Norfolk Island.

**Senator Ian Campbell**—Have you been there yet, Senator?

**Senator CARR**—No, I haven't. I understand there is a lamppost waiting for me still. We are going. We are all going.

**Senator Ian Campbell**—Good.

**Senator CARR**—What is more, Minister, we get a chance to have a look at what you did when you were the minister. Ms Clendinning, do I understand the Acumen report's accuracy has been challenged by ministers on Norfolk Island? That is your understanding. Is that the case?

**Ms Clendinning**—Yes.

**Senator CARR**—They have made public comment?

**Ms Clendinning**—They have made public comment. Some Norfolk Island residents have made public comment also.

**Senator CARR**—Is the department still of the view that the conclusions of that report are accurate? Do you have any reason to doubt the conclusions that are reached?

**Ms Clendinning**—No. We have no reason to doubt any of the conclusions, but the view is that the Acumen report was not the sole determinant of the government's policy on the matter of Norfolk Island.

**Senator CARR**—No. I appreciate that. There were a number of Senate committee reports as well. I have not seen those being disputed. I am just interested, though, in terms of this specific report. It is quite an important document to the assessments that have been made. Do you have any reason to doubt the modelling that was conducted through that report?

**Ms Clendinning**—No.

**Senator CARR**—Have you had any contact with Acumen about the report? Have you had any need to review the findings of that report?

**Ms Clendinning**—No.

**Senator CARR**—Have you seen any critique by the Norfolk Island government as yet as to that report?

**Ms Clendinning**—No. The minister actually wrote to the Norfolk Island government at the time of the release of the Acumen report, to Mr Gardner, the Chief Minister, offering him the opportunity to provide comments, and that opportunity was not taken up.

**Senator CARR**—Are you still waiting on a reply?

**Ms Clendinning**—A reply has not been received as yet to that opportunity that was provided.

**Senator CARR**—Thank you. That stands then? There has been no reason to challenge it? We are now looking essentially at the review processes from the department. Do you have a budget for these reviews? Is there a line item in terms of the funding of this initiative?

**Ms Clendinning**—Yes. We have had money for doing the surveys, and things like that.

**Senator CARR**—How much is it?

**Ms Clendinning**—The CGC inquiry is being conducted on a cost recovery basis. That is expected to be up to \$250,000. The ABS has estimated the cost of the survey to be around \$107,000, and we have been provided with some additional funds for staffing—to have a small team that is focused on the Norfolk Island reform agenda.

**Senator CARR**—What is the budget for that?

**Ms Clendinning**—I do not have the figures in front of me, but I think it is three extra staff. I will have to check that and give you the details of it.

**Senator CARR**—Thank you. There are no other moneys that have been appropriated for funding?

**CHAIR**—Is there GST on Norfolk Island?

**Ms Clendinning**—The Norfolk Island government has just passed a Norfolk Sustainability Levy, which is a one per cent levy on goods and services provision.

**CHAIR**—I am interrupting.

**Senator CARR**—You are. It just so happens that it is fortuitous that you are, because I understand that there is in fact—

**Senator Ian Campbell**—You see, Senator, if you had visited there when I suggested last February, you would have avoided that one per cent levy.

**Senator CARR**—Yes. Do you realise that we did seek to go out to the island and the government was not available because they were all at the Commonwealth Games?

**CHAIR**—No. They said you could swim.

**Senator CARR**—We sought to go on another occasion and they were all at the Foundation Day celebrations, so we are awaiting with interest the government's response to our inquiries. I am sure that sooner or later we will find a convenient date for us to—

**Senator Ian Campbell**—One of the members of the committee wanted to go to Antarctica and I said, 'Here, jump on a ship.' It is easy. You have to ask the right people.

**Senator CARR**—Unfortunately, there is no government in Antarctica to keep him there. That is the point, Minister. I am sure your good officers will encourage the government of Norfolk Island to meet the committee. With regard to the robust tendering processes, which we were advised of at the last hearing, is this one per cent GST levy that Senator Heffernan has referred to to be collected privately on Norfolk Island?

**Ms Clendinning**—That is a Norfolk Island government—

**Senator CARR**—Are you aware of who is collecting the money?

**Ms Clendinning**—No. I do not have the details of that.

**Senator CARR**—So you were not consulted about the tendering of that contract?

**Ms Clendinning**—Sorry, the tendering of the contract for?

**Senator CARR**—The contract to collect the money. It is a government tax.

**Senator Ian Campbell**—It is a tax of the Norfolk Island government.

**Senator CARR**—I understand that. I do not think I have said anything that is inaccurate. I am not saying that it is this government's tax. It is the territory government's tax. What I would like to know is, was the department consulted about the tender arrangements for the collection of that money?

**Ms Clendinning**—No. It is not a matter for the Commonwealth government. It is a Norfolk Island government matter.

**Senator CARR**—Was the Administrator consulted about the tender arrangements for the private collection of this government tax?

**Ms Clendinning**—Not that I am aware of. I do not think it would be appropriate if he was.

**Mr Mrdak**—It would be unlikely that he was, Senator.

**Senator CARR**—I see.

**Senator Ian Campbell**—He would have been told.

**Senator CARR**—He would be told?

**Ms Clendinning**—Yes.

**Senator CARR**—What, who had won the contract?

**Ms Clendinning**—The legislation he would want to know about.

**Senator Ian Campbell**—They have a system on the island called Demtel, and he would have heard it on the Demtel system.

**Senator CARR**—Right. That is what, Minister? Can you perhaps explain to us how you find out about getting a government contract on Norfolk Island.

**Senator Ian Campbell**—You will find out about Demtel when you get there. We call it the grapevine on the mainland; up there it is Demtel.

**Senator CARR**—I see.

**Senator Ian Campbell**—It works very well over there; far better than the telecommunications system.

**Senator CARR**—I am interested to know whether it is the case that a company known as Norfolk Island Business Solutions, which was owned by the minister's daughter, has secured the contract for the collection of this tax. Can you confirm that?

**Ms Clendinning**—No, I have no knowledge of that. That would be, again, a Norfolk Island government matter.

**Senator Ian Campbell**—It is a bit like the WA Labor Party, so it is quite possible.

**Senator CARR**—Ms Clendinning, is this the same person that is doing the accountancy practice work for the Commonwealth Grants Commission?

**Ms Clendinning**—I do not know.

**Senator CARR**—What is her relationship with the Commonwealth Grants Commission?

**Ms Clendinning**—I do not know who you are talking about, Senator, I am sorry.

**Senator CARR**—You do not know her?

**Senator Ian Campbell**—It could be Sharryn Jackson, the former member for Hasluck. She seems to do well.

**Senator CARR**—We were given assurances about the robustness of the tendering arrangements and this has happened since that time. I am wondering whether the department still wants to hold to that view.

**Ms Clendinning**—I am not sure what—

**Senator Ian Campbell**—I think, Mr Chair, the senator should get a little bit of advice from an old Norfolk Island hand. Any incoming shadow minister in this portfolio will always get a

direct feed from people on the island. There are a lot of very good people on the island but you need to always check and double-check where your information is coming from.

**Senator CARR**—Absolutely. There is only one accountancy firm, I am told—and that is what was presented to the Grants Commission submission—and they have secured the contract for the collection of the tax. I can understand how it is happening. Or is it the case that that contract has not been let?

**Senator Ian Campbell**—There are a lot of questions, Mr Chairman, that do not relate to the department's responsibilities. They do relate to affairs of the Norfolk Island government. Senator Carr has a long history of asking a lot of questions; he obviously has very diligent staff in his office who prepare endless questions. At the last hearing Senator Carr asked 115 questions which related to Norfolk Island. Of these, 63 were on matters for which the portfolio does not have responsibility; answers to 27 of those 63 questions were prepared by the department. A further 27 were on matters for which the Norfolk Island government has responsibilities and nine of those issues were where there are joint responsibilities. It is probably a bit of fun to come here and ask us questions and ask the department questions, but they need to relate to what this department has responsibility for.

**Senator CARR**—Since you have raised the question of this matter, Minister—I was not going to pursue it here—I can tell you now that most of the answers that I got back were next to useless. I have never seen such poor quality responses to parliamentary questions.

**Senator Ian Campbell**—There is an old saying, Mr Chairman: ask a silly question.

**Senator CARR**—No, they are not silly questions; they are silly answers, and it is quite clear that your intervention highlights why you do not want to address these questions.

**Senator Ian Campbell**—Senator, you asked 115 questions and more than half of them had nothing to do with this department's responsibilities. Either you or your staff need to be a little bit more diligent.

**Senator CARR**—That is why we now have surveys being undertaken by every agency in the Commonwealth on the island. The whole question about who has what influence and what capacity they should have is central to what I understood this government's initiatives are.

**Senator Ian Campbell**—Senator, if you wanted to prepare yourself to be an effective shadow minister in the portfolio dealing with Norfolk Island, you would read the history of Norfolk Island going back to the Pitcairn Island evacuation, and you would have some understanding of the long history of governance issues and the relationship between the Commonwealth of Australia and the governance of Norfolk Island, and you would not be asking such silly questions.

**CHAIR**—Thanks very much. If we could just get back to questions relevant to the portfolio.

**Senator Ian Campbell**—Wasting the time of the parliament and wasting the time of very effective department officers.

**Senator CARR**—As a former failed territories minister, you would understand precisely why it is we need to ask more questions.

**Senator Ian Campbell**—You would not know a territories minister if you saw one.

**Senator CARR**—On the employment conditions for public employees on Norfolk Island, which are obviously covered by local legislation, what are the government's proposals for future employment arrangements for members who are public servants on Norfolk Island?

**Ms Clendinning**—Members of the Norfolk Island Public Service?

**Senator CARR**—Yes.

**Ms Clendinning**—Clearly, the government has not come to any conclusions yet, as all the studies are under way. There have been no decisions on any matters like that.

**Senator CARR**—Is it your intention that any of those public servants will be transferred to Commonwealth employment?

**Ms Clendinning**—I need to repeat what I have just said.

**Mr Mrdak**—There are some threshold decisions which would need to be taken in relation to how the Commonwealth will apply future powers, or may or may not do so. I think those matters would be secondary to all those in-principle decisions which have yet to be taken by the cabinet.

**Senator Ian Campbell**—This is the trouble when you have staff prepare endless sets of questions and they do not know the answers to question 1 before they ask question 2. You cannot ask a question about what would happen under certain circumstances when the officers have already said, 'The government is going through a process to make decisions to lead to a set of decisions.' Then Senator Carr totally ignores that answer and asks a series of questions that he would not ask if he had listened to the answer to the first question. He is just wasting the time of the committee. Let us go to the next question.

**Senator CARR**—I have asked you, 'Is it the government's proposal to transfer any of the current employees who are employed by the Norfolk Island government to the Commonwealth?' to which you said, 'There are some threshold questions yet to be addressed by the government.' Is it the case that there are currently employed by the Norfolk Island government persons who are on secondment from the Commonwealth?

**Ms Clendinning**—I am aware of at least one person, through a personal contact. No, there are two that I am aware of.

**Senator CARR**—Only two that you are aware of?

**Ms Clendinning**—As I said, that is personal knowledge.

**Senator CARR**—That is your personal knowledge. Would the department not have a better knowledge of that more broadly?

**Ms Clendinning**—It would depend from which department they were seconded.

**CHAIR**—Just out of curiosity, how many people are on Norfolk Island?

**Ms Clendinning**—The permanent population is nearly 2,000.

**CHAIR**—How many are on the staff of the government, so called?

**Ms Clendinning**—Of the Norfolk Island government?

**CHAIR**—Yes.

**Ms Clendinning**—I am not aware of that figure.

**Senator CARR**—The legal group in Norfolk Island administration—are they officers who are on secondment from A-G's, that you are aware of, or are they on secondment from DOTARS?

**Ms Clendinning**—No. There was an officer from DOTARS who was working on Norfolk Island, but he is no longer there. He was in the legal area.

**Senator CARR**—Can you advise us what areas the two officers that you are referring to are from?

**Mr Mrdak**—We will find out if they are from A-G's.

**Senator CARR**—Thank you.

**Mr Mrdak**—We are not aware that they are, and they are certainly not DOTARS employees.

**Senator CARR**—You only have two DOTARS staff that you are aware of?

**Ms Clendinning**—One DOTARS staff member is the official secretary to the Administrator.

**Senator CARR**—Yes.

**Ms Clendinning**—I am aware that another Commonwealth officer from another department is working for the Norfolk Island administration. But that was, as I say, a personal contact when I was on the island in February.

**Senator CARR**—What are the terms of the secondment for those officers that you have mentioned?

**Ms Clendinning**—I do not have the details of that employment.

**Senator CARR**—Was the Administrator or the department consulted about a Norfolk Island assembly legislative change to clause 8, 'Working arrangements', under the 1979 legislation with regard to entitlements for employees?

**CHAIR**—Could you explain what that regulation means?

**Senator CARR**—It is a question of whether or not the Norfolk Island assembly has changed the penalty rates provisions for workers on Norfolk Island. Were you consulted about that?

**Ms Clendinning**—Not that I am aware of.

**Mr Mrdak**—I think it is a schedule 2 matter which would be a matter for the Norfolk Island government.

**Senator CARR**—There were no consultations?

**Mr Mrdak**—Not that we are aware of.

**Senator CARR**—What is the relationship between Norfolk Island assembly employment regulations and the recent changes that the Commonwealth has introduced? Does that cover Norfolk Island or not?

**Ms Clendinning**—What, the Work Choices legislation?

**Senator CARR**—Yes.

**Mr Mrdak**—Not to our knowledge. Matters of employment conditions on Norfolk Island are solely for the administration.

**Senator CARR**—Will that be one of those matters that is under the review for the extension?

**Mr Mrdak**—It is part of the ambit of Commonwealth legislation, yes.

**Senator CARR**—Do you have any responsibilities for the Norfolk Island Remuneration Tribunal at all?

**Mr Mrdak**—No.

**Senator CARR**—In terms of Acumen's assessment of the financial crisis, does the Commonwealth see that it has any responsibilities for the liabilities that the Norfolk Island government has attracted with regard to salary, wages and conditions of public servants on the island?

**Mr Mrdak**—No.

**Senator CARR**—None whatsoever?

**Mr Mrdak**—No.

**Senator CARR**—No legal responsibilities?

**Mr Mrdak**—Not to my knowledge.

**Senator CARR**—Is the Commonwealth a guarantor for public employees on Norfolk Island or not?

**Mr Mrdak**—No.

**Senator CARR**—Recently, as I understand it, the minister's staff had a meeting with the Public Service Association on Norfolk Island. Were you briefed on that meeting?

**Ms Clendinning**—Was that at the time of the minister's visit?

**Senator CARR**—I understand so, yes.

**Ms Clendinning**—No, I am not aware of the content of that.

**Senator CARR**—You were not briefed about that at all?

**Ms Clendinning**—When we were on the island, a number of meetings took place with a number of people on the island. I am not aware of the content of that meeting.

**Senator CARR**—Is it the Commonwealth's intention, under its reform package, to improve the level of training for public servants on the island?

**Ms Clendinning**—I think that is a question of detail that cannot be addressed at this stage.

**Mr Mrdak**—At this stage, Senator, if I can summarise, I think the Australian government's perspective is at a much higher level than that. The first thing is to ascertain the financial position of the island, which has been done. The next stage is to determine what the consequences would be if the Australian government were to change the governance arrangements. Matters such as you have outlined are matters of detail which I think are some way down the track of being addressed after some of those threshold decisions have been taken by the cabinet in relation to the next step. I am sorry, we have not got to that level of detail in our analysis.

**Senator CARR**—It is quite an important matter for people directly concerned. I thought it would actually go to some of the more positive aspects of the government's proposals. I would not see that there would be any need to run away from these issues.

**Mr Mrdak**—I understand that. The fact that the Australian government has taken the steps it has to address the Norfolk Island situation indicates its concern for the wellbeing of the community on the island, but I do not think that we are at the level of where I could give you any statements of intent in relation to particular directions, particularly in relation to public employees on the island, because I do not think that we have advanced our consideration to that point.

**Senator CARR**—So you will not be able to advise me on the government's intention in relation to any social policy questions?

**Ms Clendinning**—Not at this stage.

**Mr Mrdak**—The government has made some firm statements in relation to its concern to address some of the island issues, but we have not got to that level of specificity that you are outlining there which would enable me to give you those sorts of answers.

**Senator CARR**—Have the government's representatives advised the people of Norfolk Island that there is an intention to restrict the Australian payments with regard to social security payments?

**Ms Clendinning**—The only statement that I would consider might relate to that was, when the minister was on the island—a lot of people on Norfolk Island were concerned that people would get the dole payment, the social security payment, which is at a higher level—the minister gave, I would not say assurances but made statements that that sort of thing would need to be tailored to the social circumstances of the community. That would be the sort of thing, when the legislation was being reviewed—the Commonwealth legislation, as to its application—that would be covered; also the level and nature of the taxation contribution that would be required from people on the island.

**Senator CARR**—Would the same be said about planning laws? Were there any comments made about application of planning laws?

**Ms Clendinning**—No, I cannot recall any.

**Senator CARR**—Population restrictions? Is it the intention of the Commonwealth to limit the number of people that can actually visit the island?

**Ms Clendinning**—I think the government is wanting to encourage tourism and visitors to the island.

**Senator CARR**—I would have thought the government would be spelling out these things clearly by this point in the process. Frankly, I am surprised that you are not able to give me more detail of what is being said by government representatives on the island.

**Ms Clendinning**—Which government representatives?

**Senator CARR**—I have already indicated that ministers' advisers were saying these things. I would like to know whether or not you have been briefed on it. You are telling me that you have had no contact with the minister's office in any of these matters. You do not understand whether this is true or otherwise. I am surprised how vague the government's officers here are on these matters. With regard to superannuation, do you have any position yet on what the government's response is to public servants' superannuation entitlements? Will they be entitled to transfer to a Commonwealth run program, for instance?

**Ms Clendinning**—These are Norfolk Island government superannuation issues that you are asking about?

**Senator CARR**—These are current public servants on the island. If the Commonwealth is broadening the scope of its coverage, will it be taking over responsibilities for these areas?

**Senator Ian Campbell**—Is the shadow minister suggesting that this hypothetical Norfolk Island public servant would apply to come and work in the Australian government Public Service? Is that part of the hypothetical question?

**Senator CARR**—I have asked the question: is it the intention of the Commonwealth of Australia in its takeover of functions on Norfolk Island to pick up the public servants?

**Senator Ian Campbell**—We have said that there are going to be in-principle decisions which will be made down the track, which will be required to be made. They are the sorts of things that obviously will be scoped.

**Senator CARR**—So you have had no discussions on those issues?

**Ms Clendinning**—Not as yet, Senator.

**CHAIR**—I take it there is a super scheme on the island run by someone for the Norfolk Island public servants?

**Ms Clendinning**—I think there is.

**Senator JOYCE**—For both of them.

**CHAIR**—I wonder if it is funded. No, there must be more than two. But I wonder, is it funded? That is a question for some other place.

**Senator Ian Campbell**—It is a good question for the Norfolk Island government when the committee goes out and talks to them, which would be a great investment of time for Senator Carr. It would be well worthwhile for Senator Carr to go and have a cup of coffee with Senator John Hogg. I know they are in absolute opposite factions and probably do not talk to each other—maybe take a mediator, a referee or an umpire—but it would be very useful. Senator Hogg has actually spent a lot of his life looking at territory governance and all these issues and would know a lot about this. I found John's views very useful when I was the minister. I did not agree with them all but he knew a lot about it and he had a very strong view on these issues.

**Senator CARR**—Is it the intention of the government to move the customs and immigration staff into the Commonwealth?

**Ms Clendinning**—The government has announced that the legislation that would definitely be applied to Norfolk Island is the customs, immigration and quarantine legislation but no decisions have been made yet about any detailed implementation strategies.

**Senator CARR**—You cannot advise the people who are currently doing that work what is likely to become of them under the government's policies?

**Ms Clendinning**—No, Senator.

**Senator CARR**—When will you be able to advise them of what will become of them under this government's policies?

**Ms Clendinning**—It is the same answer as before. The cabinet has not made decisions on the key threshold issues.

**Senator CARR**—So we cannot presume that the people doing the work now will be asked to do the work when the functions are transferred?

**Mr Mrdak**—I think it is fair to say that the sorts of issues you raised will be quite critical to whichever way the Australian government decides to provide customs, quarantine and border control.

**Senator Ian Campbell**—I think that is a question for the customs minister. Customs would want to ensure that the people who perform the role of border security at Norfolk Island are the best people for the job. That may be someone who is doing it now or it may not be. That is surely a question for another estimates committee, I would have thought.

**Senator CARR**—This is the lead agency, Minister.

**Senator Ian Campbell**—We are not the lead agency on customs. We do not make decisions on—

**Senator CARR**—You are the lead agency on Norfolk Island. That has already been established at these committees' proceedings. If you were listening, you would have heard that.

**Senator Ian Campbell**—You have it half-right, Shadow Minister. You have ascertained that the government has made a decision about border security and customs operations at Norfolk, so you have actually, on one out of about 30 occasions tonight, asked a question that is reasonable. The trouble is, you have asked it at the wrong committee. The person who would be in charge of moving to normalising customs arrangements at Norfolk under Australian law will be the customs minister, Senator the Hon. Chris Ellison.

**Senator CARR**—So this department can tell me nothing about those transfer arrangements?

**Ms Clendinning**—Not yet, no.

**Senator CARR**—Can you tell me how many Norfolk Islanders are enrolled to vote in Australian federal elections?

**Ms Clendinning**—No. I do not have that figure with me. I could find that out.

**Senator CARR**—Has there ever been any inquiry of you as to why there is no polling booth on Norfolk Island during federal elections?

**Senator Ian Campbell**—Mr Chairman, just so that we do not waste the time of the department, could I refer the senator to the joint standing committee report which has that contained in its report on Norfolk Island matters. The answer to the question about how many people are enrolled to vote is already on the public record.

**Senator CARR**—That is very helpful, Minister.

**Senator Ian Campbell**—John Hogg will give you a copy of it if you cannot—

**Senator CARR**—I am a member of the committee. Thank you very much, Minister. I asked: has the department had any inquiries as to why there is no polling booth on the island?

**Ms Clendinning**—Not that I am aware of.

**Senator Ian Campbell**—That would be an issue for the Electoral Commission. Again, that reports to another entity.

**Senator CARR**—Has there been any discussion with the department about the applications for postal votes through the Administrator's office, which is a function of this department?

**Senator Ian Campbell**—Has this been raised with the Administrator was the question.

**Senator CARR**—Is it the case that you can only get an application for a postal vote on Norfolk Island by applying to the Administrator?

**Ms Clendinning**—I am not sure of the circumstances or the details of that sort of administrative arrangement, but I could find out.

**Mr Mrdak**—We will check.

**Senator CARR**—Can you establish for me how many applications for postal votes were through the Administrator in the last elections?

**Ms Clendinning**—Yes, Senator.

**Senator CARR**—Does the Administrator adjudicate on the eligibility for postal votes on Norfolk Island?

**Ms Clendinning**—That is another element I would have to check.

**Senator Ian Campbell**—Again, these are all questions for the Electoral Commission. The Administrator may well have a role in providing services for the Electoral Commission, but I think they are primarily questions for the Electoral Commission, and I would ask any of the officers of this department, if that is the case, to refer the senator to the Electoral Commission rather than waste our time with 115 questions which have nothing to do with this department.

**Senator CARR**—Question TLG80, which is a Territories and Local Government question, was on the role and office of the Administrator. This was my question, but it was a follow-up on a question that was asked originally by Senator O'Brien as to the breakdown of expenses for the Administrator on Norfolk Island. In the table you have provided me with, you indicated that in 2004-05 there were salary expenses of \$154,000—I can understand that—

\$114,000 for personal staff, nothing for accommodation, \$29,000 for official hospitality, \$10,000 for travel. I take it that is to and from Australia?

**Ms Clendinning**—Yes.

**Senator CARR**—What interests me, though, is the reference to ‘Other’ and \$64,000 worth of expenditure under the category of ‘Other’. Can you advise the committee what that \$64,000 was referring to?

**Ms Clendinning**—I do not have the details here. I would have to check that.

**Senator CARR**—Thank you. I turn to Christmas Island and the matter of the crane. Can you advise the committee when you expect the tower crane at the port of Christmas Island to be fully operational?

**Ms Clendinning**—The latest advice is sometime in July.

**Senator CARR**—How long will it have been out of service?

**Ms Clendinning**—20 January I think was the date it went out of service, so that would be six months.

**Senator CARR**—In the last round of estimates I asked a series of questions. I have indicated now that, given the minister’s intervention, I did not think there was sufficient detail in the answers, so I will need to seek further advice from you. In terms of the contracting out of the maintenance of the crane, who has that responsibility?

**Ms Clendinning**—I think it is Norman Disney and Young. The maintenance regime recommended by the manufacturers of the crane is Toll Ports, the port manager.

**Senator JOYCE**—My questions are going to relate to recent experiences. Taking on board the department’s strong and active work in stopping whaling in the Antarctic territories—and good luck at St Kitt’s next year—is there any long-term plan, in regard to queries of territorial claims in the Antarctic, for how Australia will deal with other breaches of the act, such as in geological surveys or mining?

**Senator Ian Campbell**—They are questions which are being dealt with by the Antarctic Division at environment committee estimates on Thursday. This territories division does not deal with Antarctica; it is dealt with by the environment department. I will try to provide your office with the approximate time when the Antarctic Division will come on. It is not in my mind.

**Senator JOYCE**—Thanks for that.

**Senator Ian Campbell**—Thanks for giving us notice of the question. It will get you a very well worded answer.

**Senator JOYCE**—I will leave those other questions for that meeting. Is there any view by the government on taking back Macquarie Island as an external territory? The Tasmanian government do nothing there. They pay a couple of rangers.

**Senator Ian Campbell**—Again, that is a question for the environment portfolio. We are the key department in relation to Macquarie but we do share concerns about what occurs on

Macquarie. There is always blame shifting, and a lot of cost shifting, but it is a magnificent part of Australia.

**Senator JOYCE**—Thank you very much for that.

**Senator Ian Campbell**—See you Thursday!

**Senator JOYCE**—Okay.

**Senator CARR**—Can I return to the crane. In your last answer you told me that Toll implemented the maintenance regime recommended by Favco. That is correct, is it?

**Ms Clendinning**—Favco, yes.

**Senator CARR**—Can I have a copy of that maintenance regime?

**Mr Mrdak**—We will take that on notice and see what form it exists in.

**Senator CARR**—Could I also have a copy of the maintenance schedule that was undertaken by Toll? In particular I would like to know the dates of inspection, what was inspected on the crane, and what reports were made to you as owners of the crane.

**Ms Clendinning**—This is in relation to the breakdown of the crane or the maintenance?

**Senator CARR**—This is in terms of the maintenance of the crane itself. The thrust of my questions last time was that there are management issues at stake here. And I would like to know how often Toll reported to you as the owners of the crane.

**Ms Clendinning**—I would have to take that on notice.

**Mr Mrdak**—We will come back to you with a full picture of the regime.

**Senator CARR**—I would like to know to whom those reports were made and how those reports were made. I am raising this issue because the crane, which is a critical piece of infrastructure—absolutely vital—has been out of service, so I think it is important to establish how it is that the community on Christmas Island has been placed in this position.

**Ms Clendinning**—Could I just correct my earlier date on when the crane went out of service?

**Senator CARR**—Yes.

**Ms Clendinning**—It was 11 January.

**Senator CARR**—Thank you. You did receive regular reports, didn't you, on the maintenance?

**Ms Clendinning**—Our Perth office handles those details.

**Mr Mrdak**—We will ascertain the form and the content of the maintenance reports.

**Senator CARR**—I am particularly interested to know when the last inspection was done prior to the breakdown, and did that report identify cracks in the base of the footings that led to the breakdown.

**Ms Clendinning**—I do not have that information here.

**Senator CARR**—It is important to establish whether or not that report did identify this fault. I take it that the engineers' and metallurgists' reports have now been concluded?

**Ms Clendinning**—Yes. They are implementing the repairs to the crane.

**Senator CARR**—Can I get a copy of that report?

**Ms Clendinning**—I will have to check that.

**Mr Mrdak**—We will take that on notice and come back to you on that one.

**Senator CARR**—Does that report tell us how the cracks to the base of the footings occurred?

**Ms Clendinning**—I am not aware of the details.

**Senator CARR**—Can you advise the committee as to what was the reason given by the engineers as to why the cracks occurred?

**Ms Clendinning**—I think the committee was provided with the investigations report on the failure of the crane dated 8 April.

**Senator CARR**—Yes. Refresh my memory. Did it establish why the cracks occurred?

**Ms Clendinning**—I am sorry, Senator. I have not read it recently and I cannot find it at this point.

**Senator CARR**—I am interested to know whether or not the department now agrees that the reuse of the footings for an earlier, smaller crane was a contributing cause to the breakdown that occurred in January.

**Mr Mrdak**—We will take that on notice and come back to you with a position.

**Senator CARR**—It is a central issue. I am, again, surprised that your brief does not cover that. You do not have any information to provide the committee with tonight on that matter?

**Mr Mrdak**—We do not have relevant officers here this evening, I am sorry. We will endeavour to get that information for you as quickly as possible.

**Senator CARR**—Is it the department's view that responsibility for the crane's failure is now to be found in inadequate footings or in other design faults?

**Mr Mrdak**—Again, my apologies, Senator. I do not think the officers at the table are able to give you that advice.

**Senator CARR**—To clarify, are you talking about the engineers' report on the breakdown of 11 January or are you talking about an earlier report?

**Ms Clendinning**—I beg your pardon?

**Senator CARR**—Is the report that you referred to related to the accident that occurred in 2005 or to the breakdown on 11 January?

**Ms Clendinning**—That was 2005.

**Senator CARR**—I see. I am surprised, given the importance of this issue, that you would not have expected me to raise it.

**Mr Mrdak**—As Ms Clendinning has indicated, the department has initiated action, remedial work is now under way and every effort is being made to address the problem. I think that is where our focus has been. I am happy to review the documentation.

Unfortunately, we do not have officers here with us this evening who can give you any detail on the engineering advice, but I will endeavour to do that as quickly as possible.

**Senator CARR**—Where are those officers located?

**Mr Mrdak**—The contracts on Christmas Island are principally managed on the island and from our Perth office.

**Senator Ian Campbell**—37 St Georges Terrace.

**Senator CARR**—I am surprised that the department does not have a clear view at this stage at senior levels as to what caused the breakdown.

**Mr Mrdak**—Certainly, we have advice in relation to this matter, and the department has a position on the matter, but I am unfortunately unable to provide that to you this evening. I do not have the officers at the table who can do that, I am sorry. I will endeavour to do that as quickly as possible.

**Senator CARR**—You are the most senior officers in the department, aren't you?

**Mr Mrdak**—We are, but I personally have not had the opportunity to look at this review report. I will ascertain to do that quickly and come back to you with advice.

**Senator CARR**—I have before me TLG36 and TLG39. Do you have copies of those questions?

**Ms Clendinning**—Yes.

**Senator Ian Campbell**—For the record, we certainly would not expect the most senior departmental officers in Canberra to have to manage the issues relating to a crane breakdown on Christmas Island. We have very competent people at more junior levels who deal with these issues, and I think it shows an incredible lack of understanding of public administration that someone would expect the deputy head of the department to have read a report on a crane.

**Senator CARR**—If you were the former territories minister, I would have thought you would understand how important a crane was.

**Senator Ian Campbell**—I do understand exactly, but I also understand we have a very competent department with very competent officers. You certainly would want people at junior levels competent to deal with an analysis of the crane and why it broke down. We are going to fix it and make sure that it is reliable in the future, and you do not need people at the level of secretary or deputy secretary to be having to deal with those issues when you have competent people below them who are dealing with them.

**Senator CARR**—Can I draw your attention TLG42, the reference there to Territories Office senior management. Who is that?

**Mr Mrdak**—That refers to the contract management team in our Perth office.

**Senator CARR**—So no-one here in Canberra?

**Mr Mrdak**—No. These are operational matters which, as the minister has outlined, are generally managed through our Perth office.

**Senator CARR**—So you would not have had anything to do with signing off on the contracts. Is that right? It is nothing to do with senior office management in Canberra?

**Mr Mrdak**—Sorry, I am not sure which contract you are referring to.

**Senator CARR**—The question is: the Territories Office senior management does not refer to anyone in Canberra?

**Mr Mrdak**—The question you asked, as I—

**Senator CARR**—Who is responsible for the—

**Senator Ian Campbell**—It depends on the size of the contract as to who has sign-off on it. If it gets to a certain level, the minister signs off on it. At lower levels, there are delegations in place.

**Senator CARR**—In regard to TLG42—

**Senator Ian Campbell**—We can tell you who is able to sign off on the contract.

**Senator CARR**—Sorry?

**Senator Ian Campbell**—We will be able to tell you at what level the contract can be signed off at.

**Senator CARR**—That is what I would like to know. Who signed off on the contract?

**Mr Mrdak**—The purchase contract or the project management—

**Senator CARR**—It is referred to here in TLG42. Who were the Territories Office senior management? You say that it is all Perth based.

**Mr Mrdak**—The question you have asked is who is responsible for the project management.

**Senator CARR**—No, who was responsible for the decision in regard to putting the smaller footings on the larger crane; who signed off on that; who was responsible for the project management within the department; and who would have an issue that you would have to deal with? Those were the four propositions advanced in that question.

**Mr Mrdak**—Okay, thank you for clarifying that.

**Senator CARR**—The answer here, as I say to you, is Territories Office senior management.

**Mr Mrdak**—Now that I have that clarification, I will come back to you with a detailed answer on that matter.

**Senator CARR**—That is why I am saying these answers are grossly unsatisfactory. They are vague. They may even be in such a form as to avoid answering the question.

**Senator Ian Campbell**—Again, in your long history, because you are not competent at asking questions, you start abusing the servants of the Commonwealth. One day you say you will stick up for Commonwealth public servants and their industrial relations rights and a fair day's pay for a fair day's work, but when you come here and you get face to face with them all you do is abuse them.

**Senator CARR**—I am not abusing—

**Senator Ian Campbell**—You are abusing them.

**Senator CARR**—I am abusing you, Minister.

**Senator Ian Campbell**—You are accusing these people of misleading or being evasive in their answers.

**Senator CARR**—These are government censored answers. These are the answers that the minister's office hands back. These are the answers that are written in such a way as to not provide advice to the parliament.

**Senator Ian Campbell**—Abuse the minister, then, do not abuse these officers.

**Senator CARR**—I am saying that that answer—

**Senator Ian Campbell**—You have a long record of abusing people under parliamentary privilege.

**ACTING CHAIR**—Senator, I am sure they are answering you to the best of their ability, so perhaps we could just get back to the questions.

**Senator CARR**—That was the point I was getting to. Could I ask if the officers—

**Senator Ian Campbell**—And you are insinuating that the minister would rewrite a question in relation to who authorised putting on various leg sizes on a crane, and our answer comes back Territories Office senior management, and you think that is evasive.

**Senator CARR**—I said the responsibility for signing off on the contract.

**Senator Ian Campbell**—The crane's manufacturer—

**Senator CARR**—Obviously, you want to answer these questions. Is it the government's view—

**Senator Ian Campbell**—I am the government.

**Senator CARR**—that the government is responsible—

**Senator Ian Campbell**—Yes, we have the crane's manufacturer—that is pretty damn clear—and the project manager—very clear. What is unclear about that, unless you have problems with clarity?

**Senator CARR**—Who signed off on the satisfactory completion of the contract, then, Minister?

**Mr Mrdak**—Sorry, this is the completion of the installation of the crane on its original—

**Senator CARR**—Yes, 41 and 42 I am referring to. Who has the final completion sign-off responsibility?

**Mr Mrdak**—It most likely would have been our project manager in the Perth office or an SES officer in Canberra. At that stage, it may even have been myself, as I previously held the position of first secretary, Territories and Local Government some years ago. I will check the exact details of the level of the position who signed off on both the acceptance of the project on installation and also the initial contract.

**Senator CARR**—At what point was there any evaluation—

**Senator Ian Campbell**—So that we do not get the sorts of press releases we had coming out of the opposition this morning saying we have repaired the runway in Canberra because of President Bush's plane—no reference to all of the other presidents that turned up weeks later, because of this xenophobic anti-Americanism in the Labor Party—for the record, the answer is the project manager signed off on it, to quote the answer in the *Hansard* 'on the advice of the crane's manufacturer'.

**Senator CARR**—As the senior officer at the time, at any point were you able to establish whether the failure was due to design faults or installation faults?

**Mr Mrdak**—I am not familiar with the consulting engineers' report on this particular fault. I will undertake to review that material and come back to you with an answer. I have not been directly involved in this engineers' assessment or the review of that matter, but I will take that on personally and come back to you.

**Senator CARR**—Who is the SES officer that is now responsible?

**Mr Mrdak**—For the territory's administration?

**Senator CARR**—Yes.

**Mr Mrdak**—Ms Clendinning. She is responsible to myself and the other deputy secretaries in the department.

**Senator Ian Campbell**—Would you like us, Senator, to investigate whether *Air Force One* was in the vicinity at the time?

**Senator CARR**—Why would I want to do that? Ms Clendinning, since you have held this post has any advice been provided to you as to whether there was a failure due to design or installation faults?

**Ms Clendinning**—No, I have not received any advice.

**Senator CARR**—What compensation are you now seeking from the manufacturer or the project manager?

**Ms Clendinning**—I cannot comment on matters of possible liability or—

**Senator CARR**—Have you sought legal advice?

**Ms Clendinning**—Legal advice has been sought, yes.

**Senator CARR**—When was that provided to the department?

**Ms Clendinning**—It is still in preparation, I understand.

**Senator CARR**—Who have you sought legal advice from?

**Ms Clendinning**—The matters are referred to our legal area and they manage it from there.

**Mr Mrdak**—From the department's legal area, we have a general counsel seconded from the Australian Government Solicitor and we draw on a panel of legal advisers, so it will be handled through the normal legal channels of the department.

**Senator CARR**—At this stage it is with the Australian Government Solicitor?

**Mr Mrdak**—Or one of our other legal panel who provides advice to the department.

**Senator CARR**—Can you please advise the committee as to which one it is? You said one or the other. Which one is it?

**Mr Mrdak**—We will establish who is providing the advice and the status of it for you.

**Senator CARR**—Could you advise me on what date that was sought?

**Mr Mrdak**—Yes, Senator.

**Senator CARR**—I take it, Ms Clendinning, you were saying that you are yet to receive a reply from the solicitors?

**Ms Clendinning**—The matter has been referred to Legal, on the legal area, and the advice is still in preparation, as far as I am aware.

**Senator CARR**—There have been other occasions on which the crane has also been out of service. You referred at TLG38 to two occasions it has been out of service. One was the failing of the luffing motors in April 2005. This is the second failure, I take it. Is that right? Have I understood your answer correctly?

**Ms Clendinning**—That is my understanding.

**Senator CARR**—They are the only two that you are aware of?

**Ms Clendinning**—Yes.

**Senator CARR**—This one and the one in April 2005?

**Ms Clendinning**—Yes.

**Senator CARR**—Can I go to the issue of the time line for Comcare responses as the result of the April 2005 failure. The failure occurred on 8 April. Comcare was notified on 11 April. Investigations were commenced on the 14th. That is correct, is it not?

**Ms Clendinning**—I have not got that detail.

**Senator CARR**—2005, the report that you referred to before.

**Ms Clendinning**—Yes. As I said, I have not reread that.

**Senator CARR**—You can confirm whether I have read that correctly or not?

**Ms Clendinning**—Yes.

**Senator CARR**—What is the timetable for the current problems? What is the timetable for action taken by the department? Was it similarly as quick as had occurred in April 2005?

**Ms Clendinning**—I assume it has been, but I would have to check that.

**Senator CARR**—I am interested to know why it was that it took from 11 January when the crane broke down to get the metallurgist commissioned on 17 or 18 February. That is correct, is it not?

**Ms Clendinning**—Yes.

**Senator CARR**—It took six weeks. Why did it take so long?

**Ms Clendinning**—I think that problems had to be assessed and then we had to find an appropriately qualified person and get them to the island, but I can check.

**Senator CARR**—They were able to respond very quickly in April 2005, yet DOTARS took six weeks.

**Ms Clendinning**—I will have to find out the details of that, Senator.

**Mr Mrdak**—I am not sure that the nature of the problem was similar in both situations. I think the circumstances in terms of this failure are quite different, but I will check that.

**Senator CARR**—Why did it take 12 weeks to let a contract? It was not let until 29 March, was it?

**Ms Clendinning**—There were negotiations with a number of parties that I am aware of—two at least—and I would have to find out the process of those negotiations; the detailed process for why it took that long.

**Senator CARR**—As a senior officer of the department, do you think that 12 weeks is a satisfactory time line for urgent repairs?

**Ms Clendinning**—I think everybody was more than cognisant of the urgency and we were working as quickly as was possible, given the constraints of the remoteness of the island, getting material there and getting people there to even look at it.

**Senator CARR**—When did work actually start on the repairs?

**Ms Clendinning**—I do not know that I have the detail of that here, I am sorry. I will have to check that for you.

**Senator CARR**—You are certain the repairs are still on schedule?

**Ms Clendinning**—The last advice I had from the Perth office was that July would be the date. There was some delay in getting the reinforced steel that was necessary onto the island. There were freight issues.

**Senator CARR**—When was the last time you heard the completion date that you mentioned, July? When was the last time that completion date was confirmed?

**Ms Clendinning**—Last week.

**Senator CARR**—That is the position as of last week?

**Ms Clendinning**—Yes.

**Senator CARR**—Are you able to give me a summary of what actions you have now taken to ameliorate the effects of the crane failure on the local community? I know that you reduced the port charges.

**Ms Clendinning**—The time based port charges of the Commonwealth levies, yes.

**Senator CARR**—Were there any other actions that were taken?

**Ms Clendinning**—No. There has not been anything else.

**Senator CARR**—That is it?

**Ms Clendinning**—That is it.

**Senator CARR**—Were there any other actions taken to assist local businesses?

**Ms Clendinning**—No specific measures.

**Senator CARR**—Have you been advised that Northwest express freight, the shipping line that is now providing the freight service, has increased its charges by 13 per cent; citing, among other things, the breakdown of the wharf crane?

**Ms Clendinning**—Yes.

**Senator CARR**—So there have been discussions with the department on that matter? Is that a fair increase, a 13 per cent surcharge on everything that comes onto the island?

**Ms Clendinning**—I am not sure of the percentage level. I would take your mathematics as right. We are going to be writing to the freight, the shipper, the stevedores to ask for a breakdown of how they have compiled that charge.

**Senator CARR**—Would you accept that the calculation I made of 13 per cent is right or not?

**Ms Clendinning**—I am taking it as read, but we will check that.

**Mr Mrdak**—We will check that and also, as Ms Clendinning said, the department has contacted or is in the process of contacting that shipping line to ascertain the detail of why they believe such a price quantum increase is warranted. You suggested they have cited the crane breakdown as one factor but it seems to me that would not, in my knowledge of island affairs, warrant that sort of an increase at all.

**Senator CARR**—The advice that has been provided to Christmas Islanders, in the community consultative committee, is that—in fact there have been requests made by the community consultative committee that the Commonwealth pay the freight surcharge. Have you received that request?

**Ms Clendinning**—Not that I am aware of, Senator.

**Mr Mrdak**—No.

**Senator CARR**—Are you aware if the minister has received that request?

**Mr Mrdak**—Not to our knowledge.

**Senator CARR**—The mail must be awfully slow.

**Mr Mrdak**—We will check that and provide you—

**Senator CARR**—It is recorded in the *Shire of Christmas Island News* on 5 May.

**Mr Mrdak**—Matters often appear in the *Shire of Christmas Island News* which are not necessarily communicated to the department or the minister.

**Senator CARR**—It says that as the result of concerns raised at the community consultative committee, the shire has written to the minister for territories, requesting that the Commonwealth pay the freight surcharge of the Northwest express line.

**Senator Ian Campbell**—It would not be surprising, in my time as minister, that those very well intentioned people would write regularly seeking money and support from the Commonwealth taxpayer. A very regular train of mail that would come into the office of the territories minister would be a lot of requests for Commonwealth taxpayers' money to be paid to people on the island, for various reasons, and I would be entirely unsurprised if they had asked for money for that.

**Ms Clendinning**—I will have to check that, because I have a lot of correspondence across my desk relating to all the other territories as well. That is not an excuse. It is just—

**Senator CARR**—You may have received it?

**Ms Clendinning**—I do not know.

**Senator Ian Campbell**—You said it went to the territories minister and he would obviously receive it.

**Senator CARR**—I know that, but it may well have gone back through to the department.

**Senator Ian Campbell**—It would have, I am absolutely certain.

**Mr Mrdak**—Ms Clendinning is saying she has no knowledge at the moment, Senator, but we will check.

**Ms Clendinning**—I will check that.

**Senator CARR**—Thank you. It does say 13 per cent to the cost, per cubic metre of freight, so the calculation is based on that public statement. You are not able to confirm that yet?

**Ms Clendinning**—Not at this stage.

**Mr Mrdak**—No, but we will ascertain that and try to confirm it as soon as possible.

**Senator CARR**—Is there not an argument, given that the crane is a Commonwealth responsibility—which you would acknowledge, that it is a Commonwealth responsibility?

**Mr Mrdak**—Yes. The Commonwealth provides the port services on the island.

**Senator CARR**—It is Commonwealth owned property?

**Mr Mrdak**—The port?

**Senator CARR**—The crane.

**Mr Mrdak**—That is correct.

**Senator CARR**—It is a piece of infrastructure that—

**Mr Mrdak**—It is a piece of Commonwealth infrastructure.

**Senator CARR**—Is it not the Commonwealth's responsibility to keep the crane operational?

**Mr Mrdak**—Certainly the Commonwealth, in its management of the port, is looking to ensure the port is operational, as Ms Clendinning has indicated. In our view, efforts have been made to try and rectify this crane as speedily as possible.

**Senator CARR**—Surely there is a case, given the failure to keep the crane functioning, that some responsibility does rest with the Commonwealth in regard to meeting the freight costs?

**Mr Mrdak**—That is a matter which people have raised, but it is not something I could comment on at this stage. We would have to look at the situation and come to a judgment. We are not in a position to comment on it at this stage. If the parties have written to the minister seeking that, we will review the request and provide advice to the minister.

**Senator CARR**—Do you expect that is a matter that could be responded to reasonably quickly?

**Mr Mrdak**—Yes. Given the minister's interest in ensuring that this matter is rectified as quickly as possible, I am sure he will want to respond quickly.

**Senator CARR**—Can I ask you about the failed space base. We now acknowledge that it has failed.

**Mr Mrdak**—Senator, the Australian government has reached a decision not to continue to provide the funding support for that proposal.

**Senator CARR**—Why is that? Why did the Commonwealth reach that conclusion?

**Mr Mrdak**—My understanding is that in the funding agreement which has been entered into by the parties, conditions under that agreement have not been met by the proponents of that project.

**Senator CARR**—Have they met any of the agreed targets? The 'milestones' I believe is the term.

**Mr Mrdak**—Milestones. We would have to check what has been met but my understanding is that the Commonwealth has now taken steps to terminate that funding agreement.

**Ms Clendinning**—They did not achieve the milestones that were required to be achieved.

**Senator CARR**—Did they achieve any of them?

**Ms Clendinning**—The milestones have not been achieved by the APSC, is the advice I have.

**Senator CARR**—There was \$68 million to be spent on common infrastructure on the island. How much of that money will be spent on common infrastructure?

**Ms Clendinning**—Yes, the \$68.6 million. The new port and the road upgrade went ahead because that is being used to service the construction of the immigration reception and processing centre. The airport upgrade that was planned will not go ahead.

**Senator CARR**—How much of the \$68 million will be spent?

**Ms Clendinning**—At this stage, \$17.3 million has been spent. The airport upgrade was the major factor in that large \$68 million figure.

**Senator CARR**—So the remainder of the money will be returned to the Commonwealth consolidated revenue or was it being redirected to some other project?

**Ms Clendinning**—I am not aware of what has happened to that money as yet. I imagine it will go back into revenue. That is part of the administered program, so it will stay in—

**Senator CARR**—Administered by whom?

**Ms Clendinning**—The administered funds that IOT has administered, not departmental funds.

**Senator CARR**—So by the department?

**Ms Clendinning**—It would be held by the department, yes.

**Senator CARR**—DOTARS?

**Ms Clendinning**—DOTARS, yes.

**Senator CARR**—What are you going to do with it?

**Ms Clendinning**—I do not have advice on that at the moment.

**Mr Mrdak**—That would be subject to further government budget decisions.

**Senator CARR**—That is not clear yet? It is \$51 million. You do not know what you are going to do with it? Is it in the current budget or is it just in the administered items?

**Ms Clendinning**—Perhaps the financial officer could help us here.

**Mr Ash**—Senator, the funds are still in the official public account, in the department of finance. The \$51 million remaining have not been drawn upon. At the time that the government makes a decision not to proceed with any further projects on this, the appropriation will then be lapsed.

**Senator CARR**—So it is still within the department of finance?

**Mr Ash**—It is in the official public accounts of the department of finance as an appropriation that has not yet been drawn.

**Senator CARR**—So you do not have access to the money?

**Mr Ash**—In the sense that it is still an appropriation to the department, yes, there is access; but because there is nothing at this stage to spend that money on, it stays as undrawn appropriation.

**Senator CARR**—Has there been any application to spend that money on other projects?

**Mr Mrdak**—No. This money was dedicated to the airport development, as Ms Clendinning said. It was contingent on certain milestones being achieved by the spaceport proponents. That has not been done, as you have outlined. The money has not been resought for any other purpose at this time.

**Senator CARR**—The upgrade of the airport will not be needed to service the detention centre?

**Mr Mrdak**—The specific upgrade to the airport was to handle very large freighter aircraft which would be bringing in components for the operation of the space centre. These were the sorts of expansions which would only be warranted by that sort of a construction program and operation. I do not think the airport would warrant this type of design expenditure for the sorts of traffic requirements on the island to support the detention centre.

**Senator CARR**—How much money in the end was paid to David Kwon's companies?

**Mr Mrdak**—Paid to them? I am certainly not aware of funds paid by this portfolio to his companies.

**Senator CARR**—None of the common infrastructure work was undertaken by any of his companies?

**Mr Mrdak**—No.

**ACTING CHAIR**—Senator Carr, it is nine o'clock. Do you have a lot more questions? Would you like to come back, after the break, with Territories?

**Senator CARR**—I am waiting for Senator Lundy to appear. She is coming very shortly, is she not?

**ACTING CHAIR**—You would know better than I, Senator Carr.

**Senator CARR**—I would like to finish this section, if I could. It will not take too long.

**ACTING CHAIR**—All right.

**Senator CARR**—I expect that Senator Lundy will not be too far away. I have a lot more to put on notice, given the amount of disruption the minister has engaged in today. It is unfortunate that that is what will have to occur. As I understand it, the government has taken away a spillover day so we will not have that opportunity to pursue these matters. I am particularly interested in what has happened to the lease arrangement.

**Senator Ian Campbell**—We have got until 11 o'clock tonight, so we might as well just keep going.

**Senator CARR**—If you had actually been listening you would know that there are a number of portfolio areas that have to be covered in this time line. I am interested to know what has happened to the lease of the resort on the island.

**Ms Clendinning**—Christmas Island Resort?

**Senator CARR**—Yes. It is still crown land, is it not?

**Ms Clendinning**—Yes, I think so. I will have to check that.

**Senator CARR**—Mr Kwon still holds the lease?

**Ms Clendinning**—Yes, he does.

**Senator CARR**—What is the current condition of the resort complex?

**Ms Clendinning**—I have not seen it myself but Ms Susan Page, the deputy secretary, was with the minister on his recent visit to the Indian Ocean territories. She says it is in very poor repair but there is a man employed by Mr Kwon who maintains it to the best of his capacity.

**Senator CARR**—On my last visit there I had an opportunity to look at the outside of it and I noticed that there were parts of the building actually falling off the structure. The shire advises—and I understand has told the minister the same thing as it has told me—that they are concerned that, unless some work is done quickly on the site, it may be beyond repair. Has there been an assessment undertaken by the department as to the veracity of that claim?

**Mr Mrdak**—No, Senator.

**Senator CARR**—Is it the case that the minister has acknowledged the need for resolution to the ongoing use of the resort?

**Ms Clendinning**—I am not sure. I will have to check.

**Senator CARR**—What work are you doing as a department to resolve the problems associated with the deterioration of the resort?

**Mr Mrdak**—I am not aware of any such work at this stage. It is held in a private company by that entity. It is their responsibility at the end of the day. As Ms Clendinning has indicated, this matter, we understand, was raised with the minister during his recent visit to the island. We will follow that up and see what was raised and what action was proposed.

**Senator CARR**—Thank you. Can you advise the committee what impediments there are to the Commonwealth reclaiming the lease?

**Mr Mrdak**—Certainly. We will examine the nature of the lease arrangement.

**Senator CARR**—Given the importance of the building, again.

**Mr Mrdak**—It is important to note that this was a lease that was sold as part of the administration arrangements.

**Senator CARR**—It was in connection with a space base, wasn't it?

**Mr Mrdak**—Not directly. My understanding is that the resort was in receivership, in administration, and the lease was sold to a party associated with Mr Kwon some time ago. He certainly had plans to integrate it into his spaceport proposal but that has not been the sole purpose of his ownership of the resort. He has looked at alternative developments, I think, for that site for some time.

**Senator CARR**—But nothing has been spent on it, apart from the caretaker.

**Mr Mrdak**—From memory—and I do go back to my previous association with the territories area some years ago—Mr Kwon did expend some money probably four to five years ago. Certainly he started to refurbish some elements of the resort to make it available for accommodation. That was, as I say, going back at least four to five years ago. I am not sure what the status of those renovations currently is.

**Senator CARR**—Can I have, as part of your previous answer, any advice as to what the Commonwealth intends to do in regard to returning the site for community management or community use. Is it the department's intention, for instance, to reacquire the lease?

**Mr Mrdak**—I am not aware of any intention by the Commonwealth to reacquire the lease. There have been ongoing negotiations into certain aspects of the lease such as access to roads and water supply. That has been a contentious issue between the Commonwealth and the private owners of the lease for some time, but I am not aware of any Commonwealth intention to reacquire the lease. I will check with the minister and the relevant officers and come back to you if there is any change in that position.

**Senator CARR**—Thank you very much.

**Ms Clendinning**—We have actually managed to get Soft Star Pty Ltd to surrender the land necessary for the upgrade of Linkwater Road and for the water infrastructure. They have signed an agreement to do that and we are now in the process of getting the necessary documents from them so that the lease variations can be registered properly.

**Senator CARR**—It is crown land, isn't it?

**Ms Clendinning**—Yes, it is a lease.

**Senator CARR**—It is all crown land.

**Ms Clendinning**—They have got a lease on the crown land.

**Senator CARR**—They have got a lease over crown land, so it is having a section excised from the lease. Is that the point you are making?

**Ms Clendinning**—Yes, that is what has happened.

**Senator CARR**—A road-widening, is it?

**Ms Clendinning**—The Linkwater Road project is to repair and upgrade.

**Mr Mrdak**—That is the road leading from the second port up to the airport.

**Senator CARR**—Yes, I am aware of the one. Past the cemetery.

**Mr Mrdak**—That is right, and the water supply from that spring near the resort, which we would seek to augment the island's water supply with.

**Senator CARR**—I will put the rest of the questions on notice.

**Mr Mrdak**—Thank you, Senator.

**Proceedings suspended from 9.06 pm to 9.13 pm**

**National Capital Authority**

**ACTING CHAIR**—We now welcome the National Capital Authority. Senator Lundy?

**Senator LUNDY**—I would like to turn first to the National Capital Authority's one-off grant of \$500,000 in the budget, to be spent on unspecified urban planning initiatives. Can you outline what is envisaged for that budget allocation?

**Ms Pegrum**—It is specifically targeted at doing additional feasibility and engineering work associated with the initiatives of *The Griffin Legacy*, which we published in December 2004. It builds on some of the work that we have doing within the authority in relation in particular to Constitution Avenue, City Hill and West Basin and the intersections associated with Kings Avenue Bridge, Parkes Way, Commonwealth Avenue and Constitution Avenue. That will allow us to complete those works sufficiently to understand the full implications of them.

**Senator LUNDY**—I have a number of questions relating to *The Griffin Legacy*, so I may as well go there now since the funding is there for that. When that document was released, it articulated quite a long-term vision. Can you go through what the specific stages are in achieving that vision? I appreciate that \$500,000 is going towards feasibility, planning and engineering studies. What happens after that?

**Ms Pegrum**—*The Griffin Legacy* was prepared in tandem with the territory's policy spatial plan, and part of that spatial plan was identifying two parameters for development of the capital. One was the concept of containment of development and one was of consolidation. Containment, from memory, dealt with developments something like 15 kilometres from the city centre and consolidation was 7.5 kilometres from the centre. When they announced their intent to undertake the spatial plan, the NCA at the same presentation nominated that we would undertake the Griffin Legacy work, which would look at the central capital area and would help inform their concept of consolidation. They are really the fundamentals of how we worked together at that point in time.

In parallel over the last year, we have been working on a number of initiatives with the territory. The one that has had the most public airing has been the City Hill precinct work, and we are about to go out with a draft amendment associated with that. There has been some delay in that, waiting for the territory to complete some of its more detailed road planning considerations on London Circuit. We have also identified with them a number of priorities. Among those priorities are Constitution Avenue and West Basin and the road infrastructure that I outlined.

Part of the situation post this feasibility work—and also being done during this financial year—is continuing to work with the territory government and with the other key land-holders in those central national areas, primarily Defence and the Department of Finance and Administration. There has been a forum meeting and another meeting more recently with those stakeholders, where we are looking at signing up to a memorandum of understanding associated with the Griffin Legacy proposals in those areas.

As an outcome of the feasibility studies and what might come out of the discussions of those stakeholders, we would then look at the sequencing of development associated with those areas and the infrastructure implications for development for all of the stakeholders. At this point in time, my understanding from the sequencing that the territory has provided is that their emphasis is on—I am looking at Mr Rohl for verification—West Civic in the first instance and then, I think, Constitution Avenue, and we certainly are focusing on Constitution Avenue east.

**Senator LUNDY**—In terms of funding any changing of the roads or the actual redevelopment to fit in with your plans, what is the process for that attracting, I presume, some Commonwealth funding to initiate some of those changes or, indeed, ACT government funding? What is the next step?

**Ms Pegrum**—I could not at this stage commit to funding by any of the stakeholders—

**Senator LUNDY**—No, I am not asking you to, but would it be a question of an application by the territories minister to cabinet for a budget allocation to facilitate that for the next year's budget?

**Ms Pegrum**—I think that is much too early to determine. As I said, the memorandum of understanding just to establish the parameters of discussion has not yet been signed by all the parties. I would anticipate that considerations of cost and infrastructure and revenue returns from land released will all play a major part in that and that, within the course of this year, it will be much clearer about what processes are available, not only to the government stakeholders but also to the private sector stakeholders.

If I can use examples, along Constitution Avenue, subject to amendments to the plan being approved, there are considerable commercial opportunities that derive from the legacy and, equally, in relation to West Basin development there are substantial potential development opportunities that could, for example, fund things like the land bridge. So it is too early—

**Senator LUNDY**—Across Parkes Way?

**Ms Pegrum**—to give you any definitive answer but also it really will be a partnership approach in order to deliver this.

**Senator LUNDY**—Given you are at the final stages of preparing a draft amendment, how far advanced do you have to be in having agreement from all of those public and private stakeholders to actually progress the draft amendment, or is the draft amendment not contingent on those agreements being in place?

**Ms Pegrum**—It is not contingent on those agreements, because what the amendment is doing is establishing a planning framework to allow the sort of development that the legacy envisages to occur. If I look at the City Hill proposal, there are restrictions on height and the nature of development in that precinct that would not allow for the kinds of things that we envisage in the legacy and that the territory supports. In the first instance, you need to know that that planning framework will be approved and adopted. However, in the course of that process, all parties have an opportunity to comment, and I expect that that comment is going to be fairly wide ranging on a lot of the amendments that we put forward in the future.

**Senator LUNDY**—You may not be able to answer this, because it might be something the ACT government has jurisdiction over, but is the idea of this draft amendment for the City Hill precinct to allow a range of proposals to still be considered within the parameters of that draft amendment or is the draft amendment designed around some final selection of the NCA and the ACT government?

**Ms Pegrum**—No. The draft amendment is predicated on what we call planning principles, from memory, which we put forward to the special task team that was established to look at the City Hill precinct. The position that the authority has taken is that the amendment will be fundamentally a principles amendment. It will not incorporate a development plan. There may be in the public documentation indicative development—that is, the kinds of things that could happen if the opportunities of those principles were taken up—but there is no master plan and there is no preferred design aka the proposal put forward by the Snow development or the territory government or, indeed, illustrations that we have used in the context of the Griffin Legacy. So it is a set of new planning principles that address things like land use, road access, building development height and opportunities for growth in certain cultural facilities or administrative facilities of the territory or of others.

**Senator LUNDY**—How far will that particular draft amendment reach? Does that cover the West Civic area and West Basin as well?

**Ms Pegrum**—No. That particular one deals only with the City Hill precinct, which is defined as Vernon Circle, London Circuit and the land between those two, and incorporates the City Hill park, I will call it, at the moment as well. We anticipate that there may be a need for other amendments associated with Constitution Avenue and West Basin, primarily to do with the same sorts of issues, and we have already agreed in the authority to propose a principles amendment for the Griffin Legacy that in effect calls it up in the National Capital Plan, and that is likely to run either ahead of or in tandem with the City Hill precinct.

**Senator LUNDY**—With respect to Constitution Avenue, my memory was that the NCA's vision for that area was to increase the density along that avenue and turn it into a place where people want to go—cafes and commercial activities. Is that still what you have planned for that area? Am I recollecting that accurately?

**Ms Pegrum**—That is still the intention, yes; to have it as a mixed use avenue of a much higher density than is currently available. I do stress the ‘mixed use’ because there is very complex land ownership along Constitution Avenue. There is private sector, public sector; public sector split between ACT government, National Capital Authority, Department of Defence and I think even the department of finance. It is a good example of the need for those parties to come together. They will wish to use land along the avenue in particular ways. The fundamentals at this point in time in our consideration deal with the way in which the avenue itself can cope with the particular increases in density that might occur, and the ways in which the public realm either side of the avenue can be such that it encourages pedestrian use and use for cafes and the like and active street frontages. We are currently exploring all of those issues of setback, road pavement width and treatment, and we are about to start more detailed discussions with the territory government agencies in relation to that.

**Senator LUNDY**—On Constitution Avenue, what is the formal interaction that occurs between yourselves and the territory government—that is, the status of the land? From memory, on the inside of Constitution Avenue, it is national capital land.

**Ms Pegrum**—No, Constitution Avenue—

**Senator LUNDY**—Sorry, territory land but under the National Capital Plan.

**Ms Pegrum**—That is correct. All of those areas are within a designated area of the capital, so development approval rests with the authority. The land, as I said, is a mix. That pretty much sums it up. I hope that with the MOU we will all be able to have a more formal arrangement. At the moment, we are meeting with the territory planners very regularly. We would be speaking to them every week, if not more, on Griffin Legacy proposals, and we have just started discussions with ACT Roads about the implications for the infrastructure which is also territory infrastructure at this time.

**Senator LUNDY**—There are a number of gravel car parks in that precinct, on the southern side of Constitution Avenue. Given the history of parking issues that we have on the other side of the lake, what is the NCA’s current thinking about replacement parking; presuming those areas will be developed, at least to some degree?

**Ms Pegrum**—It would not be dissimilar at this time to the way in which we have looked at parking in areas where we have consideration under Barton or, indeed, in the parliamentary zone where we would be looking at parking associated with developments being part of the development requirements, and replacement parking being looked at in that context and/or in developments like structured car parks. There has been no decision about the nature of the development on, for example, the surface car parking that is immediately opposite the CIT. Then there are issues about what the territory envisages for development in areas around the Civic pool, for example. But development in most cities of raw land is of that nature: the parking requirements associated with the development and the replacement parking that is already there. If it is within the Civic context, it is most likely that, as in other areas, we will call up the territory standards for that development.

**Senator LUNDY**—That area is notoriously used for special events in Commonwealth Park, so much so that there is spill-over. Obviously, that is not every week of the year. What is the current thinking around special event parking, if that area is developed?

**Ms Pegrum**—It is always a complexity. We are currently looking at a master plan for Commonwealth Park, and it is our intention to go to national competition for Kings Park within the financial year. Part of that will be looking at event parking, but we would not, at this stage, envisage putting in mass surface car parking for events of that nature. Floriade is a good example of the way that that is dealt with: the majority of any spill-over is in the car parking that is associated with the Olympic Pool site and through there. Again, one would be looking at structured car parking and the like.

The important thing with events of that nature is that a majority of them occur in holiday periods, so you are not necessarily dealing with the same commuter and event contradictions that you might during a normal working period of the year. But, of course, that happens as well. We will just have to deal with that with the strategies that are available to us at the time.

**Senator LUNDY**—Ultimately, that will require a draft amendment as well?

**Ms Pegrum**—Not for the parking, but for use along the avenue. It is most likely that that will require a draft amendment, yes.

**Senator LUNDY**—Going to West Basin, again my memory is that development right up to the water's edge would be considered in that area. Is that still the case?

**Ms Pegrum**—No. What is on the table from the Griffin Legacy is reclamation of part of the lake, and that the majority of the reclamation remains the public domain, so that there is a wide public promenade that is contiguous along the lake. Then development would be permissible down to that, through what is currently the open space area. The reason that we are looking at the reclamation is—

**Senator LUNDY**—Does that mean you will make the lake smaller?

**Ms Pegrum**—Yes, the lake would be smaller by approximately 75 to 100 metres through that basin edge. The positive environmentally is that that is a particularly shallow area of the lake and my understanding—and George will correct me if I am inaccurate—is that where we do have algal blooms they tend to occur within that area, and we have also looked at the sailing depth associated with it. It is a good spot to reclaim land, from an environmental point of view, and has very limited impact on recreation opportunities on the lake, but it increases recreation opportunities for people on the land side and leaves the balance of West Basin and the land bridge over Parkes Way available for development directly from Civic down towards the lake, and with the obvious views.

**Senator LUNDY**—What sort of area would be available for development in that precinct?

**Mr Scott-Bohanna**—We are still in the early stages of planning, but there are approximately 12 blocks of land, large blocks of land, which we released as a consequence of that land bridge going in a combination of those on the land bridge and those on that part of West Basin that is there now. The development rights on those blocks have not yet been established, although, if you worked on the principles of four to six storeys, that was certainly the way in which the Griffin Legacy was predicated.

**Senator LUNDY**—Does the West Civic area require a draft amendment?

**Ms Pegrum**—There are some pockets that do. In fact, one of the draft amendments that was notified on Saturday deals with a site on University Avenue for the ANU to allow for

mixed uses that include educational uses for the ANU. At the current time, I think they only permit the university uses, and that request for an amendment has been put forward, which was then discussed with the territory in relation to its West Civic plans and is supported by them in principle. That amendment is currently under way. I think the rest of West Civic is fairly much available currently to deliver Griffin Legacy opportunities.

**Senator LUNDY**—Moving to the other side of the lake, I notice there has been a draft amendment prepared for an oval precinct outside the National Library—some redevelopment there. I just want to work through what is proposed there and the cost and how that is being funded.

**Ms Pegrum**—There are two different issues at hand in relation to the humanities and science campus. One is the draft amendment that was notified last Saturday. What that deals with is the particular site that is currently the dirt car park and down to the international flags immediately to the north of Questacon. Currently, in the National Capital Plan, that site has been reserved for a significant building and, in order to allow flexibility for it to include public places, parks and similar things other than buildings, this is an amendment proposing that flexibility on that site. That is the amendment that is at issue.

The other issue that has been in the media most recently is the design proposals for the humanities and science campus, which is the space between the site I have just identified, the National Library and Questacon. In the National Capital Plan, that is nominated as a campus, as is the arts and civic campus to the east, and we have been preparing for over a year now designs for that area to take up the level differences between the buildings, which are quite substantial, to address the traffic flow concerns, the parking issues and, most importantly, accessibility for pedestrians and people using wheelchairs, and to create a unique place that resonates for those particular uses in that area.

In the process of that, we have been in consultation with the library and Questacon in some depth, and the proposal is still currently subject to consideration under the EPBC Act. Subject to that consideration, it is our intention then to put those proposed works to parliament for approval, and the works are funded as a mix of capital new works and replacement of existing infrastructure through depreciation.

**Senator LUNDY**—Andrew Smith in the *Canberra Times* talked about a people-friendly design, with better traffic flow and those other things. On what basis have you drawn those conclusions? Have people complained about the precinct or access and those issues?

**Ms Pegrum**—You might recall, Senator, when we did the Parliamentary Zone review that there was considerable consultation associated with that. Accessibility, identity and way-finding were key issues identified out of the Parliamentary Zone review, which, since we had amendment 33, I think it was, to the plan approved for the Parliamentary Zone, we have been slowly implementing. Hence Commonwealth Place, Reconciliation Place, replacement of car parks, services, lighting, paths and the like, which have been rolling out over the last four years or so. So this is the next stage of that.

In particular for that campus, there have been real concerns about conflict between pedestrians and car traffic and bus parking areas for visitors. Of course, the dirt car park to the north, which is the site at issue, has always been problematic. There are several access points

into that area, and pedestrians cross over them a number of times. There are also very significant level changes across what is a very large site, so the curved ramp that is proposed, which is pedestrian only, picks up on those level changes and allows people to move between the buildings and across the space without conflict with cars. Yes, these issues have been raised in various forums previously, and this is another roll-out to try and address them.

**Senator LUNDY**—Are you able to provide the committee with a summary of your consultation with stakeholders in this regard or some evidence that these problems have been reported to you?

**Ms Pegrum**—I can table the Parliamentary Zone review report, because the primary issues are derived from that. There was also an access survey, from memory, of the Parliamentary Zone, and I can table that. We can table the design intent and the issues that it has addressed. But it is our intention, as I said, to come forward to parliament in due course after EPBC considerations.

**Senator LUNDY**—If you could forward those to the committee and highlight the references to the issues, that would be helpful. Predictably, the issue of the trees is one that is attracting media attention. It is not the first time old trees that people have grown to know and love have attracted attention. Has the NCA conducted a health and condition assessment of the existing poplar trees which I understand will have to be removed if this redevelopment of the precinct takes place?

**Ms Pegrum**—At this stage, we have not undertaken a health assessment of the trees.

**Senator LUNDY**—What process does the NCA have to go through with respect to the EPBC Act for any changes to the trees in that precinct?

**Ms Pegrum**—It is up to the department of the environment as to what they take into consideration. We forwarded the whole proposal for their consideration as to whether or not it constitutes a controlled action, and that is what we are waiting for. The proposal to remove trees is not predicated on health on this occasion; it is predicated on the necessity to be able to get the access ramps through and the roads in the positions that are necessary, in our view. The trees that were planted, particularly the poplars, are virtually impossible to retain in order to put in those access provisions, particularly the pathways, so it is a question of where they are located rather than their health that is driving this proposal.

The intention is to replace those trees with a mix of exotics and natives and, in fact, to double the number of trees in the area. Should we have approval to proceed with the works, I have been advised that the poplars would be replaced with six-metre-high new species. Having said that, these proposals are subject to approval by both houses of parliament and, of course, by the NCA. So there are fairly stringent approval processes in place prior to us being able to remove the trees.

**Senator LUNDY**—I remember with the National Museum that the ponderosa pines were initially going to be removed and some poplars disappeared one night. What lessons emerged from that experience with the National Museum redevelopment and the public backlash? I was involved at the time in making representations on behalf of the group that felt that the ponderosas had a role to play. I am sure everyone would agree now, looking at the museum, that that was absolutely the right decision and that they add a lot of character to that

development. I am at a bit of a loss, given those issues, that a design was forthcoming that did not accommodate those existing trees.

**Ms Pegrum**—The lessons of the museum are interesting ones. The authority was, in fact, at the forefront of protecting those trees and declined to give approval for their removal, despite the fact that they were not listed as being of cultural significance. You might recall that there was some disagreement as to whether the survey that had been undertaken had been sufficiently robust and that there was discussion about whether the trees should have been listed or otherwise. There was also a white cedar that was proposed for removal that the NCA declined to give works approval for, which had implications for the location of an amphitheatre, and there were a number of trees associated with the car parking area, from memory, of the same vein.

Perhaps the difference between that proposal and this one is that those trees were proposed to be removed for issues associated with a number of options for sites for things like the amphitheatre and also because the designer's view at the time was that the viewpoint of the building would be best without the trees in front of it. From memory, there were some issues associated with access for garbage removal and the road associated with the ponderosas, but it was possible, with careful retaining walls and the like, to retain the trees. As I said, I am going from memory on something that occurred nearly eight years ago but we were deeply involved in it. If that was the case for the humanities and science campus, we would be taking the same viewpoint. We are, however, exploring opportunities for replanting of some of the plane trees, but we are yet to get an assessment of the cost and the health of the trees, as to whether they would be able to take that.

**Senator LUNDY**—You mentioned the status of the trees, with respect to the National Museum, as having cultural significance. Do these trees have any cultural significance under any act attached to them?

**Ms Pegrum**—To my knowledge, none of these trees are individually listed.

**Senator LUNDY**—None of them are?

**Ms Pegrum**—No, whereas with the museum certainly the cedar, from memory, was listed; but the ponderosas were not.

**Senator LUNDY**—What is the order of events that takes place with respect to this particular draft amendment, particularly in relation to your approach to Environment Australia about their status under the EPBC Act?

**Ms Pegrum**—The draft amendment has nothing to do with the humanities and science campus design proposal we have just been discussing. It is a completely separate issue. The only thing that it is dealing with is land use flexibility for the site in front of Questacon.

**Senator LUNDY**—The draft amendment does not relate to this oval precinct in any way?

**Ms Pegrum**—Not at all.

**Senator LUNDY**—What process do you have to go through then to consult or get feedback for that?

**Ms Pegrum**—For the draft amendment?

**Senator LUNDY**—No, for the proposed oval park. I do not know how to describe it.

**Ms Pegrum**—Campus works. The consultation to date has been in detail with the National Library and Questacon, and their issues associated with that area. We are then going through the EPBC processes as to whether the proposal constitutes a controlled action. If it did, we would have to look at the consequences of that.

**Senator LUNDY**—Which would be what?

**Ms Pegrum**—We would be required to make a much more detailed heritage assessment of the area. If it is found not to be a controlled action, we would then refine the design, including the considerations of whether the trees can be replanted or not. We would then go to the authority for consideration of works approval, through the delegates, and then separately to both houses of parliament. The norm, as you know, is that the minister would consider referring the proposal to the joint standing committee prior to it being tabled in both houses for approval.

**Senator LUNDY**—It is just a works approval in the form of major works in the Parliamentary Triangle?

**Ms Pegrum**—That is correct. There is nothing in it that is inconsistent with the plan.

**Senator LUNDY**—As you said, the draft amendment relates to the land use of the block north of Questacon.

**Ms Pegrum**—That is correct.

**Senator LUNDY**—In relation to the cost, you mentioned ‘funded through capital works and depreciation’. Is the National Library involved in the cost of this campus development?

**Ms Pegrum**—I would be delighted if they were, Senator!

**Senator LUNDY**—I did notice that they are getting some capital works funding for issues to do with the podium surrounding the National Library and I was wondering if you knew if that was related to this or complemented it.

**Ms Pegrum**—We are obviously aware of what their proposals are and, having looked at their proposals and ours, they are consistent. Among the issues that they have with the campus design—which does not include the trees, I might add; they understand the parameters that we are working within—is the quality of paving that we might be considering for the pedestrian walkway. At this time, their expectation is that we would fund that. However, we certainly will be in discussion with them about possibilities there.

**Senator LUNDY**—Don’t hold your breath!

**Ms Pegrum**—No.

**Senator LUNDY**—Is it the amendment or the campus works that provide for a multi-tiered car park west of Questacon?

**Ms Pegrum**—The campus design proposes a site for the tiered car park, but that is currently consistent with the National Capital Plan, so it does not require an amendment to provide for that.

**Senator LUNDY**—Is that part of the suite of works in the campus works proposal that you will ask—

**Ms Pegrum**—Not at this stage. We are simply nominating a likely site. For example, if the library chose to expand to the south, that possibility is available as well. The key issue that we are still doing some detailed work on at the moment is the access into the surface car park to the immediate south of the library which, certainly in the first stages, will be retained as a car park. This campus proposal takes the National Capital Plan and does a detailed development possibility for that campus area. The initial capital works, those for which we have funding, deal with the public place areas, not with the development sites per se.

**Senator LUNDY**—Given that the campus development requires works approval and not a change to the plan, what consultation is required under the act for the purposes of interested members of the public, advocates for poplar trees and plane trees et cetera, to express their view about the proposals?

**Ms Pegrum**—On this occasion, in relation to our part of the proposal, there is not a statutory consultation requirement because they are consistent with the National Capital Plan and because the parliament, representative of the people, will consider the proposals.

**Senator LUNDY**—However, we all know better than that, don't we?

**Ms Pegrum**—We certainly do and for some time we have had in place a memorandum of understanding with the stakeholders in that campus, which again is a roll-out of the initiatives from the Parliamentary Zone review. We also have in place one, for example, with the arts and civic campus; and we are in discussions with the executive campus, John Gorton House and Treasury. That has allowed us to enter into very detailed consultation with both the library and Questacon over quite a lengthy period of time on this particular proposal. There is, however, a statutory requirement for us to consider the proposal in relation to the EPBC considerations and, on that basis, it is currently in that statutory process and that does involve stakeholder opportunity to make comment through to the Department of the Environment and Heritage for their consideration before the delegate there makes a judgment. Much of the comment that has occurred has been because of that part of the process.

The next statutory process is the referral to both houses of parliament. There is also a statutory requirement in relation to the moral rights legislation and on that basis our consultants have consulted with those parties who have an interest in the National Library and in Questacon. Graham Scott-Bohanna can give you more detail on that. The processes are the parliament's approval, the consultation under EPBC and the consultation under moral right and, non-statutory, our consultation with the direct stakeholders in the campus.

**Senator LUNDY**—Have you got agreement from the National Library and Questacon?

**Ms Pegrum**—The National Library has given us general support in principle. The outstanding issues there are the access associated with entry to the car park and their concerns about the quality of paving. I think that is a fair summary. Questacon has given us their support. They are also looking, in the context of their budget funding, at expansion opportunities for their building. We are currently exploring that, within the context of the campus, with them.

**Senator LUNDY**—The EPBC requirement to consult: that is their requirement under their provisions to seek input into what particular change—and didn't you say earlier that that was contingent upon their decision as to whether or not it actually warranted some consultation? I am unclear as to what level of engagement or active seeking of input would be required under that act.

**Ms Pegrum**—That is more a question for the Department of the Environment and Heritage. I am not sufficiently au fait with the EPBC consultation to give you a definitive answer.

**Mr Smith**—The EPBC Act requires that DEH publish on their website any proposal that is put forward to them for their consideration. So the information was publicly available prior to their making a decision on whether it was a controlled action or not.

**Senator LUNDY**—Can you tell me what period that is and if it is already finished?

**Mr Smith**—I believe it is 14 days, but that question would be better addressed to the Department of the Environment and Heritage.

**Senator Ian Campbell**—I can provide that to you. I have friends in the department.

**Senator LUNDY**—You're a very useful person, Senator Campbell!

**Senator Ian Campbell**—There are statutory time frames. I think they might be a little bit flexible. I think 14 days might actually be the shortest period, from memory, but we will confirm it.

**Senator LUNDY**—If that is the only opportunity that the citizens of Canberra would have to provide direct input to it—and that input would not go to you as the NCA, it would go to Environment Australia—is it possible for you to give an opportunity to the citizens of Australia, given we are the national capital, to provide input to this particular proposal? I appreciate that under the law you do not have to do that and that, yes, it will be considered by parliament. Having been through this issue of consultation many times with the National Capital Authority, I guess I am asking you whether or not you can make an opportunity available for people to express a view and for the NCA to take that into account before you proceed.

**Ms Pegrum**—I would contend that the people of Australia have been given that opportunity on a number of counts: one with the original parliamentary zone review, which included an advisory panel, extensive consultation—

**Senator LUNDY**—Sorry to interrupt, but did that review contain the concept of the oval in that precinct?

**Ms Pegrum**—No, but I will build through to that. In planning terms, there was extensive consultation to the concept of the campuses and then, of course, there was the amendment to the National Capital Plan to provide for campuses to be developed, and that has statutory consultation associated with it, which is available to anyone in Australia, and then approval by the minister and disallowance in parliament.

With respect to the design, I would contend that the statutory processes associated with the cultural values of the Parliamentary Zone are embedded in the EPBC proposals and that the

parliament is a representative for Australia in looking at these proposals. In effect, within the Parliamentary Zone review, that is why the parliament has a role in giving works approvals. If we were to go to a situation where there were available comments across Australia to anyone on a design proposal, we might have a lot of difficulty in getting projects like the National Portrait Gallery and others through. At which point do you draw the line and who appraises those comments?

The view that has been taken and that is enshrined in the legislation is that those processes give sufficient opportunity for consideration. We also put these sorts of proposals on the websites, so if there are people with an interest they have a chance to put in comments and we take account of those when we are looking at the proposals.

**Senator LUNDY**—So you have that system operating now?

**Ms Pegrum**—Yes, and I think it has been on the website for a couple of months.

**Senator LUNDY**—That is helpful. I understand the statutory provisions about consultation in this area, and I think that there will obviously be some disappointed people who would have sought a more specific right to express a view, but what I understand you are saying is that with these proposals on the website of the NCA, even though you are under no statutory obligation, it is possible for people to express a view and that you will have a look at that.

**Ms Pegrum**—I would not like you to think that that is the primary recourse to consultation.

**Senator LUNDY**—Sure.

**Ms Pegrum**—What I am saying is that the primary recourse in consultation are the plan amendments themselves. I take your point, but if you look at the development assessment forum across Australia, that is very much the approach that is being taken in relation to development; that the strategic planning principles are subject to consultation and then, subject to proposals being consistent with that, there is no further consultation. However, because this is in the Parliamentary Zone the parliament itself has an interest and has a right to approve or otherwise the works, and that is a fairly good representation of the nation.

**Senator LUNDY**—Can you go through with me the impact on car access to the foreshore area. There is already a sort of shared place where cars can drive through. What do you call that area?

**Ms Pegrum**—Down to Commonwealth Place and the international flags?

**Senator LUNDY**—Commonwealth Place at the lake foreshore. What is the proposal for car access through this new oval-park thing to the lake foreshore?

**Mr Scott-Bohanna**—The existing road will be rearranged to enable cars to come down the existing road, Parkes Place West, go around in front of the library and then down to the lake shore. There is also access at the other end, past the National Gallery and the High Court, down to that same space.

**Senator LUNDY**—You will still be able to get down there between Questacon and the library?

**Mr Scott-Bohanna**—That is right. The principal intention is to reduce the number of cars that use that access road in order to ensure greater levels of safety for pedestrians, particularly school children, by putting a new entry into the library car park. Where now you would go down, up into the library and turn back into the car park on the south side, you were turning off the road as you came down the hill, down Parkes Place West. The access into the car park to the north of Questacon would be accessed by the existing road on the eastern side of Questacon rather than coming down Parkes Place. By reducing the amount of traffic and capturing the cars looking for car parking earlier, before they get to that place, there is a significant reduction in the numbers of cars using that road.

**Senator LUNDY**—Where will the Questacon parking be if not on the dirt patch where it currently is?

**Mr Scott-Bohanna**—It will be on the dirt car park, which will be fixed up, but there is an existing road that comes down on the eastern side of Questacon, Dame Edith Lyons Place. At the moment, the access point into the car park is—

**Senator LUNDY**—That is how you access that car park?

**Mr Scott-Bohanna**—That is right. You would come down through there, straight in off that road.

**Ms Pegrum**—But that parking will only be short term, because that is a development site. When I say ‘short term’, it depends on the development proposal coming forward that is appropriate, but the overall campus master plan allows that to be used as a development area, and the primary parking would go to structured car parking as we have identified within the campus master plan, so as development occurs, basement parking for the new development and structured car parking to take up the balance.

**Senator LUNDY**—Going somewhere else in the geography of the nation’s capital, what are the implications of the recent decision on the land of the Canberra International Airport?

**Ms Pegrum**—You are aware of the government decision that the airport will be removed from the requirements of the National Capital Plan. That means that the approved master plan under the Airports Act will prevail and the airport development will no longer, after that amendment occurs, be subject to works approvals by the National Capital Authority or to the planning regime of the National Capital Plan.

**Senator LUNDY**—Can you identify any other land in the ACT that carries the same status as that?

**Ms Pegrum**—There are areas of national land where the only requirement under the plan is a development control plan to be approved by the authority, but there are no works approvals by either the territory or by the national capital. As we understand it, this decision is based on bringing Canberra airport into the same jurisdiction as other airports that have been listed.

**Senator LUNDY**—I understand that, but we are the national capital. What was that device you mentioned?

**Ms Pegrum**—Development control plans.

**Senator LUNDY**—Does the airport have to have a development control plan?

**Ms Pegrum**—Not at the moment, because it is subject to works approval, which is a higher level of control.

**Senator LUNDY**—Now that the decision has been made for the NCA not to be involved in planning, under the new regime will they have to have development control plans?

**Ms Pegrum**—My understanding is that it will be purely the same regime as any other airport—that is, subject to the master plan under the Airports Act and the airport controller.

**Senator LUNDY**—So no DCPs and no works approvals?

**Ms Pegrum**—That is correct.

**Senator LUNDY**—So you can confirm that there is no other land in the ACT which has the same treatment now as the airport?

**Ms Pegrum**—I will take it on notice, but my best knowledge at this time is that that is correct.

**Senator LUNDY**—Has the planning regime at the airport been considered an anomaly? That is probably not a fair question to ask the NCA, Minister. I do not know if that is one you could take on notice for the minister for territories or even the minister for transport. I am interested to know what prompted this change, particularly in the context that I do not think anyone would argue that the owners of the airport have had any grave difficulty in getting planning approval for some award-winning designs for their office buildings. I would like a bit of an insight from the government as to what prompted this, I think quite substantial, change.

**Senator Ian Campbell**—We debated it at some length this morning with the relevant section of the transport department.

**Senator LUNDY**—I am happy for you to take that on notice. I do not want to revisit that debate here.

**Senator Ian Campbell**—Sure.

**Senator LUNDY**—But, from a planning perspective, I know the NCA has been criticised for the openness with which it has approved some really interesting developments out there, so it is not as though there has been a climate of constraint applying to the owners of that airport.

**Senator Ian Campbell**—The real answer is that it would be one of the only airports in Australia, and certainly the only capital city airport, that has to be under more than one planning regime. That would be my assessment, but I was not part of the process. I am sure the minister would be happy to add a couple of paragraphs to that.

**Senator LUNDY**—I know the issue was canvassed, so I do not want to revisit all of those things. I move on to State Circle. My understanding of the status of State Circle, having attended the most recent consultation meeting with the residents affected in the area, is that the National Capital Authority has made representations to the developer and you are currently awaiting a response. Can you confirm that or, indeed, update the committee on the current status?

**Senator Ian Campbell**—The great thing about this portfolio is you can go away and come back two years later and it is almost like you have not been away at all.

**Senator LUNDY**—I can tell you that this issue of State Circle now has been on the books for some six years or so.

**Senator Ian Campbell**—Yes. It is a great way to attract developers to Canberra, isn't it?

**Senator LUNDY**—It is like *Days of Our Lives*.

**Senator Ian Campbell**—It is a great way to say to developers: 'Come to Canberra and develop. It will take six years to get a development going.'

**Senator LUNDY**—I am sure the NCA is noting your comments.

**Senator Ian Campbell**—No wonder so much is happening at the airport.

**Mr Rohl**—To provide you with an update on what is happening on that, we did send correspondence out to the proponents in relation to the development. Their response was received on 18 May and we are about to look at their response.

**Senator LUNDY**—Mr Rohl, could you go through what happens next?

**Mr Rohl**—The process is that we will be having a meeting with the local residents, as we indicated previously, where we will be articulating what information was received and our response to that. From there we will be making a decision. Once we make that decision we will obviously be informing all those people who provided submissions of that decision.

**Senator LUNDY**—I know you are under no obligation for a formal time frame, but do you have an indicative time frame for that?

**Mr Rohl**—We were attempting to arrange the meeting today with the local residents. That email has gone out, to be arranged, and hopefully I can have this matter resolved as quickly as possible so the decision can be finalised.

**Senator LUNDY**—Rather than go into that in detail now, we will await your advice of the outcomes from the residents meeting. Did you get a good response from the developer—generally positive to the issues raised?

**Mr Rohl**—I have not gone through the information that was submitted as yet.

**Senator LUNDY**—So you are not able to answer those questions anyway. In the last round of estimates I asked questions related to Pierces Creek, in that one of the concerns expressed by the NCA as to why they were not willing to expand the size of the settlement related to the impinging upon open spaces, from memory. But I note the answer to the question on notice about how many amendments had impinged upon open space previously came back with quite an array of examples where that had occurred. What is the prevailing view of the National Capital Authority in relation to the limited size of the Pierces Creek redevelopment, and has your view changed?

**Ms Pegrum**—I will start with the first part of your question associated with the answer we gave to the question on notice. There have been a number, but if you look at them they are primarily of a minor nature. They are to do with existing arrangements, extensions to urban and rural areas and expansions of existing uses on existing sites.

**Senator LUNDY**—But isn't that what enlarging Pierces Creek settlement is about, too?

**Ms Pegrum**—The issue at Pierces Creek was whether or not we would allow an expansion of it post the bushfires and, for the reasons that were documented in the *Hansard* previously, we did not agree to that. The ones that have been addressed in the past, as expansions, are typically things like the Quamby Youth Detention Centre, which required an extension to the existing facility rather than an additional entire youth detention area or prison development on that site, or for facilities like the ACT hospice, where an alternative site was being found. The current status of Pierces Creek is that we were asked by the territory to propose an amendment for the one house remaining and the authority had, at its meeting on 17 May—last week—declined to agree to propose such an amendment, for similar reasons to that which we gave formerly. Because the territory is not proposing to rebuild the houses, the amendment that was sought was to allow for lease changes that would allow the sale of that property.

**Mr Rohl**—That is right.

**Ms Pegrum**—Or for its use as a rural development. They were also requesting it on the basis of being able to implement a fire abatement zone. We have advised them that we will be doing that formally so they do not require an amendment for that purpose.

**Senator LUNDY**—On what basis did you reject the most recent request?

**Mr Rohl**—We rejected the most recent request on similar grounds to previously: that the single block for residential was 1,400 square metres. That is essentially residential in nature and it raised concerns of having a single residential block of 1,400 square metres smack in the middle of the National Capital Open Space System, which is obviously inconsistent with the principles and policies: to have urban development, or one residential block, in the open space system.

**Senator LUNDY**—My understanding was that previously the NCA's position was that it was okay to rebuild the existing settlement, just not enlarge it. Are you now saying that your position has changed?

**Mr Rohl**—No. What I am saying is that, in terms of what was requested, the one block would be residential in nature and not part of the National Capital Open Space System. What was previously agreed was the issue of sustainability of 13 blocks versus 25, if I recall correctly. Certainly one individual residential lot would not be sustainable.

**Senator LUNDY**—So they cannot have 25 and they cannot have one. You would only approve 13.

**Ms Pegrum**—No, they are different issues. The 13 houses did not require any amendment to the plan to rebuild.

**Senator LUNDY**—Sure, because they were already there, at least notionally.

**Ms Pegrum**—They were already there. What the territory requested was, in the event that they rebuilt them, that we propose an amendment to allow for them to be leased so that they could then be presumably sold either to the current tenants—who are largely Housing Trust tenants, as I understand it—or in the future. The territory declined to wish to rebuild. Then quite recently we received another request from the territory to provide for an amendment for the single house. As I recall, the conditions associated with it were that it would be a rural

lease and that it would be necessary in order to allow for the fire abatement zone. The latter does not require an amendment and the view of the authority was that the size of the block that was being countenanced would not sustain rural activity sufficient to warrant a rural lease and therefore it was inappropriate to propose an amendment.

**Senator LUNDY**—That means that the lessee is stuck out there unable to even sell?

**Mr Scott-Bohanna**—The house is owned by the housing trust. The house is tenanted, not leased.

**Senator LUNDY**—I thought you said the amendment that was put to you that you rejected would have enabled the ACT government to sell that block. Is that the case?

**Ms Pegrum**—Yes, that is true.

**Senator LUNDY**—In other words, it could have allowed the tenant to purchase that block?

**Ms Pegrum**—That would be true, yes.

**Senator LUNDY**—And you have prevented that?

**Ms Pegrum**—We have said we will not propose the amendment. That is correct.

**Senator LUNDY**—I am at a bit of a loss. Can you run through your argument as to why you would prevent the ACT government from allowing that tenant to purchase that property?

**Ms Pegrum**—I think we have just done that. I am quite happy, once we have written to the territory, to provide a copy of that correspondence to the committee, which will set out our reasons.

**Senator LUNDY**—Have you advised the territory of this decision?

**Ms Pegrum**—Not at this stage, no.

**Senator LUNDY**—Have you advised the lessee?

**Ms Pegrum**—It is not our responsibility to do that. The proponent was not the lessee. We have had no correspondence from them whatsoever.

**Senator LUNDY**—I think that is extraordinary and I will comment on it further at another point in time. I want to go to the media from yesterday, the National Capital's 'Sound and light show illustrates Canberra at its best' article and the self-described multimedia initiatives. Can you describe the source of the funding for these types of promotional activities?

**Ms Pegrum**—We are funded under output 2 for promotional activities of this nature. The National Capital Exhibition is funded through output 2. These particular products are replacements for existing and out-of-date components of the exhibition, with the exception of Virtual Canberra, which has been developed in-house by the authority as an outreach tool. The light show replaces the old laser model. There are various reasons for that to do with the practicalities of running laser but also updating the information available and the way it is presented. The film replaces the film that was shown in the little theatre in the exhibition. Virtual Canberra, as I said, is an extension and enhancement of our website capability.

**Senator LUNDY**—The article mentions the Virtual Canberra website was at a cost of \$18,000. Did you say you did that in-house, or did that go to tender?

**Ms Pegrum**—We developed it in-house.

**Senator LUNDY**—None of that was contracted out?

**Ms Pegrum**—No. We got a little bit of consultancy help on the actual website itself, but the bulk of it was done in-house with our IT people and web designers, including the people making the verbal presentations. They are all NCA staff.

**Senator LUNDY**—Who was the consultant and what was the value of the consultancy?

**Ms Pegrum**—All I have here is that the total cost of redevelopment was approximately \$18,000, so I will take on notice which consultants we used and in what capacity.

**Senator LUNDY**—And if there was a tender process for that consultant?

**Ms Pegrum**—Not for Virtual Canberra because it is only \$18,000, so within the procurement guidelines there is no need to go to tender.

**Senator LUNDY**—But you are saying the consultant was not for \$18,000 anyway? It was for less?

**Ms Pegrum**—No. That is what I am advised.

**Senator LUNDY**—Was the new film made in-house as well?

**Ms Pegrum**—No, that was produced by Bearcage Productions at a cost of approximately \$80,000 and it was tendered.

**Senator LUNDY**—Bearcage are a local film production company, aren't they?

**Ms Pegrum**—That is correct, yes.

**Senator LUNDY**—That is very good to see. And the DVD presentation?

**Ms Pegrum**—The Canberra light show was produced by Mental Media Pty Ltd at a total cost of \$180,000. That was tendered.

**Senator LUNDY**—All of those were within your existing budget?

**Ms Pegrum**—That is correct, yes. I should just clarify that they were all within the existing budget but I believe I said funded out of output 2. In fact, I believe the film and the light show were funded in whole or in part also from our administered side of the budget through the replacement programs, because the exhibition is an administered asset.

**Senator LUNDY**—If you could take on notice providing those details, that would be helpful. The National Capital's role in promoting output 2, that outreach role, has obviously changed and developed over the years. I note that the ACT government obviously continues to play a substantial role in the promotion of Canberra. To what degree is the NCA able to align itself and work with the ACT government strategies in promoting Canberra also as the national capital and generating interest in not only the national institution but Canberra as a destination generally?

**Ms Pegrum**—Quite substantially. That has also been developing over the years. We were required to establish a partnership plan—in fact, by Senator Campbell—as part of the budget in 2004-05, from memory, which looked at ways of not only engaging with the territory government but with private sector groups in the delivery of some of our promotional

activities, in particular events on national land. That has borne considerable fruit, typically in relation to the way in which Tropfest and Summer in the Capital are delivered. In addition to that—directly with the territory, of course—we have been moving towards a far more collaborative approach in relation to delivery of Australia Day, and the territory supports us also through their marketing for the Australia Day Live concert. We have also been working with the territory in relation to opportunities for Australia Day next year.

At the moment there is a draft—I will call it an MOU; it may become an agreement or a letter of arrangement between us for Australia Day over the next three years. That is proposed. We have liaison with Australian Capital Tourism on a fairly routine basis, largely with the chief executive, and we certainly have liaison with Jeremy Lasek within the Chief Minister's Department, on a range of activities that they are out there promoting; typically the more recent one to bring more people to Canberra for work opportunities, simply by providing graphic material and the like. So to the extent that we can, we try and involve ourselves with the territory as closely as possible to complement each other's activities.

Perhaps one of the most successful has been the consortium associated with the National Capital Education Tourism Program that began with a survey which we funded in 1998-99, from memory, and then grew into the 2001 initiative, and it has been very successful since then. We are currently in discussions with the National Capital Education Tourism consortium and DEST in relation to the new funding to DEST for the Civic outreach program that was announced in this budget. We do make a substantial effort, as do they, to work in tandem.

**Senator LUNDY**—Thank you for that. I am going to jump around a few of my remaining issues now. This is another perennial one, Senator Campbell: the child-care centre for Parliament House. I know we have discussed it previously, the process for approval for a building within the Capital Hill site. We have not seen any formal proposals yet other than a feasibility study done some years ago which proposed a child-care centre in the north-east corner of Capital Hill. Can you outline—perhaps to refresh certainly my memory—what the NCA's involvement would be in approving the capital works for such a facility, were it to attract government funding, capital works funding, including what complications, if any, would occur if that were to be privately managed?

**Ms Pegrum**—With respect to the first, to my knowledge, certainly I personally have not seen any request from parliament associated with that since the feasibility study.

**Senator LUNDY**—You would not have had a request. That is my understanding from joint house. But because this issue has been discussed endlessly, certainly amongst parliamentarians and representatives of staff in this building, I thought it might be useful to sort of gauge a heads-up on what such a proposition would involve from the NCA's perspective.

**Ms Pegrum**—To go to the last part of your question, we would have no role in relation to whether it was private sector managed. That would be a matter for the Presiding Officers.

**Senator LUNDY**—That would not be an issue for you?

**Ms Pegrum**—No. Our issue would be works approval under the National Capital Plan, because it is within the parliamentary precinct area which is a designated area of the National Capital Plan. We would be required to give a works approval, as would both houses of

parliament, and that constitutes our role. I can foresee no reason why a child-care centre would present as an amendment to the National Capital Plan. I think I have made that point previously.

**Senator LUNDY**—From memory, too, another issue would be design and siting and the qualitative assessment of the capital works.

**Ms Pegrum**—That would be part of the works approval.

**Senator LUNDY**—Okay. It does not sound too hard then. I will send this *Hansard* to the Presiding Officers.

**Ms Pegrum**—Thank you so much, Senator.

**ACTING CHAIR**—Sounds terribly easy really, doesn't it?

**Senator LUNDY**—All too easy! Another issue: there is a rumour going around that there is a suggestion of a 2,000-metre rowing course. I should tell everybody—they already know—that I row, and I am the patron of the Canberra Rowing Club. I certainly think it would be a fantastic thing to see a 2,000-metre rowing course; everyone knows that. Can you tell me where it is up to?

**Ms Pegrum**—It is in our proposed business plan for 2006-07, to do the feasibility work, and we have allocated internally funding to do that. I will ask Mr Scott-Bohanna to bring you up to speed on where we got to in this financial year.

**Senator LUNDY**—Thank you.

**Mr Scott-Bohanna**—I have consulted with every person that enjoys rowing, I think, in Canberra, or they have consulted with me is probably a more accurate way of describing the process.

**Senator LUNDY**—Excellent.

**Mr Scott-Bohanna**—I happened to go to uni with a couple of the local Masters rowers, so when I got the job they began knocking on my door. But the reality is that this idea has been around since 1964 when the lake was first filled. There have been a number of processes looking at it, without really doing it thoroughly and appropriately. We have allocated \$100,000 for the cost of the work associated with the feasibility study, because not only does it need to establish whether or not you can fit a 2,000-metre course plus suitable start distances and run-off distances but also there are issues like the depth of the course and so on, the impact it would have on adjacent shorelines, and more important probably I think is how you would address the questions of car parking, infrastructure services, sewerage and power and so on. It is a bit bigger than just simply where 2,000 metres can fit in the lake.

It is also worth observing that, from our examination through our cadastral map system, it is a very tight fit to make it fit, and it may well be that it will have to be a compromised 2,000-metre course rather than an absolutely uncompromised course. But that is what the feasibility study will establish.

**Senator LUNDY**—I am trying to imagine what 'compromised' means in those circumstances.

**Mr Scott-Bohanna**—In a sense at the moment you have a compromised 1,800-metre course because the run-off distance on one lane is extremely short. It might be that you cannot have a course with the ideal of about 100 metres past the finish line to be able to stop. You might not be able to have that on all the lanes. It might also be that you have to have the start pontoon partially on land, so you bring it right back, as close to the shore as possible.

**Senator Ian Campbell**—Or fit the eights with sea anchors so that when they cross the line you just chuck a little parachute out the back and stop them really quickly.

**Senator LUNDY**—I will submit that to the ACT Rowing Association on your behalf, Senator Campbell. Thank you for that input. Very creative. It probably would have helped in a few cases that come to mind. It is a tight fit. Thank you for that. I will look forward to hearing more about it. I am interested in the impact of the Uhrig review on the governance structures of the National Capital Authority. Can you advise me as to the current status of the review and what decisions, if any, have been made by the government with respect to the National Capital Authority's governance structures?

**Ms Pegrum**—To date, what I can tell you is that we have been assessed against the Uhrig executive management template. That template was seen to be the closest fit with our current operating and governance arrangements as established under the act. The assessment recommendations have been agreed to by the Minister for Finance and Administration, Senator Minchin, and we anticipate a statement of expectations will be provided to us by Minister Lloyd by the end of this financial year. We would then be given some three months to reply with a statement of intent. That is all I can tell you at this point in time, Senator. The assessment process is conducted by DOFA, although we were consulted. Any other discussions on it would best be provided by the minister.

**Senator LUNDY**—Perhaps you can help me recap here. The Uhrig review looked at weighing up the merits of an executive management structure against a statutory board or more commercial structure. Is that correct?

**Ms Pegrum**—I think one was called the executive template and the other the corporate.

**Mr Wales**—Yes, it was. The two areas were the executive management template, which is under the FMA Act. The other one is in relation to corporations under the CAC bodies as well. We were assessed, as the chief executive said, under the executive management template because that basically fitted the way that the organisation is structured.

**Senator LUNDY**—That is where you are at the moment too, aren't you, under the FMA Act?

**Mr Wales**—Yes.

**Senator LUNDY**—Are you able to tell the committee what implications that has for the status of the current board of the NCA?

**Ms Pegrum**—I do not believe that I can. If you referred that to the minister that would be appropriate.

**Senator LUNDY**—In terms of DOFA's correspondence to the NCA and now your opportunity to—

**Mr Wales**—Sorry, Senator, I need to clarify: it is actually the department, the portfolio. DOTARS carried out the review in consultation with the department of finance.

**Senator LUNDY**—Having been advised that the executive template is the applicable one, and that obviously being accepted by DOTARS, the NCA has been advised of that fact?

**Ms Pegrum**—Yes.

**Senator LUNDY**—What happens next?

**Ms Pegrum**—As I said, we are waiting on the statement of expectations.

**Senator LUNDY**—Who prepares that—DOTARS?

**Ms Pegrum**—Minister Lloyd, so it is the minister's expectations of the authority, and the authority then responds with a statement of intent. Any other changes associated with the legislation are really matters associated from the minister and DOTARS.

**Senator LUNDY**—The next step will happen when you get that direction from the minister?

**Ms Pegrum**—That is correct.

**Senator LUNDY**—Okay. I note that there have been some changes in the board.

**Ms Pegrum**—That is correct.

**Senator LUNDY**—I note the departure of Mr Arthur Kenyon—

**Ms Pegrum**—Yes.

**Senator LUNDY**—and certainly recognise his contribution. And, Ms Pegrum, your reappointment?

**Ms Pegrum**—Yes, that is correct, for three years.

**Senator LUNDY**—Which will take your appointment to how long?

**Ms Pegrum**—Overall, that will be 11 years.

**Senator Ian Campbell**—We are hoping to see the State Circle development sod-turning before the end of the next term.

**Senator LUNDY**—Another three years should probably see it done and dusted. What do you think? I am not going to hold my breath but I live in hope, as I think many people do. I note also the appointment of the new chairman, Mr Michael Ball.

**Ms Pegrum**—Yes.

**Senator LUNDY**—And a new member of the board, John Murray.

**Ms Pegrum**—That is correct.

**Senator LUNDY**—Can you, if you are able, reflect on the credentials of the new board members? You cannot say anything bad about it, can you?

**Ms Pegrum**—No. All I can tell you is that Michael Ball was a member of the authority prior to having been appointed the chairman.

**Senator LUNDY**—You do not have to reflect on their credentials. I did not word that very well.

**Senator Ian Campbell**—We could provide you with details of their background.

**Senator LUNDY**—Yes.

**Senator Ian Campbell**—There is probably in a press release.

**Ms Pegrum**—Yes, there are media releases.

**Senator LUNDY**—There is probably a public statement that would have that effect and I have probably seen it anyway. Can you run through with me who the current members of the board are and the remuneration associated with their positions on the board?

**Ms Pegrum**—There is Mr Michael Ball, the chairman, part time through to 7 May 2008; myself, the chief executive, full time through to 1 June 2009; Denis Page, part-time appointee until 31 December 2006; John Seccombe, whose appointment is part time to 31 December 2006; and John Murray, whose appointment is through to 7 May 2009. The Remuneration Tribunal sets the remuneration allowances for the authority members. The chairperson receives \$39,750 per annum, paid fortnightly, plus tier 1 travel allowances at \$322 per overnight absence. The tier 1 is the highest class of travel available. The part-time members are paid at \$16,000 per annum, plus tier 1 travel allowances at \$322 per overnight absence. My remuneration at 8 February 2006 was \$221,519, of which the salary is \$173, 251.

**Senator LUNDY**—Thank you. To wrap up, I note the efforts of the minister to promote more expansive use of the lake for different water sports, particularly the waterskiing trial.

**Ms Pegrum**—Yes.

**Senator LUNDY**—Can you tell me what is happening with that, please?

**Ms Pegrum**—We have completed the trial and the authority has made a decision on that which we are about to go forward to the minister on.

**Senator LUNDY**—Are you able to speak about that in advance of telling the minister?

**Ms Pegrum**—I would prefer to brief the minister first. I would be happy to provide that to the committee afterwards.

**Senator LUNDY**—What other plans are afoot to make better use of the lake precincts?

**Ms Pegrum**—We did go out with an EOI in relation to other recreational or commercial uses of the lake and that process has closed. I believe we are able to say how many EOIs we received.

**Mr Lasek**—Seven responses have been received and are currently being reviewed.

**Senator LUNDY**—I look forward to further announcements on that as well. Thank you very much for your time.

**Ms Pegrum**—Thank you, senators.

**ACTING CHAIR**—I declare the meeting adjourned. We will resume at nine tomorrow morning.

**Committee adjourned at 10.42 pm**