



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL  
AFFAIRS

ESTIMATES

**(Supplementary Budget Estimates)**

TUESDAY, 31 OCTOBER 2006

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**

**STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**

**Tuesday, 31 October 2006**

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

**Senators in attendance:** Senators Bartlett, Brandis, Carr, Crossin, Chris Evans, Heffernan, Johnston, Joyce, Ludwig, Nettle, Patterson, Payne, Scullion, Siewert and Trood

**Committee met at 9.05 am**

**ATTORNEY-GENERAL'S PORTFOLIO**

**In Attendance**

Senator Ellison, Minister for Justice and Customs

**Management and accountability**

Mr Robert Cornall AO, Secretary

Mr Miles Jordana, Deputy Secretary, Criminal Justice and Security

Mr Ian Govey, Deputy Secretary, Civil Justice and Legal Services

Mr Richard Oliver, General Manager, Corporate Services Group

Ms Jan Blomfield, Assistant Secretary, Corporate Services Group

Mr David Finlayson, Assistant Secretary, Corporate Services Group

Mr Graham Fry, General Manager, Information and Knowledge Services

Ms Sue-Ellen Bickford, General Manager, Financial Services Group

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

**Outcome 1: An equitable and accessible system of federal civil justice**

**Output 1.1**

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Ms Sandra Power, Assistant Secretary, Civil Justice Division

Ms Sue Pidgeon, Assistant Secretary, Family Pathways Branch, Civil Justice Division

Mr Kym Duggan, Assistant Secretary, Family Law Branch, Civil Justice Division

Mr Peter Arnaudo, Assistant Secretary, Dispute Management Family Pathways Branch,  
Civil Justice Division

Ms Deborah Turner, Acting Assistant Secretary, Administrative Law and Civil Procedures  
Branch, Civil Justice Division

Ms Deborah Nance, Family Law Branch, Civil Justice Division

Mr Matthew Osborne, Family Law Branch, Civil Justice Division

Ms Amanda Bush, Family Law Branch, Civil Justice Division

Ms Jane Selwood, Family Law Branch, Civil Justice Division

**Output 1.2**

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

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

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Ms Amanda Davies, Assistant Secretary, Classification Branch  
Mr Jim Faulkner PSM, Assistant Secretary, Constitutional Policy Unit

**Output 1.3**

Ms Philippa Lynch, First Assistant Secretary, Information Law and Human Rights Division  
Ms Gabrielle Mackey, Acting Assistant Secretary, Human Rights Branch  
Ms Helen Daniels, Assistant Secretary, Copyright Law Branch  
Mr Colin Minihan, Acting Assistant Secretary, Information Law Branch

**Output 1.4**

Mr Bill Campbell QC, First Assistant Secretary, Office of International Law  
Mr Greg Manning, Assistant Secretary, International Security and Human Rights Branch  
Mr Stephen Bouwhuis, Assistant Secretary, International Trade law and General Advising Branch

**Output 1.5**

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

**Output 1.6**

Mr Iain Anderson, First Assistant Secretary, Legal Services and Native Title Division  
Mr Steven Marshall, Assistant Secretary, Native Title Unit  
Mr Richard Glenn, Acting Assistant Secretary, Native Title Unit

**Output 1.7**

Dr James Pople, First Assistant Secretary, Indigenous Justice and Legal Assistance Division  
Mr John Boersig, Assistant Secretary, Indigenous Law and Justice Branch  
Ms Katherine Jones, Assistant Secretary, Legal Assistance Branch

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

Ms Joanne Blackburn, First Assistant Secretary, Criminal Justice Division  
Dr Dianne Heriot, Assistant Secretary, Community Safety and Justice Branch  
Mr Geoff Gray, Assistant Secretary, Criminal Law Branch  
Ms Judith Pini, Principal Legal Officer, Criminal Law Branch  
Mr Craig Harris, Assistant Secretary, National Law Enforcement Policy Branch  
Ms Catherine Hawkins, Assistant Secretary, International Crime Cooperation Branch  
Mr Anthony Seebach, Principal Legal Officer, International Crime Cooperation Branch  
Ms Toni Dawes, Principal Legal Officer, International Crime Cooperation Branch  
Mr Nick Morgan, Acting Assistant Secretary, International Crime Branch  
Ms Sandra Bennett, International Crime Branch  
Ms Elizabeth Kelly, Executive Director, AusCheck  
Ms Annette Bouchier, Assistant Secretary, AusCheck

**Output 2.2**

Mr Keith Holland, First Assistant Secretary, Security and Critical Infrastructure Division  
Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch  
Mr Geoff McDonald PSM, Assistant Secretary, Security Law Branch  
Mr Peter Wythes, Acting Assistant Secretary, Critical Infrastructure Protection Branch

**Output 2.3**

Mr Tony Pearce, Director General, Emergency Management Australia  
Ms Diana Williams, Assistant Secretary, Emergency Management Policy  
Mr Peter Channells, Assistant Secretary, Community Development  
Mr Morrie Bradley, Director, Business and Governance

**Output 2.4**

Mr Martin Studdert, Executive Director, Protective Security Coordination Centre  
Mr Paul de Graaff, Assistant Secretary, Counter-Terrorism Branch  
Mr Mark Brown, Acting Assistant Secretary, Security Programs Branch  
Ms Belinda Moss, Assistant Secretary, Information Coordination Branch  
Ms Kelly Williams, Assistant Secretary, Policy and Services Branch  
Mr Mika Kontiainen, Assistant Secretary, APEC 2007 Security Branch  
Mr Lee Gordon, Executive Officer, Executive Services Section

**Administrative Appeals Tribunal**

Mr Doug Humphreys, Registrar  
Ms Sian Leathem, Assistant Registrar

**Australian Crime Commission**

Mr Alastair Milroy, Chief Executive Officer  
Mr Andrew Phelan, Executive Director, Infrastructure and Corporate Services  
Mr Kevin Kitson, Executive Director, National Criminal Intelligence  
Mr Michael Outram, Executive Director, National Operations  
Mr Lionel Newman, Executive Director Strategy and Governance

**Australian Customs Service**

Mr Michael Carmody, Chief Executive Officer  
Mr John Drury, Deputy Chief Executive Officer  
Mr Neil Mann, Deputy Chief Executive Officer  
Mr Jon Brocklehurst, Acting Deputy Chief Executive Officer  
Mr Chris Ramsden, Acting Chief Financial Officer  
Mr Murray Harrison, Chief Information Officer  
Rear Admiral James Goldrick, Director-General Coastwatch  
Mr Tom Marshall, Deputy Director-General Coastwatch  
Ms Marion Grant, National Director Border Compliance and Enforcement  
Ms Sue Pitman, National Director Cargo and Trade  
Ms Jane Bailey, National Director Border Intelligence and Passengers  
Ms Margaret Jamieson, Acting National Manager Staffing  
Ms Annwyn Godwin, Acting National Manager People and Place  
Mr Andrew Rice, National Manager Trade Measures  
Mr Jeff Buckpitt, National Manager Drugs and Precursor Program Initiatives  
Ms Jo Corcoran, National Manager Cargo Systems

**Australian Federal Police**

Mr Mick Keelty, Commissioner  
Mr John Lawler, Deputy Commissioner  
Mr Andrew Colvin, Chief of Staff  
Mr Trevor Van Dam, Chief Operating Officer

Mr Tony Negus, National Manager Human Resources

Mr Allan Gaukroger, Chief Financial Officer

**Australian Security Intelligence Organisation**

Mr Paul O'Sullivan, Director-General

**CrimTrac**

Mr Ben McDevitt AM APM, Chief Executive Officer

Ms Nicole McLay, Chief Financial Officer

Mr Peter Bickerton, Deputy Chief Executive Officer, Operations

Mr Matt Cahill, Deputy Chief Executive Officer, Support

**Federal Court of Australia**

Mr Warwick Soden, Registrar and Chief Executive Officer

Mr Philip Kellow, Deputy Registrar

Mr Gordon Foster, Executive Director Corporate Services

**Federal Magistrates Court**

Mr John Mathieson, Chief Executive Officer

Ms Charlotte Stockwell, Executive Director Operations

Ms Susan Cibau, Dispute Resolution Co-ordinator

**Human Rights and Equal Opportunity Commission**

Ms Pru Goward, Sex Discrimination Commissioner and Commissioner Responsible for Age Discrimination

Mr Graeme Innes AM, Human Rights Commissioner and Commissioner Responsible for Disability Discrimination

Mr Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner and Commissioner Responsible for Race Discrimination

Ms Diana Temby, Executive Director

Ms Karen Toohey, Acting Director, Complaint Handling

**Office of the Director of Public Prosecutions**

Mr Damian Bugg AM QC, Director of Public Prosecutions

Mr John Thornton, First Deputy Director

Ms Stela Walker, Deputy Director Corporate Management

**Office of Parliamentary Counsel**

Mr Peter Quiggin, First Parliamentary Counsel

Ms Glenyce Francis, General Manager

**Office of the Privacy Commissioner**

Ms Karen Curtis, Privacy Commissioner

Mr Andrew Solomon, Director Policy

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

**CHAIR (Senator Payne)**—I declare open this public meeting of the Senate Standing Committee on Legal and Constitutional Affairs. The committee will begin with questions to the Administrative Appeals Tribunal. The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 31 August 1999. The committee has agreed to the date of Wednesday, 13 December 2006 for receipt of answers to questions taken on notice and additional

information. The committee requests that answers be provided to the committee in electronic format wherever possible.

I welcome Senator the Hon. Chris Ellison, the Minister for Justice and Customs and Minister representing the Attorney-General; Mr Robert Cornall, Secretary of the Attorney-General's Department; and officers of the department and associated agencies. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. I also draw to the attention of witnesses the resolutions agreed to by the Senate on 25 February 1998, 'Procedures to be observed by Senate committees for the protection of witnesses', and, in particular, to resolution 1(10) which states in part:

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

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

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

Evidence given to the committee is protected by parliamentary privilege. I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. For the record I note that there remains one outstanding response to questions taken on notice from the budget estimates round of May 2006 and I thank you, Mr Cornall, and your officers and the minister's office for assistance in progressing those responses. Minister, do you or Mr Cornall wish to make an opening statement?

**Senator Ellison**—I have no opening statement to make.

**Mr Cornall**—I do not have an opening statement to make either.

[9.09 am]

#### **Administrative Appeals Tribunal**

**Senator LUDWIG**—I was after some statistics more broadly about the number of appeals, particularly from the SSAT to the AAT. When did your annual report become available?

**Mr Humphreys**—The report should be tabled within the next three to four weeks. We have been dealing with our publishers, and the latest estimate is the report will be delivered to the Attorney-General's Department for tabling purposes by 24 November.

**Senator LUDWIG**—That is late. I think there is an administrative order—

**Mr Humphreys**—Yes. I do apologise. I would have preferred it to have been available for these hearings, but I do have, taken from the annual report, a number of figures up to 30 June on appeals and statistics. I can hand those up if they are of interest to you.

**Senator LUDWIG**—I might take the lead from the chair in respect of this; you could provide those. But there are a number of statistics that might have been in the annual report which may have saved me from asking about them here. Alternatively, if they are not in the

annual report then clearly I can get them from you, but we will struggle with what we have and see how we go.

**Mr Humphreys**—Certainly.

**Senator LUDWIG**—From the previous annual report it seems that there has been a change in the number and type of matters from the SSAT. Perhaps I can start with a broader question. Is there something happening there? Are a greater number of appeals coming through from the SSAT and then landing in the AAT?

**Mr Humphreys**—The number of appeals in the social security area is up 10 per cent on the previous year, to 30 June 2006. That represents an additional 149 appeals.

**Senator LUDWIG**—Do you keep statistics as to whether they are found in favour of the applicant or whether they are dismissed?

**Mr Humphreys**—We do.

**Senator LUDWIG**—And of those?

**Mr Humphreys**—We have a table which sets out the outcomes of appeals. We have broken it up into departmental applications and non-departmental applications. For example, 20.2 per cent of departmental applications were set aside or varied by consent; non-government applications, 12.4 per cent. Twenty-six per cent of departmental applications and 8.8 per cent of non-government applications were decisions set aside or varied by the tribunal following hearing. As I said, I have the table here and we can provide that in some detail if you wish us to.

**Senator LUDWIG**—Thank you very much; that would be helpful. When you say ‘non-government’, is that other than the government as appellant?

**Mr Humphreys**—We break them up into individual applicant—as in social security recipients—and then we have a category that we call secretary appeals.

**Senator LUDWIG**—And that is from the department of—

**Mr Humphreys**—DEWR, FaCSIA or DEST. The change in administrative orders meant that we went from having one type of secretary appeal to three different types of secretary appeals.

**Senator LUDWIG**—Do you have the statistics which reflect the proportion from each which are seeking to be appealed and then a total amount in comparison to, say, last year or the year before that?

**Mr Humphreys**—I can hand up a table that sets out the number and percentage of applications from DEWR, DEST and FaCSIA by agency for the last three years. These are just lodgements, but it shows the number of appeals that are coming up.

**Senator LUDWIG**—Thank you; that would be helpful. Are they effectively appeals by the Commonwealth of decisions of the SSAT?

**Mr Humphreys**—Yes, that is right.

**Senator LUDWIG**—And those figures seem to reflect an increase?

**Mr Humphreys**—It is reflected in the figures. For example, during the period 1 July 2005 to 30 June 2006 there was a total of 1,643 applications received. By agency, 41 were from FaCSIA, four were from DEST and 202 were from DEWR, so there was a total of 247 secretary appeals which represented 15 per cent of the total number of appeals that were received in the social security area. That was up from 5.5 per cent in the year before and 6.3 per cent in 2003-04. So there has been quite an increase in the number of secretary appeals that are coming through.

**Senator LUDWIG**—Do you have statistics on the nature of those types of appeals? In the sense that they are from DEST, DEWR and FaCSIA, do they relate to veterans' affairs or—

**Mr Humphreys**—Veterans' affairs are in a different area.

**Senator LUDWIG**—Perhaps I can pick a different one, then. Do they relate to social security payments, Newstart, or—

**Mr Humphreys**—Yes, again, we have got those figures. For example, within DEWR, of the numbers that we got, 103 related to disability support pension, 41 to overpayment and recovery of debts, 19 to Newstart, 18 to compensation preclusion period, 15 to parenting payment and six to other things. In terms of FaCSIA, there were 15 to overpayment and recovery of debts, 10 to age pension, three to the pension bonus scheme, three to special benefits and 10 to other types.

**Senator LUDWIG**—Is any one group increasing? In other words, I refer to appeals that are being taken in there. I do not know whether you break down your statistics to that level.

**Mr Humphreys**—We have not broken it down to that extent, but what we can say is that the numbers of appeals are increasing across the board. In fact, it worked out at about a 200 per cent increase in the number of secretary appeals.

**Senator LUDWIG**—Is the Commonwealth legally represented in those matters?

**Mr Humphreys**—It is represented. In some cases it may be Centrelink advocates, who may not be legally qualified, but it is represented in those appeals, yes.

**Senator LUDWIG**—Do you have statistics on the self-represented litigants in the AAT—in other words, whether or not the respondents are represented?

**Mr Humphreys**—I would have to take that on notice, to see whether or not we record whether they are represented or not.

**Senator LUDWIG**—I am not sure whether you do. If there is an increasing number of matters being appealed to the AAT then of course it is—I know it is less formal—a more formal process, where there is sometimes legal counsel representing the Commonwealth and the respondent may not have the resources or the ability to engage counsel.

**Mr Humphreys**—Having said that, I think it is important to note that within the AAT we take a great deal of care to provide as much assistance as we can to unrepresented applicants or respondents, if they are respondents to a secretary appeal. If they are unrepresented, first of all we provide an outreach program where they are contacted by a staff member. We go through and provide them with information as to the nature of the appeal, the processes, what is likely to be expected and what they might be required to provide. We have a legal aid

scheme in place, and we offer a referral to the relevant legal aid commission in the state, who provide an in-house service. When I say 'in-house', they actually come to the tribunal and we make appointments for them to see a legal aid representative from the legal aid commission. In many cases they are quite expert in that area.

If they fit within the relevant legal aid guidelines, legal aid is then made available to them. If not, they can provide them with advice and assistance and/or referral to a pro bono provider of legal services. I am not going to say for one minute that that system is perfect and that everybody gets representation, but it is the best that we can put in place to try and ensure that people have ready access to advice and assistance within the means that are available.

**Senator LUDWIG**—But you are not sure whether you keep statistics on the self-represented litigants or respondents that appear, particularly in Commonwealth appeals?

**Mr Humphreys**—No. I can take that on notice. We have a very old computer system that we look after, and I am quite certain it does not record that. We hope that will be recorded in the near future, when we introduce a new system.

**Senator LUDWIG**—I might ask about that, then. Where are you up to with that?

**Mr Humphreys**—The system is ready for rollout in the latter half of this year. We are looking at Sydney: around the first or second week of December we will roll it out. We are in the final phases of populating various fields in relation to it, and we are very satisfied with the product that we have. We think it will be a very good addition to our system.

**Senator LUDWIG**—And will there be more information in the annual report on the rollout of that? Is it a case management system; is it a court record—

**Mr Humphreys**—It is a case management system, yes.

**Senator LUDWIG**—What is it called?

**Mr Humphreys**—We have not come up with a name for it yet. One of the names that was suggested was 'Genesis', it being a new start. It is a system provided by SBC. They are a commercial provider. They have systems in place in a number of state and territory places, such as the South Australian Residential Tenancies Tribunal. It is a commercial off-the-shelf system, so we have not developed it in house. It is probably an 85 per cent fit, and we have modified it for our own purposes. It should be a very good system.

**Senator LUDWIG**—What is the cost of it?

**Mr Humphreys**—I do not have the precise figures here. The system involves a number of discrete elements. The project cost was around \$500,000—that is the purchase of the system. From there, we have to roll out new PCs, which has been an additional cost, and we have to do server upgrades. I can provide the precise cost on notice.

**Senator LUDWIG**—I want to know what the total cost was, what was budgeted, whether it is running according to budget and whether it is running on time in terms of the eventual rollout and implementation. I would also like to know whether you have looked at the Department of Finance and Administration site to ensure that the ICT program, your software and the management of your contract are in accordance with the AGIMO's guidelines.

**Mr Humphreys**—The project is running slightly behind time—about four months. In terms of the cost, it is running slightly over budget. When I say ‘slightly’, it is within an acceptable limit—it has not doubled or anything like that. In terms of the other stuff, I would need to come back to you on that.

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

**Senator CROSSIN**—The answers to the questions that we have may well be revealed in the annual report, so we can put them on notice. They go to the average cost of social security matters or the percentage of social security applicants that were self-represented.

**Mr Humphreys**—They would be best taken on notice. I do not have with me that level of detail.

**Senator CROSSIN**—Okay.

**Senator LUDWIG**—What is the reason for the lateness of the annual report? Did you provide a reason?

**Mr Humphreys**—I can provide a reason.

**Senator LUDWIG**—Could you tell us, then.

**Mr Humphreys**—We had a changeover of staff. Unfortunately, the staff member who was principally responsible for the preparation of the annual report now works for the Attorney-General’s Department.

**Senator LUDWIG**—I can blame the minister.

**Mr Humphreys**—We have a brand new group of staff who are looking after it, and they have found that it has taken more time than they expected. It is as simple as that.

**CHAIR**—Thank you.

[9.24 am]

#### **Human Rights and Equal Opportunity Commission**

**CHAIR**—Welcome. We will go to questions from Senator Ludwig.

**Senator LUDWIG**—Do you have the annual report?

**Ms Temby**—The annual report has not been tabled as yet.

**Senator LUDWIG**—Is there a reason for it not being tabled as yet?

**Ms Temby**—Not that I know of, Senator.

**Senator LUDWIG**—Do you know when it is expected to be tabled by?

**Ms Temby**—I will refer that to the department.

**Ms Lynch**—I will have a quick flick through my brief to see if I can find if we have a date when it was received by the Attorney-General. I am not sure of the date of the anticipated tabling.

**Senator LUDWIG**—So I can blame the minister on this one. Some of the reports have different tabling dates. That is why it was an open-ended question. I was simply asking when it was to be tabled by and then we can determine whether it should be tabled or not.

**Ms Lynch**—The information I have is that the report is due to be tabled within 15 sitting days from 20 October.

**Senator LUDWIG**—So it will not come in until later in the year.

**Ms Lynch**—No, it has not been tabled yet.

**Senator LUDWIG**—It is not due now, in that sense.

**Ms Lynch**—No, it is not overdue in terms of being tabled.

**Senator LUDWIG**—That is what I was trying to establish. HREOC has finalised the annual report and provided it to the Attorney-General. Is it with the Attorney-General at the moment?

**Mr Cornall**—The report was received by the department on 20 October, and it has to be tabled by the Attorney within 15 sitting days. As to whether it is with us or with the Attorney's office, I am not sure from the information we presently have. But it is within the time provided.

**Senator LUDWIG**—Yes. I understand that. I look forward to that report. In terms of a more broad question, I understand that Ms Goward may be leaving you soon. In terms of the way in which you manage the—I do not know whether to say 'probable' or 'perhaps'—departure of Ms Goward, how do you work that through? Does the position become vacant at a certain time? Have you looked at what you need to be able to do to ensure that there is a continuing Sex Discrimination Commissioner?

**Ms Temby**—I am happy to answer that question, but I think it may be more appropriate if the department answers the broad issues in your question.

**Senator LUDWIG**—I am happy for Mr Cornall to answer it, but the question is really about how HREOC plans—or are you saying that Mr Cornall plans for you?

**Mr Cornall**—I think the point is that Ms Goward is a statutory appointee appointed by the government. The position, as I understand it, is that Ms Goward will take leave from 4 November, and the Attorney-General will appoint an Acting Sex Discrimination Commissioner to take that role, pending the resolution of the New South Wales election and the determination of whether Ms Goward hands in her resignation or returns to the job.

**Senator LUDWIG**—What does the statutory position in terms of the act require? These circumstances often occur.

**Ms Lynch**—Section 99 of the Sex Discrimination Act allows the Attorney to approve leave of absence for the commissioner.

**Senator LUDWIG**—For an indeterminate date?

**Ms Lynch**—Yes.

**Senator LUDWIG**—So Ms Goward will go on leave from 4 November and may or may not resign at some future date.

**Ms Lynch**—It is a combination of leave, as I understand it. The commissioner is taking rec leave entitlements, which are approved by the president of the commission, and then the Attorney would grant leave of absence for the remaining period—

**Senator LUDWIG**—That is why I thought some parts of it might relate to HREOC being able to explain what the situation is.

**Ms Temby**—Ms Goward has some accrued recreation leave entitlements; she has taken that leave, requested it of the President, been approved, and she will take that to be paid in advance. But during that time she would be deemed to be on recreation leave; then the formal leave of absence approved by the minister would cut in.

**Senator LUDWIG**—From what date?

**Ms Temby**—I think Ms Goward has approved leave until early February and then the leave of absence would take effect.

**Senator LUDWIG**—Is there anyone acting in the position from 4 November?

**Ms Temby**—That has not been announced as yet but I believe Mr Cornall can clarify the matter.

**Mr Cornall**—The Attorney-General is to make an announcement about that, but no announcement has been made yet.

**Senator LUDWIG**—So it is the intention to make it from the 4th?

**Mr Cornall**—I cannot say what the Attorney is going to do. It is our understanding, but at this stage the announcement has not been made.

**Senator LUDWIG**—I accept that.

**Senator Ellison**—If it is any different, I will get back to you.

**Senator LUDWIG**—The annual leave is paid leave, I assume. Is there any unpaid component?

**Ms Temby**—From I think some time in the first week of February, or perhaps a little later. I have not got the exact date when the recreation leave will cut out—

**Senator LUDWIG**—Perhaps you can have a look at your records and get back to us.

**Ms Temby**—and then it will be unpaid leave.

**CHAIR**—Could you provide the detail of that to the committee on notice?

**Ms Temby**—I am happy to, Senator.

**Senator LUDWIG**—From the date that the Attorney-General approves—do you call it leave?

**Ms Lynch**—I think we call it leave of absence, Senator, under section—

**Senator LUDWIG**—Is that paid or unpaid?

**Ms Lynch**—That would be unpaid.

**Senator LUDWIG**—What about entitlements? Do they accrue during that period?

**Ms Lynch**—No.

**Senator LUDWIG**—I am not sure of all the entitlements that Ms Goward would have available, but there would be, I assume, a range of provisions.

**Ms Lynch**—I think arrangements have been made within HREOC for what happens with Ms Goward's entitlements.

**Ms Temby**—I am sorry, Senator; could you repeat the question?

**Senator LUDWIG**—Do any entitlements accrue during the unpaid provision—that is, from the approval at some future date by the Attorney-General to provide for leave for Ms Goward?

**Ms Temby**—No entitlements would accrue, but while you are on recreation leave you get standard entitlements, although Ms Goward has been paid those in advance of her date of going on leave, which is 4 November.

**Senator LUDWIG**—That is not unusual; if someone goes on annual leave, you can pay them in advance so that they can enjoy their holiday in some cases.

**Ms Temby**—It is exactly the same.

**Senator LUDWIG**—Are there any paid components that are not annual leave?

**Ms Temby**—No.

**Senator LUDWIG**—In terms of what happens during the annual leave component, we will have to wait for the Attorney-General to make a decision as to who may fill that position or if it remains unfilled. If it remains unfilled, what does HREOC do? Do they shift the work to another commissioner? Do you have plans afoot to take that into account?

**Ms Temby**—From discussions with the department and the Attorney, I do not believe that is going to be an issue. But should it be, obviously we have a permanent staff within the commission, including the sex discrimination unit and the staff in the age discrimination area, who would continue the daily work of the organisation. We would see being without any acting commissioner as being very much a worst case scenario.

**Senator LUDWIG**—Yes, you can't get another commissioner to fill the role if the position remains unfilled from 4 November. Is that right?

**Ms Temby**—I am sorry?

**Senator LUDWIG**—If the position remains unfilled from 4 November, can another commissioner step in and do the work in accordance with the legislative requirements or does the position remain unfilled until such time as an appointment or an acting appointment is made, in which case have you put in place processes to ensure that at least the day-to-day management of the area is underway?

**Ms Temby**—The day-to-day management of the area would be managed by the director of the unit, with me as Executive Director, and that is ongoing. The other commissioners would always step in and assist with speaking engagements and other matters, but they cannot be the Acting Sex Discrimination Commissioner unless there is an appointment made by the Attorney.

**Senator LUDWIG**—Yes; so they cannot hear matters or determine matters or provide a report in respect of matters until such time as—

**Ms Temby**—The president is responsible for complaints handling within the commission. The president accepts complaints. That is not an issue to do with the commissioners. The commissioners, after statutory amendment some years ago, are not involved in the management of the complaints process.

**Senator LUDWIG**—I mean it in a broader sense than that. They do work.

**Ms Temby**—They do a lot of work. I do not envisage this happening but, if it should happen, there is no doubt that a whole range of speaking engagements and other matters for the Sex Discrimination Commissioner would be taken up by other staff and other commissioners.

**Mr Cornall**—I perhaps should repeat, Senator, that it is our clear understanding that it is the Attorney's intention to make an acting appointment.

**Senator LUDWIG**—Thank you, Mr Cornall; I think that was clear. At the other end of the process, if Ms Goward is no longer required by the commissioner or chooses to resign, what happens at that point? When would a resignation be necessary if Ms Goward was successful? Is it when the writs are issued?

**Mr Cornall**—I am not sure of the technicalities of that. I am not sure if Ms Lynch or Ian Govey are.

**Mr Govey**—Without being too precise, our understanding is that once Ms Goward became a member of the New South Wales parliament, if that is the outcome, at that point she would need to resign.

**Senator LUDWIG**—That would be at the return of the results, at some point in there. I think Ms Goward is saying yes to that.

**Ms Temby**—Could I clarify one other matter in relation to that last question. Ms Goward does have powers under the amicus role in the commission to be a friend of the court in discrimination matters which go to court. She could delegate that before she leaves should there not be an acting appointment announced before that date.

**Senator LUDWIG**—That is helpful; thanks very much. Did you seek any legal advice, in respect of the position of the Sex Discrimination Commissioner, about leaving or potentially leaving?

**Ms Temby**—Obviously the commission did seek to clarify all of the issues surrounding this matter, particularly about leave and leave of absence—

**Senator LUDWIG**—I accept that; that is why I am asking the question.

**Ms Temby**—and those kinds of things.

**Senator LUDWIG**—So did you seek legal advice?

**Ms Temby**—Yes, we did.

**Senator LUDWIG**—Are you able to provide that to the committee?

**Ms Temby**—I do not think we usually do provide that, Senator, but could I take that on notice?

**Senator LUDWIG**—All right. I know the department does not usually provide legal advice. I am not sure that extends to agencies as well, but we can all be surprised.

**Ms Temby**—That is right, Senator. I am on a bit of uncharted territory here. Could I see whether that is appropriate or not, after consultations with the department?

**CHAIR**—Certainly, Ms Temby. We will look forward to your response.

**Senator LUDWIG**—They can sometimes provide it if they want to; they have in the past provided legal advice where they have chosen to provide it. On the process should a resignation occur: is it the usual practice that the Attorney-General will appoint an acting commissioner?

**Mr Cornall**—Yes, that is what has happened in the past when there has been a vacancy in a position.

**Senator LUDWIG**—So there is an advertisement for the position—or is it then subsequently, if Ms Goward should resign?

**Mr Cornall**—It would be the same as any statutory appointment: the government has the power to make the decision as to how it wants to make that appointment, and it would make that decision at the time.

**Senator LUDWIG**—In the budget there was \$1.8 million over two years, including \$0.6 million to the Human Rights and Equal Opportunity Commission, to meet the expected additional workload, particularly as a consequence of the changes to the Workplace Relations Act 1996. What impact has that had on the work of the Human Rights and Equal Opportunity Commission?

**Ms Temby**—I will ask my colleague Ms Karen Toohey, who is the director of complaint handling, to answer these questions.

**Ms Toohey**—There has been an increase in both complaints and inquiries in the period April to the end of September.

**Senator LUDWIG**—How many? Do you have any statistics on that, or will that be put in the annual report?

**Ms Toohey**—It is in the annual report. It reports on the increase in complaints. It does not specifically report on the increase in employment complaints. We have reported that there has been about a 60 per cent increase in employment complaints in the period April to June and then July to August, compared with the same period last year.

**Senator LUDWIG**—Is that total complaints?

**Ms Toohey**—That is employment related complaints.

**Senator LUDWIG**—Do you have the raw figures? Perhaps we can go through it, then.

**Ms Toohey**—For which period?

**Senator LUDWIG**—The last financial year and then from July to now. How do you keep the statistics? Do you do them annually?

**Ms Toohey**—We usually report on them annually.

**Senator LUDWIG**—We will look at the last full year and then the new year, if that makes sense. Do you do them by month as well?

**Ms Toohey**—I can give you a table, which might be a bit easier.

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

**CHAIR**—One of our officers will collect it from you, Ms Toohey.

**Senator LUDWIG**—We are terrific in this place; you can stay in your seat and they will come and assist you.

**CHAIR**—We are here to help, Senator Ludwig.

**Senator LUDWIG**—We are. In terms of the 60 per cent increase in complaints on employment related matters, do you keep statistics on what types of complaints they are, how long the resolution of the matter takes and what advice you give?

**Ms Toohey**—We generally do not report to that level of detail about a particular area of complaint, so we do not report particular outcomes against employment or goods and services types of complaints in the annual report.

**Senator LUDWIG**—So they are all employment related? You do not know what issues the 60 per cent increase in employment complaints relate to?

**Ms Toohey**—Not specifically. Our traditional way of recording has not broken it down to that level.

**Senator LUDWIG**—Are you surprised by the 60 per cent increase? I am. It seems to be a significant jump. Do you attribute that to the workplace relations legislation?

**Ms Toohey**—I am not really in a position to attribute it to something specific. Obviously, there was a lot of publicity around the changes in the industrial relations legislation. There was also publicity around the potential for the movement of matters from the industrial relations arena to the discrimination law arena. I cannot really comment on whether those complaints coming in would have been made in the industrial relations jurisdiction; I can really only comment on what we have received.

**Senator LUDWIG**—How many have you received in total? I am getting that table now. There are totals for employment inquiries and complaints—total issues. In April the number was 771; in May it was 1,376; in June it was 1,679; in July it was 1,358; and in August it was 1,529. That is an extraordinary number. It is jumping, isn't it?

**Ms Toohey**—It is a significant increase.

**Senator LUDWIG**—How are you coping with the workload that that has generated?

**Ms Toohey**—Senator, you mentioned we received additional funding. We have brought additional staff on to ensure the complaints are handled in a timely and effective manner.

**Senator LUDWIG**—As a proportion of work, do those additional moneys meet the rise in complaints? Is it the same proportion?

**Ms Toohey**—We are still looking at that, given that when you bring staff on there is a period in which they need to get trained up. Given this has only been a six-month period since

we have brought the staff on, we are looking at the lead times and the effectiveness of the additional staffing against the number of complaints that we have received.

**Senator LUDWIG**—The trend tells me it is rising at an increasing rate. I have not statistically analysed it yet, but if you start in April at 771 and you end in August at 1,528—

**Ms Toohey**—That is inquiries, so they are a bit easier to handle in that they are telephone inquiries or email inquiries. In complaint numbers, you can see, in respect of the proportion of employment complaints versus total complaints, that, yes, there has been a significant increase. Our expectation is that that will plateau as people get used to the change in jurisdiction. We do not expect that that will go up exponentially.

**Senator LUDWIG**—That is not being reflected in the number of total inquiries, though.

**Ms Toohey**—I also think that inquiries are related to a number of other issues. In respect of the employment inquiries, while they have gone up, you can see that trend from 900 to 700 and total inquiries for September were about 1,500. It is very hard to tell. It is quite a short period to look at trend analysis in. The annual report only reports to the end of June, so it will not reflect this trend in the same way.

**Senator LUDWIG**—In terms of handling the complaints, what is the lead time in dealing with those?

**Ms Toohey**—The lead time to a matter being allocated, from receipt to allocation, at the moment is about four weeks. That is a little longer than usual, which is between two and four weeks. If a matter is urgent, it will still be allocated on receipt.

**Senator LUDWIG**—What is causing that delay?

**Ms Toohey**—Partly, you can see the increase and there are also those issues in terms of bringing staff on and training them up. I expect we will be back to about a two-week lead time by the end of the year.

**Senator LUDWIG**—How long does it take for resolution, for a complaint to be heard?

**Ms Toohey**—The average processing time is six months. That is from receipt through to the investigation process, conciliation process and to finalisation. Obviously, there are matters that are dealt with much quicker, if they need to be, if they relate to education or a person whose employment is threatened. Some matters obviously might take longer, depending on what the issues in the complaint are.

**Senator LUDWIG**—The employment complaints are showing an increase. There is a four-week period before they get acted upon. Do you have any statistics as to the nature of those complaints—whether they relate to discrimination in employment or the more general—

**Ms Toohey**—They are all discrimination in employment of some form, Senator. I do not have a breakdown—

**Senator LUDWIG**—Whether it be age, sex or—

**Ms Toohey**—in terms of age, sex or whatever.

**Senator LUDWIG**—In terms of the workload and the current budget, will you meet the workload and budget? In other words, is there sufficient budget to meet the increased workload, even with the increase that has been provided in the budget, or will you have to make savings elsewhere? If you project these along, which I suspect your budgeting would have to do, there is an increase in inquiries, there is an increase in complaint issues and there is an increase in employment inquiries.

**Ms Toohey**—The increase is tracking slightly above what the original proposal was based on. The funding, as you are aware, is until the end of this financial year. At the moment we are reviewing that. Again, because it is such a short period until we know whether the complaint numbers will plateau, it is a little hard to predict what will happen in the future. At the moment, as I said, I expect we will be able to get back to our standard lead times by the end of the year, once staff are trained up and that sort of thing.

**Senator LUDWIG**—And you do not know, in terms of tracking the types of complaints, whether or not there is an increased number of young people or women making complaints?

**Ms Toohey**—I have not done that analysis for this purpose.

**Senator LUDWIG**—Have you had to make any changes or alterations to your current work practices to deal with the increasing number of total inquiries, complaints and issues being raised?

**Ms Toohey**—We have not made any work practice changes. Obviously the increase in staff means you might make changes in how the section is structured or that sort of thing, but essentially we are using the same process. We have a flexible process, so, as I said, if complaints come in that need urgent handling for some reason then we are able to get on to those and set them down for conciliation very quickly. But we have not changed our standard practice at this stage.

**Senator LUDWIG**—Have you engaged in any outreach or work related employment matters? In other words, have you sought additional help outside?

**Ms Toohey**—No.

**Senator LUDWIG**—Have advertisements or raising awareness of your work increased, or has that been maintained—in other words, your budget for advertising?

**Ms Toohey**—I do not have a specific budget for advertising in my section. Obviously the commission has ongoing awareness and advertising programs in place, but that is not really within my area.

**Senator LUDWIG**—Whose area is it within?

**Ms Temby**—I like to think the whole commission is actually engaged in public awareness raising, but we have a public affairs area. That kind of work—public education—goes through that public affairs section. We have endeavoured to ensure that the words of Minister Andrews are communicated to the general public and particularly to employers and to unions—that the discrimination legislation is still very firmly in place and that that has not been affected by Work Choices. We are trying to assist everyone to understand that unlawful discrimination remains unlawful. To that effect, we have been updating our website and discussing the issues with employers, employer groups, trade unions, legal aid and other community bodies.

**Senator LUDWIG**—So there has been no increase in media spend on papers over the last six months?

**Ms Temby**—I do not have the exact figures. We do put the occasional advertisement particularly in local papers to say: ‘Do you want to know about human rights? Do you want to know about your rights under discrimination law?’ I do not know if there has been an increase, but I could find that out for you.

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

**Ms Temby**—We have certainly made sure that we have been letting the general public know about their rights and responsibilities under discrimination legislation.

**Senator Ludwig**—Thank you very much.

**Ms Temby**—In relation to Ms Goward’s entitlements, I do not think this was particularly what you asked, but I would like to make clear and I think Ms Goward would like to make clear that from 4 November all of her entitlements to computers, rent allowance and all of these other matters have been completely suspended and she will not be receiving those entitlements through her recreation leave. Her recreation leave is her standard recreation leave and her rental allowance will cease from 4 November.

**Senator LUDWIG**—That was the question about other components.

**Ms Temby**—Yes, and I think I did not answer you clearly enough, so I hope I have clarified that now.

**Senator Ellison**—They will not be accessed.

**CHAIR**—I understand that. Thank you for clarifying that.

**Senator Ellison**—Even though the entitlement does continue to exist, they will not be accessed.

**CHAIR**—I appreciate the clarification, Minister. Do you have a further question, Senator Ludwig?

**Senator LUDWIG**—I was just going to follow up on that, Chair, if I may. Normally, you would expect that, with annual leave, all those conditions would continue as a component of your annual salary. I am not sure whether Ms Goward is entitled to a car or all those types of additional benefits. There may be long service leave accrual. I am not sure about the salary package or the components of it. In fact, if you wanted to, you could indicate what packages will continue. If there is payment for superannuation, does that continue?

**Ms Temby**—Yes, that does, while she is on paid leave, and also accrual of long service leave entitlements once she is on recreation leave, but the other components, for example—

**Senator LUDWIG**—Perhaps you could tell me what those other components are.

**CHAIR**—As I understood the previous discussion, Ms Temby had undertaken to provide on notice the detailed breakdown of all of this, so that we are not asking for it in bits and pieces and it is going backwards and forwards. We can continue doing that or we can take up Ms Temby’s suggestion. I am in your hands.

**Senator LUDWIG**—No, I am happy for it to be taken on notice and we can have that provided.

**Ms Temby**—Certainly.

**Senator LUDWIG**—Thanks for the clarification; will you be able to indicate which ones can be accessed and which ones will not be accessed? That will be a voluntary matter by Ms Goward, I understand?

**Ms Temby**—Yes.

**Senator LUDWIG**—Is that an agreement between you and Ms Goward? How does that work?

**Ms Temby**—Yes. Ms Goward has made it absolutely clear that she is very happy to have this on the public record.

**CHAIR**—Are there further questions for HREOC? We will go first to Senator Bartlett and then to Senator Siewert.

**Senator BARTLETT**—I have a few questions for Mr Calma. Earlier this year—I think it was in about February or March—you tabled a social justice report. Has there been a formal response to that yet from government?

**Mr Calma**—The government tabled the report on 14 February this year. As is the normal tradition, there has been no formal response to the report.

**Senator BARTLETT**—I know there was one recommendation proposing as a matter of urgency some progress on a representative body. From memory, the recommendation suggested the end of June. Has there been any action in regard to that—any sort of response, formal or otherwise?

**Mr Calma**—The recommendation was specifically in relation to establishing regional council bodies or alternative bodies with the abolition of the ATSIC regional councils. We encouraged the government to do that. There have been attempts; as I understand it, there have been two known bodies established and formally recognised publicly. I refer to the Murdi Paaki and the Ngaanyatjarra councils. They are the only two that I understand have been formally recognised.

**Senator BARTLETT**—Recognised by the government?

**Mr Calma**—By OIPC in establishing them, yes. The recommendation was that in each of the regional council areas or the current ICC—Indigenous coordination centre—areas, they should have a representative body because it is important for Indigenous people, if we are to participate in the regional partnership agreements, shared responsibility agreements and so forth, to have a formal body that government does interact with. At this stage they are not known to be established.

**Senator BARTLETT**—Is there a range of other groups or regions where people are endeavouring to establish similar bodies? Is the OIPC playing any role in facilitating that?

**Mr Calma**—That question might be better answered by government. I am trying to establish this with the Office of Indigenous Policy Coordination this year. We have sent a note requesting of them, so that we can inform our 2006 social justice report, precisely how many

of these bodies have been established. As yet we have not had a response, but the government will be able to do so; they have a unit established in OIPC to progress these matters.

**Senator BARTLETT**—Have you, or the commission more broadly, been involved in the process of developing the international convention on the rights of indigenous peoples? What sort of role has the commission been playing?

**Mr Calma**—It is a draft declaration on the rights of indigenous people, which went to the Human Rights Council and was endorsed on 29 June. It will go up to the United Nations General Assembly at their next sitting, which we expect is at the end of November or early in December. My role and HREOC's role have basically been to offer support to the United Nations working group and to indigenous people at those forums. It is part of our extended role of providing education about human rights to bodies, so we have participated in a number of those activities, right up until the conclusion of the working group's report.

**Senator BARTLETT**—If that convention is adopted, as seems likely some time before the end of the year, does that automatically become one of the measuring points or benchmarks you would use in assessing actions and activities in Australia?

**Mr Calma**—Just to clarify: it is not a convention, it is a declaration. As such, it is a non-binding document, but it will set international standards that states can pick up. It will then be up to each of the states, the governments of countries, to determine whether they adopt the declaration or not—and, really, governments are the only ones that can determine whether they will or not. But, from an indigenous person's perspective, it will be the benchmark that we will be looking to encourage governments to try and follow. What needs to be recognised is that the declaration is really a compilation of all the various references to indigenous peoples in other conventions and covenants, so there is not really anything new in there; it is just talking about what rights individuals have.

**Senator BARTLETT**—Does that declaration include references to the principle of free and informed consent? As you referred to, it is already present in one of the other conventions, in ICCPR perhaps.

**Mr Calma**—It does refer to self-determination and the rights, which are becoming a United Nations standard, to free, prior and informed consent.

**Senator BARTLETT**—I may ask a question or two of the relevant department later in the week about this but I am just trying to get a handle on what impact the crystallising of a principle such as that could have or will have in Australia. I appreciate that it is a non-binding declaration, but is having it recognised and adopted likely to mean that such principles become clearer in their implementation, that we can get better at recognising them and acting on them?

**Mr Calma**—Internationally they will become clearer, and the Secretary-General is continually promoting amongst all of his UN agencies that they follow the principles of active participation of indigenous peoples and the standards of free, prior and informed consent. As to whether that does come down and become part of the approach domestically is really up to government to determine. I would point out that the Minerals Council of Australia, for example, in their standards and practices have picked it up, under the area of human rights in

the mining industry, as one of the principles that they will follow and encourage people to follow.

**Senator BARTLETT**—Obviously it is a matter for government as to what stance it takes in the UN General Assembly about the declaration. But if it is adopted or passed, regardless of what position our government takes, and appreciating that it is not binding, does it still become a reference point in terms of your role?

**Mr Calma**—Yes, it will, in relation to our role from the human rights perspective, because it will become a human rights document and something that is considered internationally. How that might be reflected through international law into the future we have yet to determine.

**Senator BARTLETT**—Thank you for that. I have one other area of questions, which I think is yours as well. It comes under the race discrimination area. There was a report done a few years ago, following consultations with the Muslim community.

**Mr Calma**—The Isma report?

**Senator BARTLETT**—Yes. Does that come under your patch?

**Mr Calma**—Yes, it does.

**Senator BARTLETT**—I wonder whether there is work being done by the commission following that report, or any other activity in that area. The attitudes and experiences of Muslim Australians are obviously a very current and ongoing issue.

**Mr Calma**—Yes, the Isma report was tabled in 2004. It became one of the authoritative documents on how Muslims in Australia are experiencing racial discrimination or vilification. We put out a number of recommendations on the way forward. We are encouraged by the way the government, through its national action plan, is starting to consider some of those recommendations in there, or at least the tenor of the recommendations.

**Senator BARTLETT**—Is there any ongoing project in a similar vein, listening or monitoring? There is the complaints process, I guess, which I will go to in a second. But is there any other, wider activity?

**Mr Calma**—There have been a couple of projects that the government has funded. One has been working with the Muslim communities in Victoria and New South Wales, trying to form relationships with their respective police departments. The consultations came to a conclusion at the end of September. There were over 100 consultations and a number of forums held with the police and the community. I think by and large it was a very successful venture, and both parties gained a lot out of it. From the New South Wales side, the Commissioner of Police was actively involved personally in the project, as was the deputy commissioner in Victoria. The other project that was funded was working with Muslim women and trying to identify the issues that they face, looking at some human rights responses—some empowerment, some information about what human rights and citizenship rights they are entitled to and what forms of redress there might be. We did the same, and we are still in the process of developing some of those responses for the police project as well.

**Senator BARTLETT**—Are you able to give us a picture from the complaints process? I do not know if you can separate complaints from the Muslim community. People always say

that Muslim is not a race but a religion, but I think there are pretty clearly racial components to a lot of the vilification that goes on. Is the complaints process giving any sort of picture about whether there is a growing problem?

**Mr Calma**—My understanding is in the short term we do not collect data to that level. They are not as specific as that. We do not record religious belief, either.

**Senator BARTLETT**—With the projects that you have mentioned and the community engagement types of projects, has there been any involvement of the media or people within the media?

**Mr Calma**—When we had the public forums media releases went out. Some media did cover it—I did a number of radio interviews—and there was feedback about it, but that is about the extent of interest that we have seen from the media.

**Senator BARTLETT**—So there is no actual participation in the process itself, as opposed to reporting on it?

**Mr Calma**—Not in those projects, no. Separate to those, though, we have endeavoured to engage with the media on racial discrimination issues and tried to inform the media about better practices. Some regional ABC and some SBS have picked up on it, but systemically they have not particularly been interested.

**Senator BARTLETT**—Is endeavouring to have more success there an ongoing task of yours?

**Mr Calma**—Yes. It is ongoing and a challenge.

**Senator BARTLETT**—It seems that you can do lots of what seem to be quite good, grassroots, community level things but it only takes one media crusade to put a blowhole in the middle of it.

**Mr Calma**—That is very true. I will just add that the government announced some months ago an additional \$4.4 million over the next four years, as allocated to HREOC, to undertake further consultations with the Muslim community as well as to develop human rights tools, empowerment projects for Muslim people, so they can better understand their rights and responsibilities, particularly on working with the police. That is an ongoing project that will commence shortly.

**Senator BARTLETT**—Is there a rough time line on that? I know you said ‘commence shortly’, but how long?

**Mr Calma**—I guess the money for additional estimates will come some time next year. But it is for over four years starting from this financial year to 2010, I think.

**Senator BARTLETT**—Finally, with racial discrimination complaints, do any of them involve complaints about media reports as opposed to other complaints?

**Mr Calma**—I will pass over to Karen, who might also be able to respond to your earlier question.

**Ms Toohey**—The Racial Discrimination Act does provide coverage for racial hatred complaints, which includes the area of internet and media. I do not have specific figures on what those particular complaints were about, but there was an increase from last year to this

year in complaints that raised those sorts of issues. Going back to your earlier question, there has been an increase in race complaints from last year to this year of about 50 per cent—from about 170 to 260. The breakdown of those is provided in the annual report.

**Senator BARTLETT**—I know you said that you do not record religious complaints, but I have seen comments made through Jewish organisations saying there has been an increase in vilification or reports of vilification of Jewish people. I got the sense they were complaints made to their bodies rather than to you, necessarily. But you are not able to record what is loosely called anti-Semitism because basically we would need to change the law to make religious discrimination a component. Is that right?

**Ms Toohey**—Complaints on the grounds of religion under the Racial Discrimination Act are not covered, but complaints on the grounds of race, which would include people of Jewish origin, are covered. So vilification on the grounds of Jewishness in terms of race would be covered but not on the grounds of religion.

**Senator BARTLETT**—Are you able to give us any statistics to get a picture about that?

**Ms Toohey**—We do not keep a breakdown of complaints by race against a racial hatred complaint. Certainly the breakdown on the grounds covered by the act—so complaints lodged on the grounds of colour, race and ethnicity—is contained in the annual report.

**Senator BARTLETT**—Does that include a breakdown about whether it is vilification through media or internet?

**Ms Toohey**—Yes, it does.

**Senator BARTLETT**—I will wait for that with interest.

**Senator SIEWERT**—I have some questions for Mr Calma. I would like to first ask you some questions about the report that you tabled in June on ending family violence and abuse in Aboriginal and Torres Strait Islander communities. When you released it you said:

... the paper seeks to ensure that any government and non government program responses to family violence in Indigenous communities are built on solid evidence and facts

If you could, I would like you to expand on that. Do I read that to imply that you are concerned that it is not based on solid evidence and facts and/or is it a call for further investigation of the evidence and facts?

**Mr Calma**—I cannot say with any certainty what evidence has been used when various commentators talk about family violence and child abuse, except to note that when, in the case of Mutitjulu, the Northern Territory government organised a task force to inquire into the allegations that were made they were not found to be able to be sustained. So I encourage everybody who does make public comment to ensure that it is factual and that there is some evidence base because the ramifications for Indigenous people are very severe. There will be long-term ramifications, particularly when we look at the impacts on those who are not perpetrators and those who are not victims but who are all suffering because of the broad-brush approach to Indigenous affairs and what we see in the media. I believe it is important that we do have some factual base and are able to substantiate that through some evidence. I must also make it clear that I do not in any way support family violence, and neither does

Aboriginal customary law condone it or child abuse. But it is important that we make sure that these allegations are factual.

**Senator SIEWERT**—I would like to follow up some of the other comments you have made in the report. You say that violence relates to almost every aspect of policy making and service delivery. I think you also make comments about not simply treating it as a law and order issue, that treating it as that will not solve the problem. You say we need a holistic approach. Where, therefore, should we be going in terms of policy development? If it goes across every aspect of policy development, what do you think should be our strategy to approaching this issue?

**Mr Calma**—There are probably a number of responses. Minister Brough did hold a summit and I am sure there has been some follow-up to that, although there has been concern that previous significant reports, like the Gordon report and the Robertson report, and the Prime Minister's summit on family violence do not appear to have had a lot of outcome. It is important that they are actually followed up and that some of the responses are made public so that the community can know that something is being done. As I advocate in the social justice report 2005 in relation to health, these issues do not stand alone. They need to be looked at from a social determinist perspective, and that is to look at all the other impacts that affect, for example, health or family violence. Those impacts include things like education, employment, housing—very significantly—and poverty. That is the holistic approach that we need to take. I believe there need to be more open forums and discussion about how agencies and departments are responding in a more holistic way.

**Senator SIEWERT**—I have several questions that arise from what you have just said. You attended Minister Brough's summit, didn't you?

**Mr Calma**—Yes, I was there as an observer.

**Senator SIEWERT**—Was the report that you have released on family violence made as a submission to the summit?

**Mr Calma**—No, it was not. We were not invited to make submissions. I was invited by the Attorney-General to participate as an observer to the forum. The report you refer to we discussed, for the benefit of any politicians a few days prior to the summit, here in Parliament House and there was some participation by politicians at the forum.

**Senator SIEWERT**—But there were no formal submissions made to the summit process?

**Mr Calma**—No, there was not.

**Senator SIEWERT**—Is anybody formally tracking the implementation of the Gordon report or the Robertson report? Do you keep an eye on the implementation of those recommendations?

**Mr Calma**—They were state government reports. No, we are not doing that.

**Senator SIEWERT**—I appreciate that they were state reports but the recommendations in them seemed to apply to the situation across Australia. Do you look at those?

**Mr Calma**—We have not looked at doing a follow-up on what has been implemented and what has not been, but in talking to people in the states it appears that there has not been follow-up on the recommendations.

**Senator SIEWERT**—An issue that is related to this one and one that you have made comments on is customary law. In particular, you recently made comments when the Law Reform Commission report came down in Western Australia. I would like to ask a few questions about that. As I said, you did make some comment when the report was released. You said:

Traditional western approaches to law and order have not made inroads into addressing Indigenous over-involvement in the criminal justice system; indeed systemic discrimination occurring within western legal systems has exacerbated the problems.

Do you have any evidence to indicate that educating our legal judicial systems about customary law and integrating customary law into these systems would make a difference?

**Mr Calma**—There has been some evidence. A recent New South Wales report looked at alternative judicial practices. The Koori courts, the Murray courts and the other court systems are already indicating success in relation to recidivism. Those rates have been reduced. The state systems are doing that. What we particularly relate to is just what is being produced by the systems in relation to the number of cases and the incarceration rates. At the time the report of the Royal Commission into Aboriginal Deaths in Custody was tabled, something like 14 per cent of the prison population were Indigenous. It is currently up to 22 per cent, so we have not seen a reduction in that period of time.

**Senator SIEWERT**—What sort of reforms would you suggest are the most appropriate to address these issues?

**Mr Calma**—There is currently a review looking at diversionary programs and other programs. They need to be progressed further. There needs to be education amongst the judiciary as well as the legal profession about customary law issues and the recognition that customary law has not been used as a defence in determining the outcomes of a case; customary law is used as a mitigating circumstance in relation to sentencing. That is important because the general media do not understand that well enough. But there are practices, such as in the Northern Territory. To be heard in any case, customary law needs to be submitted under oath or through an affidavit to all parties who can comment, and that customary law evidence can be challenged. There have been concerns that some in the legal profession are misusing and misinterpreting customary law, and that has been to the detriment of other Aboriginal people and the Aboriginal people generally.

**Senator CROSSIN**—Mr Calma—Ms Goward, you may also be interested in this question—as Social Justice Commissioner have you looked at the relationship between the payment of the baby bonus and domestic violence in Indigenous communities?

**Mr Calma**—No, I have not, other than reading the media reports and remarks of some commentators that suggest there is a relationship.

**Senator CROSSIN**—Is it something that perhaps your unit will investigate?

**Mr Calma**—Under the general work that we do in capturing information about family violence and child abuse it may come up, but we have not specifically intended to look at it.

**Senator CROSSIN**—Ms Goward, I wonder if it is something that has been raised with you in your capacity as Sex Discrimination Commissioner. In particular, I notice in the Northern Territory the anecdotal evidence indicates an increase in domestic violence around the sixth or seventh week after the birth of the baby. It seems to coincide with the payment of the baby bonus. It is hard to get any direct correlation. Is it something that has been raised with you?

**Ms Goward**—I have certainly heard the same anecdotal information that Commissioner Calma has heard. The commission would view that as something his unit would do the work on.

**Senator CROSSIN**—It would be more the social justice unit than your unit?

**Ms Goward**—Yes.

**Senator CROSSIN**—Ms Goward, all the best with your future endeavours. I do think we should recognise publicly the contribution you have made over the last couple of years with the reports you have done. I think the input you have made has been appreciated nationally. Mr Innes, has there been any consideration of or work done about any discriminatory matters relating to people with disabilities in relation to the Welfare to Work agenda?

**Mr Innes**—The commission launched in March of this year a report on employment of people with disabilities and made some 30 recommendations as to the solutions to the barriers which people with disabilities face. Whilst not directly addressing Welfare to Work reforms, it certainly raised a number of issues relating to those reforms in the area of employment of people with disabilities. Some of those recommendations have been taken up by the government, perhaps the most important of which is the job access website and information hotline, which provides information on employment of people with disabilities for employers.

However, the major recommendation of the report was the need for a national disability employment strategy involving a whole-of-government approach from federal, state and local government as well as employers and disabilities groups to address ways to reduce the unacceptably high unemployment rates amongst people with disabilities, which sit, depending on which figures you accept, at four to five times the current national rate across Australia for unemployment generally. That recommendation on a national disability employment strategy has not, as far as I am aware, gained currency with government.

**Senator CROSSIN**—Have you looked at or had any complaints about support mechanisms for people with disabilities moving into work? It has been highlighted to me, for example, that people with disabilities cannot access the \$2 a day subsidy under the JET program. People who do not have a disability get that access. Apart from access to employment, have you looked at support mechanisms that actually access employment for people, such as that subsidy?

**Mr Innes**—I cannot comment on that particular subsidy. I do not know the detail of that particular concern. It is not the normal practice for the commission to talk about complaints which have been lodged until they are finalised in particular areas. I cannot comment on

broad trends of complaints—Ms Toohey may like to make a comment there. What I can say is that those issues have been raised with us in discussions with various disability groups and we have, as late as yesterday, raised those with government because we are concerned that there are some differential treatments in terms of support mechanisms and costs. Whilst certainly government in a number of programs has moved to address the issue of the cost of going back into employment for people with disabilities, there was no guarantee given by government in the way that the guarantee was given to single parents that there would not be greater costs. The commission has urged government to refer the question of the impact of costs and support mechanisms to the Productivity Commission. That was one of the recommendations in the report.

**Senator CROSSIN**—Thanks, Mr Innes. No, this is not a complaint that is actually before you; it is just something that I have picked up in talking to people, anecdotally, as I have gone around the Territory.

**Mr Innes**—That is where my information is coming from too, in general discussions. I just wanted to be clear that I cannot comment on particular complaints.

**Senator CROSSIN**—I appreciate that. Was that report tabled in parliament back then?

**Mr Innes**—I am just thinking about whether it was tabled in parliament or launched.

**Senator CROSSIN**—If not, I might make this a request for you to send a copy to this committee.

**Mr Innes**—We can certainly make a copy available to you. It was not tabled in parliament. It was a report of an inquiry that the commission conducted and it was released in March this year.

**Senator CROSSIN**—Thanks very much.

**Senator NETTLE**—I have a question about the ‘Same-Sex: Same Entitlements’ inquiry that is going on, particularly in relation to some comments recently about the government looking at changing their position in relation to discrimination for same-sex couples in a number of areas. Has HREOC been invited to engage with the government on that issue over changing legislation for same-sex couples?

**Mr Innes**—The comment in the media that you refer to has been, as far as I am aware, a suggestion rather than any actual announcement. We have not been formally invited to engage with the government in discussing those issues. However, the government is well aware that they are issues on which we are conducting current work. We have completed the hearings for the inquiry now and we are in the process of preparing our report. If I recall correctly, the Attorney-General just last week with regard to these sorts of discussions commented that he would look at, amongst other things, the recommendations which the commission makes in its report, which ought to be provided to the government early next year—in March, I think.

**Senator NETTLE**—Thank you.

**Ms Temby**—Chair, I want to clarify something that we may have misled the committee on. Our annual report, we have discovered, this year does not actually break down the racial hatred complaints in terms of the internet and the media; we just have them as a global figure.

But we are able to provide that information to the committee on notice. We would ask that you (1) accept our apology and (2) accept our answer and question on notice.

**CHAIR**—Thanks for the clarification, Ms Temby.

**Senator Ellison**—Madam Chair, in relation to domestic violence and abuse in Indigenous communities there was a line of questioning earlier about the summit. I would point out that the Australian Crime Commission is appearing later today and can give evidence on the progress made in relation to the setting up of the task force and it can report on that. That may be of interest to senators because progress has been made in that regard.

**CHAIR**—Thank you very much. I also want to note Senator Crossin's remarks about Ms Goward and extend the committee's remarks in the same vein.

**Ms Goward**—I would just like to say what a privilege it has been to work for the commission. If things go badly I am very happy to be back—

**Senator CROSSIN**—Is that plan B?

**Ms Goward**—and I am very grateful for the interest and support of the committee.

**CHAIR**—Thank you very much, Ms Goward. I thank the Human Rights and Equal Opportunity Commission for their attendance. It is a pleasure to have three commissioners here.

[10.35 am]

#### **Federal Magistrates Court**

**CHAIR**—I welcome the officers of the Federal Magistrates Court: Mr Mathieson, Ms Stockwell and Ms Cibau.

**Senator CROSSIN**—Good morning. Could you outline for me the number of appointments to the court in recent months?

**Mr Mathieson**—There have been 13 appointments to the Federal Magistrates Court in the current calendar year.

**Senator CROSSIN**—That is since January this year?

**Mr Mathieson**—That is correct.

**Senator CROSSIN**—Have we got your annual report yet?

**Mr Mathieson**—No, I believe that it will be tabled shortly.

**Senator CROSSIN**—When was that required to be tabled by?

**Mr Mathieson**—I am not sure of the exact date. I am not sure whether anyone from the department may be able to assist.

**Mr Cornall**—We will make inquiries in response to that question. I do not have the answer at my fingertips.

**CHAIR**—I imagine this question may come up on more than one occasion during the rest of the agencies' appearances, so it would be helpful to have that information.

**Senator LUDWIG**—On that point, Chair, the committee might need to consider the issue of examining the reports. We have the ability now to examine the reports, during estimates, and we will not have that opportunity again until February, which will then be more focused on additional estimates rather than examination of the annual reports. So I ask you to consider whether additional hours might be needed once the reports are provided for this committee to consider those agencies and their annual reports, given that they have missed this round.

**CHAIR**—We will discuss that in a private meeting, Senator Ludwig.

**Senator CROSSIN**—So I am assuming the detail of those appointments will be in the annual report?

**Mr Mathieson**—They will be, until 30 June. Of course, the annual report only covers the period to 30 June. As I indicated, there were 13 appointments in the calendar year. Eight of those appointments, on my calculations, have been after 30 June so they will be in next year's annual report. To be absolutely correct, of the 13 appointments that I am referring to one actually has not commenced. That appointment has been announced, but it will commence on 13 November.

**Senator CROSSIN**—Has there been an increase in the IR matters before the court?

**Mr Mathieson**—The court did not have industrial relations jurisdiction until the recent amendments. That was from 27 March this year. So yes, there has been an increase in the IR matters, because the previous base was zero. There have not been a considerable number of IR matters filed to date. I will find the number for you, but my recollection is that there were 10 filed to 30 June and 19 filed from 1 July to 30 September. I have now confirmed those numbers.

**Senator CROSSIN**—What has been the nature of those matters?

**Mr Mathieson**—Most of them have been unlawful terminations. I can give you a more detailed breakdown. Of the total of 29 applications that have been filed—that is covering both of the periods that I referred to, from 27 March to 30 September—16 have been unlawful terminations.

**Senator CROSSIN**—What is the breakdown of the others?

**Mr Mathieson**—Again I am giving you the aggregated numbers over the full period. Three related to breaches of terms and conditions, one to a certified agreement, two to employment conditions, six in relation to industrial action, one in relation to nullity, and of course, there were the 16 unlawful terminations that I referred to earlier.

**Senator CROSSIN**—How many of those are matters brought by employees?

**Mr Mathieson**—I do not have those numbers to that level of detail.

**Senator CROSSIN**—Do you mean you cannot tell me the nature or who has filed—

**Mr Mathieson**—I cannot tell you whether they are employees or employers—I assume they are not contractors. I cannot break those numbers down to any further level of detail.

**Senator CROSSIN**—Is that because you do not keep those records or you do not have them with you?

**Mr Mathieson**—I certainly have not got them with me, and I doubt that they can be extracted from our system.

**Senator CROSSIN**—Why is that?

**Mr Mathieson**—We would not record that level of detail within our case management system.

**Senator CROSSIN**—Do you keep any kind of record of the nature of the complaints?

**Mr Mathieson**—The paper file obviously will contain quite detailed information about a complaint, but in terms of a mechanism that can be analysed, no, we do not.

**Senator CROSSIN**—Do you keep any record of whether or not parties are represented or whether individuals appear for themselves?

**Mr Mathieson**—Yes, we do. The difficulty with representation or nonrepresentation is that you can only measure it at a particular moment in time. You can measure it at the point of filing, at the point of hearing, and at other points. You can measure it at any stage of the proceedings, but whatever you choose you are going to get an arbitrary result, and it is also going to be affected by distortion.

**Senator CROSSIN**—What are you saying: someone may lodge to represent themselves but by the second or third day they bring a lawyer in. Is that right?

**Mr Mathieson**—Yes, that is so. They may initiate the application without representation; they may then decide that they need representation. The terminology that seems to have come into use lately is ‘unbundled legal services’. They may be represented for only a certain part of the proceedings. That might be the preparation of the application; it might be representation at a hearing. It is quite difficult for our court and I think for all courts to provide analysis of that.

**Senator CROSSIN**—If we are looking at any sort of pattern, 16 of the 29 are unfair dismissals and then the next patterns would be matters relating to terms and conditions of employment and then industrial action taken. That pretty well sums it up, doesn’t it?

**Mr Mathieson**—Industrial action has attracted six applications, so it would be the second highest followed by the breach of terms and conditions. They are fairly broad categorisations, of course.

**Senator CROSSIN**—Yes, I understand that. Generally, how have the matters been resolved?

**Mr Mathieson**—Only six of the matters have been resolved to date, and I do not have a breakdown of the outcomes of those six.

**Senator CROSSIN**—Are you able to get that? We would be interested to know whether there has been settlement in all six cases decided.

**Mr Mathieson**—Yes, we could take it on notice to provide a breakdown of outcomes of those six matters that have been finalised.

**Senator CROSSIN**—Would you be able to tell me what has happened with the unlawful terminations?

**Mr Mathieson**—I can tell you that of the six that were determined one was an unlawful termination matter.

**Senator CROSSIN**—How was that resolved?

**Mr Mathieson**—I do not know.

**Senator CROSSIN**—Can you take that on notice?

**Mr Mathieson**—I can take that on notice. Sorry, Senator, I am misleading you; I am misreading the figures. In fact four of the six that have been determined were unlawful termination matters.

**Senator CROSSIN**—And you would need to take on notice how they were resolved. Is that correct?

**Mr Mathieson**—Yes.

**Senator CROSSIN**—What steps is the court taking to address any likely further increases, since March 2006?

**Mr Mathieson**—The court has received a number of appointments specifically funded to handle industrial relations work. In additional estimates last year funding was received by the court for six industrial relations appointments. I would have to check, but my recollection is that we now have all six of those appointments in place, largely comprising the 13 that I spoke of earlier.

**Senator CROSSIN**—For my background, because I know quite well how the commission works but not so much the court: do they come nominated from the union or the employer side, as the commission used to do?

**Mr Mathieson**—No, they are appointed because of their general expertise. There are some statutory requirements. They have to be a legal practitioner with not less than five years standing, but beyond that it is a matter for government to decide on the appropriate level of expertise for them to hold.

**Senator CROSSIN**—Do we know how many of those six got their experience in employer related firms or businesses?

**Mr Mathieson**—I do not record that in my thinking.

**Senator CROSSIN**—Is that something that the department can answer for me?

**Mr Cornall**—The judges in the Federal Magistrates Court are judges under chapter 3 of the Constitution and they are appointed in the same fashion as any other judge. The individual backgrounds of judges have been determined by the government to be relevant backgrounds for appointment to the court, and that is the basis on which they were appointed. One of the more recent appointments was Judge Turner. I attended his welcome, and his background was as a barrister with an extensive industrial relations practice. You would have to look at the individual backgrounds of each other judge to determine the answer to your question.

**Senator CROSSIN**—You have had six with an industrial background appointed and 19 cases, so it is not exactly a huge workload at this stage, is it, for those people?

**Mr Mathieson**—That is correct.

**Senator CROSSIN**—Is there an anticipation that the number of cases will increase?

**Mr Mathieson**—Certainly there is a view that it is likely that the workload in the industrial relations area will increase.

**Senator LUDWIG**—Have you had any research done as to the expectation that it is going to increase?

**Mr Mathieson**—The court has not done any research in relation to that. Of course, the court does not make the appointments; it is a matter for government to make the appointments.

**Senator LUDWIG**—Because of the IR background, for argument's sake, of Judge Turner or Judge O'Sullivan, do you put them in the IR panel? Where do you place them?

**Mr Mathieson**—A federal magistrate is a federal magistrate. A federal magistrate is appointed to deal with the work of the court and there is not a divisionalisation as there might be in other courts, where a person appointed to a division can only sit in the particular division that they are appointed to. For example, I could say that since his appointment Federal Magistrate O'Sullivan has probably spent most of his time dealing with family law matters. A federal magistrate, once appointed, can be called upon to deal with any matter.

**Senator LUDWIG**—How many panels do you have?

**Mr Mathieson**—Panels are a separate thing. The court has recently moved to establish panels, and that is only in the general federal law area. There have been six panels established and they are in administrative law, admiralty, commercial, employment, human rights and national security. But, as I say, they apply only in the general federal law area of the work of the court. There would be an expectation that any person who was on such a panel would not be spending all of his or her time only doing that panel work. They would be sitting in other areas of the work of the court as well—be that migration, family law or whatever.

**Senator CROSSIN**—The reason I am going down this path is to ascertain whether people are represented or not. There might be a view that the courts will be flooded with cases. There might also be a view that you may not be because it will be quite expensive for individuals to get that representation. But, if you do not keep those figures, it is hard for us to come to any conclusions in respect of that. Does the court or the registry provide any assistance to applicants who want to take IR matters before the court but cannot afford to do that or do not qualify for legal aid?

**Mr Mathieson**—No specific programs operate within the court targeted at industrial relations work. Government, I understand, although I am not aware of the detail, has put in place a separate program for legal assistance for persons with industrial relations matters, but I cannot assist you in relation to that. The court does across its broader jurisdiction do what it can to assist people coming before it. It has a pro bono scheme which operates generally. It has, with the Minister for Immigration and Multicultural Affairs, different programs that operate to assist persons bringing migration applications to the court and it assists with a duty solicitor scheme which operates in family law.

**Senator CROSSIN**—The industrial relations registry has information sheets and help lines, for example. Does the court have anything similar?

**Mr Mathieson**—We have quite a bit of information on our website. We have at least one brochure, I think, that is available.

**Senator CROSSIN**—Is that on industrial relations matters?

**Mr Mathieson**—That is correct.

**Senator CROSSIN**—No help line, though? Just the website or the brochures?

**Mr Mathieson**—Yes, that is correct.

**Senator CROSSIN**—So what is the level of interaction between the court and the industrial relations registry on unlawful termination matters?

**Mr Mathieson**—You must put this in the context that the Federal Magistrates Court does not provide its own registry services. Registry services in industrial relations matters are provided to the Federal Magistrates Court by the Federal Court under the arrangements that exist in respect of general federal law. Perhaps, without wanting to avoid having to respond, that question could be better directed to Mr Soden and representatives of the Federal Court, who will follow me.

**Senator CROSSIN**—I will leave that and ask them that question, then. What are the time frames for an unlawful termination matter to come to conclusion, from the time of lodgement?

**Mr Mathieson**—The general time line that the court attempts to meet is that all matters be disposed of within six months of their filing. So the industrial relations matters would be dealt with in that same time goal.

**Senator CROSSIN**—Of four of those six matters that have already been resolved, for example, are you keeping track of how long it has taken to resolve them?

**Mr Mathieson**—Yes, we are. I am not sure that I have that—

**Senator CROSSIN**—Do you want to take it on notice? We would be interested to know if all four were settled within 28 days or five months. There is a big difference there.

**Mr Mathieson**—Perhaps I could have that checked while we go on. We do not have that number available.

**Senator CROSSIN**—Can I ask you to take that on notice, then? And what are the court costs—the filing fees or the court fees—associated with running a claim or an unlawful termination claim?

**Mr Mathieson**—I cannot assist you in relation to what costs a person may incur in legal representation.

**Senator CROSSIN**—Is there a lodgement cost?

**Mr Mathieson**—Yes, there is. The normal fee for filing an application in the general federal law jurisdiction of the Federal Magistrates Court is, if the applicant is a corporation, \$698, and, if the applicant is not a corporation, \$350. There are some special provisions made for the filing of particular types of applications. For example, in a human rights application the fee is limited to a sum of only \$50. But my recollection and my very quick reading of the

schedule does not suggest to me that a similar provision has been made for a Workplace Relations Act application.

**Senator CROSSIN**—Sorry, are you saying there is not a similar fee for IR matters?

**Mr Mathieson**—There is not. So it would just be the normal filing fee in the Federal Magistrates Court.

**Senator CROSSIN**—Of \$698 and \$350?

**Mr Mathieson**—\$698 if the applicant is a corporation or \$350 if the applicant is an individual.

**Senator CROSSIN**—Going back to what I asked earlier about whether it was employees or employers, surely you must be able to look at those 29 cases and tell me how many were filed by a corporation or by not a corporation. Can you tell me that?

**Mr Mathieson**—Yes, but I do not have the information with me. I could take that on notice.

**Senator CROSSIN**—All right. That will certainly give me an indication of whether it is an individual or not.

**Mr Mathieson**—Yes. It will not help you in relation to an individual employer, though.

**Senator CROSSIN**—That is correct. But if you could at least let us know which of those 29 were corporations or not corporations that might be a start.

**Mr Mathieson**—I will finish answering your question in respect of costs. If a matter proceeds to a substantive hearing, a trial, then there is also a setting-down fee, which again is structured on the basis of a corporation and a noncorporation. That fee is \$837 if the applicant is a corporation or \$419 if they are not.

**Senator CROSSIN**—Does that apply to industrial relations matters?

**Mr Mathieson**—It would.

**Senator CROSSIN**—Are you able to tell us how many of those fees have been paid by each of those two categories in the 29?

**Mr Mathieson**—Of the 29, it is unlikely that too many of them would have reached a trial stage and hence be required to pay the setting-down fee, but we certainly could tell you of the 29 how many, if any, have paid that setting-down fee.

**Senator CROSSIN**—Thank you.

**Senator LUDWIG**—It is a costs jurisdiction, isn't it?

**Mr Mathieson**—Yes.

**Senator LUDWIG**—So costs can be awarded upon an applicant being unsuccessful.

**Mr Mathieson**—Yes.

**Senator LUDWIG**—Have there been any cases determined in the industrial relations panel yet?

**Mr Mathieson**—I am not aware of whether there have or have not.

**Senator LUDWIG**—Could you have a look at that and, if the applicant has been unsuccessful, what costs have been awarded?

**Mr Mathieson**—Yes.

**Senator LUDWIG**—Different jurisdictions use different terms but are there party-party costs or just application costs?

**Mr Mathieson**—In the general sense they would be party and party costs. The Federal Magistrates Court uses an event based scale as opposed to an itemised scale. The result is immediate: the federal magistrate who makes the order will make an immediate determination. In the majority of cases there is no taxation process.

**Senator LUDWIG**—Minister, in terms of the costs of an employee seeking to exercise their rights in the Federal Magistrates Court, they are faced, if it goes to a hearing, with a fee of \$469, which is an extraordinary amount to pay up to get access to the court, which is meant to be a low-cost jurisdiction, especially when they would have been able to access the Industrial Relations Commission for a filing fee of \$50. That has now risen to an extraordinary amount of \$469 if the person actually goes to a hearing—in other words, a setting down. Whether or not it proceeds, of course, is another matter. That is another \$419 which has to be paid by an individual if the matter is set down. Minister, is anything being done by this government to make sure that employees can really access the Federal Magistrates Court for employment related matters? The fees are extraordinary. It seems to be a debar—in other words, it is a high bar to leap over if you want a low-cost jurisdiction to settle matters. Have you spoken to Mr Andrews about ensuring that employees can access a court?

**Senator Ellison**—Well, they can. And there is a waiver application for a fee, as there is in other jurisdictions. When you look at divorce, an application fee for dissolution of marriage is in excess of \$350, the last time I checked. Across the board there are application fees. It is nothing unusual to have a fee attached, but there is also a waiver provision. That provides an opportunity for people who are impecunious to make an application accordingly. So I see that as being part and parcel, across the board, of fees in relation to a number of tribunals, whether they be courts or otherwise.

**Senator LUDWIG**—So you do not have any difficulty with employees being faced with \$469 to have their matters heard?

**Senator Ellison**—That is for hearing, as I understand it.

**Senator LUDWIG**—It is a setting down; it does not necessarily mean—

**Senator Ellison**—Perhaps Mr Mathieson could outline the waiver provisions that apply. I mean, waiver provisions are there and we have them in other jurisdictions in other forums. But I think it is important to remember that you have those waiver provisions.

**Mr Mathieson**—Just to clarify the amounts: the filing fee for an individual is \$350, and the setting-down fee for an individual is \$419. There are waiver provisions; there are exemptions in a number of categories—

**Senator LUDWIG**—So there is \$969 as the total. Does the setting-down fee mean that it will go to trial or is it paid regardless once the setting-down date is made?

**Mr Mathieson**—The setting-down fee is paid once the matter has been set down for trial.

**Senator LUDWIG**—Whether or not it actually proceeds?

**Mr Mathieson**—Yes, whether it proceeds or not.

**Senator LUDWIG**—So you have about \$1,000 to get to trial?

**Mr Mathieson**—Yes.

**Senator LUDWIG**—And this is what—

**Senator Ellison**—No, not \$1,000.

**Senator LUDWIG**—Well, \$969. There is \$350 for initial filing and \$419—this is for an individual—to have it—

**Senator Ellison**—That is \$769, as I understand it.

**Senator LUDWIG**—Well, it is nearly \$1,000.

**Senator Ellison**—I think that you are gilding the lily there. I think that \$769 is a far cry from \$1,000. But we are dealing with the waiver provisions, and perhaps Mr Mathieson can take us through those.

**Mr Mathieson**—The fees are exempt in the case of a person who is in receipt of various social security benefits, who is in prison or otherwise incarcerated, or who is in receipt of legal aid. On top of that, if they are able to satisfy a registrar of the court that payment of the fee would impose financial hardship on them then the registrar has power to waive the fee.

**Senator LUDWIG**—So normally it would not be available for a person who has been employed?

**Mr Mathieson**—It will depend on the circumstances of that individual.

**Senator LUDWIG**—How many waivers have been granted by the Federal Magistrates Court in industrial relations matters?

**Mr Mathieson**—I cannot tell you that, Senator. I could take it on notice.

**Senator LUDWIG**—If you would not mind, thank you.

**CHAIR**—There being no further questions for the Federal Magistrates Court, I thank you all very much for appearing.

[11.08 am]

#### **Federal Court of Australia**

**CHAIR**—Welcome, Mr Soden, Mr Kellow and Mr Foster.

**Mr Soden**—Thank you. We were listening to the last line of questioning, on the filing fees. It is a very complex area. Keeping in mind that we provide all those registry services for the Federal Magistrates Court, I think it would be of assistance if we brief the committee on our understanding of the fees that are actually applied.

**CHAIR**—Thanks, Mr Soden.

**Mr Soden**—I will ask Mr Kellow to do that.

**Senator LUDWIG**—That would be helpful. I think my maths was wrong, too.

**CHAIR**—And then we will go on to questions.

**Mr Soden**—We will explain how it comes about. It is quite complex.

**Mr Kellow**—The fees are prescribed in the Federal Court of Australia Regulations 2004. In relation to applications for unlawful termination, the filing fee in the Federal Court is based on the same fee that is payable in the Industrial Relations Commission under its regulations. As at 1 July 2006 that fee was \$53.90. It is my recollection, but I am waiting to get confirmation—not having the regulations with me—that that is a one-off fee and that the setting down and hearing fees are not payable in relation to those claims within the court, so an applicant would pay the \$53.90, subject to any entitlement they may have to a fee exemption or fee waiver under the regulations. The other applications for relief under workplace relations would be subject to our usual regime of filings fees, setting-down fees and other fees set out in the regulations. My understanding is that a similar situation applies in the Federal Magistrates Court under its fee regulations.

**CHAIR**—Do you have any material that you can table for the committee?

**Mr Kellow**—No.

**Mr Soden**—We did not bring the fee schedule with us as we did not expect to be asked for that detail, but it is a published document that is readily available.

**CHAIR**—I understand.

**Senator Ellison**—In view of the circumstances, there being a clear misunderstanding about the fees for applications made by employers in relation to workplace related matters, I think it is essential that we put on the table the filing fees that do apply. The evidence has been that the filing fee for unlawful dismissal is in the region in excess of \$50, which is perhaps different to what the committee understood previously—that it could be as high as \$769 if a hearing was set down. We should perhaps make this very clear.

**CHAIR**—I agree. Mr Soden, I know this is publicly available information and publicly available material, but perhaps you can arrange for it to be provided to officers so it can be presented to the committee today.

**Mr Soden**—We can make arrangements for the document to be available and tabled.

**CHAIR**—The miracles of technology; thank you.

**Mr Mathieson**—I might interpose and perhaps correct something which I may have misled the committee about. I spoke of the fees that are normally payable in respect of the Federal Magistrates Court. I was not aware—perhaps I should have been—of the provisions that Mr Kellow has just made reference to. I have not had the opportunity to check since I gave evidence before the committee—

**CHAIR**—It was only 120 seconds ago, so that is entirely unsurprising.

**Mr Mathieson**—but I think that I may have misled the committee and that similar provisions, as Mr Kellow has indicated, will apply in the Federal Magistrates Court.

**CHAIR**—I would be keen to pursue this issue, if we are to pursue it at all, with some clarity around what we are discussing. How long will it take for the relevant documentation to be provided using some miracle of technology like a fax machine?

**Mr Soden**—As soon as we are finished before the committee, we can make a phone call and get a fax here within 15 minutes.

**CHAIR**—Perhaps one of the support staff in the room could facilitate that now, rather than waiting for your time before the committee to be completed.

**Senator LUDWIG**—We promise to keep you here long enough for a fax machine to work.

**CHAIR**—Someone from the department has nodded in agreement that that can be done; thank you.

**Senator Ellison**—If that cannot be done, we can call back the Federal Court and the Federal Magistrates Court once we have it. I think it is essential that this matter be cleared up right now—

**CHAIR**—We need to deal with the facts as they are.

**Senator Ellison**—because the committee was proceeding on a wrong premise.

**CHAIR**—Yes, and that would be unfortunate. Senator Ludwig, we will obtain that information as expeditiously as possible. Are there questions for the Federal Court in areas other than those matters of fees and charges?

**Senator CROSSIN**—My questions are along similar lines to those I asked of the Magistrates Court—that is, I am wondering whether there has been an increase in IR matters before the court. Let me put it this way: what IR matters have come before the court since March?

**Mr Soden**—I have that information for you. Since 27 March there have been 73 actions commenced. Forty-two of those 73 actions, and this is probably the figure that you would be most interested in, are alleged unlawful termination actions. I will table the document I am using; it might make it easier. But I will refer to it quickly. Other causes of action include agreement-making breaches, entry and inspection breaches, freedom of association actions and unfair contracts. So, again, 73 have been commenced, 42 of which allege unlawful termination.

**Senator CROSSIN**—What would be the next highest category?

**Mr Soden**—The next equal highest, and there are nine in each category, is allegations of breaches of terms and conditions, and there is another category in relation to industrial action commenced. They might be applications to the court seeking certain orders in relation to an industrial action.

**Senator CROSSIN**—I do not have knowledge in this area, so this might not be a question that is relevant. Are these matters that the Federal Court has only been dealing with since March of this year? The structure is different, isn't it? How does that compare to the previous 12 months?

**Mr Soden**—I will look at financial year figures, and keep in mind it is a new structure, it is a new act, although we have tried to categorise them in a similar way. For the financial year

2003-04, there was a total of 151 actions; for 2004-05, 150 actions; for 2005-06, 246 actions, some of which would be under the new provisions, of course; and for 2006-07 so far, 28. Twenty-eight is part of the total of 73 that I mentioned previously. Has there been an increase? Yes, a little bit of an increase. I have the impression that, if there is going to be any large increase, a lot of people will be waiting to see what happens in the High Court with the matter that is presently reserved in the High Court.

**Senator CROSSIN**—In the previous year, 2005-06, how many of the 246 were related to unlawful terminations?

**Mr Soden**—According to our figures, 60 of the 246 were alleged unlawful terminations.

**Senator CROSSIN**—How many of the 28, then?

**Mr Soden**—Fifteen. But I would be a little bit hesitant about relying on that because they were categorised differently. I should mention also that, out of that 246, 86 are categorised as breaches of terms and conditions, and that might have just been due to the way the cases were categorised by the people putting the data into the system. Some of those breaches of terms and conditions might be also unlawful termination related cases.

**Senator CROSSIN**—Do you also keep a record of the proportion of matters that are brought by employees as opposed to employers?

**Mr Soden**—No, we do not.

**Senator CROSSIN**—For the same reason as that of the Magistrates Court?

**Mr Soden**—The data would be there, but we just have not extracted the data.

**Senator CROSSIN**—Is it easier to make a correlation in relation to the nature of the fee that is filed—corporation, non-corporation or—

**Mr Soden**—I think you could safely assume that in relation to unlawful terminations they would all be employees, and the majority of the rest, probably apart from a breach of a term or condition, are likely to be—it is hard to be categorical. I might be misleading the committee. If we took on notice that question it would mean having a look at each individual file and trying to work it out, and that would be fairly time-consuming and cumbersome. I think you could rely on the assumption that the bulk of employees are in the unlawful termination category.

**Senator CROSSIN**—Do you know what proportion of those would be represented? One would assume in the Federal Court that probably all of them are represented.

**Mr Soden**—I would not make that assumption. We are a very friendly jurisdiction to unrepresented litigants.

**Senator CROSSIN**—Not as friendly as the Industrial Relations Commission, though, I have to say.

**CHAIR**—Mr Soden goes out of his way to create a very friendly jurisdiction.

**Mr Soden**—We certainly try to. I must say I would be surprised if quite a large number of those were not unrepresented applicants.

**Senator CROSSIN**—But you do not keep formal statistics.

**Mr Soden**—We do not collect that, no.

**Senator CROSSIN**—So it would be hard at this stage to say if there are any discernible patterns coming before the court in relation to IR matters.

**Mr Soden**—The one pattern that is clear is that a large proportion are unlawful termination allegations.

**Senator CROSSIN**—So, generally speaking, have those matters been resolved? Let us go through the 73 because I think that is where the interest lies. What is the status of those 73?

**Mr Soden**—I can report that 18 of the 73 have been completed and 14 of the 42 unlawful termination cases have been completed. But, I am sorry, I cannot tell you the manner of disposition—whether it has been by trial, hearing, settlement, withdrawal or discontinuance. I am not sure.

**Senator CROSSIN**—Do you keep records automatically?

**Mr Soden**—We do not keep the records, but the data would be there.

**Senator CROSSIN**—When I say records, I mean do you keep a log or a tally of whether they have been negotiated to settlement or whether there has been a decision one way or the other?

**Mr Soden**—No. We have not thought there was a need to do so yet.

**Senator CROSSIN**—So, basically, you just log when they get on the books and when they are off the books. Is that about it?

**Mr Soden**—When a case is commenced in our court, it gets allocated straightaway to a judge. The judge manages that case from beginning to end, which is different from most other courts. I think the Magistrates Court might have a similar regime for these sorts of matters. We leave it to the judges to manage those cases.

**Senator CROSSIN**—So you cannot give us an indication of if there are any patterns as to how the unlawful terminations are being resolved?

**Mr Soden**—I just do not know. I would have to go and look at the data to find that out.

**Senator CROSSIN**—What steps is the court taking to address any likely increase in the number of IR matters that may come before it?

**Mr Soden**—We are keeping a close eye on this in terms of what the trends are showing in relation to where the actions are being commenced and the numbers of them to see if there is a discernible trend. The figures are not high enough yet to cause any concern.

**Senator CROSSIN**—Have there been additional judges appointed to the court to deal with these matters?

**Mr Soden**—Yes, there were four additional judges appointed to the court.

**Senator CROSSIN**—When were they appointed?

**Mr Soden**—The allocation for those appointments came in the 2004-05 financial year. Two judges have been appointed in Melbourne, one in Sydney and one in Brisbane.

**Senator CROSSIN**—I might go back to that in a minute. Do you provide any assistance to applicants who want to appear for themselves?

**Mr Soden**—Nothing out of the ordinary by way of any special arrangements, no.

**Senator CROSSIN**—Do you provide information sheets or helplines, similar to the AIRC or the Magistrates Court?

**Mr Soden**—We have arrangements in most of our registries where, if someone wanted some procedural assistance, there are staff who can help them with that. The application form for the unlawful termination causes of action is a special form. It might be easier to use by someone who is not represented. But we do not have any across-the-board special measures. I think we rely on dealing with individuals as they need assistance. I would expect that to be most often a face-to-face arrangement.

**Senator CROSSIN**—Okay. What sort of interaction is there between the court and the Industrial Relations Commission? Is there any court check to see if a matter has been conciliated in the Industrial Relations Commission, or is that just part of the filing process?

**Mr Soden**—I do not think there is any check undertaken as to a conciliation process after a matter has been filed in our court. And I do not think we have any routine formal arrangements with the commission. There was a lot of discussion with them in the early days in relation to what the workload might be and we do provide, to the department I suppose for the commission's information, statistics on a regular basis about what is coming in.

**Senator CROSSIN**—If a matter has been conciliated in the Industrial Relations Commission it can still come to you in the Federal Court if people are not happy about it?

**Mr Soden**—I presume if it is not conciliated to a satisfactory result they can come to the Federal Court or the Federal Magistrates Court.

**Senator CROSSIN**—You do not have any formal liaison between you and the AIRC in relation to those matters?

**Mr Soden**—No, there is not.

**Senator CROSSIN**—What is the time frame for IR matters? Do you hope to deal with them within six months or a shorter time?

**Mr Soden**—We have not put our minds to whether they ought to be a category of case that we should fix some time limits for. We have some general time limits for all of our cases, and time targets for appeals. We leave it to the individual judges to make decisions about how quickly cases ought to be dealt with. An unlawful termination case, for example, I think would be treated as a matter in the routine sense which ought to receive close and quick attention, as opposed to some other matter which might need a lot of preparation and a lot of work. We leave the decisions about what ought to be done there to the judges.

**Senator CROSSIN**—On the 73 matters, of which you said 18 have been completed, do you keep a tally of the time line? Can you say that on average it is seven days or seven months?

**Mr Soden**—No, we do not. I can take that on notice and get back to you about that. That data is available; I just do not have it with me.

**Senator CROSSIN**—I will leave the questions about the court costs because we have been through that. I have some questions on new judges appointed to the court. In 2004-05 you said there were four. Are there any in the last year, 2005-06?

**Mr Soden**—I can give you the precise details. It has been in this order: Justice Collier was appointed in Brisbane, effective 8 February 2006; Justice Jessup, appointed in Melbourne, effective 23 June 2006; Justice Tracey, appointed in Melbourne, effective 24 July 2006; and, finally, Justice Robert Buchanan, appointed in Sydney, effective 8 September 2006.

**Senator CROSSIN**—Of those, how many have special experience in industrial relations matters?

**Mr Soden**—I do not know the details of their experience.

**Senator CROSSIN**—Can you take on notice to have a look at that?

**Mr Soden**—I am not sure I can. I think it is well known that some of these had some work in the industrial relations area as well as a lot of other areas. It is just a question of degree, I think, to some extent. I could certainly take on notice a question about information in their CVs and provide that for you. I would be giving a personal opinion otherwise.

**Senator CROSSIN**—All right. Are these judges expected to sit on a whole range of matters other than just IR matters? Surely 73 cases is not enough to keep those four busy at this stage.

**Mr Soden**—That is right. They are sitting on all other cases.

**Senator CROSSIN**—They do any other matters?

**Mr Soden**—Yes, as appropriate, except for this qualification: we have a panel system. You asked questions earlier about a panel system. We have had a panel system for a long time. If a judge is on a panel, they will get the panel cases. If they are not on the panel, they will not get the panel cases.

**Senator CROSSIN**—Are you able to tell us what other matters they are hearing, or is it quite broad?

**Mr Soden**—It is broad. With the docket system, the cases are randomly allocated to the judges as the cases are filed, subject to that qualification about how the panel system works. I would expect that they would be allocated all types of cases.

**Senator LUDWIG**—Is your computer system, Casetrack, up and running?

**Mr Soden**—Yes, that has been up and running for a couple of years now.

**Senator LUDWIG**—Did all the FEDCAM stuff get transferred across?

**Mr Soden**—It did.

**Senator LUDWIG**—Is Casetrack still running on budget?

**Mr Soden**—Yes. We are now into the out years for budget purposes; it is a routine system.

**Senator LUDWIG**—I heard from the AAT earlier today that they have taken a case management system off the shelf. There does not seem to be any drawing together of the Federal Court structure to one system at this point, does there?

**Mr Soden**—I cannot answer for the AAT.

**Senator LUDWIG**—You have had no interest from other courts about Casetrack?

**Mr Soden**—It was developed by the Family Court. We use it; the Federal Magistrates Court uses it. I suppose I could say that we are developing it jointly in different ways. I have said here before that I think it is a really good result for the Commonwealth that three major Commonwealth courts are using one computerised case management system developed on an Oracle database which is robust and strong. I think I have mentioned before that we have taken the lead on some of the e-filing and the e-court type strategies. We have implemented proof of concept. We have an e-filing system. We have an electronic court. We are continuing to develop that, working closely with the Family Court in relation to how that will be accommodated within Casetrack. We have set the target of no later than 1 July for the launch of our very latest e-lodgement system, which will mean that a lot of the data that we now have to enter ourselves will be prepared by the profession and automatically populated in the Casetrack database. We are doing all of that work, closely liaising with the other jurisdiction, so when they are ready to do those sorts of initiatives we will have done the hard work.

**Senator LUDWIG**—Mr Cornall, is it a matter for other court jurisdictions or other tribunals to decide what system they want to use? Is there any interest in the Commonwealth trying to standardise or at least harmonise the court document or records management systems to save money?

**Mr Cornall**—Under the devolved management arrangements it is a matter for them, but there is a lot of cooperation between them to ensure that there is as effective use of resources as possible.

**Senator LUDWIG**—I put some questions on notice. Question 135 was about Hudson Consulting and a position known as ‘People and Performance Consultant’. Do you recall question No. 135? You may have it there.

**Mr Soden**—I do recall it, yes. Did you get the details of the response?

**Senator LUDWIG**—Yes, I have that. Are there any changes or alterations to your answers to questions (a) to (g)?

**Mr Soden**—This is a bit old now. For me to accurately respond to that, I would need to go and check some of the information here. I think I can see some. For example, I would need to check question (g) because I cannot be absolutely certain that I could give you a precise answer to that question.

**Senator LUDWIG**—Has that position now been filled?

**Mr Soden**—Yes, it has. A person has been appointed on a non-ongoing contract to that role.

**Senator LUDWIG**—Who is that?

**Mr Soden**—Her name is Ms Sarah Roberts. I am sorry; I cannot answer the question about the amount.

**Senator LUDWIG**—Perhaps you could take that on notice and provide an update to No. 135.

**Mr Soden**—I am happy to take that all on notice.

**Senator LUDWIG**—I am just a little bit concerned, because it was after 25 May 2006. I am not sure of the date on which you responded to that. For you to then say that it is now a little bit out of date concerns me, I have got to say. Some of the detail has changed.

**Mr Soden**—From recollection, we responded almost immediately. That is why I am saying it is a bit out of date.

**Senator LUDWIG**—I see.

**CHAIR**—You have been too efficient, Mr Soden.

**Senator LUDWIG**—Perhaps you could have a look at that.

**Mr Soden**—I can check all that.

**Senator LUDWIG**—Are you running on budget, in excess of your current overall budget or under budget?

**Mr Soden**—We had predicted that we would have a small surplus at the end of the last financial year, and we increased that surplus by a small amount. So we are running within the budget. We are budgeting for a small surplus again this year.

**Senator LUDWIG**—I spotted a matter in the *Australian Financial Review* on 29 September 2006, which related to courts. I will quote it; I am happy for you to have a look at it, but you have probably seen it:

Courts around Australia this week have been submitting their annual data to the steering committee on government services for next year's report on court efficiency, and it appears there might be some interesting figures to be found at the Federal Court.

Have you seen that?

**Mr Soden**—I remember that article. I am not sure what they meant by 'might be interesting'.

**Senator LUDWIG**—It says:

A source tells Hearsay that Federal Court judges in Melbourne have been fudging their stats on hearing days. In Sydney, judges count a directions hearing as only part of a hearing day, but Melbourne judges count it as a full day, thereby allowing them to boast about having worked considerably more hearing days than their Sydney colleagues.

I am not sure whether there is some Melbourne-Sydney rivalry going on, but what concerns me is the way the statistics are reported and kept, and that they are kept in a standardised fashion for comparative purposes. The committee in fact relies on those data to be able to look at your workload. I am happy for you to have a look at the document.

**Mr Soden**—I remember that article. I could not understand why that comment was made, because from recollection the information about hearing days—

**Senator LUDWIG**—Perhaps you could take the opportunity to correct the record, at least.

**Mr Soden**—Yes. The information provided to the Productivity Commission does not include hearing days. It does not include information about lengths of hearing or hearing day information, so I do not understand where that came from.

**Senator LUDWIG**—Is there a leak within your place?

**Mr Soden**—I think a lot of people in our organisation talk frequently about the work and the jurisdiction and all those sorts of things, and there is a lot of interest in the Productivity Commission exercise, between the courts for comparative purposes.

**Senator LUDWIG**—How does it happen? How do you count the statistics for directions hearings?

**Mr Soden**—There is a requirement in the Productivity Commission exercise for the counting of the number of events in relation to particular cases, but there is no differentiation of what that event is. It is just a hearing event before the court. You might recall that there is reporting on an indicator called the attendance indicator. The assumption is, if the number of attendances is low for each disposition, that is a more efficient process than if the number of attendances is high. That has caused a great debate in the Productivity Commission exercise in the context that there is always an opposite reason why something might look different.

For example, in the state jurisdictions where they have the drug courts, where people are expected to keep coming back for assessment and treatment, a higher attendance indicator is a measure of success rather than failure. When that work has been done it has produced a whole lot of qualifications in relation to all the exceptions to the principle that, on the face of it, fewer attendances might be more efficient. That is why the number of appearances before the court is counted. There is no differentiation between whether it is a hearing, a direction or a case management conference; it is just the number of events.

**Senator LUDWIG**—Is there a standardisation between the registries in Melbourne, Sydney and Brisbane?

**Mr Soden**—In the way things are counted?

**Senator LUDWIG**—Yes.

**Mr Soden**—Yes.

**Senator LUDWIG**—Is there a practice note, practice direction or procedures manual that deals with how matters should be counted in each registry?

**Mr Soden**—No. All of the information provided to the Productivity Commission is collected in the registries but all collated centrally. There is a data folder which is quite comprehensive. That article must be referring to something else because the information in the data collection process is quite clear—in other words, you could not fudge it.

**Senator LUDWIG**—I guess that is one of those ones that will remain a mystery. Do you use outside training assistance or coaching to assist in the running of the court?

**Mr Soden**—I am sure we do. I do not have with me all of the details of people or organisations that we might have employed for training or related services. I could take that on notice and provide it to you. A lot of those decisions are left to district registrars, local management, to engage somebody for a specific training purpose.

**Senator LUDWIG**—Do they appear in the annual report? Are contracts above a certain amount required to provide—

**Mr Soden**—There is a lot of information about the contracts and consultants in the annual report. On that subject I am advised that ours will be tabled later today.

**Senator LUDWIG**—That is one of the difficulties we are working under. I usually would have some of that material in my hand now and be able to explore things a little further. But you are not the only ones that have not provided it on time, it appears.

**Mr Soden**—As I said, I understand it is being tabled today.

**Senator LUDWIG**—Then you will be on time, so I will correct that. There are some that will not. But that does not give us an opportunity to have a look at it, unfortunately, whilst you are here. If the annual report does not provide for it, can you indicate which of those consultancies relate to training, coaching, personal skills training and those types of things?

**Mr Soden**—I do not think the annual report goes into sufficient detail to make it easily identifiable. I will take that on notice and get back to you with that information.

**Senator LUDWIG**—Thank you. In terms of the response to I think an earlier question on notice about Hudson Consulting on performance, were they separate consultancies or the same?

**Mr Soden**—There have been two—it might be more than two—contracts with Hudson's for either consulting or employment related services. I do not have all the details at my fingertips about that; I would have to take that on notice.

**Senator LUDWIG**—If you would not mind: if there are two, what each relates to; and if there have been more than two. I think the answer to 135 indicates that there were two contracts involving Hudson's. I am curious as to whether there have been any more since that time—

**Mr Soden**—That is what I am not sure about.

**Senator LUDWIG**—and what each relates to. A general description would be helpful.

**Mr Soden**—I am happy to take that on notice.

**Senator LUDWIG**—Do you do staff surveys?

**Mr Soden**—Yes, we do. We have done a number of very, very comprehensive staff surveys. There might have only been two but I think we have done three. The last staff survey would probably have been two years ago, but very comprehensive, across the court.

**Senator LUDWIG**—I might have asked about that at the time; that is why I recall it. There have not been any since then? I am still working in the blind—the annual report would have reported it.

**Mr Soden**—There was not a staff survey in the last financial year and we do not have a plan at the moment for a staff survey in this financial year.

**Senator LUDWIG**—The certified agreement for staff: there is one in place at the moment, is there?

**Mr Soden**—Yes.

**Senator LUDWIG**—When is it due for renewal?

**Mr Soden**—I am not absolutely certain, but I think it is next year. I think the process will need to commence early in the new year.

**Mr Foster**—We would need to check that, because my understanding is that it is July 2009.

**Senator LUDWIG**—I am happy for you to take that on notice. It would probably be in the annual report, I suspect.

**Mr Soden**—It will be mentioned in there.

**Senator LUDWIG**—That relates to court registry staff?

**Mr Soden**—All of the staff.

**Senator LUDWIG**—Are there any on AWAs?

**Mr Soden**—Yes. So, to be precise, all of the staff except those on AWAs. There are 23 staff members, out of the 400-odd, on AWAs. All of the SES are on AWAs.

**Senator LUDWIG**—I am conscious of some restrictions placed on sharing the information about AWAs but in terms of where they sit, whether they are SES level or other registry staff, do you have that breakdown?

**Mr Soden**—Not with me; but I do not see any difficulty in making it available in terms of which particular positions are covered by AWAs.

**Senator LUDWIG**—If you can that would be helpful.

**Mr Soden**—Just to clarify: the court's existing certified agreement is for 2005 to 2008. It was certified by the AIRC on 25 July 2005, so it would be up for renewal in July 2008. So we would start any work in relation to a new arrangement probably in the second half of calendar year 2007.

**Senator LUDWIG**—Does the annual report show the total cost of contractors, of outsourced contractors and the like—and only for those contracts above a certain value?

**Mr Soden**—Yes, the usual requirements. It is all set out in the annual report.

**Senator LUDWIG**—We should be able to get that by the end of the day.

**Mr Soden**—Yes.

**Senator LUDWIG**—There might be a number of questions, once I have the annual report, that perhaps I could put on notice.

**Mr Soden**—Yes.

**Senator LUDWIG**—Have any broad issues arisen during the management in the last 12 months—any incidents that you have had to deal with?

**Mr Soden**—Not that I would describe as out of the ordinary or in the extreme.

**Senator LUDWIG**—Referrals to the local police to deal with troublesome people at the counter—those sorts of issues?

**Mr Soden**—There was an incident in which a matter was referred to the police. I do not think any action was subsequently taken. We are going through—

**Senator LUDWIG**—Was that a person at a counter? I think we have talked about this before: about registry staff and interaction with the public, the difficulties that people sometimes have and the way self-represented litigants approach the registry—those sorts of issues.

**Mr Soden**—I have been reminded. I do not think I should mention names, because I do not think—

**Senator LUDWIG**—I do not normally mention names; nor do I generally request them. But I have been known to on occasion.

**Mr Soden**—There is a matter I am reminded about—it is still before the courts—where a litigant in person made some very serious threats to members of the judiciary and others, and police action was taken in relation to that person, who was charged. The matter is still pending before the court.

**Senator LUDWIG**—We will not deal with that one, then. What about internally? Is that the only one that has been referred to the local police?

**Mr Soden**—An internal matter?

**Senator LUDWIG**—Yes. Has there been any?

**Mr Soden**—I only know of one internal incident that involved a report to the police.

**Senator LUDWIG**—I suppose that begs the question: what was that about?

**Mr Soden**—There was certain action taken by somebody, which damaged what I would describe as Commonwealth property in one of the registries, and the matter was reported to the police. There was no person interviewed or charged or anything; it was just damage to Commonwealth property and it was reported to the police.

**Senator LUDWIG**—What was the damage?

**Mr Soden**—It was graffiti in one of the toilets.

**Senator LUDWIG**—Is that a public toilet?

**Mr Soden**—To be honest I am not certain it was an area exclusive to staff or open to the public. I think it might have been an area where the public could also get access. I just do not know the details.

**Senator LUDWIG**—Perhaps you could take it on notice, then. I was just interested in what happened, whether you referred it to the police and whether there was any feedback about it.

**Mr Soden**—There was an incident. I understand it was referred to the police. I do not think anyone was interviewed or charged or any follow-up action was taken by the police, but certainly I can provide the details for you.

**Senator LUDWIG**—And then what action did you take?

**Mr Soden**—Me personally?

**Senator LUDWIG**—Yes.

**Mr Soden**—Nothing.

**Senator LUDWIG**—On the earlier matter—let us call it the self-represented litigant matter—do you normally follow up with staff or judges about those sorts of issues: about how you handle them and what you do? Did you do anything in this instance?

**Mr Soden**—I can report that I spoke personally to our staff members involved in the incident involving the litigant in person about any special assistance they might need, about any professional counselling and about how we might deal with similar circumstances arising in the future. We have not documented what we did there, but I am reasonably satisfied that the people who were involved in that will know what to do if a similar situation arises.

**Senator LUDWIG**—How are we going with the facts coming back, or the emails—

**Senator Ellison**—Just confirming those figures, Chair—

**CHAIR**—The filing fee figures?

**Senator Ellison**—We want to make absolutely sure we have got those figures right, because—

**Senator LUDWIG**—I would not want any of my statements to remain on the record if they were not right.

**Senator Ellison**—The Federal Court is going to check them before we produce them, so if we have reached the end of questioning for the Federal Court we can ask that officials remain whilst we get those figures checked and then bring them on, I envisage, before lunch. We are due to break for lunch at one o'clock. We can have that sorted out and in the meantime continue with questioning ASIO. But we do want to make absolutely sure that we have got the figures right.

**CHAIR**—I do not want to go over them again in the way we were doing before; that was not helping anybody.

**Senator LUDWIG**—No.

**CHAIR**—If you have come to the natural conclusion of questions, Senator Ludwig, perhaps we should conclude with the Federal Court now. Mr Soden, if you and your officers can remain here until the document becomes available, that would be helpful.

**Senator LUDWIG**—I think I have finished, unless there are other questions.

**CHAIR**—Are there other questions for the Federal Court?

**Senator HEFFERNAN**—I have one. Is this the appropriate forum to raise the issue of an answer given to a question in an earlier proceeding of this committee about complaints to the Federal Court? Are you blokes equipped to answer a question on this? This is an answer from an earlier proceeding. It says: 'The court has a judicial complaints procedure which sets out the procedure for dealing with complaints against Federal Court judges. The procedure recognises the constitutional limitations and safeguards with respect to such matters and therefore does not provide a mechanism for disciplining a judge.' Where does that leave us?

**CHAIR**—Is that a previous response of the court, Mr Soden?

**Senator HEFFERNAN**—This may not be the right forum.

**Mr Soden**—I do not recall making that response.

**CHAIR**—Which question is it? Do we have the relevant question and answer?

**Senator HEFFERNAN**—It may be a matter for the Attorney-General. I am just curious to know how you deal with them. Obviously, I am making the point that I think we have to have a process, which I have mentioned at earlier proceedings. This is a self-admission in my book that there is no way of dealing with it under the present system.

**Mr Soden**—That document that you are referring to is a question that has been responded to on notice before. It was not me personally; it was someone else.

**Senator HEFFERNAN**—That is right. I said ‘at this committee’ not you personally.

**Mr Soden**—We get complaints made, and we deal with them.

**Senator HEFFERNAN**—But, as you say, there is no way of disciplining a judge. That is according to your advice.

**Mr Soden**—That is true.

**Senator HEFFERNAN**—Thank you. That is all I needed to know.

**CHAIR**—Are there any more questions for the Federal Court? If there are not, Mr Soden, on the undertaking we were discussing before in relation to the document on filing fees and other matters, would you mind remaining in near call with your officers?

**Mr Soden**—That is fine.

[11.59 am]

#### **Australian Security Intelligence Organisation**

**CHAIR**—Good morning, Mr O’Sullivan. We will start with questions from Senator Brandis.

**Senator BRANDIS**—Mr O’Sullivan, I say in advance that I suspect you will want to take some of these questions on notice to consider your appropriate response on advice. Did you happen to see a report in yesterday’s *Australian* under the by-line of Natalie O’Brien entitled ‘Canberra ignored secret agent’s warning on sheik’ in which your name appears?

**Mr O’Sullivan**—I did.

**Senator BRANDIS**—It is said in the report that in 1984, at a time when the then minister for immigration was considering an application for permanent residency by Sheik Hilali, an intelligence report generated from Cairo contained warnings about national security matters concerning Sheik Hilali. Without going into the content of any such report, are you aware that a report of that kind was prepared at or about that time concerning Sheik Hilali?

**Mr O’Sullivan**—I am not aware.

**Senator BRANDIS**—On the basis of your experience, Mr O’Sullivan, is it common for ministers for immigration to receive reports concerning national security aspects of an application for permanent residency?

**Mr O’Sullivan**—That is a very general question.

**Senator BRANDIS**—I am keeping it general, for the obvious reason that I think it would be inappropriate for me to ask—let alone for you to answer—questions that descended to

confidential matters in relation to a particular report. Therefore, I am deliberately trying to frame my questions in the general.

**CHAIR**—At the same time, Senator Brandis and Mr O’Sullivan, this committee does not encourage engagement in hypothetical questions on intelligence issues, in particular, and in fact is very careful about the way it deals with matters pertaining to—

**Senator BRANDIS**—With respect, Chair, I am not asking—

**CHAIR**—If you could let me finish, Senator Brandis. This committee is very careful about the way in which it deals with matters pertaining to intelligence issues. I know that Mr O’Sullivan is very mindful of that, and I am sure you will be, too, Senator Brandis.

**Senator BRANDIS**—Yes, but the question is not a hypothetical one—any more than the questions that I asked yesterday were hypothetical questions. I am asking about categories of documents.

**CHAIR**—We may agree to differ on that. I would ask you both to be mindful of the committee’s usual procedures.

**Senator BRANDIS**—With respect, I will ask my questions appropriately and I will choose my own words. Mr O’Sullivan, I think I had finished the question. Did you understand the question or would you like me to re-put it?

**Mr O’Sullivan**—If I understand correctly, you asked me, based on my experience, what my impression was of what material was put before ministers for immigration.

**Senator BRANDIS**—No, I did not ask about your impression.

**Mr O’Sullivan**—You asked, based on my experience, what my understanding was.

**Senator BRANDIS**—Yes.

**Mr O’Sullivan**—I do not have much experience to draw on in that respect, because I do not think I have had any direct exchanges with any minister for immigration on that sort of matter.

**Senator BRANDIS**—Would it be right to say that you have never had any experience of an occasion when an application to a minister for immigration for permanent residency or citizenship was the subject of commentary from a national security point of view in a report generated by a national security agency, whether ASIO or another national security agency?

**Mr O’Sullivan**—Not entirely, because there was one issue last year, which is now before the Federal Court, where I made a recommendation to the minister for immigration, and under the terms of the Migration Act 1958 the minister is obliged to take the advice that was provided to her. So there is one particular case where I did provide such information.

**Senator BRANDIS**—You told me in answer to my first question that you were not aware of the alleged 1984 report concerning Sheikh Hilali. Were you in fact at the Cairo embassy at the time, as is alleged in the newspaper story?

**Mr O’Sullivan**—I was posted to Cairo between 1983 and 1985. The reason I answer that way, to be clear, is that I do not know whether I was in embassy at the time when that alleged report was or was not sent.

**Senator BRANDIS**—But it obviously follows from your answer that if that report was sent it had nothing to do with you.

**Mr O’Sullivan**—I have no recollection at all of such a report.

**Senator BRANDIS**—That is fine. What is the practice of ASIO in relation to the security classification of reports that go to ministers? Is it always a matter for ASIO to choose the security classification of a report?

**Mr O’Sullivan**—Normal government practice is that the initiating officer who writes a document is the classifying officer, so if the material came to ASIO then it would be ASIO which would classify such a document.

**Senator BRANDIS**—I want to refer to the practice as it was in 1984. I imagine it has not changed. Speaking from the perspective of 1984, is the minister at liberty themselves to alter the classification or is the minister in effect subject to the classification placed on the document by the agency generating it?

**Mr O’Sullivan**—I would have to get legal advice on that point.

**Senator BRANDIS**—All right—would you, please? Is it nevertheless, in your experience, customary for ministers to observe and respect the security classification placed on documents by the generating agency?

**Mr O’Sullivan**—In my experience, yes.

**Senator BRANDIS**—The purpose of a security classification, among other things, is obviously to restrict access to the document, is it not?

**Mr O’Sullivan**—It is to protect the nature of the material in the document, yes.

**Senator BRANDIS**—Of course, and one of the ways in which that is protected is by restricting those who may have access to it.

**Mr O’Sullivan**—Correct.

**Senator BRANDIS**—Would the Treasurer be a person who would ordinarily be expected to have access to a national security document which had received a high level of secure classification on the basis of a national security concern identified in the document?

**Mr O’Sullivan**—He could be. The distribution of material depends on the content of the document. If it had relevance to the Treasurer or to the Treasurer in his role as a member of the National Security Committee of cabinet it could well be distributed to him.

**Senator BRANDIS**—Was the Treasurer a member of the National Security Committee of cabinet in 1984?

**Mr O’Sullivan**—I do not know.

**Senator BRANDIS**—Can you check that and come back to us with the answer?

**Mr O’Sullivan**—I do not even know whether there was such a committee of cabinet in those days.

**Senator BRANDIS**—Indeed.

**Senator LUDWIG**—If we are going to ask Mr O’Sullivan questions about where he was and what he was doing in 1984, does that also apply if I want to ask Mr Carmody, when he appears as Customs CEO, about Mr Gerard and tax matters? If that is the case then I certainly will.

**Senator BRANDIS**—Was that a point of order?

**Senator LUDWIG**—I guess.

**Senator BRANDIS**—Mr O’Sullivan is here as the head of ASIO and I am asking him about a newspaper report which contains a claim which is sourced from indirect speech from an unnamed person that a certain matter in 1984 concerned a report about national security. I cannot see why it is not relevant to ask the head of ASIO about a matter of national security, albeit that it relates to events which are alleged to have occurred in 1984, before he was in his current position.

**CHAIR**—Please continue, Senator Brandis.

**Senator BRANDIS**—Thank you, Madam Chairman.

**Senator Ellison**—Madam Chair, Senator Brandis asked whether the Treasurer was on the National Security Committee, and the question was raised as to whether it was in existence then. That is a matter dealing with structure of government, and I am happy to take that on notice.

**Senator BRANDIS**—Would you, please, Minister. I appreciate it.

**CHAIR**—Thanks, Minister.

**Senator Ellison**—It is a matter of historic record which can be checked.

**Senator BRANDIS**—I do not want to be too obscure. Let me explain to you, Mr O’Sullivan, why I am asking these questions before I proceed to my next question. Obviously I am asking these questions because a claim has been made in a newspaper story yesterday that in 1984 the then Treasurer, Mr Keating, and a person who was then a government backbencher, Mr McLeay, sought to influence a decision about an application for permanent residency by this man Sheikh Hilali, and that at the time, so it is claimed, that they sought to influence that decision the minister was in possession of a report which warned on national security grounds against giving Sheikh Hilali permanent residency. That is why I am asking these questions. They arise, as I have openly told you, directly out of a newspaper story. I am not asking you, and I have not asked you, to reveal anything of the content of that report; nor could I, in view of your answer to my first question. But what I am pursuing is the question of the appropriate handling of such a report, and I am interested in exploring whether any impropriety occurred. The questions I am asking you now are questions about process. That is the background.

The minister has kindly agreed to take on notice the previous question which I directed to you about whether the Treasurer was a member of the National Security Committee of the cabinet at the time, or, indeed, whether such a committee then existed. Would you think it surprising or unusual were a backbench member of the government made aware of the contents of a classified report about the national security implications of an application for permanent residency by Sheikh Hilali?

**Mr O'Sullivan**—If that were to be so I would regard it as unusual.

**Senator BRANDIS**—Would it be irregular?

**Mr O'Sullivan**—It certainly would be very unusual, and it would be irregular if it had not been authorised.

**Senator BRANDIS**—Let it be assumed it had not been authorised. Can you conceive of any circumstances in which a backbencher would be authorised to be in receipt of classified national security material?

**Mr O'Sullivan**—That is a very broad question.

**Senator BRANDIS**—It is. It is a process question.

**Mr O'Sullivan**—Yes, but I mean: are there any circumstances where such an event could take place? It requires some rather broad considerations. In the context of particular matters, ordinarily that would not be the case.

**Senator BRANDIS**—No. And can I suggest to you that ordinarily, unless the report dealt with a matter specifically germane to the Treasurer's portfolio responsibilities or concerned the Treasurer as an actor in events, it would be highly unusual for the Treasurer to be apprised of the contents of a national security report, he not being, in plain speech, a national security minister.

**Mr O'Sullivan**—As I said at the start, I cannot confirm to you that such a report existed in 1984, so it is impossible for me to speculate on a report that I do not know existed, on what distribution it might have been given or whether any particular distribution would have been appropriate or inappropriate.

**CHAIR**—Thank you, Mr O'Sullivan.

**Senator BRANDIS**—Indeed, Mr O'Sullivan, and you'll appreciate that I am seeking to observe the chair's guidance, by not asking you hypothetical questions, and my own self-imposed injunction of not asking you questions about the details of a particular report. So I am asking you questions about process only and what would or would not be regarded as appropriate, having regard to the process and the document handling procedures, for a document of the category we are discussing. Okay?

**Mr O'Sullivan**—Yes.

**Senator BRANDIS**—Are there protocols in place—and, if so, what are they—which govern the creation of secondary documents? For example, I mean summaries, briefs to ministers or any other category of secondary document which draws upon classified material. Does the secondary document, for instance, bear derivatively the same security classification as the primary document from which secure material is drawn in the preparation of the secondary document?

**Mr O'Sullivan**—The answer to that is: not necessarily. It depends on what material was included in the secondary document. Sometimes, in fact, the custom in government is to have documents labelled, for argument's sake, 'restricted, covering confidential'. So sometimes you would find derivative documents that would have a different classification, sometimes you would find the same classification and sometimes you would find a situation where a

covering document might draw the attention of the reader to the fact that it itself was either unclassified or lowly classified but the material attached was of a higher classification.

**Senator BRANDIS**—May we take it that the more sensitive the material reproduced in the secondary document the more likely it is that the secondary document would derivatively bear the same security classification as the primary document?

**Mr O’Sullivan**—The classification derives from the sensitivity of the material.

**Senator BRANDIS**—That is my point.

**Mr O’Sullivan**—If sensitive material was the basis for the first classification and the same material was used then you would expect the same classification to follow.

**Senator BRANDIS**—Should that have been understood by ministers and ministerial advisers? You would expect that they would understand that document handling procedure?

**Mr O’Sullivan**—These principles are set out in the *Protective Security Manual*. I cannot recall what was included pre-1984 and post-1984. I would have to check when things were set down. That is a principle which is of long standing, in my recollection, but I cannot recall specifically whether that was precisely the case at a point in history. It is a longstanding principle.

**Senator BRANDIS**—Minister, you might also take on notice to supply to the committee the relevant portions of the *Protective Security Manual*, referred to by Mr O’Sullivan, as it was in 1984.

**Senator Ellison**—Yes, I will take that on notice. I will also take on notice what is involved in and what can be divulged about the security clearance of staff.

**CHAIR**—Thank you, Minister.

**Senator BRANDIS**—Thank you very much, Minister. Mr O’Sullivan, focusing now on the primary document, the document generated by the national security agency itself, rather than secondary documents, I assume that the handling of all such documents is also, perhaps under the manual you have just referred to, subject to protocols, including protocols governing the archiving and preservation of such documents.

**Mr O’Sullivan**—That would be so, or, if it were supplemented, it would be supplemented by other provisions, such as the Archives Act and so on.

**Senator BRANDIS**—By whom would it be archived—by a generating agency, by the recipient or in some other fashion?

**Mr O’Sullivan**—Normally, classified documents around the government would be archived by the possessing agency. It could be that over time documents, multiple copies of which have been distributed through the system, are culled because there is no need for agencies to archive them. I understand that this is really a question for the archives processes. In general, what happens is that classified documents are archived in the agency where they are received.

**Senator BRANDIS**—Where we are concerned with a document containing national security information generated by a national security agency and bearing a high security

classification which has been passed to a minister, who is the archiving authority? Is it the department for which the minister is minister or is it someone else?

**Mr O'Sullivan**—Normally, the document would have been provided to the minister by his or her own department, so the documents ordinarily would have been returned from the minister's office to the department for handling, which includes accounting and, in due course, archiving.

**Senator BRANDIS**—When you say they were returned from the department, were they returned to the generating agency?

**Mr O'Sullivan**—That could be the case, but there could be other cases where documents of which there are multiple copies are distributed around the system. Normally, if my memory and understanding are correct, they would go back to the distributing agencies rather than the originating agency. Some documents, because of their classification and the way they are handled, are required to go back to the originating agency, but other documents of a different category more or less stay in the departments to which they were distributed. They would be archived in those departments. It depends a little bit on the nature and the classification of the documents.

**Senator BRANDIS**—If there were a report about the national security implications of a successful application for permanent residency which was generated by a national security agency and went to the minister for immigration and that document was subject to these protocols and practices, where today would we expect to find it?

**Mr O'Sullivan**—As I say, depending on the nature of the document it might have gone from the minister for immigration and his or her department back to the originating agency or it might have stayed in the immigration department. That question is impossible for me to hypothetically resolve.

**Senator BRANDIS**—Does the originating agency routinely keep a copy of such documents, even documents that it passes to a department, a minister's office or another agency?

**Mr O'Sullivan**—Ordinarily, yes.

**Senator BRANDIS**—So, if a document of the kind we are speaking about were generated by a national security agency and it were subject to these archival protocols, we would expect to find it archived at least within the generating agency.

**Mr O'Sullivan**—I think that is correct.

**Senator BRANDIS**—If it were also copied to a minister's office, we might expect to find it archived also within the minister's department.

**Mr O'Sullivan**—That is possible but less certain than the first case, because it depends on the nature of the document.

**Senator BRANDIS**—I know this is slightly more amorphous, but do the same or substantially similar archiving protocols and practices govern secondary or derivative documents as govern the primary document?

**Mr O'Sullivan**—The treatment of documents depends ultimately on their content and therefore their classification.

**Senator BRANDIS**—Let it be assumed for the purposes of this question that the secondary or derivative documents contain the substance and effect of the secure material in the primary document.

**Mr O'Sullivan**—If that were so, they should have been classified in the same way and therefore should have been analogously treated, one would think, unless there were some reason in the culling process, if you like, or in the derivative process which changed the nature of the original document.

**Senator BRANDIS**—I think I have covered all of the possibilities other than the possibility of a verbal report. Does it follow from your answers to my earlier questions about conveying those documents to, let us say, a government backbencher—I assume it does, but let me put it to you—that the rules apply identically whether one is concerned with passing a copy of the secure document or verbally communicating the contents of the secure document to a person who ought not to be the recipient of the document or the information contained within it?

**Mr O'Sullivan**—Broadly speaking I think that is right. The prohibition on the distribution of material outside government refers not just to a physical location of such material but to passing it orally as well.

**Senator BRANDIS**—Is the passing in an unauthorised manner of a secure document or verbally conveying the sensitive contents of a secure document a criminal offence?

**Mr O'Sullivan**—That is a legal question. You would have to get advice about—

**Senator BRANDIS**—Would you, please?

**Mr O'Sullivan**—Perhaps other people could—

**Senator BRANDIS**—The minister might take that on notice.

**Senator Ellison**—I will take that on notice.

**Senator BRANDIS**—I think you will find the answer to that question is yes, incidentally.

**CHAIR**—Mr O'Sullivan has indicated his position on the answer to that question. Do you want to move on?

**Senator BRANDIS**—I am just wondering, Madam Chair, whether, if a criminal offence were involved—and the minister might care to take this on notice too, as this question is to him and not to Mr O'Sullivan—the protocols which govern preserving the secrecy of previous governments' documents, archived documents, would apply to protect a document which had been communicated, in circumstances in which a crime had been committed, by both the conveyer and the recipient.

**Senator Ellison**—I understand the question from Senator Brandis, Madam Chair, and I will take that on notice—that is, whether the protocol which Senator Brandis has explained operates to exclude any possible criminal investigation—and I will also take on notice the previous question which Senator Brandis asked about; that is, whether, in the circumstances,

the activity described by Senator Brandis could constitute a criminal offence. As well, I will take on notice the applicable laws in relation thereto.

**Senator BRANDIS**—Thank you, Minister, and thank you, Chair.

**CHAIR**—Thank you, Senator Brandis.

**Senator LUDWIG**—I take it that you are now increasing the number of your staff. You are on a recruitment campaign. There is a shoe waiting to be filled, I take it.

**Mr O'Sullivan**—Yes, we are.

**Senator LUDWIG**—Can you tell us what the recruitment target is? How many people do you intend to recruit? Are there certain targets that you have set for yourself?

**Mr O'Sullivan**—The government decided in October last year to fund ASIO to increase its staffing over the period to 2010-11 to 1,860 staff. If you make a linear division of that, that would add up to a net increase of 170 per year over each of the intervening years. In fact, we may well end up somewhat exceeding that in the early years—that is, have more than 170 in some years and fewer in others. It depends a little bit on the cycle of such recruitment. Broadly, we are aiming to increase our staff net by 170 per year over the cycle to reach 1,860 by 2010-11.

**Senator LUDWIG**—Are you on target for that at the moment?

**Mr O'Sullivan**—We are slightly ahead of target.

**Senator LUDWIG**—How many have you recruited in the last 12 months?

**Mr O'Sullivan**—I am trying to find the exact figures. If I recall correctly, we recruited about 247 in the last financial year for a net gain of around 150.

**Senator LUDWIG**—Is that taking into consideration the six per cent separation rate?

**Mr O'Sullivan**—Yes, that includes that.

**Senator LUDWIG**—There was a significant increase to your budget and it includes out years as well. Do you have overspends or underspends and, if so, do you carry those forward? I know we have just come off the May budget, but I am interested in your future projections for the output areas or the agency as a whole. Do you keep track of whether or not you will meet your budget—in other words, your forecast budget expenditure—or whether there will be an underspend or an overspend? What do you intend to do if there is an overspend—that is, how will you re-phase that for the next year?

**Mr O'Sullivan**—We monitor very carefully the budget outlays, in conjunction with the Department of Finance and Administration, to try to make sure that the tracking process and the sequence of expenditure tracks closely to the approved budget, so that we purchase equipment, for instance, that corresponds to the capacity to use it at a particular point in time; so that we have enough desktop computers, for example, to correspond to the number of staff; or so that we have enough accommodation arrangements to correspond to the number of staff. We have a system internally that monitors very carefully the budget outlays corresponded against the recruitment pattern, so that the two things get harmonised effectively. We believe we are doing that in accordance with the budget.

**Senator LUDWIG**—Are you on track for an underspend or an overspend in this financial year?

**Mr O'Sullivan**—At the moment I believe we will meet the budget target. We aim to come in on budget. One thing we are looking at right now is making sure that our project management system is robust enough to make sure we do not end up with underspends because of problems with late ordering, supplying and so on. If, however, we did run into such problems—and I am not saying that we think at the moment that we will—we would then go back to Finance with an underspend and aim to roll the money over into the succeeding financial year.

**Senator LUDWIG**—In terms of security assessments or work of that nature, have you done any in respect of Iraq?

**Mr O'Sullivan**—Do you mean the threat assessment to Australia?

**Senator LUDWIG**—Yes.

**Mr O'Sullivan**—The threat assessment to Australia has been set at medium since 11 September 2001.

**Senator LUDWIG**—Do you provide security assessments of particular countries like Afghanistan, Iraq or others?

**Mr O'Sullivan**—We provide advice that helps determine the level of risk that is related to particular Australians and Australian interests in particular parts of the world. So the advice that is given and the settings that are determined are partly based on our judgements about the threat in particular areas. The threat to Australians in, say, Iraq, is higher, obviously, than the threat to Australians in Australia or other parts of the world.

**Senator LUDWIG**—So they relate to Australian interests in overseas settings.

**Mr O'Sullivan**—That is right.

**Senator LUDWIG**—In terms of visits overseas to Mr Hicks to see about his wellbeing, does ASIO undertake that role?

**Mr O'Sullivan**—No.

**Senator LUDWIG**—Have you been involved in any of the consultations in respect of the US commission for Mr Hicks?

**Mr O'Sullivan**—No.

**Senator TROOD**—I want to turn your attention to the two Iraqi gentlemen who are based on Nauru, if I could put it that way. Am I right in assuming it is your agency that is responsible for the security assessments about these people?

**Mr O'Sullivan**—Yes.

**Senator TROOD**—Can you tell us when the first security assessment was undertaken in relation to these two people?

**Mr O'Sullivan**—I do not know that I have exact dates, but it was a number of years ago. I do not think I have that exact detail with me at the moment. I can get it for you.

**Senator TROOD**—Would you advise us about that?

**Mr O'Sullivan**—Yes.

**Senator TROOD**—When this assessment was first undertaken, was that as part of their original refugee claim review?

**Mr O'Sullivan**—It would have been when they came within the Australian system, so it could well have been associated with their original applications.

**Senator TROOD**—Are those assessments made as a matter of course or was there particular reason to assess these individuals?

**Mr O'Sullivan**—They would have been made as a matter of course. It relates to the visa process.

**Senator TROOD**—Can you tell us what assessment was made of them at the time of the first judgement?

**Mr O'Sullivan**—The assessment was that they fell within the terms of the act, which provides for us to make a judgement that they represent a security threat to Australia.

**Senator TROOD**—Is that a single category of evaluation? I am seeking to clarify whether there are various levels at which a person can be assessed.

**Mr O'Sullivan**—No, it is a judgement that we reach about their status in respect of our security.

**Senator TROOD**—Has the same assessment been made about each of these gentlemen?

**Mr O'Sullivan**—There are a couple of further things to say that I have to be careful about. First of all, these gentlemen have commenced proceedings in the Federal Court against me for the judgements that I have made in these matters and so I have to be circumspect about what I say about them. I think getting into some of these details risks trespassing on the authority of the courts.

**CHAIR**—Which the committee does not wish to do in any way.

**Senator TROOD**—My view is similar to the chair's. I do not wish to trespass on any ground which may be in any way dangerous in relation to the proceedings that may exist in any court. Maybe I could press on with my questions and, if you feel there is a danger, you will no doubt draw my attention to that. The chair will no doubt make a judgement as to whether or not we can go any further, if that is satisfactory.

**CHAIR**—No doubt.

**Senator TROOD**—My question was whether or not these two gentlemen had been assessed similarly. Your response, as I understand it, is that it is a difficult question to answer in light of the proceedings. Is that your position on that?

**Mr O'Sullivan**—These are statements of fact which go to the dispute that they have with me and with which they are proceeding through a Federal Court process. I am not trying to deny facts, as it were, but these are matters which come within the purview of the courts. As I say, they have initiated legal action against me for the decisions that I made. I think there are

fairly well-established protocols or conventions about debating in a public forum outside the courts the matters which are being canvassed within the courts.

**Senator TROOD**—There are indeed well-established protocols on that. I am grateful to you for drawing it to my attention. As I said, I do not wish for you to trespass into those areas in ways which might be either embarrassing or in breach of well-established principles of justice. I am conscious of that.

**CHAIR**—Senator Trood, I am concerned that we might be putting Mr O’Sullivan and the committee in a very difficult position in pursuing this discussion, given the nature of the circumstances that currently obtain.

**Senator TROOD**—Perhaps I can remove it to a level of generality, which will avoid any potential embarrassment or danger.

**CHAIR**—You mean the Brandis approach.

**Senator TROOD**—Sometimes he sets good examples.

**CHAIR**—Often, I would have said.

**Senator TROOD**—Perhaps you could just enlighten us, Mr O’Sullivan, as to the status of these proceedings. We are probably not in any danger of trespassing on any delicate ground by relating the detail of court proceedings.

**Mr O’Sullivan**—My understanding is that the Federal Court has heard evidence in this matter. If I am correct, I think the judge has reserved his decision.

**Senator TROOD**—So we are waiting for the judge to decide. Of course, I imagine that none of us have any insight as to how long that might take. I am in your hands, Chair, but I will proceed. In circumstances where an adverse security judgement has been made about an individual of this kind, is the implication of that judgement that that person, or those people, cannot be resettled in Australia?

**Mr O’Sullivan**—I think that is a question that you ought to pursue with the Minister for Immigration and Multicultural Affairs, because there are circumstances where the minister has discretion in respect of issuing visas.

**Senator TROOD**—I see.

**Mr O’Sullivan**—It is the case that an application for a visa or another category of visa triggers another security assessment. So, in the broad circumstances you describe, the minister for immigration does have some discretion. I am required to give advice to that department and, through that department, to the minister about ASIO’s security assessment. The minister in some circumstances is required to take actions but in other circumstances has discretion. The broad question you are posing leaves open both possibilities.

**Senator TROOD**—Thank you for clarifying that. Since you made an original assessment of these gentlemen, has there been a review of their situation?

**Senator Ellison**—A review in between the decision and the court proceedings which have just concluded?

**Senator TROOD**—Any review. There was an original assessment of their position, as I understand it. Mr O’Sullivan has confirmed that to the committee. What I am now asking is whether or not there has been a subsequent review of the assessment that was made.

**Mr O’Sullivan**—Provided you use the word ‘review’ in a slightly extended sense, the answer is yes. That is to say, we keep an open mind because new information can come before us which bears on the original judgement. If ASIO becomes aware of new information, that process of review, if I can use that phrase rather than ‘review’ with a capital ‘R’, will trigger further consideration.

**Senator TROOD**—So, not necessarily in relation to these people but generically, these reviews are a continuing enterprise.

**Mr O’Sullivan**—Generically the position is that if new information bears on the original decision it is taken into account to see whether the original decision remains justified. As a matter of historical fact, there have been cases where ASIO has changed security assessments about individuals from adverse to non-adverse. There have been historical examples where an adverse assessment was made against an individual and additional information became available over time and the original judgement was modified.

**Senator TROOD**—Are you limiting that observation to refugees or to all people who might be of interest to ASIO?

**Mr O’Sullivan**—I am trying to make a point that the basis for judgement is the grounds on which recommendations or decisions about security assessment are made. If those grounds shift because new information becomes available, no matter what the original category of the person’s application was, the matter is further considered.

**Senator TROOD**—Is it your agency’s decision to undertake a review? Is it possible that another agency might be able to suggest to ASIO that the matter bears further attention?

**Mr O’Sullivan**—That would be a judgement that we would make, but we would be perfectly open to information from another agency. In other words, if, for argument’s sake, the department of immigration or the department of foreign affairs came with additional information that bore on the case, we would certainly take that into account.

**Senator TROOD**—Can you tell us insofar as you are aware—and this may well be information that is outside your area of knowledge—whether there have been any circumstances in which people with the kind of adverse security judgement that has been made about these two Iraqi gentlemen have been resettled? Or is it the kind of judgement that virtually precludes resettlement in Australia, apart from the area of discretion which you described in relation to the minister?

**Mr O’Sullivan**—If we make an adverse security judgement about a person and that person is offshore, while that security assessment remains valid then you would have to think of very elaborate circumstances where a minister would want to overturn that judgement. We make a judgement, and we provide the basis for that to the minister for immigration, in respect of any person who has applied for a visa to come to Australia. If that judgement were adverse, it would be very hard to imagine under what circumstances a minister would overrule such a judgement.

**Senator TROOD**—So it would be so severe in your view as to constitute a threat to national security?

**Mr O'Sullivan**—That is the basis in the act that we have to provide advice on.

**Senator TROOD**—Which could mean a range of things, obviously.

**Mr O'Sullivan**—Of course.

**Senator TROOD**—That is clearly an impediment to resettlement in Australia, but does it follow that it would also be an impediment to resettlement elsewhere?

**CHAIR**—I am not sure that is a matter on which Mr O'Sullivan can comment.

**Senator TROOD**—He may have some experience.

**Senator Ellison**—Where a person settles and such is a matter for Immigration.

**Senator TROOD**—I can see that, Minister, but perhaps Mr O'Sullivan can inform the committee whether he has any knowledge of any individual where that kind of assessment has been made and whether, to his knowledge, there have been any circumstances where that kind of assessment has nevertheless allowed that person to be resettled in a third country.

**Mr O'Sullivan**—We make assessments about the threat to Australian interests. That judgement does not necessarily apply anywhere else, so it is quite available for speculation that a third country which had a different judgement might well take such a person.

**Senator TROOD**—Would it be appropriate or is it part of your practice to provide a third country with the nature of ASIO's assessment if a person is nominated for resettlement?

**Mr O'Sullivan**—That is once again a rather hypothetical question.

**CHAIR**—I think that is a difficult question for Mr O'Sullivan, Senator Trood.

**Senator TROOD**—I would have thought Mr O'Sullivan must have experience of being asked by other intelligence agencies to provide an assessment or the information from an assessment made about an individual who is in an Australian detention centre.

**CHAIR**—Indeed, but the processes pertaining to that are not necessarily something that the committee is inclined to discuss on the public record.

**Senator TROOD**—I do not wish him to discuss the detail of it; all I am asking is whether or not he can tell us whether or not there have been any instances where that information has been provided to a foreign intelligence agency.

**CHAIR**—Mr O'Sullivan, as you are able, please respond to Senator Trood. If you are not, please indicate that.

**Mr O'Sullivan**—As you can see from the annual report, the number of people that you are talking about is extremely small. There was one person in 2004-05 who had a qualified assessment and there were no people in 2005-06 in that category, so I do not have much direct experience to draw on in trying to answer your question. But hypothetically, if such a situation as you describe did come about then it would not be unusual for ASIO to discuss with our counterpart agencies, depending on which country you are talking about for resettlement. I can imagine the sort of hypothesis that you are describing coming about. But, as I say, in my period as Director-General there has been one such person.

**Senator Ellison**—At this point we could bring on the Federal Court just to finish off with that area—they do have the information available now—and then those officials could be released before lunchtime.

**Senator TROOD**—I will not be much longer, so perhaps I can ask just a couple of questions and then we can proceed as the minister has suggested.

**CHAIR**—It is not that ASIO is going away; ASIO will be coming back.

**Senator TROOD**—I am nearly finished with Mr O’Sullivan.

**CHAIR**—If you are very brief.

**Senator TROOD**—Of course, Madam Chair. Mr O’Sullivan, can you tell us whether or not you have any plans at the moment to review the assessments of these two individuals?

**Mr O’Sullivan**—As it happens, of the two people you are referring to, one of whom was previously on Nauru, Mr al Delimi has applied for a permanent protection visa. That application, as I said before in general terms, will trigger in due course a security reassessment. So in his case that is an inevitable consequence of his application for a further protection visa.

**Senator TROOD**—Is he the gentleman who presently remains on Nauru, or is he the person in Brisbane receiving medical treatment?

**Mr O’Sullivan**—He is the person in Brisbane. In respect of the other person, Mr Sagar, my understanding is that he has said he does not intend to come to Australia, so the issue of a visa application by him is moot and therefore the same process would not apply in his case.

**Senator TROOD**—ASIO is comfortable that it has a settled view of his position for the moment?

**Mr O’Sullivan**—This once again gets me close to some of the material that is before the courts. As I said to you, I am being sued by a number of people in the Federal Court. They have a view about my responsibilities and I have a different view. And that question, I think, goes to how I discharge my responsibilities.

**Senator Ellison**—I think it is a fair point, Madam Chair.

**CHAIR**—I agree, Minister; that has been my point the whole time.

**Senator TROOD**—I do not press it. Perhaps I can conclude my remarks by saying that I hope these matters are resolved satisfactorily and that by the time we resume at the next round of estimates they will be resolved in a way such that I might, if I choose to do so, be able to press these matters more usefully. Thank you, Mr O’Sullivan.

**CHAIR**—Mr O’Sullivan, I hope you will be able to assist the committee by returning when the lunch break is concluded.

**Mr O’Sullivan**—I will be pleased to.

[12.50 pm]

**Federal Court of Australia**  
**Federal Magistrates Court**

**CHAIR**—Mr Soden and your officers: do we have the information on the matter we were discussing earlier?

**Mr Soden**—Yes. I will ask Mr Kellow to report.

**Mr Kellow**—The fees for commencing and conducting a proceeding in the Federal Court are prescribed by the Federal Court of Australia Regulations. Those fees are set out in schedule 1 of those regulations. Item 3 of schedule 1 deals with applications for unlawful termination. It prescribes the filing fee by reference to the fee that is payable under subsection 644 of the Workplace Relations Act 1996. So the fee for commencing an unlawful termination case in the Federal Court is the same as it is in the Industrial Relations Commission. Because the fees are adjusted on a biannual basis, not by amendment to the regulations, the court prepares an internal document—the basic content of which is also available on the website—that summarises all the relevant fees, basically following the schedule. I will hand up the court prepared document for the benefit of the committee.

**CHAIR**—That is a tabled document, thank you.

**Mr Kellow**—The fee for item 3 is \$53.90 for a commencement application. Schedule 3 to the regulations sets out a number of exemptions to the fee regime. Clause 1(2)(b) provides—and this is my paraphrasing—that the only fee payable in relation to an application in relation to unlawful termination is that filing fee of \$53.90. So all the other fees that are set out in the schedule or in the document that is about to be provided to the committee will not apply. The \$53.90 is also subject to the general exemption and waiver provisions in schedule 3 of the regulations which are similar to those in the Federal Magistrates Court which relate to people who are in receipt of a social security or other benefit or who may be in detention or who are unable to pay the \$53.90 due to grounds of financial hardship.

**CHAIR**—Thank you. Mr Mathieson, do you need to add to or address your earlier remarks in any way?

**Mr Mathieson**—Yes, I do. The position in respect of the Federal Magistrates Court is almost identical to what Mr Kellow has described in the Federal Court. There is a separate prescribed arrangement in relation to applications for unlawful termination, and the fee that is fixed in the Federal Magistrates Court is identical to the fee that is fixed in the Federal Court, at \$53.90. For those applications, no setting down or other fees are payable.

**CHAIR**—Thank you very much for that clarification. Are there questions flowing from that?

**Senator LUDWIG**—So I am right: it would have been extraordinary for a charge of \$769 to be paid. Has anyone paid that to date—that is, the filing fees or the setting-down fees—by mistake?

**Mr Mathieson**—No. As I understand it, in both courts—if I can speak for the Federal Court—the computer case management system, which also processes the receipts and so on, regulates how much is asked for and how much is received and receipted.

**Senator LUDWIG**—So you can confidently tell me that nobody has been overcharged for making an application for unlawful termination in either the Federal Court or in the Federal Magistrates Court since April? I will not go back any further. In terms of what we have been talking about; that is, a mistake between—

**Mr Mathieson**—Yes, that would be the case.

**Mr Soden**—A computer automatically calculates the fee.

**Senator LUDWIG**—Thank you. That is very helpful.

**CHAIR**—As there are no further questions on that, I thank you, Mr Soden, and your colleagues for assisting the committee by providing that material.

#### **Proceedings suspended from 12.56 pm to 2.01 pm**

#### **Australian Security Intelligence Organisation**

**Mr O'Sullivan**—I wish to clarify one particular point. In answering a question from Senator Trood, I drew his attention to the fact that we had issued one qualified assessment in 2004-05 and none in 2005-06. Just to be clear, that refers to personnel security checking under the broad rubric of access. On the separate category of adverse visa security assessments, 12 were issued in 2004-05 and 13, in respect of 12 people, were issued in 2005-06. I wanted to make sure that was clear so that I did not mislead the committee.

**CHAIR**—Thank you for clarifying the record.

**Senator NETTLE**—I want to go back to the area Senator Trood was asking questions in. In June of this year was there a re-interview of both of the two Iraqi men?

**Mr O'Sullivan**—In June of this year we revisited Nauru with the intention of trying to clarify whether the conditions pertaining to when the original judgements were made persisted—in particular, in respect of Mr Sagar and whether or not the level of cooperation that he exhibited was changed or not. That was the purpose of the visit. I think the answer to your question precisely is that they were both interviewed, but I will check that and confirm it for you.

**Senator NETTLE**—As you explained it, that was not as a result of any new information provided.

**Mr O'Sullivan**—As I was trying to explain this morning, the point about this concept of a process—as distinct from a capital 'R' review—is to try and make sure that, if new information is available or if people with whom we have had a discussion previously wish to bring additional information to our attention, we have some way of seeing that the original judgement is still well founded. So we have a continuous concept, if you like. By June of this year, it seemed reasonable, given the length of the period it had gone on, the publicity and all the rest of it, that we should check whether those things remained valid, so that was what happened.

**Senator NETTLE**—Was that initiated by ASIO?

**Mr O'Sullivan**—It would have come out of a discussion we were continuously having with Immigration but the decision was ASIO's, yes.

**Senator NETTLE**—The decision to—

**Mr O'Sullivan**—The decision to go and rediscuss the matters with them.

**Senator NETTLE**—There was a report at the time that they were given less than 24 hours notice of the interview. Is that correct? Is that usual?

**Mr O'Sullivan**—They were given plenty of time to consider any information they wanted to bring to our attention. They have had years to consider these matters. It is not as though the 24 hours—if it was 24—was the only time frame in which they had to consider whether they wanted to say anything different to us.

**Senator NETTLE**—You would be aware there was reporting at the time in relation to Mohammed Sagar that he had made requests to the department of immigration about not having interviews because he had his exams. He was studying at the university. That is why I was asking in particular about the 24-hour notice. You may be aware of his comments that that created difficulties for him, which is why I was asking.

**Mr O'Sullivan**—I do not have any particular information on that point.

**Senator NETTLE**—We were talking before about the sharing of information with other countries. The department of immigration has described in the past the process that they have been going through with these two individuals in seeking to find a third country, and they have told us about numbers of countries that they have approached. Has there been a sharing of information with the countries that they have approached for those people?

**Mr O'Sullivan**—I am not prepared to discuss in this sort of forum the way in which we conduct information sharing with our partners internationally. That is a security matter which bears on the way we do our work.

**CHAIR**—That is similar to the discussion we had before the lunchbreak, Senator Nettle, in terms of what it is possible and appropriate to explore on the public record.

**Senator NETTLE**—Sure. Was the trip in June the one where ASIO arrived in Nauru without visas?

**Mr O'Sullivan**—I cannot remember exactly all the aspects of that particular press report. Some parts were correct and some were not. I just do not remember precisely. I would have to go back, get the report and check it if you wanted to debate that particular report.

**Senator NETTLE**—I was not going to go through the report. I was going to give you the opportunity to explain what happened there.

**Mr O'Sullivan**—My understanding is that there was a process that was gone through of applying through the ordinary channels, including through the defence department, and arranging for transport. I believe there was a hiccup with one aspect of the arrangements to do with the physical arrangements, but that was overcome within a very short space of time and the officers went there, conducted their work and came back.

**Senator NETTLE**—If you are able to provide any more detail around the circumstances of that situation, that would be helpful.

**Mr O'Sullivan**—I will have a look at that.

**Senator NETTLE**—This question relates to public debate around what constitutes torture, specifically in relation to sleep deprivation. The minister, in answer to a question that I asked in parliament, said that in some circumstances sleep deprivation would not amount to torture and that in the environment of counterterrorism operations where intelligence is being sought sleep deprivation can be appropriate. I am not quite sure to whom to address the question, but, when the minister was referring to intelligence collections and counterterrorism operations, was he referring to ASIO? Did the comment that in that environment sleep deprivation would be appropriate refer to the operations of ASIO?

**Mr O'Sullivan**—What I can say in response is that the minister's description was an accurate description of the legal position, if I am correctly advised. In respect of ASIO, what happens under our questioning warrant is that there is a very highly specified set of circumstances that are delineated in the legislation and those provisions are scrupulously observed. You might remember that you put a rather detailed question on notice about that and other matters and in response to that question I spelled out a whole lot of details about that matter.

**Senator NETTLE**—Maybe I can check with the minister. Minister, I recall that at the time you answered the question in two ways, in relation to criminal investigations and counterterrorism investigations. My recollection of your answer is that you said that, because there were such guidelines in place for criminal investigations, you did not think sleep deprivation would occur there, but that in the environment of counterterrorism operations sleep deprivation can be appropriate. How does that relate to the answer that Mr O'Sullivan gave just then?

**Senator Ellison**—As I said in my answer, there are two different regimes. There is one that is under the criminal law. That is where evidence is being obtained for the purposes of a trial. The Crimes Act has a number of provisions in relation to that. This is where you have police investigations and the evidence is sought to be admitted into a court of law. That is the regime which the Australian Federal Police Commissioner, Mr Keelty, spoke about recently. The other is in relation to the collection of intelligence and security related information. That is what the Attorney-General was talking about recently in relation to sleep deprivation.

I have said that, generically, you have these two different regimes and that sleep deprivation per se does not of itself constitute torture unless there are other circumstances, such as the method of its use and the extent of it, the time and the manner, relevant to that. As to which particular agencies would use it, I was talking in a generic sense. I am not going to comment on the operational aspects of ASIO, ASIS or, indeed, any other security agencies—Australian or otherwise.

**Senator NETTLE**—Was Mr O'Sullivan's answer in relation to counterterrorism?

**Mr O'Sullivan**—I was simply volunteering the point. I think I referred to the answer that the minister had given and then said that, if you were asking me specifically about the provisions of the ASIO Act which refer to the questioning and detention warrants and the operation of that questioning regime, I would make the point that there is spelt out a whole series of conditions which have to be met under that warrant.

**Senator NETTLE**—The minister indicated that sleep deprivation can be used in counterterrorism activities. Does ASIO use sleep deprivation in counterterrorism activities?

**Senator Ellison**—I will just explain this. I firstly said that sleep deprivation per se does not constitute torture but it could in certain circumstances. Obviously, Australia does not condone torture, and we do not engage in torture—and that includes all of our agencies or otherwise. That is a starting point. I think that what you have to look at, firstly, is what constitutes the definition of torture, and I think Mr Cornall can help us there.

**Mr Cornall**—The definition of torture in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has a number of limbs to it. It firstly requires that there is an act that causes severe pain or suffering, whether physical or mental. But it has to be intentionally inflicted on a person for the purposes of obtaining information or a confession by an official or to intimidate them or coerce information from them. It does not include the application of lawful sanction. You have to look at all of those elements. So to just say that sleep deprivation by itself is torture does not meet all of those conditions in the definition in the convention against torture.

**Senator NETTLE**—The minister spoke before about sleep deprivation not constituting torture. Minister, have you received legal advice about that?

**Senator Ellison**—The convention referred to by Mr Cornall under which we operate has spelt it out. We do not believe that where there is intelligence gathering that sleep deprivation per se equates with torture. We do not condone torture. We do not tolerate it. It is a question of how it is used and the extent of it, and I refer you back to the comments made by Mr Cornall.

The point that Mr O’Sullivan is making is that the ASIO questioning regime has strict time limits. Those time limits constrain ASIO officers in relation to the time that they can question someone for. Obviously, that would relate to the person being awake to answer questions. But there are also breaks that are allowed for and there are time limits. I think those time limits offer the necessary safeguards to ensure that appropriate standards are kept to when questioning people under the ASIO regime. Time limits do have relevance to sleep deprivation. If you question someone for two hours, you can hardly say that that was sleep deprivation. I believe that the time limits that ASIO has offer those necessary safeguards, and the government endorses them.

**Senator NETTLE**—Minister, in what circumstances would sleep deprivation constitute torture?

**Senator Ellison**—I refer you back to the evidence given by Mr Cornall in relation to the definition which is spelt out in the UN convention. Without labouring the point, I invite Mr Cornall to go through that again and remind you of it.

**Mr Cornall**—It may be best if I just read that into the record. This is from article 1 of the convention against torture:

For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted

by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

**Senator NETTLE**—Thank you, Mr Cornall.

**Senator Ellison**—I think that spells it out, Madam Chair. I cannot really take it much further than that. The Australian government would say that there you have a definition which gives you clear guidance.

**CHAIR**—Thank you, Minister.

**Senator NETTLE**—In 1997, is it correct that the United Nations Committee Against Torture ruled that extended sleep deprivation was torture? In your definition about the circumstances in which sleep deprivation would constitute torture, you talked about time limits. Do you have legal advice about the period of time for which sleep deprivation would not constitute torture?

**Senator Ellison**—Madam Chair, Senator Nettle has added an extra word in there: ‘extended’ sleep deprivation and—

**Senator NETTLE**—The reason I did that was because—

**CHAIR**—Could you please let the minister respond, Senator Nettle?

**Senator NETTLE**—Sure.

**Senator Ellison**—The questioning until now has been on sleep deprivation per se. Now Senator Nettle introduces a further concept of extended sleep deprivation, and it is tending to compare apples to pears. We have a copy of the quote, and Mr Cornall might be able to help us here, but I want the committee to be aware of the difference between the two terms.

**Mr Cornall**—In the 1997 report by the then Special Rapporteur on Torture, Nigel Rodley listed sleep deprivation among several interrogation methods and stated that while each of the measures on its own may not provoke severe pain or suffering—and I quote:

Together ... they may be expected to induce precisely such pain or suffering, especially if applied on a protracted basis of, say, several hours. In fact, they are sometimes apparently applied for days or even weeks on end. Under those circumstances, they can only be described as torture ...

I think that indicates that you have to look at the circumstances of each case.

**Senator NETTLE**—With respect to the quote that you have just read out, does that mean the Australian government accepts that in relation to definitions around torture and sleep deprivation?

**Mr Cornall**—No. We start from the convention against torture and we apply that as the definition. You raised what was said in 1997, and I am saying that is what was said in 1997 by the special rapporteur.

**Senator NETTLE**—Does that help to frame the Australian government’s position in relation to what constitutes torture or are you working only from the convention against torture?

**Mr Campbell**—Obviously, in any international law definition we go back to the definition and that is what is applied. If you are asking whether we look at statements made by special

rapporteurs on tortures or UN committees, of course they inform our judgement about what may or may not amount to torture, but they are certainly not conclusive of that. In the final analysis, it is up to the government to make its decision about the application of the definition of torture.

**Senator NETTLE**—Does the government have any additional advice or information in relation to the definition of torture beyond the convention? Has legal advice been sought by the government about the definition of torture—that is, beyond just using the convention?

**Mr Campbell**—I think you will recall that it is not our practice to reveal legal advice given to the government on issues, nor whether advice has been sought on a particular matter, nor the content of that advice. That has been the practice of successive governments.

**Senator NETTLE**—This minister, the Prime Minister and the Attorney-General have all made statements in relation to this issue, what is the definition and what is not. I am asking for the basis on which those statements are made.

**Senator Ellison**—Madam Chair, I think Senator Nettle is inviting the officials here and me to answer a hypothetical question, because the question has to be: if something was done, would it be torture? What we are saying is that there is a definition under the UN convention which we abide by and which we would apply, and you apply that to the circumstances at hand. It is like asking: if somebody killed someone, would it be murder? Of course, you have got to look at the circumstances of the case. What we are saying here is we are applying this definition as we would other definitions and the law as it applies. Certainly I do not think we can answer hypothetical questions. We have a very clear definition, in the first instance. In the second instance, we have a commitment by the government that torture will not be tolerated and that this definition is what we work by. I do not think you can have a clearer position than that. We cannot engage in hypothetical scenarios.

**CHAIR**—And, Minister, even if that is not the question, if the question is in fact Senator Nettle's question in relation to legal advice, then Mr Campbell has answered that question as well.

**Senator Ellison**—Yes.

**Senator NETTLE**—Minister, I think you are getting close to answering my question. It was not a hypothetical. You, the Attorney-General and the Prime Minister have all made statements in relation to what constitutes torture. I have been asking on what basis those statements were made. You appear to have said to me: on the definition in the convention against torture. Is there anything beyond that on which is based those statements that the three of you have made?

**CHAIR**—I think Mr Cornall has answered that at least twice now.

**Senator Ellison**—I think I have explained it fairly clearly. We have a UN convention which we have signed up to and which we abide by. There is a definition there which I think is a pretty clear one. We abide by that. I am grappling to understand the question here. Is it: is there something else which would influence us? The only thing I am saying is that we have the convention's definition, and we apply that and we abide by it, and we apply it to the circumstances of the case. So the only variable is the circumstances of each case. There is

nothing else that I can see which would guide us in the application of that definition, other than the words of the definition itself.

**CHAIR**—Thank you, Minister.

**Senator NETTLE**—I go back to Mr O’Sullivan to ask: would ASIO use sleep deprivation?

**Mr O’Sullivan**—I was mentioning before that in the issue of the way we conduct our question warrants we have spelt out in the Attorney-General’s guidelines strict limits on the period of questioning. There is an instruction that there have to be rest periods after four hours, there have to be provisions for sleep periods and it has to be humane treatment.

**Senator NETTLE**—Were those time limits set in response to the convention against torture about what period of time sleep deprivation would, if it extended, go into torture? The minister has said that he does not consider sleep deprivation to be torture. So are the limits on the time of questioning for ASIO set on the basis of ensuring anything beyond that would be torture? How are those limits set? How do those two things relate?

**Mr O’Sullivan**—I do not know what was in the minister’s mind when he decided on those instructions, but I suppose the answer is basically the same answer as Mr Campbell’s.

**Senator Ellison**—I think that the debate on this was fairly clear. Senators will remember that this was the subject of some debate in the Senate. It is difficult to come by a hard and fast rule when you are dealing with specifics such as time, because different human beings tolerate different things. Some people are early risers; others are not. Some require eight hours sleep; some do not. For any human being, dare I say it, there is a different make-up. What we did with this legislation was to get in place a regime which was largely acceptable, having regard to community norms, in relation to the length of time that someone should be questioned. I think the time limit is 24 hours, or 48 hours if an interpreter is used. There are four hours for respite at certain intervals. That was thought to be a reasonable regime, having regard to general application. Of course, there are issues dealing with interpreters—

**Senator NETTLE**—General application of what?

**Senator Ellison**—General application of the law across the community. How could you frame law on the basis that if you have red hair you get 10 hours and if you have freckles you get six hours? You really cannot do that.

**CHAIR**—Be careful where you are taking that, Minister!

**Senator Ellison**—We all know that red-haired people are very patient and tolerant.

**CHAIR**—I would leave it right alone, if I were you.

**Senator Ellison**—I could say that estimates involve some sleep deprivation! No; it is a very serious issue and we regard it as such. That is why the debate was a very thorough one in relation to the regime of questioning for ASIO. But it has to be a general application. Human beings are different. What we have put in the legislation is that where someone has trouble with English you have to have allowances for interpreters. There are allowances for juveniles as well. I think that there is also allowance for certain discrete aspects, such as access to a

lawyer. There is also a special regime for young people. So we believe that we have in place a regime which has adequate safeguards.

**Senator NETTLE**—So, Minister, can you rule out ASIO using sleep deprivation?

**Senator Ellison**—I am not going to comment on operational matters of ASIO. I never have and I do not intend to start.

**CHAIR**—That is not the practice of this committee.

**Senator NETTLE**—Can you rule out any Australian authorities using sleep deprivation?

**Senator Ellison**—When you say ‘Australian authorities’, I say this: there are the security intelligence agencies, the law enforcement agencies and other authorities such as Fisheries or Immigration. They are governed by respective legislation. As the Minister for Justice and Customs I have a responsibility for agencies which are classed as law enforcement, and they are guided by the Crimes Act. The Crimes Act sets down very clearly what is to be done when a person is arrested and questioned. The AFP has its own regime of questioning, which it abides by. So what I can tell you is that I have every confidence in Australian authorities. I have confidence that they will abide by the statutory requirements made of them in relation to the questioning of people who they come into contact with. Those regimes may well differ across the spectrum of Australian authorities. One thing I can rule out, though, is the use of torture.

**Senator NETTLE**—But you cannot rule out the use of sleep deprivation?

**Senator Ellison**—Sleep deprivation per se, as we have said, is not torture. We have already gone through the hoops in relation to what defines torture.

**Mr Cornall**—Before we leave this point, I think you have to look very clearly at the time limits that are prescribed for questioning, the rest breaks that are prescribed for questioning and the limits on questioning in total and then ask yourself whether, with those time limits, you can even get into the whole area of sleep deprivation at all. Before we go off on a tangent here, I think you have to come back and look at the very closely prescribed limits on questioning and on the duration of questioning before you even get to that fundamental starting point.

**Senator NETTLE**—I am asking the question because the minister said to me in question time:

... a counter-terrorism operation where intelligence is being sought ... in that environment sleep deprivation can be appropriate ...

I would like the minister to tell me in which Australian authorities, given that environment, sleep deprivation can be appropriate. Which authorities were you referring to?

**Senator Ellison**—I was talking generically about the gathering of intelligence for counterterrorism. As I have said, I will not comment on the modus operandi of any particular security intelligence agency. I have not done that in the past and I have no intention of starting. Certainly other agencies that are appearing today can account for themselves in relation to the regimes they use when they question someone who has been arrested, but in relation to ASIO I am certainly not going to make any comment about any modus operandi.

**Senator NETTLE**—Can you indicate who you were referring to when you made that comment?

**Senator Ellison**—I said I was speaking generically in relation to the gathering of intelligence for counterterrorism purposes.

**Senator NETTLE**—Can you rule out ASIO using sleep deprivation?

**Senator Ellison**—I can rule out ASIO using torture, because I have every reason and every confidence to believe that ASIO would not use it and because the Australian government would not tolerate it anyway.

**Senator NETTLE**—But you cannot rule out ASIO using sleep deprivation?

**Senator Ellison**—I think Mr Cornall has asked you this: if ASIO abides by the regime that we have been describing, could you possibly countenance sleep deprivation in that regime? You do the maths; you work it out. It is a pretty careful regime which allows for four-hourly breaks, which I mentioned, and limits on the time for questioning. Do you think that that regime could incorporate sleep deprivation? Have regard to the time limits; they speak for themselves.

**Senator NETTLE**—You said at the beginning of your sentence: ‘If ASIO follows those time limits.’

**Senator Ellison**—I said they would. I want to make it very clear that I have every confidence that ASIO would. I cannot speak for ASIO to the extent of direct knowledge, because I do not have that, but I can say that with extensive experience with ASIO I am totally satisfied with and have every confidence in ASIO as a very professional agency, especially in abiding by its statutory requirements.

**Senator NETTLE**—Are you or Mr O’Sullivan aware of any circumstances where ASIO has not followed those guidelines in relation to breaks in questioning?

**Mr O’Sullivan**—Not at all. As the minister and Mr Cornall have said, and as I have said, we have strict guidelines about these issues. A questioning period is specified, a length of detention is specified, rest periods after four hours of questioning are specified, sleep periods are specified and humane treatment is specified. All of that is strictly monitored by the prescribed authority, and the prescribed authority is usually a former or current federal judge or magistrate.

**Senator NETTLE**—Given the outcome of recent court proceedings in relation to Jack Thomas, where his conviction was quashed because of the conditions under which he had been held and questioned overseas, has ASIO undertaken any evaluation of the implications of this decision for intelligence collection from people held in custody overseas?

**Mr O’Sullivan**—The issue I think you are referring to relates to a decision in the Court of Appeal in Victoria.

**Senator NETTLE**—Yes.

**Mr O’Sullivan**—That is not an issue where ASIO has the prime carriage. That is a legal matter, and the proper assessment of legal processes would have been carried out by the Attorney-General’s Department.

**Senator NETTLE**—That is the case to which I am referring, and of course that was dealing with the AFP. I wondered whether ASIO had looked at that decision and had to make any evaluation about their own practices or the intelligence agencies that they were working with overseas as a result of that decision.

**Mr O'Sullivan**—Since 9/11 there has been a broader evolution, if you like, for security agencies more generally—not just for ASIO and not just for Australia. That relates to the rather complex interrelationship between intelligence and evidence. That complex interrelationship has evolved over time, partly because of the evolving legal framework. That evolving legal framework is a direct response to the threatening and serious security environment that we now face.

As that legislative framework has evolved, the tasks for ASIO have also evolved and the tasks for our partners in government have evolved. That includes the people who give legal advice to government, the people who enforce the laws and the people who bring prosecutions to courts. All those aspects of the government system have evolved as a consequence of that change in the world in which we operate. So it is not just a question of ASIO having looked at its procedures; I think the very nature of the work we do has evolved. That means, of course, that we have looked at the way we operate, the way we conduct our training and the way we collect and record information and so on.

**Senator NETTLE**—I accept what you are saying overall, but I want to ask the question specifically in relation to those recent court proceedings. I will ask the AFP about what implications it has had for them, but I also want to know whether there has been any assessment within ASIO as a result of that decision.

**Mr O'Sullivan**—If I understand correctly, the appeals court judgement was based on the way in which evidence was collected—that is, the rules of evidence were interpreted by the court in a way which led them to the conclusion that the trial had been miscarried. That in itself is a point to do with legal proceedings; it is not a point to do with security intelligence. As I was trying to explain, there is a complex relationship between collecting intelligence and providing the evidence which is judged appropriate in a court proceeding.

**Senator NETTLE**—Are there interviews that ASIO was involved in conducting that would subsequently be used as evidence in the court to which this circumstance may relate?

**Mr O'Sullivan**—One of the changes since 9/11 has been the requirement for security intelligence agencies to think in a more structured way about how material which comes into the possession of an agency—in our case, ASIO—might be presented in the court. The way in which the rules of evidence—which have been well understood in other parts of government for many years and which are well understood in the parliament—are applied to security intelligence is one of the things that has changed. As a consequence of that change, there have been evolutions in the way that we collect and record information and our ability and willingness to present that information before a court.

**Senator NETTLE**—Was ASIO involved in questioning Jack Thomas, or was it only the AFP?

**Mr O'Sullivan**—I am not prepared to discuss on the public record those sorts of questions.

**Senator NETTLE**—Can I ask you about the recent reports about the Australians in Yemen and the reports that indicate that these were people who ASIO was in contact with prior to this and had operations surrounding them? Can I ask you whether those reports are correct?

**Mr O’Sullivan**—I am not prepared to answer that sort of detail on the public record.

**Senator NETTLE**—Can you provide any information to the committee regarding those people and their circumstances?

**Mr O’Sullivan**—No, not really.

**Senator NETTLE**—What does ‘not really’ mean?

**CHAIR**—It means no, I think, Senator Nettle.

**Mr O’Sullivan**—It means no.

**Senator NETTLE**—I also wanted to ask you about the film *The Road to Guantanamo Bay*—the documentary/drama about the three British detainees from Guantanamo Bay. There are reports in the media about this film coming to Australia. One of the former Guantanamo detainees, Ruhel Ahmed, has travelled to Germany, France, Iceland, Turkey, Spain, Ireland, Holland and other European countries to promote his film, and I understand that, next month, he is travelling to South Africa, Slovenia, Denmark and Kosovo. Are the reports correct that he has had his visa denied on the basis of an adverse security assessment?

**Mr O’Sullivan**—Yes.

**Senator NETTLE**—Did ASIO make that adverse security assessment against him?

**Mr O’Sullivan**—Yes.

**Senator NETTLE**—Was there any consultation with the Attorney-General’s Department or any other department prior to issuing this adverse security assessment?

**Mr O’Sullivan**—I do not think it is appropriate for me to describe the internal processes. That was a judgement that I came to.

**Senator NETTLE**—Were there any consultations with overseas agencies in coming to that decision?

**Mr O’Sullivan**—I am not prepared to discuss the internal processes we go through in reaching our judgments.

**Senator NETTLE**—In the case of this gentleman, he is clearly not trying to hide very much about his circumstances, given that there has been a documentary made about him and he is travelling here to promote the film. Are those considerations taken into play by ASIO?

**Mr O’Sullivan**—We reach a judgement on the basis of our assessment of his threat to Australian security. That is the test we apply.

**Senator NETTLE**—Clearly the UK, Germany, France, Iceland, Turkey, Spain, Ireland, Holland, South Africa, Slovenia, Denmark and Kosovo have made a different judgement.

**Mr O’Sullivan**—You would have to ask them that.

**Senator NETTLE**—He has been granted access to all of those countries. The only other country that has sought to deny him access is the United States, which is why I was asking you about what interactions you had with other countries in reaching your decision.

**Mr O’Sullivan**—I was not trying to be clever with respect to the first part of your question; I was making a slightly different point. In a number of those countries that you mentioned, the movement around Europe is not monitored, so I do not know that the countries have actually consented to his movement there.

**Senator NETTLE**—They have certainly not stopped him going there, as the Australian government is doing and the United States is doing—which is why I was asking whether there had been any consultations with the United States in relation to the blocking of his visit to Australia. For example, were you asked by the United States to block his visit to Australia?

**CHAIR**—Mr O’Sullivan has indicated his response to that question, Senator Nettle.

**Senator NETTLE**—Is the promotion of the film considered to be a threat to Australian security, or simply his involvement in it?

**Mr O’Sullivan**—The question that comes before ASIO is the question of an application for a visa.

**Senator NETTLE**—So ASIO has not been asked to assess, for example, the film but simply the individual.

**Mr O’Sullivan**—There is no provision under our act for such activity.

**Senator NETTLE**—I think I will leave my questions there. Thank you.

**CHAIR**—Further questions for ASIO: Senator Bartlett, do you have any questions remaining?

**Senator BARTLETT**—I have a small number of questions. I want to go back to the broad question of visa security assessments. Your annual report—which, I would note, was provided in a quite timely fashion—stated that the increasing complexity of the security environment and the increasing volume of intelligence complicate the assessment process and can make it time consuming—and also just the number of people coming in on visas. This is for all visa security assessments. I note that you also mentioned that with the new 90-day time line—or at least a goal—on protection visa applicants, you have established a task force to manage the increase in applications referred for assessment. Firstly, does that mean that extra staff would have been involved in making these various security assessments? Secondly, is there any measure of the time lines having improved or the timeliness having improved?

**Mr O’Sullivan**—I think both of those propositions are correct. If you look in the annual report you will see that the total number of visa security assessments in 2004-05 was 52,417, and in 2005-06 it was 53,147. So there has been a slight increase. The number of referrals to ASIO, however, dropped from 4,833 in 2004-05 to 2,131 in 2005-06. As I explained last time when Senator Nettle was asking about this point, there was a carryover of previous ones, so the number of assessments actually went from 4,008 in 2005 to 3,005 in 2005-06, out of which 12 people in 2004-05 were given an adverse assessment and 12 people, but 13 applications, in 2005-06. So the same number of people were involved.

Your question went to whether extra staff were involved. Yes, to try to reduce backlogs and time lines. In respect of personnel access and checking, for instance, we have almost halved the backlog in access assessments since 1 July. Regarding the time taken on those 53,147 I just referred to for security assessments in 2005-06, 50 per cent of those were handled within seven working days. Of the remainder, we discussed with DIMA about prioritising them.

**Senator BARTLETT**—You may have gone through this in past estimates, but I ask this for clarification. Is it automatic that you do them for all protection visa applicants who are unauthorised? Obviously, you do not do them for everybody who applies for a visa or you would need to quadruple your staff, I imagine. Are there any others that are automatic referrals, if you like, in terms of visa category, or is it basically the assessment of DIMA as to which ones they seek assessment on?

**Mr O'Sullivan**—We contribute to the movement alert list that DIMA administers. That is set up, as you are aware, to try to identify people who are of security concern. I do not want to comment specifically in public about the content of that list, but the fact of it and the operation of it are well known.

**Senator BARTLETT**—Is it automatic for protection visa applicants who are unauthorised arrivals?

**Mr O'Sullivan**—All applicants for protection visas would be assessed, yes.

**Senator BARTLETT**—Referring to those figures you mentioned in the annual report, there were 12 people subject to negative assessments in both the last financial year and the one before. I notice you have a footnote there that in 2004-05 the 12 included two assessments on unauthorised arrivals. I am assuming that is the two on Nauru we have been discussing before.

**Mr O'Sullivan**—I will not go into detail.

**Senator BARTLETT**—You mention 3,005 assessments on unauthorised arrivals who were applicants for protection visas in the last financial year. In the last financial year there is no footnote about unauthorised arrivals being included in the 13.

**Mr O'Sullivan**—I see your point. I will check and get back to you.

**Senator BARTLETT**—I want to clarify that there were no negative assessments against any protection visa applicants in the last financial year. I am assuming, because it is well and truly on the public record that there were two the year before, that that is the two in place. In your annual report you mention that you take a range of factors into consideration. I appreciate that at the end of it all you have to come to a judgement, weighing up a range of factors. You cannot just have a cut-and-dried formula. It mentions there the nature and type of the applicant's activities, the credibility of the information available and the honesty of the applicant. The honesty of the applicant is an issue that comes up in visa assessments in general, including protection visas, I suppose. Is that basically what that refers to—the sort of credibility you can place on their statements and comments?

**Mr O'Sullivan**—Broadly, yes. That is to say, in reaching an overall judgement one element of that judgement is whether the person has been straightforward in past information provided, which was the basis for the past assessments. If new information contradicts

previous testimony then there is an issue about whether there was an attempt to manipulate the Australian system. If my notes here are correct, Senator, your assumption in the previous question is correct. Those two people are part of the 12.

**Senator BARTLETT**—With the assessment, it says here in the annual report that you are assessing whether the person's entry or ongoing stay would pose a direct or indirect threat to security. That is based on what is in the Migration Act criteria, as I understand it, rather than what is in your act.

**Mr O'Sullivan**—I will get legal advice, but I think that is correct. The point there is that the judgement about a threat to security is a judgement made by ASIO. ASIO then supplies that judgement to the department of immigration. Under the 1958 act, if it is negative advice it constitutes the basis for the cancellation of the visa or the nonissue of a visa if it has not been issued.

**Senator BARTLETT**—I appreciate that. The point I want to clarify with direct or indirect threat is that there are not two separate decisions about whether there is a direct threat and then whether there is an indirect threat. It is the collation of the whole thing.

**Mr O'Sullivan**—Yes, it is the whole thing.

**Senator BARTLETT**—Given the public portrayal of some of these decisions, though, it does not necessarily mean that there is a genuine fear that this person might be a suicide bomber or likely to engage in violence. Indirect threat can be a lot broader than that.

**Mr O'Sullivan**—That is correct.

**Senator Ellison**—Regarding the questioning by Senator Nettle in relation to the film *The Road to Guantanamo*, there was some implication that the film itself was a security threat. In no way has the film been banned. It is being classified in the usual way as any other film and should be available for the public to view.

**CHAIR**—Thank you for clarifying that, Minister. If there are no further questions, we will move to the Australian Federal Police.

[2.53 pm]

#### **Australian Federal Police**

**CHAIR**—Welcome, Commissioner, Mr Colvin and Mr Van Dam. Senator Ludwig, would you like to start?

**Senator LUDWIG**—We have the annual report. Are there corrections that you wish to make or matters that you wish to highlight?

**Mr Keelty**—No.

**Senator LUDWIG**—I do not seem to be able to search on the financial statements in the annual report. For example, go to page 207, where the AFP's average staffing levels are listed. I was trying to find one of the answers that Mr Van Dam, the Chief Operating Officer, gave at a previous hearing. He said that there would be 4,369, excluding ACT police, and that that would appear in the annual report. I cannot find it in the annual report. What happens is that when you select a piece of text you can copy and paste it, because the annual report is provided in a format that I can do that with. Usually, you can then search for various figures.

The difficulty is that when I copy and paste this I cannot search. Do you prevent me from doing that when you provide the annual report or is there a different way that you put those figures in?

**Mr Van Dam**—Do you mean in the material available on the website?

**Senator LUDWIG**—Yes, as a PDF file.

**Mr Van Dam**—I am not in a position to answer you. I do not know the answer to that question, but Mr Gaukroger may.

**Mr Gaukroger**—No.

**Mr Van Dam**—In relation to your earlier question, however, I think my previous answer to you was correct in the sense that 5,150, the figure on page 207 of the annual report, is a figure that includes ACT policing. I am advised that the figure for ACT policing is 781. If you subtract 781 from 5,150, I believe the answer is 4,369. I think the comments at a previous hearing arose from the errors that occurred previously in relation to whether ACT policing had or had not been included in certain total figures.

**Senator LUDWIG**—Yes. That is why I could not find it when I searched. That is very helpful. Could you have a look at the PDF file for next time. It is helpful for me when I look at your financial statements to be able to cut and paste and then search on terms.

**Mr Van Dam**—Certainly.

**Senator LUDWIG**—It has been the same in a number of different computers that I have tried, so I suspect it is to do with the way those figures have been imported from somewhere else and put in the PDF file for your annual report.

**Mr Van Dam**—I will not speculate on why it is that we might do that, but we will certainly take that on board.

**Senator LUDWIG**—I want to turn to one of the matters from the last hearing that I have got some answers back from you on, and that is current ratios. Mr Gaukroger, at the recent hearing you described to the committee what you called the AFP's current ratio—that is, the agency's current assets divided by its current liabilities. You told the committee that the AFP's current ratio was 2.1 at the moment, putting it at the top end of what you described as the normal operating range. You provided an overview of some other departments as well, to show what their ratios were. As a rule of thumb, what would the normal operating range be for your organisation?

**Mr Gaukroger**—The benchmark that from my own experience I would consider normal is between one and two. Again from experience, it can get below one but if it gets much below 0.5 you have to do a lot of detailed analysis to see whether there is a solvency issue there. It is a benchmark as to how an agency—or a private sector organisation, for that matter—is travelling.

**Senator LUDWIG**—When an agency's ratio is well above two, what does that mean?

**Mr Gaukroger**—It can mean a couple of things. Generally, it could mean that there is a good deal of capital commitment coming up in the future, because the money for the capital expenditure is included in the cash component of the current ratio. The capital expenditure is

not included in that ratio at all, so it means that you have to build up that ratio if there are going to be some significant improvements in the future.

**Senator LUDWIG**—If it is below one—say at 0.5—what would that indicate?

**Mr Gaukroger**—It could mean a number of things. It could mean a very stable agency in terms of its capital program. It could be a telltale sign that there are some solvency issues. It could mean that they are running perfectly well. It depends on the break-up of the balance sheet and the operations, so you really have to look at it on a case-by-case basis and analyse it accordingly.

**Senator LUDWIG**—Mr Van Dam also indicated that there was a reasonable capital acquisition program ahead. In answer to—

**Mr Van Dam**—Question 7.

**Senator LUDWIG**—question 7, you indicated that there are a range of capital programs that will have expenditure. Are they all of the major capital projects for the foreseeable future that you have on the books currently?

**Mr Van Dam**—The foreseeable future is quite a long time.

**Senator LUDWIG**—Ones that are currently announced or under planning for the next four years, then.

**Mr Van Dam**—What we have tried to capture here are those projects for which we have a clear commitment. This represents the bulk of what I understand our capital commitment to be. There will be a range of smaller capital items, as we have talked about previously, year on year. But we have tried to capture here those reasonably substantial capital items that are already committed to.

**Senator LUDWIG**—So that would go out to at least three years?

**Mr Van Dam**—Yes. We have tried to cover the next three years.

**Senator LUDWIG**—So you would be able to calculate on an annual basis what that expenditure over the next three years would be?

**Mr Van Dam**—I could not give it to you right now.

**Senator LUDWIG**—No.

**Mr Van Dam**—But I would be able to give you an estimate of what the outlays are likely to be over that period.

**Senator LUDWIG**—That would be helpful. In terms of the initiation of the projects, do they come from the minister, from internal decision making or are they imposed by the need to build another building because the current one is no longer suitable? I am just trying to work out the decision-making process.

**Mr Van Dam**—If you refer to question 7, we have tried to give you an indication of that. I apologise; I realise that you have not had that material very long. We have tried to differentiate between specific budget decisions made by government and appropriated by government and what was—

**Senator LUDWIG**—Yes.

**Mr Van Dam**—We have tried to answer that question for you.

**Senator LUDWIG**—How is the decision making done for those projects which are internally funded, such as the Anzac Park West headquarters and the financial management information system? Is that Commissioner Keelty's decision or is it a—

**Mr Van Dam**—Ultimately, it is the commissioner's decision as the CEO of the organisation, but usually those decisions are informed by discussions at the finance committee. The decision in relation to Anzac Park is a decision that goes back a couple of years in terms of a commitment. We were looking out over a five-year period.

**Mr Gaukroger**—The minister for finance for that one.

**Mr Van Dam**—My apologies: what Mr Gaukroger is correcting for me is that that also requires some approval processes from government.

**Senator LUDWIG**—That was the next question to the minister, in terms of the Anzac Park West headquarters and the financial management information system integration upgrade. You mention it is AFP internally funded. Therefore, as a consequence, it is ultimately the decision of the CEO, or the commissioner in your case, to proceed. Do you consult with government about that?

**Mr Keelty**—Yes, we do; not only with our own minister, but some of these require a sign-off from the minister for finance as well.

**Senator LUDWIG**—So before they can be proceeded with they get a tick-off from you, Minister, and the department of finance as well?

**Senator Ellison**—The finance minister.

**Senator LUDWIG**—Does that come before you see it—in other words, do you see the department of finance tick it off and then you?

**Senator Ellison**—I think it is the other way around; I think it goes to me then Finance. If that is wrong I will correct it, but as I recall it that is the way it went.

**Mr Keelty**—With these projects, the department of finance obviously has been heavily involved in negotiation because they in fact own Anzac Park West.

**Senator LUDWIG**—The budget funded ones are all at the instigation of the minister?

**Senator Ellison**—The government, yes.

**Senator LUDWIG**—Do you tick those off with the department of finance, Minister?

**Senator Ellison**—No, I do not personally, but there is correspondence with the minister for finance. As the commissioner mentioned, there is ongoing consultation with the department of finance. As to whether the officials in Finance deal with their minister in relation to it, I cannot say. They could well do that; you would have to ask them.

**Senator LUDWIG**—I will. Mr Van Dam, you said that the AFP's capital acquisition program would come down over the next three to four years. If it was in the pipeline prior to the May budget would you have reflected that normally in your forward estimates? These programs are clearly ones that have been around, and it looks like the decision-making process was made some time ago.

**Mr Van Dam**—I am trying to be very clear about your question here, Senator. Are you saying: would the expected out-year expenditure be reflected in reductions in our out-year receivables forecasts?

**Senator LUDWIG**—My answer is, I think, yes. If we come back to the capital projects expended, there are AFP internally funded ones and then there are budget funded ones with particular dates. If we look at the AFP internally funded ones, there is \$46 million over two years and \$6.4 million over two years. When was the decision made for those to be proceeded with?

**Mr Van Dam**—The decision in relation to Anzac Park West I think was about two years ago.

**Senator LUDWIG**—And the financial management information system?

**Mr Van Dam**—It was only taken in the course of the last nine or 10 months, I think.

**Senator LUDWIG**—So both of those were known in that sense prior to May this year.

**Mr Van Dam**—On the financial management information system, I would want to check. It is possible.

**Senator LUDWIG**—In terms of the Anzac Park West?

**Mr Van Dam**—It should have been known in May, yes.

**Senator LUDWIG**—In terms of the budget funded ones, you can put a date on those, on when they were made, other than the ones that were made during the May budget?

**Mr Van Dam**—Yes, we can put a date on when they were announced.

**Senator LUDWIG**—Which means, absent those, they were known prior to the May budget.

**Mr Van Dam**—Absent those that were incorporated into this year's, yes.

**Senator LUDWIG**—The remaining or the balance, those ones which you knew prior to May were going to be expended: why wouldn't that have been reflected in the out years for estimates purposes—that they were going to be costs incurred one year, two years, three years hence?

**Mr Van Dam**—I might pass that question to the CFO, Mr Gaukroger.

**Mr Gaukroger**—They normally would if they were known. Looking at the PBS, it does not appear that the building has been incorporated in the forward estimates when you look at the purchase of non-financial assets.

**Senator LUDWIG**—It is not included?

**Mr Gaukroger**—My reading of the PBS is that it is not. It would have been a pretty big lump.

**Senator LUDWIG**—Would you expect it to be there?

**Mr Gaukroger**—If the commitment were there, if the probability were there, yes I would.

**Senator LUDWIG**—Then why isn't it there as the Anzac Park commitment of a fairly lumpy amount of money?

**Mr Gaukroger**—I do not have that information.

**Senator LUDWIG**—Are you saying that it should be there?

**Mr Gaukroger**—If we knew about it and if there were a high probability of it going ahead in those estimates then, yes, it should be there.

**Senator LUDWIG**—To put a finer point on it, doesn't the Anzac Park West headquarters fit that bill—\$46 million and a decision made something in the order of two years ago that has been approved by the minister and by the department of finance? But it does not appear in your forward estimates.

**Mr Gaukroger**—There should be some reflection there.

**Senator LUDWIG**—Does that need a correction?

**Mr Gaukroger**—I do not know whether it is a correction. I would have to think about that; I am not sure.

**Mr Keelty**—It may well be as a result of the way the project has come about, with base preparation being done by the department of finance. Our involvement in it from a financial perspective has been limited up until this point in time, except to say that it is a forward estimate. I should point out that Mr Gaukroger took on the position of chief financial officer after the PBS was prepared, so he would not have been the decision maker on this. If you will allow us to take that on notice, we will consult with the former chief financial officer to see whether there was another reason for not putting it in the PBS.

**Senator LUDWIG**—Thank you; that would be helpful. I understand that Mr Gaukroger was not there, but it is good to clarify that for the record. Perhaps when you take that on notice you could have a look at the budget funded ones which would also fall into the same category, where the decision has clearly been announced and approved.

**Mr Gaukroger**—I would have to have a look at the—

**Senator LUDWIG**—I know; I understand that. I did not want to take up time going through each individual one and asking, 'When was that decision made?' but you will quickly be able to ascertain when it was made prior to May this year and the amount that should be reflected in the forward budget.

**Mr Gaukroger**—Yes.

**Senator LUDWIG**—I guess you can guess the next question. When you calculate that ratio based on the forward estimates, it changes because the amount in the forward estimate changes as a consequence. In the 2006-07 PBS it is projected to increase by 40 per cent to a whopping 9.3 per cent in 2009-10.

**Mr Keelty**—What are you saying is 9.3 per cent?

**Senator LUDWIG**—That would be when you calculate the ratio based on the forward estimates—

**Mr Keelty**—The current ratio is about 1.5 per cent. If you look at the figures we have provided you with of projected expenditure of \$153.7 million, that will reduce the current ratio from 2.1 to—doing the figures in my head—about 1.5. It is not a recurring expenditure;

these are one-offs. Mr Gaukroger might have a more accurate figure; he has just used a calculator.

**Mr Gaukroger**—I will give a little insight into the budget estimates. There have been a few changes in the financial statements this year with the introduction of the Australian Equivalents to International Financial Reporting Standards. One of those is the treatment of components in the current ratio, which has an impact on the way the forward estimates are treated. I suggest that when the AEs are calculated that figure will be a little bit lower. But it also should incorporate the impact of any future capital commitments, whether it is high, low or whatever. It really is a benchmarking tool, looking at solvency and how cash is being put to use.

**Senator LUDWIG**—I want to go to the PBS. Do you have a copy of the 2006-07 PBS?

**Mr Gaukroger**—Yes, I do.

**Senator LUDWIG**—If you look at the projected increase to 2009, it is about 40 per cent. If you start at the actual and move through, there is about a 40 per cent increase to 2009-10. If you look at the ratio of that, then, according to the PBS the AFP expect to accumulate an additional \$40 million in cash and \$76 million in receivables to 2009-10. That takes into account the \$146 million over the next four years in capital expenditure, funded internally by departmental resources, which is in table 5.5. At the bottom of 5.5 you have 'funded internally by department resources'. If you add up those amounts from the budget estimate 2006-07—that is, the 30,411, the 30,594, the 35,279, and the 49,791—you should get to about \$146 million.

**Mr Gaukroger**—In capital?

**Senator LUDWIG**—Yes.

**Mr Gaukroger**—A lot of that is capital replacement, which is covered by the depreciation in the current year.

**Senator LUDWIG**—So how much of the capital appropriation were we talking about earlier? Was that in addition to the \$146 million that I just mentioned?

**Mr Gaukroger**—I do not quite understand the question.

**Senator LUDWIG**—If you look at the budgeted financial statements, is the answer to question 7 the \$146 million or is that different and separate from it?

**Mr Gaukroger**—The \$156 million is a combination of internally funded and budget funded. The first two items under budget funded, with the AIPM and the aviation security, were funded in 2005-06. For the purposes of the 2006-07 PBS they were assumed to be fully spent by that year. That has not occurred. That will occur in 2006-07. The Anzac Park headquarters will be a combination of cash and depreciation components. It is hard to ascertain exactly how much of which. The financial management information system upgrade will also be a combination of depreciation and cash. We go over the page with aviation security phase 2 and also the International Deployment Group. Those amounts of budget funding are coming through in 2006-07, so they will match those amounts as that work gets carried out in the new financial year.

**Senator LUDWIG**—Yes, but is the money in table 5.5 what you have listed in your answer to question 7?

**Mr Van Dam**—No.

**Senator LUDWIG**—So it is different again. What does that relate to?

**Mr Gaukroger**—It is your normal replacement items when offices come up for fit-out replacement right around the country. It could be some replacement software; it could be a whole range of things. That is determined as part of the internal budgeting process at the beginning of each year as to what is required. There is a large component of depreciation funding in each financial year, which helps fund those types of items.

**Mr Keelty**—Madam Chair, just by way of correction: the senator just said: ‘It is different again.’ What I am concerned about is: you can look at various figures that we have provided, both as questions on notice or in answer to previous questions; you can look at the current portfolio budget statement; you can look at the annual report. Unless we are talking the same language, we can say that a lot of figures are different. The figures that were asked for in, I think, the second or third question—I would have to go back over *Hansard*—from Senator Ludwig was: our answer to question on notice No.7 says that we will spend \$153.7 million in capital project expenditure. The senator asked us whether we would break that down into what we would spend per financial year. We have given an undertaking to do that.

Now we are going into the detail of that answer, which we have not provided and we have not got in front of us. I just want to make sure that we are all talking from the same set of figures. Otherwise it will sound confusing to the uninitiated. We have figures here. We have provided figures and we have provided some of them at extraordinarily short notice. We want to try to ensure that there is confidence around these figures, of course. I have every confidence around these figures. We want to try to make sure that, if questions are being asked, there is clarity around the question and clarity around the answer. If we have given an undertaking to the committee to answer a question on notice then we ought not have to answer any further questions about that until we have actually got the time to do the detail of it.

**CHAIR**—And I would assume, Commissioner, that we are talking apples and apples as the conversation progresses. I think that the commissioner makes a valid point, Senator Ludwig. It is very hard for Mr Van Dam and Mr Gaukroger to deal with a matter they have agreed to take on notice for which they do not have the detailed information, in the process of this questioning.

**Senator LUDWIG**—I accept that. I am happy for you to take it on notice and go through it. I was trying to differentiate between that \$146 million and the \$153 million. I think you have answered that. But the follow-on question is: should the \$153 million be included in the \$146 million? If it relates to the earlier issue about being taken on notice then I am happy for that to be taken on notice as well. I was unsure whether that could not be easily answered in that sense.

**Mr Van Dam**—Consistent with the commissioner’s point, I am now trying to recall your added-up figures that give you that 153. I think it would be very sensible for us to take that on notice.

**CHAIR**—And without the record in front of you, I do not see how we can do that competently, frankly.

**Senator LUDWIG**—All right. When you take that on notice and have a look at it, what I am also trying to understand revolves partly around the ratio—why the current ratio is projected to increase when the PBS seems to suggest something different from that. So you can also have a look at that rather than going to the detail of it. If you calculate using the current assets over current liabilities, using table 5.2 in the PBS, you get an increase from 6.7 to 9.3. Those are the simple calculations I am making. I am not sure if they are a valid calculation or a valid method to adopt. That is why I thought that, if I explained it a little bit further, you could understand the position that I am looking at. If it is incorrect then I am happy for that to be included and taken on notice.

**Mr Van Dam**—I think it would be sensible to take it on notice. By way of response, current liabilities in the forecast on page 176, for example, which I am sure you have, show for 2007-08 the same figure for 2008-09 and the same figure for 2009-10. There may be some perfectly reasonable and appropriate accounting basis on which those estimates were made, but clearly we need to take those away to be able to give you a more comprehensive answer as to what is and is not in those forecasts.

**Senator LUDWIG**—Yes. I worked on the basis that the ratio was supposed to go down from the last time that we spoke, so I looked at it in terms of how it would go down. It does not seem to be going down but seems to be going up, so I was trying to explore why you say that it is going down when the PBS and the figures that I have suggest otherwise.

**Mr Van Dam**—If I go back to our hearing of two weeks ago, I was trying to flag for you that our expectation is that the current ratio will come down because we have a reasonable capital acquisition program. We have tried to give you some insights into the nature of that capital acquisition program. I understand your question in relation to the PBS forecasts out to 2009-10, and that is what we will need to take on notice and have a look at the detail of.

**Senator LUDWIG**—All right. I think you said cash on call was another name for receivables, Mr Gaukroger. The AFP has projected to have \$450 million in cash in 2009-10, which is equivalent to about 45 per cent of the projected budget for that year. Is that what you expect it to be as well?

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

**Senator LUDWIG**—Yes. In terms of a receivable, if you look at the size of the organisation and look at cash on call, it seems a very high figure.

**Mr Van Dam**—They are clearly interlinked, so we will try and deal with the lot in a comprehensive way for you.

**Mr Keelty**—Madam Chair, before we get any sensationalist reporting, as was the occasion on the previous time that we appeared before this committee, that needs to be looked at in context. In respect of the figure of \$450 million as projected, let me give you some examples. We have been budget funded to rebuild the Australian Institute of Police Management. It has taken me nearly three years to negotiate with all the stakeholders—I will not bore the committee with the detail of all those stakeholders—about that particular project. Therefore,

very little money has been spent on that project, despite the fact that we have had the money sitting in the budget for some years now.

Equally, the negotiations over the acquisition of Anzac Park West and negotiations over the acquisition of Anzac Park East have formed a very fundamental part of the strategic planning of the accommodation requirements for the AFP over the next 20 to 25 years. These are major acquisitions and major projects. It is part of the strategic planning that is incorporated in both the finance committee and the executive management board committee of the AFP, which comprises two non-executive members. Both of them come from a private enterprise background. One is from PricewaterhouseCoopers and the other one, who will be familiar to the committee, is the former director of AUSTRAC.

So we have been doing a lot of work about the future of the AFP, not the least being reducing ourselves from 26 separate locations in Canberra down to two or perhaps three. We have been in full negotiation with the department of finance over all the capital programs that we are engaging in. We are still trying to deliver the aviation security phases for the government. The AFP is in the hands of the state and territory police to a degree in getting some of these programs up and running, because they have to recruit the numbers to provide the police to us. That has a downstream effect in terms of acquisition of property and places to locate these people at airports. These airports are owned, in the main, by the private sector. There is a significant amount of growth activity in the AFP and a significant amount of contract management, capital acquisition and negotiation with both the private sector and other areas of the public sector. You could be alarmed at statements such as the one that has just been made by the senator—unless they are kept in some sort of context. Once bitten, twice shy. I had this the last time we appeared before this committee. In good faith, we provided accurate details to this committee. I corrected a typographical error that then became headline news. I ask for us to have some context to the discussion that we are having.

**CHAIR**—You have placed the material on the record, Commissioner, and the committee notes that.

**Senator LUDWIG**—Perhaps the commissioner could have a look at a speech by Dr Peter Shergold, who is from the Department of the Prime Minister and Cabinet. I do not want to quote it without you having the opportunity of reading it, either. On 16 October, Dr Shergold said:

Despite improvements in the estimates processes, we are still having systematic underspends arising from failing to meet the anticipated level of project implementation; procurement not achieved on schedule; delays in negotiating delivery through States and Territories, NGOs and the private sector; and failure to make payments in response to the achievement of contracted milestones.

That is a statement made by Dr Shergold. Do you think that that excerpt reflects the experience of the AFP over the last couple of years?

**Mr Keelty**—Could you point me to exactly where you are quoting from?

**Senator LUDWIG**—I did not keep a copy of it. It should be highlighted there.

**Mr Keelty**—If Dr Shergold was talking about the AFP, then that is a matter—

**Senator LUDWIG**—No, he was not; I made that clear.

**Mr Keelty**—to discuss with Dr Shergold, not with me.

**Senator LUDWIG**—I have made it clear that it was not. What I am asking is: does it reflect your experience?

**Mr Keelty**—I have given evidence before this committee on numerous occasions explaining some of the unforeseen circumstances in which the AFP finds itself, one of the major ones being the fact that we had to put 200 police into Papua New Guinea at very short notice. That exercise was funded by the Australian government. It has created on our balance sheet extraordinarily unforeseen circumstances to do with non-expenditure of money. We were committed to contractual arrangements with accommodation providers in Papua New Guinea. We purchased police vehicles for Papua New Guinea. We embarked upon the program as if it was still occurring. Suddenly, because of a decision by the courts in Papua New Guinea, we found ourselves not there.

Equally, as I just explained, we have entered into a significant program of growth in the organisation. We have to put these people somewhere. In the last 24 hours, you have been given the figures for the projected staffing levels of the AFP. We have to accommodate these people somewhere. We have to have equipment for them as we bring them on board into the organisation. We have major projects underway; major undertakings, like the Solomon Islands deployment. This time last year, we were not even talking about East Timor. That is another major undertaking by the organisation. And that is reflected in both the recruitment the organisation is undertaking and the figures going up and down on a fairly regular basis. That is also factoring into the budget side of the organisation, which is making it very difficult for us. But we are complying with all the requirements that we understand that we need to comply with in terms of advising not only the government but also the parliament through the portfolio budget statement about what we see happening in the future.

No doubt a lot of things that appear in the 2001 portfolio budget statement—I do not have it here; perhaps I should have gone back and got it—would not have even been on our minds back in 2001. The AFP is trying to manage what is a considerably unstable external environment. I do not know; you would have to ask Dr Shergold whether he was talking about the AFP. I would be disappointed if he was, because I think we have gone to extraordinary lengths, as I just explained to you, through governance arrangements, through having an executive management board, through a finance committee and through the work of the chief operating officer, Mr Van Dam, to try and get this right. I cannot answer the question as to whether Dr Shergold was referring to us, but I would be disappointed if he was.

**Senator Ellison**—Dr Shergold says:

My point is not to pick on any individual agency—precisely the opposite.

So the point is made clear. I for my part think that Dr Shergold was talking about something completely different. He was talking about long-term projects and about the ‘foreseen unforeseen’, which sounds a bit Irish. I think he is talking about long-term projects where you look at the changing of technology during the delivery of that project—how can we identify where the boundaries of certainty lie? What contingencies can be put in place for the unexpected?

He was talking about the Australian Public Service. I think the commissioner has outlined very well the environment in which the Australian Federal Police work, and I do not regard the Australian Federal Police as just another department. I think if you do that you make a fundamental error. You are dealing with uniformed people in certain circumstances who can be deployed in a situation where, as the commissioner has outlined, you either have to double or triple your numbers in a flash or you have to withdraw quickly. It is similar to our defence forces. In fact I would say that the Australian Federal Police have to be even more flexible than ADF.

You had East Timor, the Solomons and PNG—urgent requests for assistance. They are projects which do not have any ‘foreseen unforeseen’ in them at all, as Dr Shergold has referred to. There is no ‘foreseen unforeseen’ in the Wenge decision, the rioting in Honiara or the rioting and problems that eventuated in East Timor. Any person who foresaw that with certainty is a brave person indeed. We certainly knew there were issues, but you just cannot predict those sorts of things.

Added to that, you have other issues such as the AIPM in Manly, where you have to rely on the environmental approval of a state government, because for the certain expansion to occur that we were trying to achieve we had to go to the state government for various approvals. It was not exactly in our control. I think that that has all been obtained, if I understand correctly, so we have reached that position. Policing at airports depends on eight governments agreeing—eight police ministers agreeing—to the deployment of state police to airports.

I could go on and mention a variety of other projects and programs which are totally different to administering child support and totally different to administering any of the projects Centrelink administers. They might well come into the ‘foreseen unforeseen’ that Dr Shergold was talking about. The AFP is in a totally different environment, so I do not think you can run over the operation of the AFP’s projects. With the greatest respect, I think in his speech, which is outlined here, Dr Shergold is referring to something quite different.

**CHAIR**—I take your point, Minister, and the commissioner’s point.

**Senator LUDWIG**—The AFP is still funded on the same basis as other departments, so, Minister, if you say that—

**Senator Ellison**—No, they are not. I will tell you why they are not. The fact is that when we fund the AFP to go into PNG or the Solomons or East Timor it is not like funding child support where you know that there is going to be a four-year program which is administered by the laws of Australia. Where you are engaging in other countries, I can tell you, you don’t know where you are going to be from one year to the next. In fact, every year the commissioner and I both say: ‘What will the year bring us this year?’ And whoever guesses it right is pretty smart indeed because I can tell you in this portfolio things change quickly and without notice. We have seen that time and time again in the demands made of the AFP: it could be a bombing in Indonesia; it could be a variety of circumstances.

So when you look at funding you say, ‘Yes, that’s on a four-year funding program—if everything goes according to plan.’ But I have to tell you: we are dealing with environments where we do not have total control. We are in countries where we do not have jurisdiction.

How you can compare that to running a child support program or other programs in the Commonwealth government I do not know. Of course you run it in accordance with the FMA outline and all the other aspects of accountability and scrutiny; of course you do. But to ignore the fact that you are not largely in control of what is going on, to the extent that you are in an environment which is not Australian, I think is a fundamental flaw. And we have seen it happen. Two hundred police had to be evacuated from PNG very quickly as a result of a court decision in another country.

**Senator LUDWIG**—Minister, that was interesting straw-man reasoning, but that is not the question that I put. In terms of the budget, it is a four-year program. I did not compare it to welfare; you did, not I. And there is a responsibility to match the financial management and accountability structure. Dr Shergold is talking generally, and that was the point of providing the speech. All departments and agencies would be expected to come under that umbrella and take note of what Dr Shergold says about how you run your department or your agency. You would also be expected to look at long-term planning. There are elements of the Australian Federal Police which can be long-term planned. The war on terror: I expect that you are not telling me that it is a short-term plan, that you have no long-term plan in respect of that. There is a long-term plan there and you would expect—

**Senator Ellison**—Subject to change.

**Senator LUDWIG**—Of course; everything is subject to change.

**Senator Ellison**—It is subject more to change than other areas, and that is what I am saying here. You can find where you have large funding that something can happen all of a sudden where you have to withdraw, and that funding is left hanging over, with the prospect of re-engaging. That was the PNG example. Of course you have long-term planning for the war on terrorism, but you have to be flexible.

**Senator LUDWIG**—That is different from what you said, Minister.

**Senator Ellison**—It is not a Maginot line: you have not set everything in concrete and you cannot move. It is not immutable. That is where the AFP's financial planning has to be much more flexible than in other areas of government, because of the nature of this portfolio. I am not saying you do not have planning; of course you do. And you have staff planning. The commissioner has outlined that. But where you have these unforeseen events, it is not a question of the 'foreseen unforeseen'. I stress: could anybody have foreseen precisely the events in Honiara and in Dili, and the Wenge decision—three major impacts on the Australian Federal Police which came out of the blue and which we had to adapt to immediately. That is the sort of environment you are working in and that is what the commissioner was getting at. We do not eschew what Dr Shergold is saying, but I think Dr Shergold's comments were aimed more at those programs which are totally within our control to the extent that they are all within the Australian jurisdiction, for a start, and where there is certainty. We always say that what we are doing is a pretty uncertain game in many respects.

**CHAIR**—Thank you, Minister. I think the commissioner has provided an exposition of the AFP's position, and the minister and Senator Ludwig have engaged in the political discussion. What I would like to do is get back to questions if we can, Senator Ludwig.

**Senator LUDWIG**—There were a couple of matters I had to deal with because, as I said, I had not mentioned child support and I think that was an unfair comparison to make.

**CHAIR**—That is a matter for the minister.

**Senator LUDWIG**—I was using Dr Shergold's speech as a way of categorising what accountability framework would be expected of departments and agencies. It is not an unreasonable matter to put to the commissioner, who looks after a significantly important agency.

**CHAIR**—And the commissioner responded.

**Senator LUDWIG**—Thank you. The other part that related to that speech was where there are indications like with the Wheeler report where it seems you could apportion blame to others. But Dr Shergold, in remarks following on from those I mentioned earlier, said:

We cannot blithely attribute blame to the failure of 'third parties': a public servant may contract out delivery but cannot outsource responsibility.

Ultimately the minister has assigned to the AFP the responsibility for the Wheeler report and implementation thereof. Minister, that is the issue I am trying to explore: that ultimately it is your responsibility to ensure that the Wheeler report is complied with in full, and there is no point and it is no good apportioning blame to others.

**Senator Ellison**—In fact, the AFP does an exceptionally good job in meeting the demands made of it. If anybody were to go to the Australian community and say otherwise, I do not think they would have much support. I am very happy with the way in which aspects of the Wheeler report are being implemented. One outstanding aspect is state and territory involvement, with the involvement of state police. Of course, we have to rely on them, and to ignore that is to totally ignore how the Wheeler report recommended that policing be put in place in airports around the country. But it is a question of understanding the reality of the environment in which the Australian Federal Police works. I am not saying that the AFP is not transparent or accountable. And that is as it should be: it should be very accountable and transparent. It is just that when you are dealing with programs with large amounts of money and those programs have to be stopped in their tracks, or even doubled, that is a very different scenario from what Dr Shergold was contemplating. He talked about the 'foreseen unforeseen', if you like.

**Senator LUDWIG**—I do not dispute what you are saying, Minister. Can I take Mr Keelty to this answer that he gave in a recent hearing:

With four-year budget cycles—and I have made this point to the government through the minister—it is difficult for us in policing to get people into the organisation overnight and to have them contributing to new programs within a financial year. That is complicated, of course, by things that happen during election cycles where they will happen from 1 January rather than 1 July.

Commissioner, could you elaborate on that answer? What point have you made to government about the four-year budget cycles, and when?

**Mr Keelty**—It is a continuous discussion that we have with both the minister and the government, in terms of the lead time taken to recruit police and the lead time taken to have recruited police return on the investment in terms of training them. In answer to the previous

question, since we are selectively quoting from Dr Shergold's speech, now that I have had a chance to have a closer examination of it, can I say that there are other things in Dr Shergold's speech. He stated:

I mentioned that very often failure could be directly attributed to mundane things like the inadequacies of the IT systems—

I point out that we are trying to improve both the PROMIS system and the financial systems in the AFP. 'Insufficient training' is referred to. I place on the record that every member of the AFP senior executive service has undertaken the company directors course to improve their focus on governance and their accountability to the executive management board. 'Ineffective oversight structures' is mentioned. The AFP has a security and audit committee that oversees the finances of the organisation. That has external people sitting on it, including people from the ANAO. We have, as mentioned, a finance committee, and we also have, as I mentioned before, an executive management board, with two non-executive directors from private enterprise, giving us advice on some of the decisions that the AFP is undertaking. We also have contracted the former deputy secretary of the department of finance to undertake a strategic view of the AFP's finances to ensure that we are going to be in a position, particularly through 2009-10, to be financially viable as an organisation, and looking at all the steps we would need to take to ensure that that occurs.

So, in terms of the tenet of Dr Shergold's speech, I would not want to accuse the senator of selectively quoting it, but there are some issues about keeping an eye on the detail. One of the things I have circulated to the executive has been a speech by a CEO of one of Australia's largest companies that addresses the issue of keeping an eye on the detail in order to manage the organisation for today whilst at the same time dealing with the requirements for strategic management.

**Senator LUDWIG**—Thank you, Commissioner Keelty. I am aware of IT failures, particularly this minister's failure in terms of Customs IT management, quite frankly. But it was not so much directed at the—

**Senator Ellison**—It is working well.

**CHAIR**—Wait for Customs, Senator Ludwig.

**Senator Ellison**—Yes, wait until Customs.

**Senator LUDWIG**—It is not so much directed at the AFP; it is directed at the minister's administration of the AFP, Commissioner Keelty. That is what I am trying to explore. The impression I have got in the past—I am happy for you to correct it—in terms of four-year budget cycles is that it does complicate matters for you. That is how I understood the answer that you gave. And the election cycles also complicate matters. I was trying to understand what kind of impact the four-year budgets and election cycles have in terms of planning for your workforce and known expenditures—and, of course, how unforeseen new policies that come in mid-cycle in a financial year impact upon your planning for staffing, recruitment, retention and those sorts of issues.

**Mr Keelty**—An example of what I was saying is Operation Wickenby, which was an unforeseen investigation that became a joint investigation. It required new funding and that was provided mid financial year. For me, that meant allocating people to the investigation

immediately and at the same time using the funding to recruit to backfill those people. Another example of mid financial year funding is things such as fighting terrorism at its source. Again, it is more to do with having to put experienced police into those investigations immediately and then backfill to recruit. Other unforeseen situations are, of course, things like the Bali bombing investigations, where we actually deploy and undertake the investigations. We then seek funding to cover the costs of those deployments after they have in fact occurred. All of these things should appear in the portfolio budget statement or in the additional estimates statements, which are made mid financial year.

In terms of my discussions with the minister and the government about these issues, I have often spoken to the minister about this or reported on it. The decision of the Australian government to build the International Deployment Group to a total staffing level of 1,200 over the next four years is an example of the government responding to my request and understanding that we cannot just find experienced police and put them into these overseas missions. So, in terms of what I have been saying to government, there has been a positive response.

**Senator LUDWIG**—On page 99 of the annual report it mentions the workforce of the future program. When was that completed? It is on the left side of page 99 under the heading ‘Workforce planning’. About half-way down it says ‘for implementing characteristics of the AFP’s workforce of the future’.

**Mr Van Dam**—That work was undertaken over the course of the last calendar year. The outcomes of that review went to our executive management board, I think, on two occasions and to one of our executive retreats for exploration.

**Senator LUDWIG**—Sorry; when was it finalised?

**Mr Van Dam**—I think last calendar year.

**Senator LUDWIG**—Is that available or is that an internal working document?

**Mr Van Dam**—I am happy to take it on notice. It may well be available. I certainly do not have it with me.

**CHAIR**—Thanks; that is fine.

**Senator LUDWIG**—Do you provide the report to the minister’s office for input?

**Mr Van Dam**—I am not in a position to be able to advise you of that at this point. I am happy to also take that on notice to check.

**Senator LUDWIG**—So you do not know whether it was publicly available at the time of its completion?

**Mr Van Dam**—I am confident that we did not publish it as a public document.

**Senator LUDWIG**—The section also mentions implementing characteristics of the Workforce of the Future initiative and the realisation of plans for base and lateral recruitment programs. Are you able to say what those characteristics are?

**Mr Van Dam**—I have already indicated I am happy to take on notice the report. If I can give you broadly a bit of an insight into that, what we are trying to do here is look out five to 10 years and say what are the sort of characteristics that a fully effective federal agent would

possess in five or 10 years time. They might be psychological in terms of outlook and approach. They might be knowledge based, competency based et cetera. So by looking into the future we have tried to adopt those in the course of refining techniques for screening and/or selecting individuals for joining the organisation. If I could take on notice providing you with the report, that would probably inform.

**Senator LUDWIG**—In the answer to the question that you provided you also talked about lateral recruits as part of the—

**Mr Van Dam**—I think it was question 9.

**Senator LUDWIG**—Yes. Is the term ‘lateral recruiting’ one that you use to designate those who come from state and territory police?

**Mr Van Dam**—I think the commissioner the last time we met indicated this, and it is also covered in this answer. We say:

... ‘Base Police’ refers to applicants with no previous police experience, ‘Lateral Police’ are those with previous or existing service.

**Senator LUDWIG**—And that can include from the AFP as well.

**Mr Van Dam**—Yes, it can, I think.

**Mr Keelty**—Yes, it can.

**Senator LUDWIG**—Regarding the 2,300 who are on the records, did they come via a letter in the post or email? How do they get to you?

**Mr Van Dam**—I will check this, but my recollection is we receive them in all of those forms. We introduced an online system in December of last year with a view to providing people the capacity to electronically express interest. That has proved extremely successful since we have brought it in. The number of people applying for positions within the AFP has increased fivefold, I am told, since the time we introduced that system and capability. It also allows us to track much more carefully and much more readily the status of each of our applicants.

**Senator LUDWIG**—Are all of the 2,300 in the same form? Is there a form that people fill out online or is there a standard letter that they forward?

**Mr Van Dam**—We have a full application form. We have a form for applying for a position as a police officer within the AFP, which, like other application forms, calls forth a wide range of information from a potential recruit.

**Senator LUDWIG**—So all of the 2,300 applicants have either filled out a form online or have expressed an interest, been sent a form, completed it and returned it.

**Mr Van Dam**—I am so advised, yes.

**Senator LUDWIG**—Are there some rough figures for the proportion of those who fill it out online and the proportion who send it in by post or fax—I guess they are the alternatives?

**Mr Van Dam**—I am advised 90 per cent at the moment would be the proportion of applications received online.

**Senator LUDWIG**—Would that include the lateral recruits as well?

**Mr Van Dam**—Yes.

**Senator LUDWIG**—Are there figures for the proportion of those that have come through online and the proportion that have come through in other forms?

**Mr Van Dam**—I will check this, but my understanding is that in fact since we have brought the recruitment system online the vast majority of those also come online.

**Senator LUDWIG**—Minister, when you appeared on *Meet the Press* on 27 August and the presenter asked how many of the 2,300 expressions of interest were from state police officers, your response was:

... we wouldn't assess that .. because we're not out to recruit specifically State and Territory police officers.

If the AFP does not assess whether or not applicants are state and territory police officers, could you explain why the AFP have in place lateral recruitment—in other words, the facility to be able to designate applicants as lateral recruits, which means that they have previous experience, be that state, territory or AFP?

**Senator Ellison**—I think that question was in relation to the IDG announcement which had just been made, when we saw the number going up to 1,200. The Prime Minister and I both made it clear that we were not setting out on a campaign to poach state and territory police officers, and that is the point I was making there. I think I said we needed to assess the number because I did not have any figure available to me at that point in relation to the state and territory police who might be applying. The point I was making was that we were not setting out to poach state and territory police officers. But you cannot stop them from applying. The fact is there are state and territory police officers who have applied to join the AFP, just as there are AFP officers who have gone to state and territory police forces and who I have known of personally.

You are going to have that lateral movement, which I welcome, quite frankly, as the federal minister for justice. I think it is a good idea to have a bit of movement between our police services around the country because it really does breed more professionalism and greater experience. Gone are the days when we jealously guarded each other's turf and never crossed the state border. The Australian Crime Commission is an example of that, where we are using state and territory police to act in joint operations. We have just seen it with the Indigenous intelligence task force in Alice Springs, where you have a three-state approach, with the Northern Territory, South Australia and Western Australia involved in that in relation to Indigenous initiatives. You are going to have lateral movement. You should have lateral movement. When we set up that IDG and expanded it it was not on the basis that we would be manning it with state and territory police.

**Mr Keelty**—By way of clarification, I thought the question from the senator was one to do with definition. The reason we define people as lateral recruits is that they undertake a different training course. It recognises the prior learning that they have as serving police officers. We do not go out and specifically target this cohort as a group, but once they do apply for a position with the AFP the training they undertake is different to that of a base recruit.

**Senator LUDWIG**—It is true, though, that on the form you ask whether they are a current serving police officer and from which jurisdiction they come from. That is right, isn't it?

**Mr Van Dam**—That is right, yes.

**Senator LUDWIG**—The issue, Minister, is that you said in regard to the 2,300 in that *Meet the Press* interview that you would not assess that. In fact, you do assess it in the online application, where you ask them whether they are a current serving police officer and what jurisdiction they come from. Then there is a term to describe that: 'lateral recruitment'.

**Senator Ellison**—I would have to look at the context of that interview and the remarks I made, but as I recall that question was couched in the terms of poaching police officers. That interview took place in an environment in which there was an allegation that we were out to poach state and territory police. The point I was making was that we do not. There is movement across all police services, but that is not done through poaching from each other's services. It is just a fact of life that people move from state to state and want a change in life or a difference in career, and there is nothing wrong with that. That was the context of my remarks, as I recall it, and I will check the interview.

**Senator LUDWIG**—You might want to have a look at the interview, because you might have unwittingly misled the viewers of that program. You also then went on to say:

Someone who wants a career in defence, I think, has a different profile to someone who wants a career in policing. We're looking at totally different areas of people. As I said, the Australian Federal Police has no trouble in recruiting people. As I said, 2,300 expressions of interest already of people who want to join the Australian Federal Police. It won't be crossing over with Defence, and our experience is this has not been the case.

The application form, as I understand it, also includes a question about whether they have any previous military experience.

**Mr Van Dam**—What we are trying to do in our forms is capture as much relevant and informative material as we can from a potential applicant. I cannot comment on what the minister may or may not have said, but it is certainly useful for the AFP to understand whether or not an individual who is applying for a position with us has military experience—has had experience with the use of weapons, for example, or potentially uses force in certain circumstances. I do not necessarily see the two as being contradictory.

**Senator Ellison**—I might point out that an initiative has just been announced by the Minister for Defence talking about school leavers being engaged in the ADF. The average age of a person entering the AFP is about 29 years of age. They are very different people to those whom Defence is targeting. Defence is looking at an age group which is very much younger and less experienced. That was manifest in the recent initiative announced by Dr Nelson. This was a question put to me on the basis that this was going to cut across recruiting by Defence, and the point that I was making in that interview was that it was not. There are two different pools and you want two different sorts of people. That has been demonstrated by the recent initiative by the ADF seeking school leavers. The average age of people entering the AFP is much older. If it is not 29, I dare say that I will be corrected.

**Senator LUDWIG**—That is a different answer from what you were giving before. I might add that it makes complete sense to assess both on previous experience and on military

experience; I do not have any difficulty with it. As Mr Van Dam points out, it is relevant to policing, certainly in terms of experience in weapons handling and all of those issues. And it does not necessarily mean if you use a lateral recruit that they will come from a 17-year-old recruit in the Australian military. It might be a person who has already gained a rank in the service. It seems that on that basis you do and you can cut across that pool if you then say the person who is a corporal or sergeant or officer in the Defence Force with similar experience, even someone from a military police background, would not be suitable for lateral recruitment into the Australian Federal Police. I am sure there are probably incidences of that, and if I cared to ask they probably would be turned up. So, Minister, I think you are now hedging your bet as to what you said on *Meet the Press*. Perhaps you made it up at the time, and I accept that; it sometimes happens. But in terms of the current issue I think it is unsustainable to say that you are not cutting across existing pools.

**Senator Ellison**—I stand by what I said. It has been demonstrated by recent initiatives announced by ADF. Chasing school leavers is very different to what the AFP does. The average intake, at 29 years of age with prior experience, is a very different profile to a school leaver, who ADF is targeting. I rest my case on that.

**Mr Keelty**—Madam Chair, there has been a lot of discussion about lateral police; if I can just put some context around that as well. Of the 2,310 people who have applied to join the AFP, only 346 are laterals. I just point out that that is out of a pool of about 46,000 police in Australia. So it is a very, very small percentage of the overall people trying to get into the AFP, but it is an even smaller percentage of existing police resources. I think context is really important here. We are not poaching. And of the 346 we would take perhaps only 50 per cent into the AFP for a variety of reasons.

**Senator LUDWIG**—Minister, you were talking about base recruiting at 17. Were you aware of lateral recruits at the time of the interview?

**Senator Ellison**—I have been aware that people have joined the AFP with prior policing, prior defence, prior customs backgrounds and also with university degrees. I really do not see that that is an issue. What the commissioner has pointed out is that the amount of police that come from the state and territory police, when you consider the overall number, is minuscule. I really fail to see the consequence of it.

**Senator LUDWIG**—Well, it would have been more helpful if you had disclosed it at that point. In terms of the overall recruitment into the Australian Federal Police, it does and can come from both state and federal police; it can come from the existing ranks of the military. It can be from sought-after, limited skill pools of both the Australian Defence Force and the state and territory police. It can then in effect be taking away from a limited pool that exists.

**Senator Ellison**—The point I made at the time of that interview was that it was not an issue. I say today: it still is not an issue.

**CHAIR**—Indeed.

**Senator LUDWIG**—We can beg to differ on that, I have to say.

**CHAIR**—Further questions, Senator Ludwig?

**Senator LUDWIG**—I was going to go into some other areas. I think Senator Bartlett has some questions. Given that I have spent a fair bit of time to date, it would not hurt for another senator to have an opportunity.

**Senator BARTLETT**—I thank Senator Ludwig for yielding. Mr Keelty, you made some comments recently regarding the potential risk to the whole community that could occur if there is excessive vilification of Muslims in media coverage. I think this was in a speech you gave in Adelaide a couple of days ago. In a summary of that in the *Age* yesterday, you mentioned that you hear more and more stories of substandard treatment of the Islamic community. I wondered if there is a more thorough amount of detail you can give us about that, beyond just things you are picking up as you travel around. Is there a more solid body of evidence or studies or work being done by the AFP to assess the level of this?

**Mr Keelty**—The reporting on the speech that I gave to the South Australian Press Club last week has joined two separate issues that I spoke about. One was the responsibility that the media have in accurately reporting what is occurring and, in doing so, ensuring that they do not propagate the terrorist mantra. The example that I used was, in fact, the alleged plot to attack the Australian cricket team and the English cricket team during the Ashes series. I pointed out that those reports that dominated the headlines in Australia for at least 24 hours proved to be from a doubtful source—being another newspaper.

That was connected with questions I answered in relation to the Islamic community. I had only just finished a meeting with the Islamic community—I do regularly meet with their communities right around the country—where they had voiced some concerns about vilification. It was totally unrelated to what was happening in Sydney with Sheikh al-Hilali. I was then asked a question about Sheikh al-Hilali. The news about Sheikh al-Hilali was fresh at that time, and I did give an equivocal response, saying that, if what was reported to have been said was indeed said, that was unacceptable. Unfortunately, some journalists have joined all three matters to make different opinions about what was said.

Certainly, as I have travelled around the Islamic communities in Australia, they have expressed concern to me about vilification, and I expressed the view that the media has a responsibility to report on matters in a measured way. It is nothing new in terms of what I have said. I addressed the press club with a similar statement some three weeks ago. Indeed, I addressed the Australian Press Council on the very same issue—that is, that the media has an important role to play in the current security environment and that we need to work together. So what has been reported and then reported on again is not exactly what I said in the speech. Like most of the major speeches I give, it is available on the AFP website.

**Senator BARTLETT**—I am sure all of us here can appreciate the difficulties and frustrations of not being accurately represented in media coverage. I am certainly not wanting to in any way suggest any concern with your comments. The only media report I will go off is the opinion of yours—which I presume you are supportive of—which was in the *Age* yesterday, which says that it is an edited extract from your speech.

I really just wanted to go to the points that you raise in it—as you say, it is not a new point that you are making—and perhaps even to take it out of the context of the current feeding frenzy over Sheikh al-Hilali, because it is always harder to talk about these things in the

middle of a feeding frenzy. I wanted to get a sense of whether the AFP has been monitoring or assessing the level of concern in the Islamic community, the extent of what you have called substandard treatment and the potential impacts of the sort that you were expressing concern about; that is, of greater extremism perhaps being fomented. I appreciate that you can never have a direct single causal thing, but I am just wondering if there is anything more solid that you can provide us with that goes to the general concerns you have expressed.

**Mr Keelty**—The AFP does not have a role to specifically measure it, but we do have a role—along with other agencies, such as ASIO—in terms of understanding the environment and the causes of home-grown terrorism. My comments were largely as a result of the experience of meeting with the communities around the country and indeed talking as I do, not as frequently as I would like, on the Voice of Islam radio station in Sydney, where I take talkback calls from the Islamic community, largely to do with the work of the AFP and certainly the interpretation of the legislation that is applied by the AFP. A lot of those calls and a lot of the comments from the community are about their own feelings that they are being vilified from certain quarters and how that can be managed. Of course, that is not a role necessarily for the AFP, but what is important in my view is to ensure that their voice is heard in terms of moderating the debate somewhat because these people do feel this, these people are part of our community and policing is about community.

**Senator BARTLETT**—Have you or the AFP had any formal engagement with the mainstream media in trying to address some of the concerns you raise?

**Mr Keelty**—It did form a major part of my speech to the Press Council. That was one mechanism by which I thought I could address, certainly in part, the issue. Whilst I attempt to do that, I understand the enormity of the task of getting the media to report fairly on every aspect of what we are talking about. I think the greatest example is the case that I raised, and that is the threat against the Australian cricket team and the English cricket team during the previous Ashes series. The point I am making is that unless you get it right you can actually create fear in the community and you can actually cause an economic loss. If those comments and those headlines resulted in people forgoing their tickets to the Ashes series or mums and dads deciding not to take their kids to the cricket then the unforeseen circumstances of the sensationalist reporting would actually deliver a result that is the intended result of terrorism. That is one of the reasons for seeking some moderation and some understanding, particularly when it comes to that part of the community that may already feel disenfranchised or vilified and that we need to moderate our comments.

**Senator BARTLETT**—Would it be fair to say you think that particular story about the alleged threat to the cricketers was unfounded?

**Mr Keelty**—Certainly we have no evidence of a threat against the Australian cricket team during the last Ashes series, nor have our UK counterparts. When you go back to the origins of the story, if I recall correctly, it was reported in one of the British tabloids and then merely repeated by the Australian media outlets. They can explain their reasons why, but I think this is where we need a degree of moderation. You can think of other examples. I do not want to use them because they will suddenly appear in tomorrow's press as imminent threats against certain entities in Australia or certain brands, and that is what I am counselling against.

**Senator BARTLETT**—I know, as you said, it is a large task in regard to reporting and not necessarily your core role either. But, given the potential consequences that you have expressed in a direct way in your speech and previous comments about having almost a self-fulfilling prophecy of generating divisiveness and antagonism, do you think there is a role for having some mechanism for direct contact with media outlets when these sorts of things happen, or is that likely to just be more like a red rag to a bull?

**Mr Keelty**—I cannot really answer that, other than to say that it is contained in the speech that I made not to the press club but to the Press Council, because the experience of making complaints against media outlets is not a happy one. It is very drawn out and does not necessarily provide anyone with a satisfactory result. I am speaking from my own experience. I should also point out that in those speeches I also point to the AFP having a responsibility. Where we have an operational outcome, it is incumbent upon us not to promote those operational outcomes in any way, shape or form other than in the way we promote operational outcomes for other crime types. If we do not, we risk marginalising people—or, indeed, in the environment of home grown terrorism, encouraging people who might not otherwise turn their mind to doing so to take up a cause. Notions such as trophy trials simply do not exist in the lexicon of AFP people. The people who will deal with the matters that we investigate in terms of terrorism will be the courts. One of the other points that I was making was that we too have a responsibility in how we portray what we are doing in the media so as not to disenfranchise other people.

**Senator BARTLETT**—I assume that you are not aware of any retraction or clarification about the cricket team story, front page or otherwise?

**Mr Keelty**—No. My judgement is that when these things leave the front pages after a very short period of time it is a bit of an indication of the accuracy of the original source, but I am only speaking from experience.

**Senator BARTLETT**—Finally, there has also been some coverage of and reporting about the New South Wales police and aspects of the Cronulla riots of last year. Leaving aside some of the political atmospherics around that, was the AFP involved in any way in contributing to that report? Have you studied it at all?

**Mr Keelty**—We did not contribute to the report. We have a copy of the report and we are studying it, as we would with any reports of a similar nature where there has been a review of police operational practices. There is nothing to say that there will not be lessons in there for the AFP; indeed, we think that there are. Outside of that, I really do not want to comment on the Cronulla riots because they were handled by the New South Wales police and it would be inappropriate for me to make any comments one way or the other on that, except to say that we have the report and we are reviewing it to see whether there is any application for us.

**Senator BARTLETT**—The only other question that I wanted to ask about it was whether there are aspects in that report—and I have not fully read it; I have only read media reports about it—that go to the points that you raised about the role of the media. I thought I read there were some suggestions that some aspects of the role the media played in that were less than helpful.

**Mr Keelty**—I would not like to proffer a comment, because I have not personally read the report yet.

**Senator BARTLETT**—Okay. That will do me.

**Senator LUDWIG**—I will be careful with the way that I phrase this. I will see if I can get it right. I understand that it falls outside Commissioner Cole's inquiry. It relates to a recent media report about an ongoing investigation. As I recall and as I understand from your responses in relation to these matters, we have to be careful about what we say on the public record in case we compromise ongoing investigations. Are you able to say whether this relates to the misconduct of public officials or is it an investigation into private individuals? That may in itself be going too far. But you might be able to do it in reverse. That is the type of information that I am seeking. Perhaps you can indicate what you can provide.

**CHAIR**—As is usually the case, the committee understands the difficulty that may be present in responding to a question of that nature.

**Senator Ellison**—Could I clarify? Is this the matter that the Minister for Foreign Affairs mentioned yesterday in the House of Representatives?

**Senator LUDWIG**—Yes, it is also mentioned today, I think, and there also seems to be a report which is headlined, 'Fed: Police investigate possible breach of UN oil sanctions'. It goes on. You may not have seen that yet. It says:

Foreign Minister Alexander Downer has confirmed police are investigating a possible breach of Australia's obligations under the United Nations Iraqi food for oil program.

**Senator Ellison**—That gives us some definition. That is good, thanks.

**Mr Keelty**—I can confirm the receipt of referrals for investigation from the Department of Foreign Affairs and Trade in relation to certain Australian companies and alleged breaches of trade sanctions. These matters fall outside the Cole inquiry's terms of reference. I can confirm that one of the alleged breaches of trade sanctions related to an Australian company importing oil into Australia. But, as you pointed out, the matters are ongoing so it would be inappropriate for me to provide any further comment.

**Senator LUDWIG**—Without compromising the investigation, it only relates to companies or private individuals?

**Mr Keelty**—On the advice I have on dealing with that one issue, it relates to the actions of the company. Whether that translates to actions of individuals will no doubt come to light as the investigation continues.

**Senator LUDWIG**—I see. Are you able to say when and how the referral was made?

**Mr Keelty**—Yes, it was 23 February this year.

**Senator LUDWIG**—And are you able to say how it was made—from where or whom?

**Mr Keelty**—Yes. On 23 February there was a written referral to the AFP from the Department of Foreign Affairs and Trade that came via the Minister for Justice and Customs.

**Senator LUDWIG**—Is that the usual practice, that it comes through the Minister for Justice and Customs? Minister, perhaps that question should be directed at you.

**Senator Ellison**—Yes, that is the protocol. I do not have the terms of that, but this would fit within the protocol that the matter be referred via the minister for justice. That is dealing with ‘politically sensitive matters’—I think that is how it is termed. But I can take that on notice to give you further detail as to protocol.

**Senator LUDWIG**—That was what I was going to follow up with: asking why you say it is politically sensitive. Is it because of Mr Downer or of the content of the referral?

**Senator Ellison**—When departments want to refer it, it is referred via the minister because it comes from a department, much like unauthorised leaks or matters that occur overseas because of jurisdiction. I am just trying to give you a range of them.

**Senator LUDWIG**—That makes sense. I understand that.

**Senator Ellison**—The commissioner has reminded me that it forms part of the Commonwealth Fraud Control Guidelines as well. But I will take it on notice and give you a fuller response.

**Senator LUDWIG**—Thank you. Mr Cornall, this seems to fall outside the terms of reference for the Cole inquiry. Is it because the terms of reference are not wide enough? It seems to be a matter that should have been included within it, if there is an issue such as this.

**Mr Cornall**—I do not know the details of the matter, so I am not able to comment except to say that if it only came to light in February this year, the Cole inquiry terms of reference were settled long before then.

**Senator Ellison**—I think you would need to look at the circumstances to see whether they were in any way related. The commissioner has said that they fall outside the terms of reference. I really think we are in a difficult position here, Madam Chair, because to go into the circumstances means going into the investigation that is being pursued. This has been referred to the Australian Federal Police, which I think is an appropriate outcome, if I can put it that way. Therefore, it is being dealt with. To say that it should go via the royal commission could well mean a much slower path.

**Senator LUDWIG**—I am not suggesting that it should go via the royal commission. I am curious as to why it has not—in other words, why the terms of reference were not wide enough to examine that issue in the first place, if we now say it is outside the terms.

**Senator Ellison**—The royal commission and the terms of reference were set up some time before this, which came to light later. So I think it is appropriate that it be dealt with in this manner. It is just a question of timing, as I see it.

**Senator LUDWIG**—The timing, of course, is not under control, but the terms of reference are. Minister, given that the nature of this matter is the UN oil for food program—or it seems to suggest that—is any consideration going to be given by government to amending the terms of reference to include such a matter? It will not, of course, jeopardise any ongoing investigation. If it does, it could wait for the investigation to be completed so that that did not happen. Alternatively, I am sure circumstances could be worked out between Commissioner Cole and the AFP to ensure that the matter is properly investigated, in terms of the Cole commission’s remit.

**Senator Ellison**—The Cole commission report is due on 24 November, as I understand it. That is a matter of record, if I am not mistaken. Having regard to this matter, is it the suggestion that we should now reopen the whole Cole inquiry and thereby delay things for a further period of time so that this matter can be included? This matter has been referred to the Australian Federal Police and I think that is an appropriate course of action. If we came across something next year, would you say that we would have to reconstitute the Cole commission of inquiry? Action has been taken here, the matter has come to light well after the Cole commission and its terms of reference have been set up and it has been referred to the Australian Federal Police. It is being dealt with appropriately. I do not think thwarting the progress of the Cole commission is appropriate in this regard.

**Senator LUDWIG**—It appears that the terms of reference for the Cole commission were not wide enough to capture imports into Australia of Iraqi oil, which is surprising, in the sense that it has not caught all of these matters and this seems to be a matter that has certainly fallen outside. Why didn't you ensure that the terms of reference were wide enough to cover it in the first place? That is a question I would like you to answer. You have already extended the Cole commission a number of times to deal with matters, and it surprises me that you will not also look at this important issue, to ensure that all of the matters can be captured by the Cole commission.

**Senator Ellison**—I think the department can assist us here but before they do that, can I say that it is not a question of it not being looked at; it is with the Australian Federal Police. I certainly would feel very uncomfortable taking a matter away from the Australian Federal Police when it is under investigation.

**Senator LUDWIG**—I am not suggesting that.

**Senator Ellison**—Just as long as we are all clear on that, that is good. Mr Govey has something to add.

**Senator LUDWIG**—There are significantly different powers involved, having regard to the Cole commission and their ability to look into matters and a proper investigation conducted by the Australian Federal Police.

**Mr Govey**—I thought it might be useful just to provide a bit of context about the original terms of reference or the letters patent for the royal commission. Originally, the idea of the royal commission stemmed from the UN investigation, the Volcker report, so it was those matters that were mentioned in the Volcker report that were the subject of the original letters patent. That defined the scope of the royal commission. The extension that has been referred to related to a matter that came up in the context of the royal commission. I do not have the details of this latter matter, but as far as I am aware it did not come up in that context.

**Senator LUDWIG**—So we have covered the exports rorts. What about the import rorts—shouldn't that be covered as well, Minister?

**Senator Ellison**—The Cole commission came out of the Volcker inquiry, which, you will recall, was the UN inquiry which was set up. As I understand it, we have been guided by the Volcker inquiry in setting up the Cole royal commission. Any other matters which are extraneous to that can be adequately dealt with by an AFP investigation. I fail to see—

**Senator LUDWIG**—What surprises me is that you have closed your mind to any investigation in terms of the Cole commission outside the Volcker inquiry. Are you saying that it is limited to what Volcker inquired into and what he found? Given the nature of his investigation, he may not have uncovered and looked at all of the issues, one of which we now see—that is, imports.

**Senator Ellison**—With a royal commission, at the end of the day matters are either referred for investigation or they are not, so an outcome from a royal commission can mean a police investigation. In this case, these matters have been referred to the Australian Federal Police for investigation in the first instance. I really think you cannot argue with that approach to the extent that they are with the Australian Federal Police now, being investigated. Are you suggesting that we take another route, through the path of a royal commission? They may or may not be referred after that royal commission—let us not assume that the royal commission would automatically refer them. But in this case these matters have been referred to the AFP in the first instance, without a royal commission.

**Senator LUDWIG**—If you look at the broader issue of imports, the difficulty I am faced with is that, yes, this matter that has come to light has been referred from 2000, I think the report says. The next question then is: are there others? I do not know this and I do not want to speculate on the record. What the commission was set up to do was to look at the broader issues from the Volcker inquiry as well as try to explore the whole area. I do not know whether there are other matters that surround imports in this area that has now been uncovered. It might be just the tip of the iceberg, so to speak, in terms of the issue that has been referred to the AFP. The commission, I think you would agree, found significant issues or looked at significant issues that came out; certainly, from the media reports, there were many issues that came out. We look forward to the report and we will see what happens from there. But we have now seen another area come to light which is outside the terms of reference which could have the same effect. There could be many issues that surround it, not just simply this one matter that has been referred to the Australian Federal Police. I have got full confidence that the Australian Federal Police can and will investigate these matters, as it will if there are matters referred to it from the Cole commission.

**Senator Ellison**—You have to remember that the Cole royal commission came out of the Volcker inquiry, which was a UN inquiry: as a result of that report, the Cole commission was set up. It is a fairly straightforward process. Along the way the commissioner asked for extension or changes to the terms of reference. The government agreed to that and it was done. This has come along after the royal commission has been set up. It deals with matters which are extraneous to the royal commission and to Volcker and have been referred to the Australian Federal Police. I fail to see where there is a necessity to expand the terms of reference of the Cole royal commission to include this when it is being investigated by the Australian Federal Police and, what's more, when we have, just a matter of days away, the report due from Commissioner Cole. I think everybody would say it would be highly undesirable to delay that report any further.

**Senator LUDWIG**—I am not suggesting it be delayed either. You raised the issue of delay. I am sure the commission can deal with these matters in the way they see fit. They do not

have to delay that report; they can certainly produce that report in the next couple of days. It would not stop a remit to the commissioner for the imports side at all, quite frankly.

**Senator Ellison**—But then you have a new royal commission.

**Senator LUDWIG**—Then have you considered that? Don't you take it seriously? I do.

**Senator Ellison**—Of course we do. It has been referred to the Australian Federal Police. I do not think you can be more serious than that.

**Senator LUDWIG**—Are there other ongoing criminal investigations in relation to the oil for food program that are outside Commissioner Cole's remit and are currently being investigated by the Australian Federal Police?

**Mr Keelty**—Yes. In addition to the one you have just discussed, there are six others, but they are not all to do with oil and not all to do with oil imports. There are a variety of matters that have been raised with us through the minister by the Department of Foreign Affairs and Trade.

**Senator LUDWIG**—Are you able to indicate, given the usual caveat that the committee states, roughly what those six relate to?

**Mr Keelty**—They are breaches of the oil for food sanctions that were imposed. I just do not recall; I have been briefed on them but it was some time ago. They are not all to do with an oil company per se. Some of them, as I recall, are to do with chemicals and other commercial types of activities.

**Senator LUDWIG**—Are you able to categorise each of the six in a general sense?

**Mr Keelty**—I am not in any way trying to avoid the question. I have just been told what they are. It would seem to me that to actually discuss what the products are could lead to, particularly with one that I have in front of me, the company knowing that they are under investigation, which could affect the ongoing investigation because there are not a lot of companies that deal with some of these products.

**Senator LUDWIG**—I understand that. Are there any individuals under investigation? I am just trying to find a better way of expressing it. There are companies under investigation. Are there any individuals under investigation not related to the company in that sense?

**Mr Keelty**—Madam Chair, the only reason I would want to take that on notice is that I do not want to mislead the committee.

**CHAIR**—I understand that.

**Mr Keelty**—My understanding is that there are no individuals; they are companies. But I would want to be absolutely clear on that.

**CHAIR**—I also do not want the committee to make any errors on the public record in relation to a matter which has been referred to the Australian Federal Police and is being dealt with accordingly. Senator Ludwig, it is not that I want to curtail the questions in relation to this, but I do want to be very circumspect about where they go.

**Senator LUDWIG**—I understand that. It is difficult to get to the point without making an allegation that I would not want to make, or asking a question that has embodied in it an allegation.

**CHAIR**—Although it is not the most timely or efficient way of conducting the committee's business, Senator Ludwig, given the current nature of this situation, is it possible to perhaps place some carefully drafted questions on notice for appropriately careful responses?

**Senator Ellison**—I think, Madam Chair, that that might be advisable. It is more about the care taken with the answers. Senator Ludwig can ask the questions, but, of course, as the commissioner has said, care has to be taken so that the answers that are given do not prejudice operations. The precedent of this estimates committee has been that, where information can be given, it is given.

**CHAIR**—Yes, it is given. I realise that, Minister.

**Senator Ellison**—Similarly, the committee also abides by the operational requirements of pending investigations. So I think that the commissioner's caution is well warranted here. Let us see what we can give the committee without prejudicing any operation.

**CHAIR**—I think you would be aware, Minister, that the committee does in general take care in its questioning—

**Senator Ellison**—It does.

**CHAIR**—and Senator Ludwig has been observing that.

**Senator LUDWIG**—One of the difficulties is that it will take a matter of time for the answer to come back.

**CHAIR**—I said that it is not timely and it is not efficient. I do not think it is going to be adequately resolved this afternoon, Senator Ludwig.

**Senator Ellison**—We can try to see whether we can do it during the course of these estimates. We will do that if we can. We will see how we go. I would also say that, with these sorts of questions, I do not really think they have been the ones that have taken some time—it is when you go into great detail about other matters. These are relatively simple questions, and I think that we can work it out fairly easily.

**CHAIR**—I do not think these are taking time, Minister. That was not what I meant. Although it is not ideal, is that a position we can adopt, Senator Ludwig?

**Senator LUDWIG**—To the extent that the report has come forward, I do think it does in part need resolution. You may not be able to answer this question. You may not be able to express a yes or no, and I accept that. So I put that on the record first. Questions in relation to the UN oil for food program that go to the individuals it might relate to, who is currently being investigated—given that there are now a range of matters that are under investigation—and the role of the office of the Minister for Foreign Affairs in approving imports require a considered response as to whether those areas are being investigated and whether Mr Downer is being investigated. It is important for the public record to understand if the investigation extends that far.

**Senator Ellison**—As I understand it, the referral has come from Foreign Affairs to my office.

**Senator LUDWIG**—I did not ask in relation to those six, though.

**Mr Keelty**—Madam Chair, since it has been raised, I think I should make the point that there is no government minister under investigation. Mr Downer is not under investigation. The investigations here relate to the companies against whom the allegations have been made.

**Senator LUDWIG**—I appreciate that.

**CHAIR**—Thank you, Commissioner.

**Senator LUDWIG**—So the six matters all came through from your office, did they?

**Senator Ellison**—I think that would be correct, yes—from Foreign Affairs, to my office to the AFP.

**Senator LUDWIG**—Are there seven matters or six?

**Senator Ellison**—Seven.

**Senator LUDWIG**—So there are seven in total?

**Senator Ellison**—Yes.

**Senator LUDWIG**—I will see if I can craft the remainder.

**Senator Ellison**—I think that we can try to get that information back in reasonable time. It is fairly straightforward.

**CHAIR**—Thank you, Minister, and thank you, Commissioner. Do you have any further questions, Senator Ludwig?

**Senator LUDWIG**—It does beg the question, though, in terms of the broader issue of an inquiry, such as a commission, of exploring those issues about the role that DFAT or the Minister for Foreign Affairs played in looking at the import side of the UN oil for food program. There are referrals for matters, but of course the same problem happened with the royal commission, or the Cole inquiry—that is, it does not look to the minister's office. The same thing is happening here as well, unfortunately, where you have no ability to look at the broader picture. This is not in relation to those investigations by the AFP; this is a more general matter that I am putting to you, Minister.

**Senator Ellison**—You have to look at what is being referred. The allegation is that offences may have been committed under the Criminal Code Act 1995. That is an allegation of a criminal act per se that does not entail any allegation, as I understand and from what the commissioner has said, that the government is involved in that in any way. It is that these companies have committed a criminal act, and that is the allegation. How that then gets transformed or expanded into what the government is doing, I fail to see. If a company commits fraud, do you then say that we then have to look at the department of foreign affairs and the department of industry? I see these as allegations which relate to a breach of the Criminal Code per se. They are being investigated and that is an appropriate course of action. I think the comments I made previously about the matter we were discussing relate to these six as well.

**Senator LUDWIG**—The broader issue, of course, is how the imports got into Australia, whether the department of foreign affairs approved the imports and all of those matters. That is what the Cole commission could have looked at in terms of exports and the AWB scandal. But we now find there are other imports issues.

**Senator Ellison**—I think I have made it clear. The Cole report is coming on 24 November and we are going to wait for that. In the meanwhile the AFP is investigating these matters, and I think that is an appropriate course of action. It is an investigation of alleged criminal conduct, pure and simple.

**CHAIR**—Senator Ludwig, that seems to be as far as we can take that matter.

**Senator Ellison**—And we will get back with those other details.

**Senator LUDWIG**—We seem to be circling the wagon. I will see what I can put on notice.

**CHAIR**—Okay. Do have anything further?

**Senator LUDWIG**—Yes. Are the AWAs you have at the commissioner or above ranks level or do they extend down?

**Mr Keelty**—We have 171 AWAs with staff. Through the certified agreement, which we are currently negotiating with the various employee representatives, we are trying to provide a framework that is consistent with the Work Choices legislation. We want AWAs with significantly more recognition of staff specialist skills and abnormal work patterns. Of course, that is a work in progress in terms of the current certified agreement, but at the moment we have 171. It extends right across a variety of ranks and positions in the organisation.

**Senator LUDWIG**—Have you finalised your EB or when is it due to be finalised?

**Mr Keelty**—They are in negotiations over the next two days. Wednesday is the second of two days of negotiation for this week. It is largely dependent upon the negotiation processes as to when we can deliver the certified agreement to the workforce, but we would like to try and have it delivered certainly before the end of this year.

**Senator LUDWIG**—When did it expire?

**Mr Keelty**—It expired on 30 June this year.

**Senator LUDWIG**—The annual report states that the AFP aims to have all employees under a single workplace agreement—that is, the enterprise agreement—excepting those who are on AWAs. Or are you endeavouring to move the AWAs across to the certified agreement as well?

**Mr Keelty**—Some people will still be under AWAs. What is talked about there in the annual report is having the certified agreement refer to the existence of AWAs so that the majority will be captured more generally by the certified agreement. But there will be reference in the certified agreement, as we envisage, to the existence of some AWAs which, as I said, will be for staff who are in significantly specialised areas or have extraordinary work patterns that are not captured by the certified agreement.

**Senator LUDWIG**—I missed the term again for what the PSOs, the protective service officers, are under, but they are not under the current certified agreement. They have a separate arrangement.

**Mr Keelty**—They have a separate certified agreement, if you like. What we are trying to do is join them under the single certified agreement, which is alluded to in the annual report.

**Senator LUDWIG**—How is that proceeding?

**Mr Keelty**—That is part of the overall negotiations, because they have more employee representative groups than the wider AFP and all of them are being consulted as part of the establishment of the new certified agreement.

**Senator LUDWIG**—The AWAs are not going to disappear; they are still going to be, where you can gain agreement with the relevant employee, I suspect, for the superintendent ranks and above. What about the intention of expanding them into lower ranks or lower areas? Or is the certified agreement going to cover all of those? Some already exist, I think, in the lower ranks, or in the non-sworn area.

**Mr Keelty**—That is right, and we envisage that that will continue—that there will be certain specialised areas that will be covered by an AWA which would be under the umbrella of the certified agreement.

**Senator LUDWIG**—And they may be specialist skills—

**Mr Keelty**—For example, the air security officers, because of the unique nature of their work, which is not applicable to the more general workforce, would be a cohort, if you like, who would be more likely to be covered by an AWA than by the overall certified agreement. The annual report is saying that we are trying to get as many people covered by the single certified agreement as we can and the certified agreement will refer to the existence of AWAs for certain specialist areas.

**Senator LUDWIG**—I see. So there is an intention to move the sworn officer ranks—other than the ones we have identified, the superintendents and above, and those who are already on them—onto AWAs or individual agreements.

**Mr Keelty**—That is correct.

**Senator LUDWIG**—And in fact it might be the reverse—you might take them off AWAs and put them under the certified agreement.

**Mr Keelty**—That is correct, if the negotiations are successful in that regard.

**Senator LUDWIG**—I wish you well, then.

**Mr Keelty**—I should point out that we are still seeking as part of the negotiation process to have the protection people agree to be covered by the single certified agreement. I would not want to pre-empt the negotiations in that regard.

**Senator LUDWIG**—No, neither would I.

**Mr Keelty**—But you know what the aim is.

**Senator LUDWIG**—Yes. I do not know whether you have had an opportunity of looking at this area but the Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006—it is a long title; it is the penchant of this government to have long titles—proposes search and seizure powers for

Centrelink. Are you aware of those powers being sought by Centrelink? Has Centrelink discussed those with the Australian Federal Police?

**Mr Keelty**—I am told that we were not aware of those powers being sought. Having become aware of it, we are now consulting with the department.

**Senator LUDWIG**—And those powers would include both search and seizure powers—as I understand it—with and without warrants?

**CHAIR**—This line of questioning pursues questions in relation to a bill which is before the committee for inquiry and which has been referred by the Senate for public hearing on the 10th of next month, if I recall correctly, and submissions have been called for. I must say that in terms of questions and answers that can be pursued in this committee and in the estimates context, I have advice from the Clerk—which was not sought by me—that this committee has already been given the task of examining and conducting an inquiry specifically into that bill and that inquiry into the provisions of the bill should be conducted at hearings and meetings of the committee which are designated for that purpose and not necessarily pursued in the context of an estimates inquiry where other interested senators might not be able to attend and where there has certainly been no notice of this as a matter for discussion, given that it is listed for inquiry by the committee. I am hesitant to pursue this line of questioning.

**Senator LUDWIG**—I was going to add that I was not going to go into the terms. I am familiar with the advice. I cannot recall whether I sought it.

**CHAIR**—I know that I did not.

**Senator LUDWIG**—The questions are more general in any event and do not go to the specific provisions of the bill. That is, as you correctly point out, best left to the committee that has been charged with that purpose. There are some general questions that it permissible for me to ask the AFP.

**Senator Ellison**—I want to table a letter that the department got from the Clerk of the Senate in relation to questions about provisions of bills at estimates hearings. It might be useful.

**CHAIR**—The Clerk, as ever, has been generous in the provision of his advice, Minister.

**Senator Ellison**—I see; you have a copy already.

**CHAIR**—By all means, table it.

**Senator Ellison**—It can be of assistance to us all in these situations. That could be quite useful.

**CHAIR**—If the advice we have is similar, then you will know, Senator Ludwig, that it indicates that, although there is a wide ambit pertaining to questions that can be asked at estimates, it is not the Clerk's view that it extends to questions about provisions of bills—for example, questions about the meaning, purpose, intention or effect of clauses in bills. Even the initial question that you asked before I intervened indicated to me that that is where you were going.

**Senator LUDWIG**—No. It was about whether they were aware.

**CHAIR**—Yes, and they answered that and then you started to talk about search and seizure, which seems to me to be discussing the intention or effect of the clauses in the bills.

**Senator LUDWIG**—The question was not going to the specifics of the bill. It was going to be about whether the AFP could provide their consultation in respect of that in written form to the committee.

**CHAIR**—Their consultation with the Department of Family and Community Services and Indigenous Affairs?

**Senator LUDWIG**—Yes. I have only just discovered that Centrelink did not consult with the Australian Federal Police prior to the tabling of the legislation. They subsequently sought to consult with the Australian Federal Police, and I was wondering what that consultation in respect of the search and seizure powers was about.

**CHAIR**—Again, I would say that I am sure that that will come to light in the process of the committee's inquiry. If the committee is so minded to pursue that—which now, based on your interest, I am sure it shall be—then we will do that in the process of the inquiry, but not in estimates.

**Senator LUDWIG**—Can I ask whether the AFP will be making a submission to the inquiry into the bill?

**Mr Colvin**—The AFP is aware of the submission time line. We are currently considering our position in relation to making a submission to that committee. We have not formed a conclusion at this stage. As the commissioner indicated, we are talking to the department about the proposed provisions.

**Senator LUDWIG**—I do not now know whether the AFP will provide a submission or appear before the committee.

**CHAIR**—Neither do I.

**Senator LUDWIG**—Does the AFP receive requests from Centrelink relating to search and seizure powers?

**Mr Colvin**—To give a complete answer, I would need to take that on notice. We receive requests from a number of other agencies, what we term 'agency liaison', to assist them with search warrants or seizure when necessary. I could not give you a figure at the moment on what ones we would receive from Centrelink.

**CHAIR**—I have to say again, Senator Ludwig, to ensure that this is done correctly, adequately and properly, I am going to press the point that it should be dealt with in the inquiry process for the bill concerned. If the committee does have questions for the AFP then by all means we will put those formally to the AFP and, if appropriate, invite the AFP to appear at the hearing, as they are always willing to do.

**Senator LUDWIG**—I would be very happy with that process.

**Senator Ellison**—Thank you, Chair.

**Senator LUDWIG**—I have heard suggestions—and perhaps it needs some comment—that New South Wales might be about to vie for the role of providing ACT policing. I listen to an incessant number of media reports, unfortunately, and this one came up a while ago. I did not

realise that there was a contract between the Australian Federal Police and ACT policing for the contractual supply of an ACT police force.

**Mr Keelty**—Yes. We have a contract with the government of the ACT to provide policing services to the ACT community. That contract is provided for under a government-to-government agreement between the Minister for Justice and Customs and the ACT Minister for Police and Emergency Services. We have an arrangement to provide the policing service. Specific details about how the service will be provided and the terms of the contract are managed on a day-to-day basis by the ACT Chief Police Officer, whilst I have periodic meetings with the ACT Minister for Police and Emergency Services on the governance of the contract. In terms of the media speculation about that contract being under review to be provided by the New South Wales police, I can tell you that we have only recently entered into the arrangement—in fact, in the course of the previous financial year. Certainly there has been no indication to me from the Chief Minister of the ACT, or indeed from the ACT Minister for Police and Emergency Services, that there is any intention to consider changing those arrangements.

**Senator LUDWIG**—When does the agreement expire? Is there a term?

**Mr Keelty**—Yes, there are terms to it. The Chief Operating Officer might recall.

**Mr Van Dam**—I will need to confirm this, but I think the policing arrangement is in the order of five years. Then I think there are annual purchase agreements, which set the services to be delivered and the price to be paid.

**Senator LUDWIG**—Is that a public document?

**Mr Keelty**—Certainly the dates of the arrangement are public. As far as I am aware the arrangements under which it operates are public as well. In the portfolio budget statement it is under outcome 2, which is the provision of appropriations by the ACT government that are counted as part of the AFP's total overall budget.

**Senator LUDWIG**—How do the discussions then go? Is there a clause in the contract that says that at three months or 12 months prior to the expiration of the agreement you then start a new round of consultation? Is it an open tender arrangement or do interested tenderers put in expressions of interest? I am happy for you to take it on notice in that broader sense—whether it is an open tender, whether you are in discussions with the ACT or whether you are aware of any competitors in the market for the ACT policing.

**Mr Keelty**—The ACT Minister for Police and Emergency Services has publicly talked up the virtues of the arrangement, as has the ACT Chief Minister. There are provisions within the arrangement and the contract for the amount of lead time that needs to be provided by either or both of the parties should they wish to withdraw from the arrangement. My recollection is that it is something in the order of three years, but if I could take that on notice I will give you a more comprehensive response.

**Senator LUDWIG**—All right. That would be helpful. I was curious about some of the issues you might want to consider. Are there any impediments for a different supplier to provide policing services to the ACT in terms of legal requirements or a legal framework? I

am not sure whether you would be aware of that or whether I am asking the right entity, but as you are currently the ACT policing authority I guess I have to start somewhere.

**Mr Keelty**—I understand there is a piece of legislation that was developed as part of the self-government arrangements for the ACT when the ACT moved away from the Commonwealth government arrangements. I can give you a reference to the legislation; I just cannot give it to you at the moment. That is the head piece of legislation, so in terms of impediments that legislation would need to be amended—and of course that is an arrangement between the Commonwealth and the territory.

**Senator LUDWIG**—I understand. I am not a New South Wales senator so, without compromising my position, I wish you well in all of the negotiations. I hope you are successful in obtaining the contract—is that how it works?

**Mr Keelty**—The first contract was entered into in 2000 and had a five-year life. The new contract has just been entered into, so we would not expect to be readdressing the issues until at least 2011.

**Senator LUDWIG**—So it is well and truly a fair way away.

**CHAIR**—Senator Ludwig, can I get an indication from you about how much more time you personally have for questions to the AFP?

**Senator LUDWIG**—Probably about another half an hour or so. I am happy to break at any juncture.

**CHAIR**—Senator Heffernan has one question which he is keen to ask. Had you finished on that point?

**Senator LUDWIG**—On that point. There were a couple of questions I wanted to come back to in relation to the oil for food program which were more general in nature, and I could deal with those quickly now.

**CHAIR**—Perhaps Senator Heffernan could ask his question now so that he can return to chair the Rural and Regional Affairs and Transport Committee, which is pressing for him.

**Senator HEFFERNAN**—I am at the risk of getting a flogging for being here! My question could be answered with just a simple yes or no. I put two questions on notice earlier—questions 245 and 246. Could I have a yes or no to that?

**Mr Colvin**—I am aware of the questions on notice that you are referring to. I would not be in a position at this committee hearing to give you a yes or no answer. The answer we gave you at the time was subject to the evaluation we were doing of certain documents that we were looking at as a result of your referral to the minister's office. Obviously since that time that evaluation process has been completed. If you were to ask those questions of us again we would need to relook at those questions in light of that evaluation.

**Senator HEFFERNAN**—The question basically refers to: connect up two or three pieces of material—are they the same? I would like to put those questions again. You can take them on notice if you want to.

**Mr Colvin**—I think it would be wise for us to take that on notice and give you a considered answer, rather than answer that now.

**Senator HEFFERNAN**—I have one other question. This does not refer to the federal jurisdiction at all, but I would be interested to know how you would handle this. If there were a matter that was referred to the AFP or an agency of the AFP for investigation and assessment which concerned a person to whom you would report eventually, how would you handle that?

**CHAIR**—Senator Heffernan, we do try to avoid dealing in hypotheticals, but I will leave it to the witnesses.

**Senator HEFFERNAN**—This is not a hypothetical.

**CHAIR**—You said that it did not pertain to this jurisdiction.

**Senator HEFFERNAN**—How would the police handle a matter where they had to assess, evaluate and investigate the person to whom they report? For instance, if the commissioner or the minister were the subject of an inquiry, how would you handle that? How would you separate out the potential conflict?

**Mr Keelty**—We are speaking hypothetically but, depending on what the issue might be, it might be that it is separated out by availing ourselves of the Commonwealth Ombudsman. Should it be a different type of issue, it may well be that we would go to the department and I would speak to the secretary of the department. It would depend on the nature of the inquiry. Of course, we are speaking hypothetically, so—

**Senator HEFFERNAN**—I am trying to be very careful, because I am actually referring to a state jurisdiction. There was a meeting that occurred on 23 January this year which involves that scenario in an agency of the state police.

**CHAIR**—I am not really sure how far we can take this matter in this committee.

**Senator HEFFERNAN**—You probably cannot take it very far at all, but I was just asking for guidance.

**Senator Ellison**—The federal process where there is a complaint of that sort—

**Senator HEFFERNAN**—Would it be possible for the state to call in the federal people to deal with it?

**Senator Ellison**—I see. So you are asking whether, if there were a state issue and they wanted to deal with it at arm's length, they could have a federal authority deal with it?

**Senator HEFFERNAN**—Yes.

**Senator Ellison**—If it related to corruption, I would think the Australian Crime Commission would be an appropriate body.

**Senator HEFFERNAN**—I think it relates to abuse of an officer's power and things like that.

**Senator Ellison**—I think the Australian Crime Commission could deal with it. They have their own corruption commissions, but I do not see why—

**Senator HEFFERNAN**—I think they are finding it very difficult. That is a good enough answer for me, thanks.

**Senator LUDWIG**—To be helpful, ACLA will be under way at some point.

**CHAIR**—And that is helpful, Senator Ludwig.

**Senator Ellison**—But that only has Commonwealth jurisdiction.

**Senator LUDWIG**—They can work with the state, though, can't they—a state corruption body?

**Senator Ellison**—They can work with a state corruption body.

**Senator LUDWIG**—That way you would have Commonwealth—

**Senator Ellison**—That is where there is Commonwealth content. If it was only a state issue, I think the Australian Crime Commission could still have jurisdiction—in fact, I think that was part of the debate in setting it up—and they would have the coercive powers available. That would be my view.

**CHAIR**—Senator Ludwig, do you have any further questions for the AFP?

**Senator LUDWIG**—There were those questions that related to that earlier one about the UN oil for food program. I think that you can answer these, because they are more general. They relate to those seven investigations. Are they all current or have they been completed? Have any been completed?

**Mr Keelty**—They are ongoing.

**Senator LUDWIG**—Have any been started and completed?

**Mr Keelty**—None have been completed.

**Senator LUDWIG**—Can you tell me the number of entities involved?

**Mr Keelty**—No, I cannot.

**Senator LUDWIG**—And I cannot ask why, either, otherwise we get into the same circle. I will think about it for a little while. I may come back. You may not have been here for this, but the issue of torture was raised. There was a response by the Attorney-General. His comments were in the context of the admissibility of evidence to the new military commission procedure. Mr Ruddock stated:

Well, I don't regard sleep deprivation as torture. I've not heard it being put in that way, but it would be seen as coercive. Obviously the question would be looked at as to whether the evidence obtained that way has any probative value.

I think that this is accurate, and I am happy to be corrected. This matter was raised by Senator Nettle with Mr O'Sullivan from ASIO. In terms of the AFP's position, is sleep deprivation per se torture? How do you work that out in terms of your operational requirements for when you are questioning people and undertaking investigations? Is there an operational manual that deals with it?

**Mr Keelty**—There are a number of aspects to that. One is the legislation under which the AFP operates. In terms of interviewing people who are the subject of investigation for Commonwealth offences, that is provided for under part IC of the Crimes Act 1914. There are a number of specific provisions under part IC that govern the way interviews will be conducted by the AFP. There are also internal guidelines in relation to how interviews are conducted. The main thrust of the operations of the AFP during an investigation process is to

obtain admissible evidence, and the use of coercion, whether it be through tactics such as sleep deprivation or any other tactic, would generally rule the evidence inadmissible. It is not a practice in which we engage, and nor would there be any purpose to engaging in such a practice because it would rule the evidence inadmissible and therefore defeat the purpose of the investigation.

**Senator JOYCE**—Is that the case in every jurisdiction in Australia?

**Mr Keelty**—I can only speak in relation to the Commonwealth legislation and the Australian Federal Police. We have very strict guidelines under which we operate. The interviews are conducted by video and audio recording. There are aspects of the legislation that invite certain people to be present during the interviews, such as legal counsel. We also have provisions in the legislation that require us to treat people with dignity and not subject them to cruel or degrading treatment. There is significant governance over the way that we do our investigations.

**Senator JOYCE**—It would be of no benefit to you if you did that.

**Mr Keelty**—Certainly, from a policing perspective, there would be no advantage in trying to obtain evidence that would ultimately be ruled inadmissible. There are also the values of the organisation in the way we conduct our operations. We treat people with dignity and we adhere to the rules of evidence.

**Senator BRANDIS**—That, with respect, Mr Keelty, is not a complete answer because, although of course it is not admissible in evidence, information obtained by that means might nevertheless elicit a train of inquiry which might have some utility. I am not saying that condones it. I do not think it should be condoned and I am sure you adhere faithfully to the values of your organisation. But to say that it is a sufficient reason not to do it because it cannot be used in evidence really masks the fact that that information can have an independent utility.

**Mr Keelty**—It is hard to foresee what that independent utility would be if we are not in the business of prosecution and providing evidence before courts.

**Senator BRANDIS**—Anticipation: if a policing authority—not you—elicits information under torture or in an inadmissible means which cannot be used in a criminal prosecution of the subject but which nevertheless reveals matters which enable the conduct of a third party to be anticipated and prevented, there is a utility in that. It is for different reasons that we prohibit it.

**Mr Keelty**—There would be no purpose in doing it because the origin of that information or the origin of that intelligence would be subject to cross-examination and presentation before the court. Apart from the fact that we do not do it, nor do we entertain doing it, the purpose for which we exist is to gather evidence and commence prosecutions. What I am pointing out is that, apart from any moral obligation to treat citizens as human beings in terms of human rights, there is a statutory obligation that would rule out the obtaining of such evidence which in normal circumstances would be inadmissible unless it was fairly obtained.

**Senator BRANDIS**—Sure, but the reason I am at pains to make that observation is that I think you are on much surer grounds to say that the reason is a values based or a principles

based reason than to say that it is a utilitarian reason. I do not think the utilitarian argument standing alone is a very effective one.

**Senator JOYCE**—An unjust outcome cannot be justified by an unjust process.

**Senator LUDWIG**—Where I was going to go next seems to have been well ventilated, and perhaps better than I would have put it. Do you have guidelines in relation to interrogation?

**Mr Keelty**—Yes, we do.

**Senator LUDWIG**—They are not public either, I take it?

**Mr Keelty**—They are based on the legislation, which is public. The legislation, as I have pointed out, has a number of aspects to it that range from how people will be treated to ensuring that they are aware of their rights and to offering the opportunity of independent persons who fall into a category of people being present.

**Senator LUDWIG**—Have you provided advice to the Attorney-General's Department on this issue, or have they sought your advice on it?

**Mr Keelty**—Not that I recall, unless we have done it through parliamentary questions. But what I am referring to are AFP investigations conducted for law enforcement purposes.

**Senator LUDWIG**—Yes, you have confined it to that. But my recollection is—and I do not really want to spend too much time in this area—that you have a wider brief now for intelligence gathering under terrorist offences and the like as well. That is right, is it not?

**Mr Keelty**—No. The brief is to investigate offences that are committed under the various pieces of terrorism legislation. So our role in that regard is the gathering of evidence, not the gathering of intelligence.

**Senator Ellison**—And that is as distinct from ASIO, which is for gathering intelligence. That is why there are different regimes in relation to the questioning by ASIO, and quite rightly so.

**Senator LUDWIG**—Thank you. I just wanted to make sure that was the case. I can move on to a different area then. In terms of the AFP's investigation into Mr Moti—and I will proceed with the usual caveat because, as I understand it, there is an extradition process underway so it is an ongoing investigation—could you indicate, as far as you are able to date, the AFP's understanding of the chain of events that has occurred so far, the civil proceedings in Vanuatu, which ceased back in the late 1990s, and the current proceedings underway and what they relate to? When did the AFP formally commence its own proceedings in the matter?

**Mr Keelty**—In terms of concerns about double jeopardy, there have been media reports that Mr Moti has already been acquitted in Vanuatu for offences for which he is now wanted for prosecution in Australia. Previous proceedings against Mr Moti in Vanuatu were dismissed before Mr Moti had faced trial for these offences. The Commonwealth Director of Public Prosecutions advised that the previous proceedings in Vanuatu do not prevent Mr Moti being prosecuted in Australia for the offences for which his extradition is now being sought.

On 14 March 2001 the Attorney-General's Department received a request from the Vanuatu government in relation to certain matters regarding Mr Moti. The mutual assistance request

was referred to the AFP by the Attorney-General's Department on 19 April 2004. A search warrant was executed in furtherance of that mutual assistance request on 7 December 2004. Documents seized under that warrant were forwarded to Vanuatu under the mutual assistance request on 26 October 2004. On 14 January 2005 the matter was referred to AFP to assess whether there was sufficient evidence to commence prosecution under child sex tourism legislation. On 2 February 2005 verification of case law was required by the AFP legal area and the Attorney-General's Department. The Vanuatu police advised that the prosecution in Vanuatu was then closed.

On 16 March 2005 the matter was accepted by the AFP for investigation. On 17 March 2005 the referral to the Commonwealth Director of Public Prosecutions was made in terms of clarification of the double jeopardy situation. On 30 March 2005 we received that advice from the Commonwealth Director of Public Prosecutions I outlined earlier and the investigation was allowed to proceed. On 29 April 2005 a request for mutual assistance was sent to the Commonwealth Director of Public Prosecutions. It was forwarded to the Attorney-General's Department on 11 July 2005. On 9 February 2006 the Attorney-General's Department and the AFP made a decision to forward the mutual assistance request to Vanuatu. It was set on 19 April 2006.

On 7 June 2006 the Vanuatu attorney-general's department approved the mutual assistance request and invited the AFP to assist in the investigation. On 12 June 2006 the AFP travelled to Vanuatu to facilitate the obtaining of evidence under the mutual assistance request. On 9 August 2006 the Commonwealth DPP advised that there was a prima facie case in relation to Mr Moti. On 11 August 2006 a first instance warrant was sworn for Mr Moti's arrest. The time line finishes on 11 August 2006 and the first instance warrant being sworn for his arrest.

**Senator LUDWIG**—Minister, what has then happened to date?

**Senator Ellison**—The commissioner got to the point of August this year, and I am just looking to see where Mr Moti was on 11 August. At that time, I believe, he was in India. Contact was made with the Indian authorities. During the course of that, Mr Moti then travelled to Papua New Guinea. We became aware of this and then sought his extradition from Papua New Guinea. We issued a provisional request for his arrest in the first instance, which is normal—that is the precursor to a formal request for extradition. That was acted upon, he was arrested, and we issued a formal request to Papua New Guinea. He fronted court and was bailed to appear. He failed to appear and, as I understand, a bench warrant was issued for his arrest by the court in PNG.

We became aware that he was in the Solomons High Commission in Port Moresby. We then monitored the situation. It is a matter of record now that Mr Moti then fled PNG in a PNG military aircraft and arrived in the Solomon Islands, where he was taken into custody. He landed under cover of darkness, some local villagers apprehended him and he was handed over to the Royal Solomon Islands Police. He then was charged with immigration offences. He was subsequently bailed. He is due to appear in court in mid-November, from memory, and faces a number of charges there.

We have issued a provisional request for his arrest, as I understand it, and we are in the process of issuing a formal request for his extradition. That is of course in the context of him

facing current proceedings in the Solomons. The convention between states is that where you have a matter pending in a country's courts you deal with that issue first, and then the request for any extradition is considered after that. I merely put that by way of context. So that is the position, as I understand it. We are ensuring that our request is appropriate and that it meets the requirements of the law. We are in the process of putting that together to issue to the Solomon Islands authorities. We are intent on pursuing him.

**Senator LUDWIG**—Because of the nature of the matter, if there are any other issues I will put those on notice.

**Senator Ellison**—That gives you a potted version.

**Senator LUDWIG**—It is helpful just to understand that process and the chain of events. Has there been an audit conducted of operation RAMSI?

**Senator Ellison**—Conducted by whom—Australia?

**Senator LUDWIG**—That is the question. Has any audit come to you?

**Senator Ellison**—There has been an announcement of a review at the Pacific Islands Forum, and that is in the communique which came from the meeting. As to an audit being conducted of RAMSI to date, I am not aware of one. As has been pointed out by the commissioner, RAMSI is made up of a number of other Pacific island nations and so Australia is hardly placed to conduct an audit itself.

**Senator LUDWIG**—No, I asked whether you were aware of an audit, and if you were—

**Senator Ellison**—No, I am not aware of an audit.

**Senator LUDWIG**—I am trying to determine whether there were any documents or audit material provided to the Australian government about RAMSI, in terms of an audit of any description. You have ruled yourself out so I was going to ask Commissioner Keelty whether, in terms of the AFP's operations in RAMSI, there has been an audit or whether it is a continual review process.

**Mr Keelty**—In terms of the AFP's operation, we commenced an independent analysis of the work we have been doing in a joint study by the Australian National University and the Flinders University. I cannot recall the title of the review, but it is a longitudinal study that we commissioned 18 months ago, and it is not due to be completed until the end of 2007.

**Senator LUDWIG**—Is that finalised? Is it available?

**Mr Keelty**—It is not due to be finished until the end of next year. We have been getting interim reports and we have been adjusting our training and our predeployment preparation in accordance with the advice we have been getting from the study.

**Senator LUDWIG**—How much can you say about the study, or is it a confidential study?

**Mr Keelty**—It is not confidential; it is something that we commissioned. In the original deployment of the AFP as part of RAMSI, I was concerned that we would be in a position by the end of the mission to measure our performance. I wanted someone independent of the AFP to measure that performance. One of the aspects of the performance was the difference that we had made in the community of the Solomon Islands post our deployment. I am happy to

share with you the terms of reference that we provided to the reviewing group. I do not have them with me.

**Senator LUDWIG**—If you want to I am happy for you to take it on notice. It is a general interest in the terms of reference, the nature of the audit, whether it is an ongoing audit, when it is likely to report, whether it will be made available to the public or whether you might redact it post release. They are matters that will be in your control. I am interested in the general nature of it, and if there are any findings whether they are acted upon. I have summarised all of it so I am happy for you to take it on notice.

**Mr Keelty**—We will provide a comprehensive response. In answer to that last aspect of your question, we have already acted on parts of the report as we have been getting interim reports back to us.

**Senator LUDWIG**—So there have been interim reports that provide recommendations and they can be acted upon?

**Mr Keelty**—Certainly. I can provide that as part of the response, subject to any commercial considerations by the two universities.

**Senator LUDWIG**—That is why I prefaced my remarks. There might be confidentiality in the contract with the ANU about the research or the underlying methodology or the approach. That is why I indicated you might want to take it on notice and consult and if necessary do a redacted or shortened version.

I presume you are aware of the comments from General Peter Cosgrove. He said:

If people say that there has been an energising of the jihadist movement through the protracted war in Iraq - well that's pretty obvious.

There were also comments from the chief of the UK Army, General Richard Dannatt, earlier in the month that our presence in Iraq—that is, theirs—exacerbated the security problems. When you look back on the comments you made in 2004, do you think the position that you adopted back then is now vindicated?

**Senator Ellison**—That is asking for an opinion. Estimates are about factual matters such as expenditure and programs. Senator Ludwig is asking the commissioner to express an opinion. If there is any question of what the person had to say, in this case Major General Cosgrove, then the question is best addressed to him. To ask the commissioner for an opinion on this matter is not something which is normal in estimates hearings, and that has been a longstanding precedent.

**CHAIR**—Indeed, Minister, you took the words out of my mouth.

**Senator LUDWIG**—I will leave that for the moment.

**Senator NETTLE**—Commissioner Keelty, you went very close to answering this question before in relation to the sleep deprivation issue. Given that I asked this question of the other agencies I want to ask you as well. Can you rule out the AFP using sleep deprivation?

**Mr Keelty**—We would not use sleep deprivation to obtain evidence. It is not part of our practices.

**Senator NETTLE**—You can rule it out?

**Mr Keelty**—Yes, I can.

**Senator NETTLE**—When the justice minister was referring to it being appropriate in counterterrorist operations, he would not have been referring to the AFP?

**Mr Keelty**—You will have to ask the minister that. I point out that in the legislative requirements under which we operate there are provisions for adequate rest times for persons who are being questioned and for the provision of other sorts of support. The AFP operates under the legislation.

**Senator NETTLE**—There would not be any other information that you would be seeking to gather which would not be intended for a court or for evidence?

**Mr Keelty**—Certainly, we do not engage in practices to elicit that sort of information or admissions or even intelligence. It is not our role to elicit intelligence for intelligence purposes. Any intelligence that we gain which is criminal intelligence goes towards investigation work.

**Senator NETTLE**—I want to ask about the recent decision in the Victorian Court of Criminal Appeal to quash the conviction of Jack Thomas and whether there had been any review of AFP procedures in relation to interaction, treatment and questioning of those detained overseas, around the issues of evidence, as a result of that decision?

**Mr Keelty**—I point out to you that the issue of Thomas and the matter of the Victorian Court of Criminal Appeal is still before the court. There is a popular thought, I think, that the matter has been dealt with. The conviction has been overturned but he has not yet been acquitted by the court. Given that the Thomas matter is still currently before the court, I do not think it is appropriate that I comment on it.

**Senator NETTLE**—I was not so much wanting you to comment on the Thomas matter; more about any implications that it had for any changes to AFP procedures.

**Mr Keelty**—In my view, there has been no need. In dealing with the Thomas matter, the original trial judge made comments in relation to the efforts by the AFP to ensure that we complied with the provisions of our own legislation here in Australia, notwithstanding that we could not do it because we were in a foreign country. In the decision of the Victorian Court of Criminal Appeal, the court turned its mind to the admissibility or otherwise of the interview that was conducted with Mr Thomas. I will quote from the decision. They said:

There is no reason to suppose that the interviewing members were comfortable with this situation—

that being the situation in which they found themselves conducting the interview—

or that they were not endeavouring to do their best. To the contrary, it seems reasonably clear that the AFP officers wished to ensure that the interview process was compliant with Australian law, and that appropriate efforts were made to achieve that end.

Without going outside what is in the public arena in terms of the judgement made by the trial judge and the Court of Criminal Appeal, I do not see at this point in time a reason for us to address the matter, particularly given that the matter is still before the Court of Criminal Appeal.

**Senator NETTLE**—If it does not have any consequences for the procedures of the AFP, does it have any consequence for the way in which you interact with other international agencies—in relation to this matter?

**Mr Keelty**—Not so much in relation to this matter but on other matters we are talking to the department about the gathering of evidence offshore to ensure that the prosecutions that might be commenced in Australia have the best potential for going through the process in the appropriate way.

**Senator NETTLE**—What are the other matters that have prompted that discussion?

**Mr Keelty**—The whole environment in which we are now operating, where we are dealing with people in different jurisdictions around the world, many of which have different court systems, different justice systems and certainly different systems applying to the detention of persons we seek to interview.

**Senator NETTLE**—Have there been specific matters that have prompted that, or is it more general?

**Mr Keelty**—It has been a general issue that has arisen by virtue of the fact of the extraterritorial reach of the new terrorism legislation.

**Senator NETTLE**—Has there been any evaluation of the implication of the military commission process in the United States on the same matter, in terms of evidence that can be used in Australia?

**Mr Keelty**—Not by the AFP.

**Senator NETTLE**—Who made the decision to request the control order against Jack Thomas?

**Mr Keelty**—The AFP made the decision to apply for a control order.

**Senator NETTLE**—Is that a responsibility that you hold as Commissioner of the AFP? Is that how that works?

**Mr Keelty**—I am responsible for that decision.

**Senator NETTLE**—There were some comments at the time in relation to the number of names that were on the initial list that Mr Thomas was unable to contact, including people who had died. Has there been any review of processes for drawing up such lists as a consequence of that?

**Mr Keelty**—There has been a review, but I do point out that there was only one name. The problem we were dealing with there was that we were referring to a particular list that is published by the United Nations and we were working to a time frame in trying to deal with the issue. The list of persons originally put before the court did contain a long list of persons of great concern to national security based on the Department of Foreign Affairs and Trade consolidated list. The court, in issuing the interim order, directed that the list be narrowed to include not more than 50 names. I cannot go into any further detail on that because that matter is still before the court.

**Senator NETTLE**—You indicated that there had been a review. Did you mean of procedures within the AFP—not so much specific to this case but as a result of it? Was that the review you were indicating?

**Mr Keelty**—This was the first control order that had been applied for under the new legislation. We have reviewed the processes in the lead-up to the preparation of the control order.

**Senator NETTLE**—What was the result of that review?

**Mr Keelty**—It is ongoing—remembering that this control order is still the subject of consideration by the Federal Magistrates Court and that there now are, in relation to the entire range of issues in respect of this matter, a number of court processes in process, one being that the Court of Criminal Appeal in Victoria has not finalised its processes. There are applications before the High Court and we are still before the Federal Magistrates Court.

**Senator NETTLE**—I did not mean to ask in relation to this specific case but in terms of the review of procedures for the operation of control orders.

**Mr Keelty**—Given that this is the first control order, it is work in progress, if you like, because there are so many aspects of it that are still under consideration by various tribunals, if I can put it that way. We are still waiting for that to work its way through so that we can finalise what we are doing in respect of our own procedures. It is work in progress.

**Senator NETTLE**—Why was the decision made to list all organisations listed by the Attorney-General as terrorist organisations under that control order? What was the rationale behind that? In particular, I refer to organisations like the PKK, for example, which one would imagine had no relevance or connection to the individual for whom the control order was being sought?

**Mr Keelty**—I have to be very careful answering that question. The Federal Magistrates Court is still dealing with this control order. The control order cannot be issued unless the court is satisfied that making the order would substantially assist in preventing a terrorist act or that the person has provided training to or received training from a listed terrorist organisation. In the preparation of the control order we consulted both the Australian Government Solicitor and the Attorney-General's Department. The issue was not dealt with lightly. There was considerable consideration, but I do point out it was the first control order under the new legislation and that we are still dealing with the matter.

**Senator NETTLE**—In another area, is there any cooperation between the AFP and the Burmese military or police?

**Mr Keelty**—Certainly, there is cooperation between the Australian Federal Police and the Myanmar National Police. That cooperation extends to a presence by the AFP in Myanmar. We have been there, in my recollection, since about 2001. Specifically, the AFP does liaise with the Myanmar National Police directly out of the office in Yangon, or Rangoon, and has been doing so for a number of years. The Myanmar National Police are part of the ASEAN police group, of which the AFP has been an observer in recent times. Through the various programs provided by the AFP, such as the management of serious crime course we conduct, and through the Jakarta Centre for Law Enforcement Cooperation we have been providing

training and development to the Myanmar National Police. We have been doing this because Myanmar, or Burma, has been identified as one of the key sources of heroin that was coming to our country, and is now largely thought to be partly responsible for methamphetamine or ice coming into our country, so we have taken a decision to engage with the police force there in order to prevent those crimes from occurring in our country.

**Senator NETTLE**—There have been reports of a request by the Burmese military government for an increase in the level of cooperation between Australia and Burma. Are you aware of those and are you involved in the discussions around it?

**Mr Keelty**—Any level of increase would be a matter for government-to-government discussions, not for the AFP to do unilaterally.

**Senator NETTLE**—So you have not been involved in any discussions about that?

**Mr Keelty**—No, we have not. Certainly, we do not work directly with the Burmese military in any event.

**Senator NETTLE**—The Burmese government is a military government; I meant the Burmese government.

**Mr Keelty**—Consideration of any increased assistance would be a matter for the government.

**Senator NETTLE**—How does the AFP ensure that their cooperation with the Burmese is not used for perpetrating any human rights abuses to suppress democracy within Burma?

**Mr Keelty**—Our assistance to the Myanmar National Police is very transparent, with the Department of Foreign Affairs and Trade and through our ambassador in Rangoon. We would not provide any assistance that we thought would be used in any way inappropriately by the Myanmar National Police or indeed any of the other foreign police forces with whom we engage. We structure our training and our programs to ensure that the adherence to human rights issues is part and parcel of what is provided to them.

**Senator NETTLE**—I imagine it would be hard to know how a group may subsequently use training that you give them.

**Mr Keelty**—We certainly do not train them in tactics or processes to abuse human rights. We are trying to engage them in a way that is similar to how we engage here in Australia, recognising that Australian law does not apply in Burma. But we also shape the sort of assistance that we do to ensure that it is appropriately used and that we can be accountable for how it is used as best we can in a foreign country.

**Senator NETTLE**—How do you do that?

**Mr Keelty**—The sort of training we provide is and has been in areas such as narcotics identification and using our field test kits for the identification of narcotics. It does not go to the heart of how they may do some of their interface work with the community outside of showing them how we do ours, in terms of interviewing of suspects et cetera, and the provision of human rights as we apply them here in Australia. But we do not provide, as we do in some other countries, specific human rights training to the Myanmar National Police.

**Senator NETTLE**—I want to ask some questions about the Solomons. The first question is about the status of Commissioner Shane Castles in relation to the AFP. Is he on leave? Is he on secondment? Does he report to the AFP? Can you tell us about that relationship?

**Mr Keelty**—Shane Castles remains an employee of the AFP. That is part of an arrangement between the Australian government and the Pacific Islands Forum in terms of the provision of assistance through the RAMSI arrangements. We have continued to employ Commissioner Castles. He receives a salary from the AFP and will continue to do so unless we are instructed to do otherwise by the Australian government.

**Senator NETTLE**—There was reporting in relation to his salary, saying that he would be earning \$20,000 a year and that the other money that Australia had put for his salary was being moved by the Solomon Islands into health care. Are you able to comment on that? Is that accurate? Is the \$20,000 the AFP salary? How does that work?

**Mr Keelty**—That matter has been referred to the Australian government to resolve with the Solomon Islands government, rather than the AFP individually trying to resolve it with Commissioner Castles.

**Senator NETTLE**—But he continues to be paid an AFP salary?

**Mr Keelty**—Yes, and that is funded by AusAID.

**Senator NETTLE**—What is the level?

**Mr Keelty**—I do not have it here with me. I do not see any reason why it would not be on the public record; my own salary is on the public record. I have just been advised that it may be a private arrangement between Mr Castles and the workplace agreement under which he is operating, because there are other aspects of it that relate to his family circumstances. I will take that on notice. If we can advise you we will because we are happy to have transparency on that.

**Senator LUDWIG**—It could be an AWA, which means discussion of the content could be precluded.

**Mr Keelty**—If it is an AWA, I am sure that would be the case. That is why I flagged it.

**Senator LUDWIG**—I understand that; I am sure Senator Nettle does too.

**Senator NETTLE**—While he is employed by the AFP is there any reporting to the AFP as part of his job?

**Mr Keelty**—Not directly. As the Commissioner of the Royal Solomon Islands Police he reports to his minister in the Solomon Islands. As I understand, he also frequently reports to Prime Minister Sogavare. His reporting line to the AFP is really an administrative one. He does not report operationally to the AFP in any way whatsoever.

**Senator NETTLE**—Was there any consultation by the Solomon Islands Police, including Commissioner Castles, with the AFP regarding the raid last week on Prime Minister Sogavare's office?

**Mr Keelty**—No, that decision was a decision made by the Royal Solomon Islands Police as part of their investigation into allegations that have been levelled against a person in the Solomon Islands. How they conduct their operations and what they decide to do as part of the

conduct of those operations is a matter entirely for them, and no-one in the AFP interferes with that process.

**Senator NETTLE**—Were any RAMSI personnel involved in that raid?

**Mr Keelty**—My recollection is that the warrant to search the office of the Prime Minister was issued by a Solomon Islands magistrate and it was the Royal Solomon Islands Police who executed the search warrant. I do not have any advice to say that the RAMSI police were involved. If that is not correct I will correct the record. My understanding is that a search warrant was applied for by the Royal Solomon Islands Police. The search warrant was granted by a Solomon Island magistrate, not an expat.

**Senator NETTLE**—I have asked questions here before about magistrate John Myers, who is paid by RAMSI.

**Mr Keelty**—My briefing is that it was a Solomon Islands magistrate who issued the search warrant, not anybody employed by RAMSI. The search warrant was executed by the Royal Solomon Islands Police, not by RAMSI. If that last aspect is wrong I will be in touch with the committee tonight to let you know whether it is anything different. Certainly, that is the understanding I have.

**Senator NETTLE**—We were discussing the matter of Mr Julian Moti before and whether any Australian police based in Papua New Guinea were involved in that process.

**Mr Keelty**—The transnational crime team of the Royal Papua New Guinea Constabulary were the officers involved in that matter. We do not have an operational person based in Papua New Guinea; we have a liaison officer. But, on the information I have, that was a matter entirely for the transnational crime team based in Port Moresby, which comprises solely Royal Papua New Guinea Constabulary members.

**Senator NETTLE**—Thank you.

**ACTING CHAIR (Senator Scullion)**—Now that Senator Nettle has completed that line of questioning we will take a dinner break and return at 7.30 pm and proceed with the Australian Crime Commission.

**Senator LUDWIG**—If there are other matters for the AFP I will put them on notice.

#### **Proceedings suspended from 6.15 pm to 7.30 pm**

#### **Australian Crime Commission**

**CHAIR**—I welcome officers from the Australian Crime Commission. Senator Evans, you have questions.

**Senator CHRIS EVANS**—Thank you.

**CHAIR**—Are you sure?

**Senator CHRIS EVANS**—I left my file here at 9.30 am on the basis that I would come back when we got to this point. I did not realise—

**CHAIR**—What that really meant.

**Senator CHRIS EVANS**—Yes. I will be quick. It is not that my enthusiasm for the subject has diminished, but I know we have a lot of ground to cover. I want to ask about the follow-

up to the summit on violence and child abuse and your role in the task force and strike teams. I want to get a sense of what funding has been allocated to the various tasks and how that has been implemented.

**Mr Milroy**—The task force commenced operations on 4 September. As a bit of background, as you would appreciate, this was a matter that was raised at the IGC and the APMC. As a result of that, the board considered a submission that was put forward by the ACCC for the establishment of the task force, which comprises ACC staff and officers from the Federal Police, state police jurisdictions and the Australian Institute of Criminology. The staff there are donated by the AFP, South Australia, Western Australia and New South Wales at their cost—that is, the salaries of the respective officers. But the rest of the costs are borne by the ACC. At this stage, the Department of Finance and Administration has indicated that funding has been approved, but it is still subject to going through the relevant government processes.

**Senator CHRIS EVANS**—Does that mean that it will be in the additional estimates?

**Mr Milroy**—Yes. We have now progressed towards setting up some offices, one in Alice Springs and one in Darwin. The balance of the field intelligence collection work will be carried out from those offices as well as from the various ACC offices around the country. The jurisdictions which did not donate personnel at their cost have allocated liaison officers.

**Senator CHRIS EVANS**—What sort of money are we talking about, in terms of the bid?

**Mr Phelan**—The total for which we have agreement with the department of finance is \$10.993 million over four years for expenses, plus \$964,000 in capital.

**Senator CHRIS EVANS**—Is that for the office fit-out?

**Mr Phelan**—The capital is mainly for setting up communications links—satellite communications, plus some ICT—and some amounts for fit-out and security in the Alice Springs office.

**Senator CHRIS EVANS**—Is the budget over four years increasing or is it front-end loaded?

**Mr Phelan**—I guess it is front-end loaded. It reflects a life cycle of a lot of collection in the first two years, migrating towards report writing and dissemination in the out years. For example, the staffing will rise from around 21 this year to, in average staffing level terms, 30.6 next year and will drop off to about 16 in the third year and three in the fourth year.

**Senator CHRIS EVANS**—Can you give me the broad rationale for that? You say it is because of the focus on collection. Is that the staff intensive aspect?

**Mr Milroy**—I will ask the director of intelligence, who has responsibility for the establishment of the task force and the relevant tasking, to comment.

**Mr Kitson**—The first couple of years have been committed to setting up and identifying the areas where we need to collect intelligence and to improve intelligence and information sharing. A lot of those processes are resource intensive and require a significant amount of human intervention to identify the intelligence—to conduct the liaison and to acquire it but,

most importantly, to manage and understand the intelligence so that we can eventually turn it into intelligence product and advice to our key partners.

**Senator CHRIS EVANS**—I am just trying to get a sense of it. I do not think of Indigenous violence in this way: using ASIO briefings and such language. What are the sources of the intelligence? Are they police reports and that sort of thing?

**Mr Kitson**—There will be police reports. We have already sought advice from all of our jurisdictional partners about their current information, intelligence holdings or criminal record holdings in relation to violence in Indigenous communities. But a good deal of the information that I think remains untapped and which we are putting a great deal of effort into acquiring is held in other sectors: in education, in health, in social welfare areas and in support agencies.

**Senator CHRIS EVANS**—What sort of material are you talking about? Are you talking about reporting of violence—that sort of thing?

**Mr Kitson**—That is the question that we need to answer and that is why we need to undertake the collection. We do not have a particularly firm idea of what information may be out there. But we do anticipate that some of those agencies will hold information which, if properly shared, may ultimately result in the reduction of harms from some of the violent activities in Indigenous communities.

**Senator CHRIS EVANS**—Do you see your role as more of collating the intelligence and then leaving the enforcement to the state police authorities?

**Mr Kitson**—Our primary role—the first objective of the task force—is to improve national coordination of the collection and sharing of information and intelligence. When we collect intelligence or information that points to offences being committed or potentially committed, that will be disseminated to jurisdictions for action.

**Senator CHRIS EVANS**—You are at the intelligence information collection end, and the enforcement will effectively be handled by other authorities.

**Mr Kitson**—Yes.

**Senator CHRIS EVANS**—What is your role in the strike teams, if any?

**Mr Kitson**—The ACC has no role in the strike teams. The strike teams are an issue for the AFP and any jurisdiction into which they enter into a partnership with.

**Senator CHRIS EVANS**—Once you have set up the collection coordination systems, your staff commitment will drop dramatically because the system should be self-sustaining and you are not required to have as much involvement. Is that right?

**Mr Kitson**—The nature of our involvement will evolve over the period. We have a critical partnership with the Institute of Criminology, which will look with us at scoping some of the nature and extent of violence and child abuse in Indigenous communities. Our experience thus far is that where we can look at the involvement of organised crime, which does have an impact on Indigenous communities, we are able to work more effectively if we do it in partnership with the more academically based research agencies and other bodies like the AIC. We will, over the course of probably one to two years and early in the third year period

of this task force, start to produce assessed intelligence—advice that contributes to potential policy reform or recommendations for improved coordination of information sharing. Part of the impact of the advice that we give will then be evaluated by the AIC, probably in the third to fourth year of the life of the task force.

**Senator CHRIS EVANS**—What is envisaged in terms of your role beyond the fourth year? Is it that you expect to be out of the business?

**Mr Milroy**—I think an important point to make is that the task force was approved for the first 12 months by the Australian Crime Commission board. We will report back to the board at regular board meetings as well as out of session where necessary in relation to the outcomes from the task force. The board will then consider the work or the results of the task force over the 12-month period and reassess the objectives and other tasks that may need to be undertaken if the task force were to continue into the second year. Of course, the board—through the chair of the board—has a responsibility to report to the IGC on the results of the task force's activities.

**Senator CHRIS EVANS**—But you are seeking funding for four years.

**Mr Milroy**—That is correct.

**Senator CHRIS EVANS**—But you have only committed to be involved for a year.

**Mr Milroy**—That is right. In relation to what is going to happen to the information that is gathered by the task force, in addition to disseminating intelligence as we acquire it to the relevant jurisdictions for their appropriate attention, we will report the findings of the task force to the board, who will then subsequently have a responsibility to report the results of the task force to the IGC. So there is an accountability mechanism to ensure that what is uncovered during the work of the task force is receiving the appropriate attention by the appropriate body.

Yes, the task force has got funding for those specified years that you have stated, but there is a reporting mechanism in place to ensure that what has been uncovered by the task force is appropriately addressed by the various jurisdictions and the board will monitor the results of the task force. The board consists of the agencies that, in the main, would have responsibility to take the relevant action as a result of the intelligence. I was just explaining to you the process in terms of what will happen to the findings—and, yes, the funding is for the four years.

**Mr Phelan**—A part of this initiative was to fund infrastructure around the improved sharing of intelligence specifically themed towards information and intelligence on family violence and child sexual abuse. So we will actually be using funds to establish a special interest desk within the Australian criminal intelligence database. That will be a living database which will endure beyond the time frame of this task force. Obviously, the intelligence will be shared through that component of the database but will continue beyond it.

**Senator CHRIS EVANS**—Information sharing with other agencies outside the policing community obviously raises a whole range of privacy issues—for example, reporting of

accidents and emergencies in hospitals and seeking the assistance of welfare organisations. Can you give me a brief outline of how that is handled and governed?

**Mr Kitson**—The governance issues are essentially managed within the ACC's internal governance processes. That reports through to the ACC board and the intergovernmental committee. As to resolving where privacy acts and other regulations may impinge on the exchange of information, each one of those is currently being examined on a case-by-case basis. The interpretation of state-based laws and the interagency protocols is a comprehensive and detailed process that we are still dealing with.

**Senator CHRIS EVANS**—So, effectively, to guide the work, you are trying to establish protocols which are based on the various privacy provisions that govern each of the agencies?

**Mr Kitson**—That is right.

**Senator CHRIS EVANS**—Is any of your work impacting on one of the key issues—that is, the reluctance of many victims to testify?

**Mr Kitson**—We have already received information from people who we believe may previously have been reluctant to provide information, through hotlines, some awareness campaigns but, most significantly I think, by engagement with elders and other leaders within certain Indigenous communities. We acknowledge that the process of getting people to tell their stories they may have been reluctant to tell in the past will be an extremely difficult one. But at this point we have some cause for optimism that the approach taken by the ACC will deliver some new understandings.

**Senator CHRIS EVANS**—That is by virtue of trust development or awareness education methods rather than anything whizzbang or targeted.

**Mr Kitson**—It is.

**Senator CHRIS EVANS**—I am not being critical, but it seems that is very difficult to overcome. Indigenous communities trust from visiting officials is a key issue, given the fly-in fly-out nature of so many government departments.

**Mr Kitson**—We very clearly recognised from the outset that a fly-in fly-out approach will deliver us very little return. That is why we have gone about not rushing into communities or rushing into assumptions but seeking first-line engagement with those who already have an understanding and who can provide us with the key introductions to communities. We have engaged some consultants to the task force who have well-established and longstanding connections with the community and who have an established trust base within certain communities, including some of the major lands in the central Australian desert. But it is based on simple tenets of communication, engagement and trust.

**Senator LUDWIG**—In terms of the current references you have—I think you answered a question on this in February—have any of those things been renewed since that time?

**Mr Milroy**—I will just check on that. There are some matters that are coming up for consideration at the board meeting in November. Since February the high-risk crime determination was considered. It has been extended till 30 June 2007. Money laundering and tax fraud have gone out till June 2007. Victorian established criminal networks, a state based determination, has been extended till June of 2007. Organised fraud has been extended till

June 2007. Outlaw motorcycle gangs intelligence operations are extended till June 2007. The board will consider at the board meeting in November the determinations to do with amphetamines and synthetic drugs, crime in the transport sector and the illicit firearms market.

**Senator LUDWIG**—What about the trafficking of persons or the exploitations—

**Mr Milroy**—The people trafficking and sexual servitude matter was completed on 30 September this year. Based on the submission by the ACC the board approved the conclusion of the determination—that is, the special powers. The ACC will continue to collect intelligence and assist those agencies which have the lead in this area. In due course, if there is a requirement in the future, then the coercive powers can be applied for.

**Senator LUDWIG**—Are you able to say, now that is finished, how many times the coercive powers were used?

**Mr Milroy**—I would need to take that on notice. I will just check if my figures are here.

**Senator LUDWIG**—I am happy for that to be taken on notice and also the number of referrals for prosecution—

**Mr Milroy**—Regarding coercive powers, around 160 were used in people trafficking with 167 summonsed. We conducted 120 examinations during the period of the determination and we have also produced a number of strategic and operational intelligence products which reported the determination's findings. They were disseminated to state, territory and federal agencies and to relevant stakeholders, including the Australian Customs Service, DIMA and the Attorney-General's Department.

**Senator LUDWIG**—How many referrals for prosecutions?

**Mr Milroy**—I would have to take that on notice. Bear in mind that the primary objective of the special intelligence operations is to scope the nature and extent of the PTSE nationally and value add to investigations and prosecutions undertaken by partner agencies. So where they may have conducted prosecutions, that would be indirectly recorded by the ACC. We do not, under a special intelligence operation, specifically go after arrests and prosecutions.

**Senator LUDWIG**—Thank you. That is helpful for the record. I will also ask the other agencies; but, if I do not ask you, I will not be able to tally up the figures. So it is helpful if you provide that and also the additional advice about your role. Chair, those are the only questions that I wanted to ask on the record today. I can put the remainder on notice in respect of the ACC.

**CHAIR**—Thank you very much. I do not think there are any more questions, Mr Milroy. I thank you and your officers.

[7.52 pm]

#### **Office of the Director of Public Prosecutions**

**Senator LUDWIG**—My question follows on from an issue that I had been following for a while in respect of people-trafficking offences in 2005-06. How many of those are ongoing or have been referred to the DPP for prosecutorial work? Do you keep those figures?

**Mr Bugg**—Yes. I gave you some answers back in February.

**Senator LUDWIG**—I was really after an update from that point in time.

**Mr Bugg**—Yes, and I can give you that. I think I did indicate previously that I would give you an update in May if there had been any substantial change, and there has not. There are seven people-trafficking matters currently being prosecuted by the office, and there are 13 defendants in those seven matters. There are two matters in Melbourne, three in Sydney and two in Queensland. Two of those are not related to the sex industry—that is one in Sydney and one in Queensland. Since the last update in May, three people have been found guilty, and there are five further charges which have been laid since then. And of course there is some detail about other matters in the annual report, which I suspect you probably now have.

**Senator LUDWIG**—Yes, I do have that. You have just reminded me that I forgot to ask the ACC where theirs was. They have escaped.

**Mr Bugg**—If I hurry, I can bring them back for you.

**Senator LUDWIG**—I will put that one on notice, I guess.

**Mr Cornall**—Senator, the ACC's report has not yet been tabled, but you will recall that it has got the process of having to be shown to the other states, and that really does make it a lengthier process.

**Senator LUDWIG**—I wanted to get on the record again how that happens so that we can understand that, from the ACC's perspective, it will be some time before it is tabled. I get the agencies which report by parliamentary days to also specify so that I can focus on the remainder, of which there are a couple. Has the number of charges of child sex tourism offences referred to the DPP in 2005-06 changed—that is, those at trial which have resulted in a conviction?

**Mr Bugg**—There are roughly seven cases involving child sex tourism offences currently being conducted within Australia. That is broadly consistent with the details given in the AFP annual report. There was a matter in Cairns where a jury returned a guilty verdict yesterday. That related to activity in Papua New Guinea.

**Senator LUDWIG**—If there is any change in the response to that question, could you update it.

**Mr Bugg**—Yes, certainly. That is the matter of Martens.

**Senator LUDWIG**—Yes.

**Mr Bugg**—The head sentence is five years, with an actual time to serve of three years.

**Senator LUDWIG**—In response to question on notice 125 from the May estimates, you noted that you expected to prosecute around 4,000 frauds in 2005-06.

**Mr Bugg**—Yes.

**Senator LUDWIG**—I think I have asked this generally before, but we can look at it again. What are the current resources in your budget that you commit to those 4,000 fraud cases? What is the number of staff that it takes to prosecute those?

**Mr Bugg**—We gave a fairly detailed response to that question, the precise details of which are not in my memory at the moment and I do not have a record of them here. I do not believe

there is any significant change. By the 4,000 you are referring specifically to the Centrelink fraud prosecutions. I think your questions on notice in May last year were focused on the numbers of staff and the resources within the administrative area of the office dedicated to the prosecution of Centrelink matters, of which there are about 4,000. The answers we gave would not have varied at all.

**Senator LUDWIG**—What I am trying to establish is whether those 4,000 are all Centrelink.

**Mr Bugg**—No, they are not.

**Senator LUDWIG**—I am not sure that I have asked for a breakdown of which department or which area they come from.

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

**Senator LUDWIG**—I will expand it a little, then. I am interested in getting from you the gross number of frauds that you deal with, the number of referrals, the ones you choose not to prosecute and the ones you choose to prosecute. I would also like a breakdown by agency of those numbers. I am not sure whether your record-keeping will provide this, but could you give me an indication of the type of fraud that might be involved and whether it relates to a fraud against the Commonwealth in respect of a Centrelink payment. This is probably one example. Another one might be where it is misappropriation.

**Mr Bugg**—It would be a rare Centrelink matter that did not involve some allegation of fraud.

**Senator LUDWIG**—There could be some out there.

**Mr Bugg**—Yes.

**Senator LUDWIG**—Those who were not prosecuted; in other words, they did not meet your prosecutorial guidelines, if that is the correct way of putting it.

**Mr Bugg**—Yes.

**Senator LUDWIG**—They refer to agencies. This might be reflected in your record-keeping: is there a way of identifying the amount involved in the fraud? This is a trickier one, I take it.

**Mr Bugg**—Yes, it is.

**Senator LUDWIG**—I am not sure what terminology I would attach to it—the cost or the amount. Are you able to specify, in terms of groupings, those under \$5,000, under \$10,000, under \$15,000, under \$20,000 and those \$20,000 and above?

**Mr Bugg**—There will be some difficulties, particularly if there has been a conspiracy in which there may have been varying roles in terms of the receipts. But we can produce that. Just looking at the details that I have here, you asked some questions about the tax prosecutions where the amount of the fraud was in excess of \$1 million. I can say from experience that there was some difficulty in producing those figures. We will do what we can.

**Senator LUDWIG**—That was my recollection, too. I did not want it any higher than that. I just wanted to indicate which areas I wanted to ascertain information about. Maybe some of

them are easily identified, such as if they were a Centrelink referral where they might have the amount of the underpayment or—

**Mr Bugg**—Centrelink ones should be fairly easy because the amount and the term or time over which the fraud was perpetrated are the key factors.

**Senator LUDWIG**—Yes. The initial investigation has been done by Centrelink and there would have been letters of demand, I suspect, put out by Centrelink that would be on the file. The question is whether that data is easily available to you or whether it requires a more in-depth look.

**Mr Bugg**—We will do what we can to answer those questions. If there is a difficulty which we are able to clarify for you, we will come back to you.

**Senator LUDWIG**—In terms of the proceeds of crime, the Insolvency and Trustee Service Australia is the keeper of the money.

**Mr Bugg**—Yes.

**Senator LUDWIG**—Do you do all the prosecutions?

**Mr Bugg**—Yes, we do.

**Senator LUDWIG**—Both the civil and the criminal ones?

**Mr Bugg**—Yes.

**Senator LUDWIG**—Can you provide a list of those that have been accepted, rejected or prosecuted, giving the agency they were from and the amount that they involved? If they have been successful, then we will have an amount.

**Mr Bugg**—That may have some difficulty about it. I would prefer to start at the back end and give you a breakdown of the figures that we can produce. You see, sometimes you might have a file for prosecution and there may be consideration of a proceeds action in parallel with the prosecution. You may conclude that there is no merit in taking proceeds action because you are dealing with somebody who does not have any discernable assets. In that case, it will not go beyond that. On the face of it, that would qualify for what you say is a decision to not go on. That is the sort of problem that we would have. I would rather produce it from the other end. In other words, I would rather say, ‘This was the amount on which there were recoveries’—that is what we call it when the money goes into ITSA—‘and this is how that was made up.’

**Senator LUDWIG**—Is that information available by the department it came from? I know that there will be some joint operations—for example, it might be an AFP-ACC joint operation. Is there a way that they apportion among themselves what their level of involvement is?

**Mr Bugg**—Not really. If, for instance, it was a joint tax office and AFP matter, that would show up under tax, I suspect.

**Mr Thornton**—With the proceeds, going back to some of the earlier points about the number of cases referred et cetera, I suspect that that will be very difficult. We operate in a less formal way, I guess, than we do on the criminal side, in that sometimes we get in at a very early stage and agencies consult us about all sorts of things, because if they need to take

action they have to take it very quickly. So to actually work out the number of matters that were formally referred to us and the number of matters rejected or not taken up would be very difficult. On the last point about agencies, we can probably do it, I suspect, by referring agency, which would be the last agency that sent it to us, so that if it was a tax matter investigated by the AFP I suspect it will show up as an AFP referral in our records.

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

**Mr Thornton**—I have not looked at this, but I would hope that we could produce something along the lines of the agency that actually referred to it, rather than necessarily the agency where it started—the source agency.

**Senator LUDWIG**—What I am trying to get a snapshot or an ongoing picture of is the total amount of money that has been obtained over the last financial year up to this financial year or what statistics you have got, which agency was the last referring agency, and the number of referrals then which were not proceeded with, broken up by criminal and civil.

**Mr Thornton**—As I said, getting back to the number of matters not taken up, I suspect that that would be very difficult because of the way that we deal with matters. We do not actually have a formal referral like a brief as we do in a criminal matter. An agency might come to us at a very early stage and talk to us about whether there is enough information to get a restraining order. Sometimes the restraining orders might be obtained before charges are laid, so it will start off as a civil proceeds of crime, if you like, and it may get overtaken by events, so it might actually finish up as a criminal forfeiture, if you understand what I am saying.

**Senator LUDWIG**—Yes, I do.

**Mr Thornton**—There will be that mixture. Again, we will have a look at what we can produce on that side, but there might not be a readily identifiable split. When it comes out at the end, I guess we will be able to tell you what that is—whether it is civil or criminal.

**Senator LUDWIG**—If you wanted to supplement that with a chart to demonstrate how it starts and how it ends, I would be only too happy to get that as well. You might already use a flow chart to track it yourself—I am not sure.

**Mr Thornton**—I could do that generally about how the act works, but I do not know if we could do that in relation to each case. It would involve going back to each file.

**Senator LUDWIG**—No, I am not suggesting that. I am suggesting a generic one, so that it identifies the lumps as they move through, rather than individually—that would be far too great to ask.

**Mr Bugg**—Looking at pages 85 and 86 of the annual report, we still break the figures down under the civil regime, which is the Proceeds of Crime Act 2002. That is table 3. You will see the amount recovered as opposed to restrained last year under that act was \$14,691,000-odd. Under the old act, the criminal regime, you will see on page 86 there was \$3,713,000-odd recovered as well. If we were to provide you with some breakdown of those figures, would that satisfy your—

**Senator LUDWIG**—I had looked at those, and I have to say I was not confident that that was answering the question that I asked. It did not seem to reflect it in the way that I wanted,

because of course there might be, under the new act, a restraint which is a civil matter and ends up a criminal matter—then it is reflected under the new act, I guess. I am not sure. That is why I wanted to look at how you categorise them, how they started and which agency they started from: so I can get an understanding of how much is being restrained by agencies under the civil forfeiture regime as distinct from the criminal forfeiture regime and then, of that, how much is in fact forfeited—I guess that would be the term.

**Mr Bugg**—Some of the matters under the 2002 act may have a criminal component in them as well. I think we could try to answer your questions within the tight framework of last year.

**Senator LUDWIG**—All right. We will be back in February, anyway.

**Mr Bugg**—Are we?

**Senator LUDWIG**—It seems to come around quicker than I want it to sometimes. The crux of the matter is that it be by agency—if we can keep that in mind.

**Mr Bugg**—Certainly. If we can break down last year's figures, the 2005-06 figures, by agency, and the other categorisations that you are asking about, we will see how that looks.

**Senator LUDWIG**—Do you have question No. 131 from 25 May 2006?

**Mr Bugg**—Yes.

**Senator LUDWIG**—You say, in the answer to paragraph (a) of the question, that it is contained in the answer to question on notice 238. That question reads:

Taxation matter of Robert Gerard: Was there any comment about this at a liaison meeting?

Your response was:

Having considered the matter further the DPP is not able to make any comment about the taxation affairs of an individual.

As I understand it, that is the response you have given for (b), (c), (d), (e), (f), (g) and (h).

**Mr Bugg**—Yes.

**Senator LUDWIG**—Except for the answer to paragraph (i), in which you state: 'No.'

**Mr Bugg**—That is right.

**Senator LUDWIG**—It is not a role that you see that you would take, and then, in answer to (j), you refer me back to the answer to paragraph (a) again.

**Mr Bugg**—Yes.

**Senator LUDWIG**—Perhaps I could ask it in another way: is it that all you can give me is your 238 answer?

**Mr Bugg**—Yes.

**Senator LUDWIG**—Because there was a considerable amount of detail in question 131, which I went into in order to at least try to explore the issue a bit further.

**Mr Bugg**—Basically, what we were saying in answer to 238 was that, having reconsidered the issue, we were not prepared to go into any further discussion about the taxation affairs of an individual. That is a caveat that the tax office imposes on its consideration and disclosure

of matters, other than obviously those matters where there has been some prosecution or public airing of the tax office's position. We were really, as I saw it, in relation to 238, and therefore in the follow-up questions in 131, being asked to delve deeper into an area which, quite frankly, the tax office would say no to. As I said in answer to 238, having considered the matter further, we felt constrained in responding further on the matter. I think there was some discussion in both February and May of this year, when you asked further questions of me. These other questions, 238 and 131, came in as subsequent questions on notice. Having considered the matter very carefully, I felt I could not expand on what I had said both here in February and May and also in what we had said in 238, when we got your further questions in 131.

**Senator LUDWIG**—I placed 131 on notice to give more information on the issue so that you could at least follow the line of questioning a little more closely, to give you an opportunity to answer it. Should I be asking the ATO the question?

**Mr Bugg**—I think it is a question for the tax office.

**Senator LUDWIG**—I think they are on this week, so I have still got an opportunity.

**Mr Bugg**—I think Mr D'Ascenzo used the term 'bailiwick' when I was before you in May. It really did seem to me to be his bailiwick rather than mine. I tried to say in that answer that we are not an investigative agency; we are a receiving agency in the sense that, if the tax office refers a brief for us to prosecute, then obviously that is another matter.

**Senator LUDWIG**—Perhaps what I keep failing to understand is if you were seized of a matter and you thought there was a case for a prosecution to be launched, why you would not pursue it any further or ask for the file or follow what had happened to it. Your answer seems to suggest that there is a separation of the investigative and prosecutorial functions of the justice system. So I guess I will ask the ATO. But that is right: you will not pursue it even if you are seized of it—

**Mr Bugg**—When you say 'seized of it', if we have received a brief—

**Senator LUDWIG**—Yes.

**Mr Bugg**—And that is an investigated matter where there has been an audit and the matter has been investigated from the point of view of evidence being presented in court—and there was some discussion about the distinction on that with some of the previous agencies this afternoon—then obviously the matter has been referred to us and we are then seized of it and it is within the prosecution side of the net, so to speak.

**Senator LUDWIG**—Can the referral agency withdraw it at that point?

**Mr Bugg**—Say, for instance, you had a file and, on the face of it, there were reasonable prospects of conviction on an assessment of all the material that has been presented. Then you would look at whether or not there were public interest factors and why the prosecution should not proceed. If the agency concerned—and we always take their views into account—were to say: 'We don't want to proceed with this now. We have got an array of alternative remedies. In fact we have imposed one of them, which is to impose a penalty, and we have recovered the outstanding tax and penalties and do not think the matter should go down the criminal path,' then we would obviously take those views into account. They may not be

determinative of it, but obviously the tax office is a regulatory agency, and if it sees itself as having achieved a sufficiently satisfactory regulatory outcome by the use of other coercive and pecuniary powers, then that is obviously a strong factor for us to take into account.

**Senator LUDWIG**—If it was prior to that point, at the point where there was not a brief but discussion about whether or not the DPP would be interested, then it is even a—

**Mr Bugg**—If it does not make it to a brief and if, hypothetically, there were some discussions but nothing more than that, we do not have a resubmit system where we say, ‘Where’s the brief?’ It is up to the agency to refer the matter to us. If it is to resource and go back and investigate a matter, then obviously that is a matter for the agency.

**Senator LUDWIG**—All right. I will follow up with the ATO. I have a couple of other questions of a more general nature, so I will put them on notice, given the time.

[8.20 pm]

### **CrimTrac**

**CHAIR**—Mr McDevitt, before we begin questions, on behalf of the committee I would like to thank you for hosting the committee and the joint committee to our visit to CrimTrac in the previous session of the parliament. We were very grateful for the opportunity.

**Mr McDevitt**—Thanks very much, Madam Chair. It was our pleasure to have you and members of the committee across to CrimTrac.

**Senator LUDWIG**—Now that you have raised that, Chair, may I apologise for not being able to get there. I unfortunately had too many other appointments to deal with on that day. I would have liked to have taken that opportunity but unfortunately I could not.

**Mr McDevitt**—If you would like, Senator, at any time in the future we could arrange a visit.

**Senator LUDWIG**—You might be sorry you made that offer! I will take it up one day.

**CHAIR**—It’s okay, I’ll go with you, Senator!

**Senator LUDWIG**—It’s not you I am concerned about!

**CHAIR**—Well, you should be!

**Senator LUDWIG**—In August 2005 \$0.998 million was allocated to ANCOR to implement the outstanding functionality from the original business case. It seems, as per the annual report under the subheading ‘Price’ on page 27, that the addition of this functionality to ANCOR has been delayed due to maintenance and consolidation releases. Is that right?

**Mr McDevitt**—The board of management took a decision, following a consolidation phase into ANCOR, to review and relook at the previously supported business case in relation to additional functionality. Basically, the reasons for that were that there were various legislative differences around the country and particular jurisdictions wanted to cater to their jurisdictional differences with the upgrade to the system. For example, Tasmania would like the ANCOR system to be able to cater for additional categories of offenders—for example, where an offence is not committed against a child but against an adult, and so on. There are also some issues around things such as advances in technology and matching of names, name

searching and so on. So what the board decided to do was to do a review of the outstanding work and to go back to jurisdictions before we go forward with that outstanding work.

**Senator LUDWIG**—Has all that funding being expended—the \$0.998 million?

**Mr McDevitt**—No, my understanding is that that funding has not been extended and is basically on hold. What we will do is go through another process of consultation with the jurisdictions and then establish a new business case to go to the board for approval.

**Senator LUDWIG**—When is that likely to go to the board?

**Mr McDevitt**—It will probably occur sometime early in the new year.

**Senator LUDWIG**—Has additional funding being requested or sought to supplement the \$0.998 million so that the delays due to maintenance and consolidation releases can be dealt with?

**Mr McDevitt**—No additional funding has been sought at this point in time. That funding will be sought as part of a revised business case.

**Senator LUDWIG**—So what is happening is that there is a revised business case that is going to go to the board.

**Ms McLay**—The business case for the three remaining components of functionality will be revised to go forward to the board. The original budget estimate for that functionality was the \$0.998 million, none of which has been expended. During the consolidation phase, the work that has been carried out whilst that remaining functionality business case was put on hold, the consolidation phase project has a budget of \$470,000.

**Mr McDevitt**—It is important to note that, in coming to that decision, the board of management took note of the fact that the consolidation phase had made considerable progress. However, they thought that a sense check of the original requirements was needed before we pursued that business case.

**Senator LUDWIG**—Is ANCOR now compliant with the original functionality requirements, or is still not up to those original functionality requirements?

**Mr McDevitt**—I will correct this if I am wrong, but my understanding is that all of the original functionality, other than those three outstanding issues which will be the subject of this new requirements/consultation phase, has been delivered.

**Senator LUDWIG**—You might have to remind me again of those three. I am sorry; it is late in the evening.

**Mr McDevitt**—The functionality under review is an investigative analysis tool to assist in the visualisation and analysis of relationships within the ANCOR data itself; advanced mapping functions to assist in identifying spatial trends with respect to where the registered persons live, work, frequent and travel to and those locations relevant to other registered persons; and advanced searching and reporting to satisfy complex time-critical inquiries by investigators.

**Senator LUDWIG**—Is that four or three?

**Mr McDevitt**—That is three. You have got the advanced searching and reporting, the advanced mapping functions and an investigative analysis tool.

**Senator LUDWIG**—So they were all requirements of the original ANCOR model that now require further additional work? Do I have that right?

**Mr McDevitt**—It is not that they require additional work; it is that we are going to actually sense check the viability of pursuing those particular things. We need to remember that, when this case was first put up, most of the jurisdictions did not have their legislation, their operating procedures and their business rules in place. This was what was anticipated and expected. It was based on the requirements of police officers who were involved in the original consultations. However, because of the changed legislation and the changed operating procedures and policies in the jurisdictions, we need to revisit those requirements.

At the end of the day, it might be that we go back to the jurisdictions and they sign off on those original three and say, ‘Yes, that is what we want,’ and we will confirm that. If that is the case, it will be a simple exercise of just getting the board to approve going ahead with those three additional items. But, as I said earlier, during the consolidation phase, we started to get a sense from jurisdictions that they might want to rework their requirements and alter them—and, hence, the request to the board to put this on hold at this point in time.

**Senator LUDWIG**—When you develop your business case and put it to the board, how long will it take to finalise that if you are given the go-ahead?

**Mr McDevitt**—I would not like to commit to that at this point in time, given that there will probably be significant variations in terms of the requirements.

**Senator LUDWIG**—We might come back in February then.

**Mr McDevitt**—Yes.

**Senator LUDWIG**—In budget estimates in 2005, it was indicated that the NMPD would be in place by September 2006. Has that occurred?

**Mr McDevitt**—With the MNPP, the minimum nationwide person profile?

**Senator LUDWIG**—Yes.

**Mr McDevitt**—There has been a significant advance in relation to the progress of the MNPP. That relates to a decision by the APMC, the Australasian Police Ministers Council, on 29 June to approve the funding and the proposed cost-sharing arrangements for the national rollout of the MNPP. We are now working with the jurisdictions to put that together to roll it out across the country. That will occur by the end of July 2008.

**Senator LUDWIG**—So the national missing persons database, as part of the overall program, was not up and running in September 2006?

**Mr McDevitt**—The missing persons database is a subset, if you like, of the MNPP. That capability was trialled in New South Wales and Victoria. We had very positive feedback in relation to that enhanced functionality. It gives operational police considerably more information around missing persons than they had previously. That will not be fully available because it is dependent on the rest of MNPP, because it is a subset of it. The issue really is

about jurisdictions' capability to be able to take on the system. We can only work as fast as the jurisdictions in terms of rolling it out.

**Senator LUDWIG**—Minister, I was curious about your comment some time ago that it was going to be ready by September 2006. It looks like it is not going to be operational until some time in 2008.

**Senator Ellison**—There is going to be an improved system in place, better than what we had before, because you are going to have those aspects which provide a better profile of the person concerned, and that was not there before. Of course, it does require all jurisdictions to cooperate. We cannot force the states and territories to come on board. In fact, we may as well forget missing persons if they do not cooperate because, after all, if a person goes missing, it is in the jurisdiction where it is reported. It really is ludicrous to think that the Commonwealth can run the whole of that, because it is not, in the first instance, the Commonwealth's responsibility. It is fed in from the police.

**Senator LUDWIG**—I think it is trite to say that. It is clear, in terms of the actual software, the development of the software and the construction of the actual model, that it is a CrimTrac responsibility. You need to consult with your clients to be able to develop it to begin with.

**Senator Ellison**—You should ask all the state and territory police ministers the same question because—

**Senator LUDWIG**—Well, I am asking you, as the responsible minister.

**Senator Ellison**—I am quite happy with the progress; I really am. It is much better than it was before. Quite frankly, I have said time and time again that this is a collective effort. It requires all jurisdictions to work together. The Commonwealth does not have constitutional power to just walk in and take over. We will be raising this at the meeting of the Police Ministers Council, as has been indicated, and that will be held in November this year.

**Senator LUDWIG**—If you look at page 29 of the annual report, it is stated that the APMC recently conducted a survey which indicated that the MNPP does not comply with the requirements of the Palmer report. Did the APMC survey on the MNPP capabilities for tracking missing persons find that the MNPP provided all functionality required by the Palmer report?

**Mr McDevitt**—There are a couple of issues here. The functionality envisaged by Palmer actually goes beyond the MNPP. What we are talking about here is biometrics, fingerprints, NAFIS, NCIDD, DNA linkages, and information that currently sits with coroners in jurisdictions. So it is not a simple task; it is an incredibly complex task. And we are talking about Palmer envisaging that access would be given to slices of MNPP by other relevant agencies such as Customs, DIMA and so on.

We have at the moment in the MNPP significantly enhanced functionality around missing persons. That richer information is now available, in terms of where it is put on, in New South Wales and Victoria, which were the pilot jurisdictions. We are now ready to roll out. Unfortunately, jurisdictions are not ready at this point to receive. In the meantime we will work on the additional functionality which was envisaged by Palmer. We have now put up a proposal for a scoping study to look at that additional functionality, which will be considered

by the next meeting of the APMC. That particular scoping study, if approved, will look at some additional enhancements for the MNPP. Just as importantly, it will look at what functionality can be brought to focus on missing persons through the NCID database and the NAFIS database.

**Senator Ellison**—Madam Chair, I might just point out that recently there was a case involving a missing person where the identity of the missing person was stolen. The person who was suspected of stealing the identity was arrested and charged by Queensland police for fraud, computer hacking, receiving, and operating a bank account in a false name. The matter has been mentioned and, I understand, adjourned. I cannot go into any more specifics on that because the matter is before the court. What this does highlight is how you treat the information on missing persons. In our rush to put this sort of information out there, I would suggest that there is a double-edged sword. This case this year has demonstrated vividly how a missing person's identity can allegedly be stolen. I say 'allegedly' because the matter is before the courts. It is something which I have a brief on and which I am concerned about. I will be factoring it into any development of a missing persons database and how it is dealt with. In this new age of identity theft we have to be very careful that we do not provide a fertile ground for criminals to steal identity. That is just another aspect of this.

**Senator LUDWIG**—Thank you, Minister. It is the opposition's job to ask questions about this. This is a matter that was started by Senator Vanstone, if I recall, when she was Minister for Justice and Customs. She said there would be a missing persons database. It think that was in 1999. I am happy to be corrected, but it was about that time. The missing persons database is a matter that I have asked questions about previously. We still do not have one in place. It has been rolled in as part of the MNPP, by the look of it, and that is to meet the APMC's requirements. The database is not there, so there has been the necessity to expand the functionality of the MNPP to become a proper missing persons database.

When you look at the Palmer report, some 16 months later we have not got to what Palmer recommended—that is, a CrimTrac database that is capable of fulfilling the requirements of that report. Time has marched on. Perhaps we could seek a private briefing at some point to understand where all that is up to. That might be a way of dealing with it, rather than me raising it here every time.

**Mr McDevitt**—I would be happy to give you a private briefing. In my view, Palmer does not specifically recommend building a database as such but rather a capacity or a capability in relation to missing persons. I believe that we are very well advanced in actually getting that. I think the new suite of functionality dealing with missing persons that is now built into the MNPP is an absolute credit to everybody involved. What you have to remember is that, up until the advent of this system, if a person was missing in a jurisdiction other than the one in which the investigator was working and the investigator went to the National Names Index they would get one line of information. That would say 'missing person'. They now get the location the person went missing from, the date and time, the date reported, the date and time located, the probable cause, personal effects, clothing, physical and mental health, remarks, the station it was reported to and so on. There is much more complete physical information, a full history of tattoos and a photograph, if it is available, and so on. I guess what I want the

committee to understand is that we have had significant advances in relation to the management of missing persons out of the MNPP functionality.

The issue of rollout has been one which has involved intense consultation with jurisdictions. As I said at the start, I think the decision of APMC on 29 June was a real plus—a real, positive step forward in terms of getting approval for the system funding to get the system out across the country. So we are a hell of a long way from where we were just two or three years ago. We now still have other issues that we want and which Palmer envisaged. They are: DNA information, other biometric information, having access to video recordings, mitochondrial DNA profiles, perhaps a public view of missing persons information for use through the National Missing Persons Unit website, perhaps a facial recognitional search facility, the capability to generate missing persons posters, missing persons overseas information, coronial information and so on. As we start to progress, we see police officers recognising the functionality but wanting more and more functionality. We will work hard to give them that, but I want the committee to understand that certainly in my view, from the eight or nine months that I have been at CrimTrac, investigators around the country are far better placed now than they have been up until very recently.

**Senator LUDWIG**—How much additional funding is required to meet those requirements? Has a case model been put up to your board to finalise that element?

**Mr McDevitt**—As I said, we are going to the next meeting of the board and we are going to the next Australasian Police Ministers Council meeting in November with a request to go ahead with a scoping study, which will probably cost in the order of about \$400,000, to go out around the jurisdictions and liaise with the jurisdictions—with the police and the coroners—and to do the work on the other databases and so on with a view to them putting up a business case to start to address this additional functionality.

**Senator LUDWIG**—So, as a general question, it will be a while before we see that finalised?

**Mr McDevitt**—I think it will take some time. If we come back to the MNPP, the reality is that we need to roll out that base model as it is. We cannot inundate and impose on the jurisdictions a whole range of new enhancements as we are trying to roll out the base model. So we would like to move ahead with rolling out the base model of MNPP but have this project going off to the side on additional functionality in relation to missing persons with a view to, at an appropriate point in time, being able to bolt that, if you like, on to the MNPP.

**Senator LUDWIG**—So at the moment the MNPP, which will include partial functionality for missing persons, will not be rolled out until 2008?

**Mr McDevitt**—It will be rolled out to the very last jurisdiction. The indicative time frames that we have are: Victoria by June 2007, New South Wales by June 2008, Tasmania by March 2008, Western Australia by July 2007, South Australia by December 2007, Northern Territory by December 2007, AFP and Australian Capital Territory by September 2007 and, the last, Queensland by June 2008.

**Senator LUDWIG**—That would then make it a national MNPP rollout with a range of functionality?

**Mr McDevitt**—What it means is that some of the jurisdictions will be providing the richer information set but not actually drawing down on it. We have broken it into two elements: provision of the richer information and consumption of the richer information. It will be a staged approach but, indicatively, we think it will be June 2008 before all jurisdictions have full provision and consumption of the richer data.

**Senator LUDWIG**—That would include the MNPP in terms of all the functions and a limited missing persons function within that.

**Mr McDevitt**—This is where I disagree. It is not limited additional functionality in relation to missing persons; it is considerably enhanced functionality in relation to missing persons. But there will still, beyond that, be other functionality that police officers around the country want and desire.

**Senator LUDWIG**—Minister, another matter that just dawned on me is that case that you mentioned. I do not want to go to that here, but I was wondering if I could get a private briefing on that as well—if you are able.

**Senator Ellison**—I will see what we can do. I will take it on notice.

**Senator LUDWIG**—If it does have an impact upon—

**Senator Ellison**—I do not know where it is before the courts. It may have been concluded. The last mentioned date was just a short while ago. I will check on that and see what we can do.

**CHAIR**—The committee will consider further the option of a briefing on the more detailed aspects of those matters with CrimTrac.

**Senator LUDWIG**—I am trying to understand that finer point. I can put the remainder of my questions for CrimTrac on notice.

[8.47 pm]

#### **Australian Customs Service**

**CHAIR**—I welcome Mr Carmody and officers from the Australian Customs Service.

**Senator JOHNSTON**—I want to talk about CMS04, the tender process surrounding the fixed wing and helicopter requirements with respect to what I think is called the Sentinel program. Are you familiar with that? Are you the right person to speak to?

**Mr Carmody**—I am, but the gentleman on my right is probably closer to it than me. Between us, we will see what we can help you with.

**Senator JOHNSTON**—We have just had a series of tests around the North-West Cape around Exmouth or Learmonth with respect to a UAV trial. We have released a tender for another one. In terms of what is happening, particularly along the border between the United States and Mexico, do we have a plan, a vision or a time frame with respect to such capability enhancements as this in terms of Coastwatch?

**Rear Adm. Goldrick**—In terms of Coastwatch, we are proceeding with the tender that you described to conduct a mid-range UAV trial. We have already conducted trials on very small

UAVs—the Aeroson—and we participated in the Mariner Demonstrator trial. The benefit of the mid-range UAV—

**Senator JOHNSTON**—Mid-range is what?

**Rear Adm. Goldrick**—It is the capability level that fits in between the very small UAV which can only carry a few kilos of payload and is effectively what in military terms is a tactical vehicle out to 20 or 30 miles and the higher capability UAVs such as the Mariner Demonstrator or, indeed, moving right up to the Global Hawk UAV which can go for 20 to 30 hours—hundreds and hundreds of miles. It is really fitting in that bracket. Also what fits into the bracket is terms of cost as well as mid capability. There is not nearly the requirement for the footprint to manage the very big UAVs. We intend to start flying before the end of this financial year. The trial will last approximately a year and will give us that information to understand the full range of capability.

**Senator JOHNSTON**—When you say ‘give us the information’, are you saying ‘give us the information so we can formulate the baseline criteria for a proper tender process’?

**Rear Adm. Goldrick**—That is the sort of idea I am thinking of. It is still an area where everybody is learning. I have just come back from a trip to America talking to the US Coast Guard. Indeed, they were extremely interested to learn of our intention of a mid-range UAV trial. They are interested in getting the results of that trial. In order to be sure that we expend resources appropriately and that we actually get a capability that is both more effective and more efficient, we still have some learning to do about how we use UAVs in the maritime surveillance role.

**Senator JOHNSTON**—I am very encouraged to hear you say all of these things. Do we have a budget for the trial?

**Rear Adm. Goldrick**—Yes, we do.

**Senator JOHNSTON**—And where do I find that? Is it in the annual report? Am I in the right jurisdiction?

**Rear Adm. Goldrick**—It is certainly in this year’s budget. It is \$9 million over two years.

**Senator JOHNSTON**—So which are the two years: 2006 and 2007?

**Rear Adm. Goldrick**—Yes. It is this financial year and next financial year.

**Senator JOHNSTON**—So it is 2006-07 and 2007-08?

**Rear Adm. Goldrick**—Yes.

**Senator JOHNSTON**—Who is managing the acquisition or tender process?

**Rear Adm. Goldrick**—The tender process is being managed within what was Coastwatch and is now the border protection division of Customs. The request for tender was released on 21 August 2006. What I can advise is that there has been substantial interest from industry.

**Senator JOHNSTON**—Certainly. Have we got an upper end of price range or an informative figure only as to what sort of expense we are prepared to undertake in this process?

**Rear Adm. Goldrick**—I would not care to go further at this stage than to say my understanding is that we expect to be able to do an effective trial within that budget on the information we have so far received.

**Senator JOHNSTON**—And the reason that Coastwatch is administering this acquisition is that we seek to integrate it firstly with Coastwatch and secondly with Defence?

**Rear Adm. Goldrick**—Yes. It is for a civil maritime surveillance role, not a military role. That—how shall I put it?—makes certain things easier. We do not necessarily require to go to the degree of specifications to the degree of, let's say—stealth is too strong a word—minimum cross-section to minimise counter-detection.

**Senator JOHNSTON**—But obviously we should take comfort from the fact that you are vitally involved from a Defence perspective.

**Rear Adm. Goldrick**—And indeed we have a strong relationship with DSTO. We were substantially involved in the Mariner Demonstrator. We actually had a feed of the data and video and other information from the Mariner Demonstrator in the National Surveillance Centre. Some of the trials done were actually to meet our needs. Indeed, a lot of the focus of that trial of the Mariner Demonstrator was—and I have just been reading the report of the patrol boat the *Pirie*, which was used as the connection with the Mariner Demonstrator—to look at the coordination of the surface asset with the UAV.

**Senator JOHNSTON**—And that is a Armidale class patrol boat?

**Rear Adm. Goldrick**—Yes, indeed.

**Senator JOHNSTON**—With respect to the trial, are you going to release the results of the trial at any point in the future?

**Rear Adm. Goldrick**—I certainly would think it appropriate for us to make some indication as to the results of the trial. I could not make any promises as to the degree of detail that I would go into, because I always have to be careful about the issue of operational capability. Even in the civil maritime surveillance aspect, that is pretty important.

**Senator JOHNSTON**—I feel much less constrained in asking you these things, having canvassed the fact that these are civil aircraft for reconnaissance. What is the time frame for a decision on the successful tenderer?

**Rear Adm. Goldrick**—I would expect to have a decision early next year.

**Senator JOHNSTON**—Thank you. I don't think I have any further questions.

**Rear Adm. Goldrick**—This is a decision on the successful tenderer. Is that what you are after?

**Senator JOHNSTON**—Yes.

**Rear Adm. Goldrick**—I would expect it to be early next year. We have a target of being able to get things going before the end of the financial year.

**Senator JOHNSTON**—Very good.

**Senator LUDWIG**—The large number of sightings has been of interest to me for a while now. You probably understand what I am asking about. With respect to 2004-05 and 2005-06,

have we been able to identify, firstly, the number of sightings and, secondly, the issue of double counting?

**Mr Carmody**—On the issue of double counting, at one of our first meetings I indicated that I shared your frustrations. We have been in discussions with CSIRO. They have been reasonably positive, and we are hopeful that early in the new year, on present indications, we will have a reasonably reliable basis on which to distinguish between sightings and number of vessels.

**Senator LUDWIG**—And they are all the illegal foreign fishing vessels?

**Mr Carmody**—Yes. That is what we are trying to do. We have taken those steps and, so far, the feedback from CSIRO has been reasonably positive on the ability to develop that capability. As far as sightings go, what I do have is comparative sightings from 1 January to the end of September this year compared to the same period last year.

**Senator LUDWIG**—All right. That would be helpful.

**Mr Carmody**—These are combined Defence and Coastwatch sightings. Last year, through to the end of September, there were around 7,700 sightings—not number of vessels but sightings.

**Senator LUDWIG**—I think I have always used the word ‘sighting’.

**Mr Carmody**—These are the type 3 vessels, not the sailing vessels. This year, from the start of January to the end of September, it is down to about 5,570 sightings. It is a significant drop, of about 27 per cent.

**Senator LUDWIG**—And that is sightings?

**Mr Carmody**—Yes.

**Senator LUDWIG**—That does not count those in the box?

**Mr Carmody**—No. It is the vessels of concern. So, on my figures, it is about a 27 per cent drop in sightings.

**Senator LUDWIG**—That begs the question: are there the same number of surveillance hours—

**Mr Carmody**—In fact, surveillance hours are up by about eight per cent. So there are more surveillance hours—about eight per cent more—and about 27 per cent reduced sightings. To complete the picture, apprehensions are up by about 100 per cent.

**Senator LUDWIG**—What about the—I am not sure how you refer to it—the tender for the mother ship?

**Mr Carmody**—The large vessel.

**Senator LUDWIG**—Yes. Where is that up to now? The tender has closed, hasn't it?

**Mr Carmody**—The tender has closed, there is an evaluation in course and we had projected that the vessel would be available from the start of the next calendar year. That is still our projection.

**Senator LUDWIG**—With respect to that tender document, how many amendments were made to it?

**Mr Carmody**—I do not know that there were any amendments.

**Senator LUDWIG**—I am after how many separate amendments were issued in relation to the tender for the—I am happy to call it a big boat.

**Mr Carmody**—It is probably a ship.

**Senator LUDWIG**—I will not try and discern between a boat and a ship.

**Ms Grant**—We did amend the tender following some queries from industry, but I have not got the precise number of amendments we made. I will take that on notice.

**Senator LUDWIG**—It was more than one, though.

**Ms Grant**—I do not know. The nature of the amendments was clarifying our requirements rather than changing our requirements.

**Senator LUDWIG**—So does that demonstrate a flaw in the way you presented the original tender documents, that they were misunderstood or that the people going to tender came back with a lot of questions? I am just trying to understand what happened. I am not familiar with tender processes, but from looking at AusTender's website it seemed there were a number of amendments that came through. It suggests to me—and I am asking the question; you can demonstrate to me otherwise—that there were flaws in the original tender documents. They may not have been clear, they were obscure or they were broad enough to drive a truck through. I do not know. I am giving you the opportunity to respond to some of those issues. Why did you need to clarify them? Was there a range of questions sought by tenderers because the document was unclear?

**Ms Grant**—I will analyse the nature of those changes and provide that information to you. But the changes were in response to questions that had been put to us by prospective tenderers.

**Senator LUDWIG**—All right. I will put the remaining questions to Coastwatch on notice. Unfortunately—or maybe fortunately for you, Mr Carmody—we are running to a limited timetable.

**Mr Carmody**—You cannot tell by my expression.

**Senator LUDWIG**—You may find that there are more questions on notice than in fact I asked tonight, so your celebration may be short-lived. The area I was looking at before was output 1, which is SmartGate, if we could come back to that one. I know that it is in a different area. I think it is now called SmartGate series 1. Ms Bailey, who made the decision to roll it out and how is that made?

**Mr Carmody**—I do not think she was there at the time. The recommendation was—

**Senator LUDWIG**—No, it is a new face. I do not recognise you, Ms Bailey. Is this your first appearance?

**Ms Bailey**—With Customs.

**Senator LUDWIG**—Where were you from so I can get the history, if I am allowed to ask that?

**Ms Bailey**—I was with Customs at the regional office in New South Wales.

**Mr Carmody**—So she knows the real action. The recommendation for the rollout of SmartGate was made to me.

**Senator LUDWIG**—It that for all of the airports?

**Mr Carmody**—No. We always knew the first one had to be a significant development trialling because this is a significant implementation. It is amongst the leaders in the world, and we wanted to make sure that we got the model right before we started to roll it out to too many airports. So the decision was taken to start in Brisbane because it is a reasonable size, but putting it into our busiest airports in the first instance in development would not have been a smart choice. That was the reason we chose Brisbane: it was a reasonable size and gave us the ability to develop the model fully before moving to other airports. The idea is, at this stage, that the first implementation will be at the end of February next year in Brisbane. As I said, it is a development implementation to develop the model fully. Then we intend to move to Sydney and Melbourne after that. But that will be a few months off. It will probably be in the latter part of the next calendar year.

**Senator LUDWIG**—Will that be the series 1, or are there planned upgrades to a series 2, 3 and 4?

**Mr Carmody**—I am sure that it will continue to be upgraded but this is the model we are looking to roll out.

**Senator LUDWIG**—On the successful completion of the trial—do I call it a trial in Brisbane?

**Mr Carmody**—You can call it a trial, but it will be implemented. It will be implemented progressively and we will be testing and modelling, because the actual model is not like the present one, if you have experienced it, where you go up to a gate and put your passport on.

**Senator LUDWIG**—I have seen them in operation, but I have not actually used them.

**Mr Carmody**—To enable it to be used—and you understand the facilities at airports—if you have to put those across the hall there would not be much room left for anything else. So this model is a two-stage one, where you actually present yourself, you answer questions and you get a token, then you proceed through to another gate. It combines the image taken at the first one with the other. So there is quite a logistical issue.

**Senator LUDWIG**—I have not seen that one.

**Mr Carmody**—This is the new one. No-one has seen it in operation. That is why we are taking a considered implementation trial in Brisbane to get the logistics, the modelling, how you inform passengers how to use it and so on before we roll it out to other airports. It is quite a different model.

**Senator LUDWIG**—It is, by the sound of that. I might seek further and better particulars about that, but perhaps not at the moment. When will it be implemented in Brisbane?

**Mr Carmody**—The idea is for the first stage of implementation, the first modelling, probably at the end of February next year. We are working closely with Brisbane airport now.

**Senator LUDWIG**—And the interim solution?

**Mr Carmody**—The interim solution is still operating in Melbourne and Sydney.

**Senator LUDWIG**—That will be phased out and the series 1 will then be rolled out?

**Mr Carmody**—Yes.

**Senator LUDWIG**—Is there an end date for Brisbane, Sydney, Melbourne?

**Mr Carmody**—I think we are still working through with that. The new model will work for electronic passports, e-passports. The interim model—well, there are two actually: there is one that works on electronic passports but then there is a subscription scheme for others. The very first—I don't know what you call it; perhaps series minus 2—was a subscription model.

**Senator LUDWIG**—I remember that one. We just left out the words 'series 1'!

**Mr Carmody**—We just have to work through the logistics of how we get people to transfer. As I say, we are giving ourselves plenty of time with the development in Brisbane to get it right before we go into the very busiest airports.

**Senator LUDWIG**—The eligibility to enrol foreign passports: how will that occur?

**Mr Carmody**—I do not know that we are there yet. The idea is that it will be electronic passports for Australian passport holders. We will get that in and then we will progressively consider the other.

**Ms Bailey**—There is some legislation that needs to be changed to allow foreign e-passports to be used in the SmartGate system. That is planned for early next year, I understand. So that will then facilitate that, as foreign passports come on board.

**Senator LUDWIG**—Do we have time lines for the roll-out? I did not really want to go there again, but in the annual report it says that work has been undertaken to clearly define the current and potential future business requirements through to 2009. But how long has it been since the project started? Why wasn't this done at that point in time? It is getting the same flavour, where we start with one, which was the enrolment one, and we have now moved to one after that, which was SmartGate—

**Mr Carmody**—For e-passports.

**Senator LUDWIG**—and now we have moved to another one, which is SmartGate series 1. Now we are trialling SmartGate series 1 in Brisbane by February. And we have still got Melbourne with the earlier version of SmartGate in operation, being trialled, I presume—I am not sure of the status of that.

**Mr Carmody**—It is in operation.

**Senator LUDWIG**—But it is not for general passengers.

**Mr Carmody**—No.

**Senator LUDWIG**—What if I held up the Booze Allen report and then asked, 'Have you learnt the lesson in respect of SmartGate?'

**Mr Carmody**—I would hold up the Booze Allen report and say, ‘See, we’ve learnt the lesson for SmartGate.’ One of the key lessons from Booze Allen Hamilton was: make sure you test it and test it; don’t implement it in a big bang; and work with industry on how their practices fit with what you are implementing—and that is exactly what we are doing here. As I explained, part of this is due to the fact that the technology that we are implementing now was not available when we first started SmartGate, and the sheer area in the arrivals halls would make it almost impossible to try to roll out the existing SmartGate and to implement it. As I said, the key lesson from Booze Allen Hamilton was: don’t go for the big bang approach; make sure you work with industry to make it work in practice—and that is exactly what we are doing.

**Senator LUDWIG**—And, I would have thought: make sure you have a clear business case.

**Mr Carmody**—Yes; and we will.

**Senator LUDWIG**—I was hoping that you would have one first.

**Mr Carmody**—That is right. If you look at the future in airports and facilitation through airports, and given the size of our airports and the sheer logistics issues, from what is available around the world at the moment, SmartGate is probably offering the best prospects to facilitate passengers. We are testing, trialling and making sure it works in practice.

**Senator LUDWIG**—So I could ask you for your business case and you could provide that? I am happy for you to take that on notice.

**Mr Carmody**—We will take it on notice.

**Ms Bailey**—There is a board of management and a whole range of documents. So we can provide that information.

**Senator LUDWIG**—Could you also take on notice how much has been spent and the time lines?

**Mr Carmody**—Sure. We will provide all that.

**Senator LUDWIG**—I can put them on notice, but you probably get the gist of where I am heading.

**Mr Carmody**—Yes.

**Senator LUDWIG**—Page 37 of the annual report refers to the eligibility for foreign passports. I refer you to the right-hand column under ‘SmartGate Series 1’. The second sentence of the third paragraph says:

Initially the service will be available to Australian e-passport holders and will progressively be made available to holders of eligible passports from other countries.

**Ms Bailey**—That relates to the fact that the current Migration Amendment (Border Integrity) Bill has to introduce some changes to allow the biometric processing of foreign e-passports. I understand that is to be introduced in the spring session or some time soon. That piece of legislation needs to be changed to allow the biometric processing of foreign e-passports.

**Mr Carmody**—But there are also business issues that we need to work through. We won't just open this up.

**Senator LUDWIG**—That was my next question, but it seems to be that—

**Mr Carmody**—We are focusing on getting it right for e-passports for Australian passport holders and then we will work through the international issues.

**Senator LUDWIG**—Page 38 of the annual report refers to the formation of joint aviation intelligence groups. When will that be delivered?

**Ms Bailey**—Customs has already placed its officers in the joint aviation intelligence teams and the investigation teams.

**Senator LUDWIG**—How many Customs officers per airport? Is that in the 11 airports that were identified?

**Ms Bailey**—The JAITS, the joint aviation investigation teams, are in five airports and the joint aviation intelligence groups are in 11.

**Senator LUDWIG**—So there will be how many?

**Ms Bailey**—The joint aviation intelligence groups, the JAIGs, are working at 11 airports—

**Senator LUDWIG**—And how many officers?

**Ms Bailey**—Twelve Customs officers.

**Senator LUDWIG**—Is that 24-hours? Or does it depend on the curfew of the airport?

**Ms Bailey**—They are working as intelligence analysts in the team. I am not entirely sure of their hours, but I think there is significant coverage in the airport. I could clarify that for you.

**Senator LUDWIG**—That would be helpful. How many are at each airport? I am happy for you to take that on notice.

**Ms Bailey**—I think there is one everywhere except in Sydney, where there are two. But I can clarify that for you.

**Senator LUDWIG**—At page 42, the cruise vessel: do you do Customs checks on cruise vessels still? There was one that was well publicised; there was a joint operation raid by the Australian Federal Police and Customs. In other words, when cruise ships come in, do you undertake special operations—say in the last 12 months—to identify any contraband or illicit substances?

**Mr Carmody**—I am not aware of particular numbers. I think we would have to take that on notice. Cruise vessels would not be immune, if we had intelligence suggesting there was an area of concern.

**Senator LUDWIG**—In terms of the shocking Brimble case, have you taken a look at what happened in that matter for Customs to learn and apply to cruise ships?

**Mr Carmody**—I would have to take on notice. I am not conscious of that. I would have to consider what the implications might be.

**Senator LUDWIG**—I understand. It is really a question that you might want to take on notice: whether procedures have changed, whether you have implemented new programs to

assist in dealing with a matter. There are many responsibilities. It depends on whether they are foreign ships or domestic ships, whether they have been at a port—

**Mr Carmody**—And whether there is any breach of Customs law.

**Senator LUDWIG**—There would be, in all of that terrible matter, things that Customs, I would imagine, could look at. I was just curious as to whether you have or not.

**Mr Carmody**—I will take that on notice, Senator.

**Senator LUDWIG**—Is the tourist refund scheme in the same area as this?

**Ms Bailey**—Yes.

**Senator LUDWIG**—Is that Treasury in that sense?

**Ms Bailey**—Yes. It is a refund of GST and duty on products being taken out of the country that were purchased in a certain time frame beforehand. We collect the GST and check the export control on behalf of Treasury.

**Senator LUDWIG**—Should I ask the questions of Treasury rather than you? I was trying to get a sense of whether there is a plan to continue the model the way it is currently operating, whether there has been consideration given to changing the model, whether there has been a review of the model—how successful the model is—whether there are any problems from Customs' perspective about how the model operates.

**Ms Bailey**—I think there is an IDC that Customs has made a submission to, that is looking at the tourist refund scheme, but you would have to speak to DOFA or Treasury about that.

**Senator LUDWIG**—Treasury. We need to get this right. Otherwise I get bumped to another committee and they chase me away—

**Mr Carmody**—They do have the policy, and there has been a review. I would imagine that Treasury would be the appropriate area on that policy.

**Senator LUDWIG**—Do you receive the complaints, if there are any, with respect of how the scheme operates? Or do you pass them on to—

**Mr Carmody**—It would depend on the nature of the complaint. If it was a policy matter, if it was our administration or operations, then we would deal with them.

**Senator LUDWIG**—Perhaps you could take on notice what type of complaints Customs have received, how many and the nature of them—whether they relate to people not being able to make a claim because the plane is departing, and those sorts of issues. I am referring to the general, run-of-the-mill customer matters that come up. That would be administration, I suspect.

**Mr Carmody**—Yes, that is administration. We will certainly provide that. The only one I do remember is someone writing to the minister saying he had purchased it 31 days instead of 30 days before, and got most upset that we would not give him the refund. So there are some complaints that arrive.

**Senator LUDWIG**—Going to page 33 of the annual report, figure 6, which shows performance against targets, the figures for international crew arrivals and departures are shown there as 941,837 actual arrivals and 932,210 actual departures.

**Ms Bailey**—The ‘target’ column shows estimates and the ‘actual’ column reflects how many actually arrived and departed. So we would have extrapolated our estimates, I guess, from previous years, and that is a figure we have used there as an estimate.

**Senator LUDWIG**—There is a difference of about 10,000. Do you reset your targets when that happens?

**Ms Bailey**—I would imagine we would extrapolate from previous years, so I guess that would be an issue we would look at in the next setting of targets. I guess there is a degree of unpredictability about exact arrivals and numbers.

**Senator LUDWIG**—But even in the ‘actual’ column, there is a figure for ‘number of international crew (air and sea)’ arrivals and departures. Does that mean they stay?

**Mr Carmody**—I think there is some transiting or something.

**Ms Bailey**—There may have been people staying over the cut-off time or there may have been people who were staying for longer times.

**Senator LUDWIG**—What is the cut-off time?

**Ms Bailey**—On 30 June, or whenever these dates were set, there may have been people who were here over that time who appeared not to have left who would have actually left in the next week—

**Senator LUDWIG**—Ten thousand?

**Ms Bailey**—No, I am not suggesting the entire 10,000; I am just suggesting there could be a number of explanations, Senator.

**Senator LUDWIG**—Could you look at that? I can’t work it out. I might understand in relation to passengers, but I imagine that crew would come and go; otherwise the planes are not going to operate.

**Mr Carmody**—We will give you further detail on that.

**Senator LUDWIG**—In terms of the import processing charge, at the last round of hearings I asked for the modelling done in relation to the threshold increases in import processing charges. It was question No. 91, which was provided last Thursday. The answer simply provided cost-recovery revenue estimates after both changes had taken place. Does it suggest that separate modelling was not done for either change?

**Mr Brocklehurst**—Modelling was done when the threshold was increased to assess what the required charges needed to be amended to in order to maintain full cost recovery.

**Senator LUDWIG**—Is there a problem with providing it? I think that is what I asked for.

**Mr Brocklehurst**—Part (b) of attachment 1 provides the summary modelling that was done for that change.

**Senator LUDWIG**—Was separate modelling done on the impact on cost recovery revenue caused by the September 2005 decision to increase the threshold?

**Mr Brocklehurst**—Yes.

**Senator LUDWIG**—And is that here?

**Mr Brocklehurst**—That was also provided as part of attachment 1 to question 89, where we provided an estimate of the number of entries below \$1,000 that we would no longer be collecting an import processing charge on.

**Senator LUDWIG**—That was schedule (a), with the heading: ‘Actuals 2004-05 below \$1,000 entries’?

**Mr Brocklehurst**—That is correct. So in essence we lost about 600,000 entries and we were able to model the revenue effect of that.

**Senator LUDWIG**—So the impact on the revenue for Customs was about \$600,000?

**Mr Brocklehurst**—It was 600,000 entries.

**Senator LUDWIG**—And how much in terms of money?

**Mr Brocklehurst**—Those entries were attracting a charge at that time of either \$49.50 for a sea entry or \$30.10 for an air entry. I do not have the exact split between air and sea here, although it is on attachment 1 to question 89, so it would be possible to calculate the effect from that. We can provide that if you wish.

**Senator LUDWIG**—Yes, if you would not mind. Was separate modelling done on the impact of cost recovery revenue caused by the 27 April 2006 announcement to increase import processing charges?

**Mr Brocklehurst**—The 27 April 2006 announcement was to reflect the increase in the charges that was required by the increase in the threshold.

**Senator LUDWIG**—So is that modelling here?

**Mr Brocklehurst**—Yes. That is the combination of the table on attachment 1 for question 89 and part (b) on attachment 1 of question 91.

**Senator LUDWIG**—Schedule (b), which was entry growth from 2001 through to—

**Mr Brocklehurst**—Sorry, I did not make myself clear. It is the combination of schedule (a) on attachment 1 to question 89 and part (b) of attachment 1 to question 91. The two of those combined give you the effects of both the increase in the threshold and the modelling that we did to calculate the revised charges that were needed.

**Senator LUDWIG**—What was the estimated size of the impact on revenue for Customs? Can you point me to that figure?

**Mr Brocklehurst**—No. You would have to take the numbers on schedule (a) of attachment 1 to question 89 and multiply that by the charges that were applicable to air and sea for those changes in the numbers. We did not actually calculate those numbers out on this schedule, but we can do that for you.

**Senator LUDWIG**—Yes—just so that I do not get the multiplication wrong. It would be more helpful if you did the multiplication, then I have a figure from you, rather than me calculating it out and making an error.

**Mr Brocklehurst**—Yes. We can provide that.

**Senator LUDWIG**—Did you estimate forgone cost recovery revenue?

**Mr Brocklehurst**—That is what I was just talking about.

**Senator LUDWIG**—Did you estimate it excluding the impact of the subsequent increase in the import processing charge?

**Mr Brocklehurst**—The revenue was forgone because there was a period of time between the threshold increasing to \$1,000 and the charges being increased as a result of that April 2006 announcement. There was a period of a number of months when we were running at the lower level of charges with the entries below \$1,000 not being charged. So there was a period of time when we were not recovering the full revenue. That is not on these schedules, but that could be provided if you wish.

**Senator LUDWIG**—Can you provide that?

**Mr Brocklehurst**—Yes.

**Senator LUDWIG**—Could you also provide an estimate of how much the subsequent decision to increase import processing charges was expected to yield Customs in terms of increased cost recovery revenue? Is that there too?

**Mr Brocklehurst**—In essence, that would be the same answer as the revenue that we lost as a result of the threshold increasing, because we increased the charges to maintain the same sort of level so that we could maintain full cost recovery. That answer would be provided as part of extrapolating that table that is attached to the answer to question 89. We can make that clear in the answer that we provide.

**Senator LUDWIG**—If you look at question on notice No. 89 from the last round, which lists the volume of entries valued between \$250 and \$1,000, you can estimate the cost and then provide an assessment notice on that.

**Mr Brocklehurst**—We can provide you with the calculation of the revenue that we lost as a result of that. That is the same, in essence, as the revenue that we sought to replenish when we increased the charges in April.

**Senator LUDWIG**—If you do the rough calculations using those answers, it would be about \$18 million.

**Mr Brocklehurst**—It would be of that order. I do not have the exact number, but it is of that order.

**Senator LUDWIG**—If you could take that on notice and confirm it, that would be helpful.

**Mr Brocklehurst**—Okay.

**Senator LUDWIG**—I might put my remaining questions on notice. It will get too complex from here onwards in respect of those figures, I suspect. I am happy to move on from Customs.

**CHAIR**—I thank Mr Carmody and the other officers.

**Senator CHRIS EVANS**—Could I suggest we do an overview and then senators can pick the spots rather than go through the program.

**CHAIR**—Okay, so some general questions to Mr Cornall and senior officers.

**Senator CHRIS EVANS**—I think if we do it that way then senators can allocate the time to accommodate the most pressing needs.

**CHAIR**—They are your pressing needs, Senator Evans, not mine so that is fine by me.

**Senator CHRIS EVANS**—Perhaps I will start by asking whether or not the department's FOI annual report is available.

**Mr Cornall**—I understand the FOI annual report has been approved, but we have not yet received the copies for tabling. It is not very far away.

**Senator CHRIS EVANS**—Looking at the website the secretary could not find one that said 2003. Are they published each year?

**Ms Lynch**—The next one is due to be tabled around December, we think. The last one would have come out about the same time last year. So there is one every year. Are you talking about the FOI statistics compilation?

**Senator CHRIS EVANS**—Yes.

**Ms Lynch**—There was certainly one tabled last year.

**CHAIR**—It just looks like your website is not updated, Ms Lynch.

**Ms Lynch**—I will check for you, ASAP.

**CHAIR**—It is certainly not under the heading for freedom of information annual reports.

**Ms Lynch**—I know there was a slight hitch when it went on the website last year, but it was corrected on the day. But we will go back and check and see if it can be corrected.

**CHAIR**—Okay, so under the heading 'freedom of information annual reports' on that page the most recent report listed is 2002-03.

**Ms Lynch**—We will get onto it first thing in the morning. We can provide you with hard copies if you would like as well.

**Senator CHRIS EVANS**—So, for a novice, this report is not tabled in conjunction with your annual report. It is referred to but it is not tabled with it.

**Ms Lynch**—No, it is usually tabled towards the end of the year because of the work that is involved in the compilation of the stats from each agency.

**Senator CHRIS EVANS**—It is not going to help me, then, tonight. I want to ask what information that provides for a couple of areas. First of all, does it provide the costs of meeting FOI requests and the number of requests et cetera?

**Ms Lynch**—I think it covers charges that are notified and charges that are collected. The charges for FOI are set by regulation on an hourly rate. The report then shows how much was notified and how much was subsequently collected.

**Senator CHRIS EVANS**—Is that just for your department, though, or for all departments?

**Ms Lynch**—That is for across the service.

**Senator CHRIS EVANS**—Does it also provide information on the legal costs involved in dealing with claims?

**Ms Lynch**—No, it does not.

**Senator CHRIS EVANS**—Then it would not help me.

**Mr Cornall**—I do not have all the facts at my fingertips, but I think it includes the costs of departments complying with their FOI obligations. My understanding is, and I will correct this if I am wrong, that the total figure includes their legal costs as part of their costs. It also includes, as I understand it, some estimation of their internal costs of complying with FOI requests. But, as they are not formally recorded in terms of each officer's time by hour, there is an estimation factor in there, which has troubled me a bit because it is not therefore essentially accurate: it is an estimation. The principal officer in charge of these matters is in London, but I will check this information and if I am wrong I will advise the committee.

**Senator CHRIS EVANS**—This is becoming a constant problem. I will have to speak to the government about the annual leave requirements that have been provided to public servants. Everyone is overseas!

**Ms Lynch**—Ms Sheedy is at the annual data protection commissioners meeting in London.

**Senator CHRIS EVANS**—I was only joking.

**Ms Lynch**—I am sure she would like me to clarify that.

**Senator CHRIS EVANS**—Even public servants are entitled to leave, as well as attending conferences.

**Senator Ellison**—You are not suggesting we should take leave away?

**Senator CHRIS EVANS**—I thought you actually had, Minister. I have not had a good day in terms of finding people—Fiji, London. Have you got the draft report with you? I do not expect you to table it but am I going to get any useful information out of you for this year?

**Mr Cornall**—Not until the report has been formally tabled, Senator.

**Senator CHRIS EVANS**—I mean if I ask you questions relating to information for this year do you have it or am I wasting my breath?

**Ms Lynch**—All I can really say is that it would cover the same information as last year, but I do not have figures. I do not even have a copy of the draft figures with me.

**Senator CHRIS EVANS**—You told me that that report will include the legal costs for dealing with FOI for each department?

**Mr Cornall**—I said it includes their costs, and they are part of those costs, Senator. I do not think they are individually identified.

**Senator CHRIS EVANS**—They are not broken down?

**Mr Cornall**—No. That is my understanding.

**Senator CHRIS EVANS**—You are not able to say what it has cost in terms of legal fees for each department to deal with FOI related matters?

**Mr Cornall**—I do not believe so, Senator.

**Senator CHRIS EVANS**—Perhaps you could take that on notice and confirm your understanding. What about in terms of your department's costs? What can you tell me about A-G's costs?

**Ms Lynch**—I need to take that on notice and talk to our corporate people. My area does not deal with actual applications except when they come up for internal review.

**Senator CHRIS EVANS**—What about work that you do for departments, representing them in matters or providing advice?

**Ms Lynch**—We would occasionally provide advice to other departments on interpretations of the FOI Act, but I do not believe that we have done any representation work, other than the corporate area doing it for the department itself.

**Mr Cornall**—We would give advice to other departments if they wanted general advice about the application of the act, more as a policy type of role. In terms of representation in FOI cases, it would be a matter for each agency to engage its own lawyers or to use its own in-house lawyers for that purpose. In relation to the department, we have our own internal FOI section which handles FOI requests against the department. I can give you some statistics on the number of cases we have had, if that is of any interest to you.

**Senator CHRIS EVANS**—Yes, just broadly.

**Mr Cornall**—As at 25 October this year, we had seven active requests that we were processing. Since 1 October 2004, the department's FOI section has received 145 requests. I can break this down as follows: in 19.31 per cent of cases the documents sought were released to the applicant in full; in 30.34 per cent of cases, the documents sought were partially released; in 13.1 per cent of cases the applicant was refused access entirely; in 17.24 per cent of cases the documents sought were not held by the department; in 10 per cent of cases the requests were withdrawn; in four per cent they were transferred to a more appropriate agency; and in five per cent of the cases they are still being processed.

**Senator CHRIS EVANS**—In terms of assisting departments, you provide policy advice and they effectively outsource the legal representation; they never use you?

**Mr Cornall**—We do not provide that service for them, no. They may well go to the Australian Government Solicitor, which would be an obvious choice. As you know, that is a separate government business enterprise and not part of the department.

**Senator CHRIS EVANS**—So you do not get involved at all other than with the policy advice matters?

**Mr Cornall**—That is right.

**Senator CHRIS EVANS**—We can look forward to your report in December?

**Ms Lynch**—It is anticipated that we will table it in December, Senator.

**Senator CHRIS EVANS**—And I will be able to find the old ones on the website very soon.

**Ms Lynch**—It will be the first thing we do tomorrow morning when we get back.

**Senator CHRIS EVANS**—It may well be that our link is not working, but we could not find it.

I want to follow up, Minister, one of the issues that Senator Crossin raised with you in the parliament, which was the question of the funding of an application by the Thamarrurr Council on behalf of the Wadeye women under the National Community Crime Prevention Program grants. Senator Crossin asked you a very good question in the Senate on 11 September. I think you said you would get back to Senator Crossin, or maybe to the Senate. I am not sure whether you did; I do not say you did not.

**Senator Ellison**—I understand we gave Senator Crossin a briefing on that.

**Senator CHRIS EVANS**—You may well have. I have not caught up with Senator Crossin.

**Senator Ellison**—We gave her what I suppose you could term a confidential briefing because of matters pertinent to some of those involved in the application.

**Senator CHRIS EVANS**—You alluded to such matters in your answer in the Senate. I have not had the chance to talk with Senator Crossin about it. It was on my list to follow up with you. I suppose I just want to confirm that they have not been funded and will not be funded.

**Senator Ellison**—No and no.

**Senator CHRIS EVANS**—So the application has not been referred to any other funding program?

**Dr Heriot**—The council's application did not receive funding under the last round of grants. The fourth round of National Community Crime Prevention grants is now open. All unsuccessful applicants from the previous round were written to and encouraged to seek feedback, and the application for the current round has been widely advertised.

**Senator CHRIS EVANS**—Has any other funding been provided by Attorney-General's or the department of justice to the Thamarrurr Council or the women at Wadeye during this period?

**Dr Heriot**—Not that I am aware of.

**Senator Ellison**—The answer to that is no.

**Senator CROSSIN**—Dr Heriot, when does this round of grants close?

**Dr Heriot**—On 1 December.

**Senator CROSSIN**—And you will have written to Thamarrurr Regional Council? The new CEO is Michael Berto, as I understand it.

**Dr Heriot**—We wrote to all unsuccessful applicants for the last round, informed them they were unsuccessful and encouraged them to seek feedback if they so wished. The fourth round is now open for applications.

**Senator CROSSIN**—My understanding is that the issue that was there previously is no longer an issue; there is a new CEO there. I think that, given the discussions we had, I should pass on this transcript and suggest they just resubmit their grant. Would that be advisable?

**Dr Heriot**—It might be useful if they were to seek feedback too. That sometimes enables people to improve their grant applications.

**Senator Ellison**—I think that is good advice. I would advise them of what has been said here today, and I think Dr Heriot's suggestion—to speak to the department and get some feedback—is a good one. As a decision maker, I suppose I should not give any advice, but generally I suppose it is okay to talk about the program. If there is any change or update in circumstances, it would be wise to include it, because the last application may be dated; I do not know. So I would bear in mind those aspects.

**Senator CHRIS EVANS**—There has been a serious change of circumstances, Minister. That is, there was an outbreak of violence in the community following the application which sought protection and assistance with dealing with violence. The Minister for Families, Community Services and Indigenous Affairs, Mr Brough, visited the site, has made a great deal of publicity about the issues there, and has promised to tackle violence in the community. What we hear is that the application that was supported by his own department—in fact, the application was made on the suggestion of his own department—missed out on the funding round, maybe for legitimate reasons. But the question is: if violence prevention and care of women and children is a government priority, as the minister for FaCSIA trumpets, why hasn't some action been taken to overcome whatever the impediments are to providing that sort of support?

**Senator Ellison**—I understand that the situation has now been remedied—Senator Crossin has said that—which is good. But previously it was not something I was going to canvass in the Senate, for obvious reasons, and that is why Senator Crossin received a confidential briefing from the department. I think there was an appropriate course of action in the circumstances, but we can only make grants during the rounds—this is for crime prevention; I can only speak for crime prevention, because it is my responsibility—that are announced, and there has to be an application. In the last round, this application was unsuccessful. Now that I understand the situation has changed—and Dr Heriot has given some very good advice in that regard—it is entirely appropriate for the applicants to make another application.

**Senator CHRIS EVANS**—I am asking about your responsibility and your government's responsibility to the people of Wadeye. Senator Crossin asked whether I wanted to come to the briefing and I said no, because I did not want to be constrained. But I had already heard the rumour as to why the government, on advice from FaCSIA, was not recommending the grant. The rumour was out and about in the Northern Territory when I visited there—people tell you things. I am concerned about why, in a site that is supposedly a trial site for new administrative arrangements which provide for greater government flexibility and responsiveness to Aboriginal people, those women are waiting for support, promised to them by the government in October 2005. Why hasn't there been more effort made to overcome what you think are problems that prevented them getting that grant?

**Senator Ellison**—As to any intervention by the government in relation to the circumstances of the community, we have been criticised roundly when we have sought to take proactive measures. From what I am gathering, I think that the community has rectified the situation itself, which is the best outcome. I can only speak from a crime prevention point of view, because that is the program I administer. As far as the Department of Families,

Community Services and Indigenous Affairs is concerned, that is another estimates committee and those questions should be directed there. I can certainly say that, in the circumstances of this application in round 3, it would not have been appropriate to have made the grant. I think it is unfair to some of the people involved to take it any further than that. We have advised that they should apply again and, in fact, have given some advice which might help matters for them. I do not think we can do much more.

**Senator CHRIS EVANS**—You and I are going to have to disagree on that, Senator Ellison. After the government encouraging them in October 2005 and FaCSIA sponsoring the grant application, and then what occurred subsequently in that community, I would have thought that you would have been even more keen to support that community and to support the women and children there seeking to take community initiatives to provide better protection against violence and crime for those women and children. I might remind you that one of the objectives of the COAG trial in Wadeye was changed to include the protection of women and children as a priority. I am just wondering what happened to the priority in terms of your department's responsiveness.

**Senator Ellison**—I suggest that you have a discussion with Senator Crossin about the briefing. We can offer it to you but, as you say, you did not want to have that briefing. The offer is nevertheless on the table.

**Senator CHRIS EVANS**—I had not had the offer before. The reason that I did not want to attend the briefing was that I always respect the confidence of those briefings—and, when you take one, you are constrained by the circumstances of the information given to you. From information that I had got on the ground in the Northern Territory, I suspected what your rationale was. In any event, can you confirm for me that you discussed the application with FaCSIA before taking the decision?

**Senator Ellison**—As I understand it, there was communication from Mr Brough's office in relation to recommendations from FaCSIA.

**Senator CHRIS EVANS**—Given that the minister said publicly that there would be no new Commonwealth funding for Wadeye, was that the effect of his advice?

**Senator Ellison**—No.

**Senator CHRIS EVANS**—The minister said publicly that there would not be any new Commonwealth funding. They had an application in for new Commonwealth funding, and they did not get the money. Was that the reason that they did not get the money?

**Senator Ellison**—There was advice which concerned governance and accountability problems, and those were the reasons.

**Senator CHRIS EVANS**—There were also problems of violence.

**Senator Ellison**—In practice, where you have a grant, you are governed by a number of issues apart from just the measures you are trying to prevent at hand—that is, you have to make sure that there are adequate measures dealing with accountability and governance, the funding and how it will be administered. Speaking generically, and not just in relation to this application, can I say that, whilst crime prevention is the aim, it also is imperative that we ensure that the funding will be administered properly, that there will be accountability and that

there will be proper governance so that the money is put to the purpose for which it is intended. We do not just say, 'That's a good idea,' and then throw money at it. We have to make sure that there are other measures in place which ensure that there will be good governance and accountability.

**Senator CHRIS EVANS**—Are you aware of the objectives and principles governing the COAG trials in Indigenous communities?

**Senator Ellison**—I am aware of the COAG trials and, in a general sense, the goals of those.

**Senator CHRIS EVANS**—Didn't they include responsiveness and whole-of-government response?

**Senator Ellison**—As the minister responsible for a fund which involves grants of up to half a million dollars, a competing imperative is that the money is governed properly and that it goes to the purpose for which it is intended. It might be that there is a very good idea, and you see them all around the place: great ideas which have woeful administration and accountability.

**Senator HEFFERNAN**—I have had a look at this a couple of times, without any fanfare. It is quite obvious that, if you cannot get these kids to school, you are treating the effect and not the cause. It is a national disgrace that this year, on the first day of primary school, at the old SH school, where the nuns from the order that taught me are located, while the school was built for 300 kids, 600 turn up and there are not enough desks and tables, so 300 have to sit on the floor or outside in the sun. After three or four days they decide to go home.

We allocate the money to the Territory government on the basis of eligibility to go to school, and they allocate it on the basis of attendance. For the first time, while I was there, they had award days for merit instead of just for attendance. There is no high school in the place. This is a community of between 3½ thousand and 7½ thousand kids in the Northern Territory and they have no access to high school. You talk about law and order. You have to go way back to put all of this in place. You can chuck as much money as you like at the head of the problem if you do not fix the base of the problem.

Would you, Minister, have a view that there has to be a much more comprehensive, non blame game sort of solution? I think there are 700 people there who will go off CDEP and onto Centrelink, and I think there are nine jobs available. It is not much different from having to run down to the waterfront at Dili. There are hundreds of kids sitting around bored stiff all day and getting into trouble.

**Senator Ellison**—I cannot argue with Senator Heffernan's sentiment that the issues are much broader in their complexion; there is no question about that. But I am here as the minister responsible for the crime prevention grants, and I have to ensure that the money is spent appropriately. If I did not do that, people would be saying that I was being negligent in my responsibilities. As a result of advice received from Minister Brough's office, including, as I understand it, from his department, and indirect advice from the Northern Territory government, there were concerns about governance and accountability, and I do not believe it is appropriate that a grant be made where there are such concerns. It seems that there have

been some remedial actions taken. That is very reassuring. The applicants are free to apply in round 4.

**Senator CROSSIN**—Senator Ellison, I want to make a comment. Given that the application that was rejected was actually from the women at Wadeye through the Thamarrurr Regional Council, was any consideration ever given to somehow providing the grant to the women's group or the women's resource centre rather than to the council? I think the council was just the auspicing body, not the body that would actually implement the ideas within the grant.

**Senator Ellison**—In the first instance, you can only give these grants to an incorporated body.

**Senator CROSSIN**—And that is a condition of the grant, is it?

**Senator Ellison**—That is an absolutely essential requirement of the program.

**Senator CROSSIN**—Therein lies your problem. Okay.

**Senator Ellison**—That would have failed in that instance on the first ground. In the circumstances, Senator Crossin's suggestion is a good one. This will be passed on to the applicants and they can consider the matter afresh.

**CHAIR**—Dr Heriot, did you wish to add something?

**Dr Heriot**—Yes. It is a normal condition in such grant programs that government moneys are paid to incorporated bodies, so that if an organisation is not itself incorporated it seeks an incorporated auspice. I also note that it was the council that was the grant applicant. From a process and probity point of view, we need to actually deal with applications and applicants rather than to go behind them to another organisation.

**Senator CHRIS EVANS**—It was also true it was sponsored by FaCSIA, wasn't it? They helped write the application and encouraged the application.

**Dr Heriot**—I am not aware of what role FaCSIA may have had.

**Senator CHRIS EVANS**—I will show you the estimates record. It is not in dispute.

**Dr Heriot**—I am not disputing it.

**Senator CHRIS EVANS**—I am just saying FaCSIA made it very clear this arose at a meeting involving the COAG trial where FaCSIA had a responsibility. The women said: 'This is our priority. This is what we want you, the government, to fix. We want assistance with this. This is our overriding priority.' FaCSIA said, 'We'll deliver for you, and here's the program that will deliver for you.' Their view now is: 'You didn't deliver.' Your explanation is perfectly feasible. I understand. It is bureaucracy at work. This is at a trial site where you promised responsive whole-of-government responses, where you identified this as the major issue, and where you had an outbreak of violence that left hundreds of people homeless. The response was to say: 'Until the people who looted have repaired the houses, we won't offer you any help,' and you put a freeze on Commonwealth funding. One of the things that went by the way was this program application, which was designed to help them with the very problem which has since become the core of the issues in the community. I want to know why we were not more responsive to their needs.

**Senator Ellison**—I think I have taken it as far as I can. We saw with ATSIIC a huge failure in a body which involved billions of dollars because of lack of accountability and at the end of the day had outstanding support for its demise from the Australian community because of that lack of accountability.

**Senator CHRIS EVANS**—Nothing has changed.

**Senator Ellison**—I am saying now that it is not bureaucratic to ensure that Australian taxpayers' funds are spent in a proper fashion under rules of accountability and good governance. That is not bureaucratic at all. For anyone to suggest that is, I think, really quite amazing.

**CHAIR**—I think we have dealt with that as much as we can, Senator Evans.

**Senator CHRIS EVANS**—I want to ask the minister another question.

**CHAIR**—Certainly.

**Senator CHRIS EVANS**—Is his department dealing with any application or being asked to assist in any way in meeting the needs of this community, other than a referral now that they could apply for this grants program again? Have FaCSIA asked for any assistance in dealing with the issues in the community?

**Senator Ellison**—I am not aware of any further contact from FaCSIA with the department.

**Dr Heriot**—No, not with us.

**Senator Ellison**—But I think that Dr Heriot has indicated a willingness of the department to talk to the applicants about a further application. I think that is an offer which should be taken up. You cannot get better than that, because the fact is that the department does have a number of measures in place to assist applicants. In this case Dr Heriot has even offered the opportunity for these people to contact the department to get some feedback and, no doubt, assistance with their application.

**Senator CHRIS EVANS**—They will be very pleased to receive that advice two years after the first promise was made, Minister.

**Senator HEFFERNAN**—This is a comprehensive issue. There are between 75 and 100 kids born a year there. You have to build 10 new houses a year just to keep up with the kids. There are 20 in a home. When you step off the plane, the first house to your left has 20 people in it, and one of them is the schoolteacher. God knows how she gets on. She goes home and supervises the homework. The whole thing is a national disgrace. Everyone sitting here tonight ought to hang their heads in bloody shame.

**Senator CHRIS EVANS**—We have built four houses while 200 kids have been born.

**Senator HEFFERNAN**—It is more complex than that. The blame game ought to go out the window. This is ridiculous.

**Senator CROSSIN**—We need to put some more money into it.

**Senator HEFFERNAN**—When someone is ready, I have some questions.

**CHAIR**—As there are no further questions on that issue, you can ask your questions, and then I will go back to Senator Evans and Senator Crossin.

**Mr Cornall**—Before we leave the FOI matter, I understand from Mr Kelly, who has just checked the website, that the 2004-05 FOI Act report is on the website. If you go to the site, you then go to portfolio responsibilities, FOI and then the annual report.

**CHAIR**—We think that there are two pages that pertain to the FOI annual report, and one has that information and the other has the other information I referred to earlier.

**Mr Cornall**—The other point that I wanted to make is that we are in the process of upgrading our website and the website should be fully operational in its new form before Christmas.

**CHAIR**—Thank you for that clarification. I think Ms Lynch said that the site would be checked in the morning, which would be very helpful.

**Senator HEFFERNAN**—I want to get an update. This time last year I provided some documents to the department and they went off to the AFP. I do not want to discuss the documents, but I have another box full. Since last year, there has been some public discussion from such people as the bar association and the law commission and in February there were questions put on notice by Senator Fierravanti-Wells going to the need for a process to deal with complaints about the judiciary. I notice from the answers to the senator's questions that it is very plain that there is no process and that there is in fact no way of disciplining a judge. They are in no-man's-land. There has been a call by some—and some resistance from other quarters—for a discussion about all the various pluses and minuses. Could you update the committee on where we are up to with what is as obvious as the last thing that we were discussing: the need for reform and change? There is an admission in all the answers that the present system is inadequate, especially related to the higher courts, where you somehow have to magically convene both houses of this parliament to get anywhere. Where are we up to? Have we made any progress on thinking this through as a government?

**CHAIR**—Mr Cornall, some of those matters will be for you; some of them will be for the minister. I will leave that to you.

**Mr Cornall**—This is really a matter for the Attorney-General. The Attorney is very well aware of all the issues that you have raised. As you quite rightly point out, it is a very difficult issue. Judges have always been in a very particular position in the Australian democracy. They are very carefully selected, but once selected they are the third arm of government. They are independent of executive government, and it is essential that they are independent of the executive government, and they are not subject to any disciplinary process except that which the courts have. As they have explained to you before, they have some complaint-handling processes which enable them to deal with complaints to some extent. But, in terms of disciplining judges, that is not done in any court in Australia. The only ultimate remedy that you have is the removal of a judge on the vote of two houses of parliament under the Constitution. It is that way for very good reason.

**Senator HEFFERNAN**—I do not really want to go to the question of detail, but I could. I could give you another box full of reasons. Other than criminal matters, I could give you endless examples, from everywhere from the coroner's court in Sydney up—and I will not go there. I think a person is entitled to know, for a start, what the state of mind of a judge is who is sitting in judgement on them. There are circumstances in which—and I could refer to

suppressed issues—people have being judged by a judge who, for reasons that have been suppressed, was completely unbalanced. I think people are entitled to a process that they can rely on. There are no speed cameras on the road at all. It is an unlimited highway at the present time. I am alarmed—and that would be an understatement—at some of the issues which have been put to me. I will not progress them here today, Madam Chair, because I do not want to alarm the rest of Australia. But there is a burning need for a process to deal with things that are not necessarily of a criminal nature. There are all sorts of deficiencies. We all have deficiencies, but these blokes have no way of being dealt with.

**Mr Cornall**—I think you have answered your own question. Judges will all bring their own personal qualities and characteristics—

**Senator HEFFERNAN**—Deficiencies.

**Mr Cornall**—to the decisions that they make, and that is something that we all have to accept.

**Senator HEFFERNAN**—But my point is that these blokes often have people's futures and welfare and interests riding on their judgement. If, for whatever reason, they have run off the rails, we have no way of dealing with them.

**Mr Cornall**—No. If a judge has a proven incapacity to discharge his or her function as a judge then that is a ground for removal.

**Senator HEFFERNAN**—But say, for instance, without giving any detail, a judge sat in judgement on his own advice and someone came upon that advice; there is nothing they could do with it.

**Mr Cornall**—Clearly, a judge should not sit on any matter in which he has some prior interest or has given some previous advice. I think that is very clear. Ms Leigh has just reminded me of something which is obvious, and that is that if a judge is believed to have made an incorrect decision the appeal process is available to litigants.

**Senator HEFFERNAN**—Yes, and there is a backlog of them. You have the details of what I am talking about there in written form. I do not know whether anyone in Attorney-General's has had the courage to read it.

**Mr Cornall**—Everything you have given to me I have read.

**Senator HEFFERNAN**—There is evidence, and I am appalled that nothing has been done about it. Anyhow, the end question is: what are we going to do about it?

**Senator Ellison**—The best thing I can do is to take this on notice and relay the concerns expressed by Senator Heffernan to the Attorney-General and discuss it with him. I think it is best that the Attorney-General then advise Senator Heffernan as to the government's position.

**Senator HEFFERNAN**—Minister, it would assist me if someone would have the courtesy to verify the documents I have given you so that I could give you some more.

**Senator Ellison**—I think that, in relation to some other matters, an investigation has been carried out. I understand this particular aspect to be somewhat separate to the other issues. This is dealing with the general issue of how you govern the behaviour of judges which might not come within criminal sanction. That, I think, is the crux of the issue.

**Senator HEFFERNAN**—It is indeed.

**Senator Ellison**—That is what I will take on notice and convey to the Attorney-General.

**Senator HEFFERNAN**—God bless you.

**CHAIR**—Thank you, Minister.

**Senator CHRIS EVANS**—What involvement does Attorney-General's have in the implementation of the government's \$130 million package to support action to address violence and child abuse in Indigenous communities?

**Dr Popple**—I think it is fair to say there were three outcomes from that summit and also from the following COAG meeting that are within the responsibility of the Attorney-General's Department. The first related to amendments to the Crimes Act relating to customary law, and that matter has already been considered by this committee.

**Senator CHRIS EVANS**—You failed that one!

**Dr Popple**—The committee has reported, certainly. The second is community legal education. One of the proposals approved at that summit and at the COAG meeting was to ensure that Indigenous Australians understand fully their legal and human rights and responsibilities, including that customary law and cultural practices cannot override legal and human rights. The third one is a judicial education program that will be provided through an initiative to fund the National Judicial College to deliver Indigenous cultural awareness training to assist judges and magistrates to better understand Indigenous issues surrounding criminal sentencing, customary law and cultural practices.

**Senator CHRIS EVANS**—For the second and third, do you have budgets and some short assessment of where you are up to?

**Dr Popple**—We have some initial figures about those. We have not finalised them and we are, in the course of our bilateral discussions with the states and territories, firming those up. We are seeking, for example, some in-kind support in relation to those proposals from the states and territories, so we are not yet at a stage to firm those up. I think this information was announced at the time, but roughly speaking we anticipate the community education program costing about \$4 million over four years and the judicial education program costing about \$500,000 over four years.

**Senator CHRIS EVANS**—Senator Heffernan left too early; he would be interested in judicial education. Do you have any involvement in resources for victims and witness support, or has that been allocated to somebody else?

**Mr Boersig**—We are involved in that aspect as well. That is part of the bilateral discussions, where we are looking at the role that can be played by the states in particular.

**Senator CHRIS EVANS**—So you are not expecting to have any hands-on involvement in that?

**Mr Boersig**—No.

**Senator CHRIS EVANS**—So the three areas outlined are really where you see yourselves providing leadership and funding, and the rest is part of the bilateral discussion. Is that a fair summary?

**Mr Boersig**—Yes.

**Senator CHRIS EVANS**—Do you have any involvement with the Valentin review? This is the review Mr Brough announced where a former Deputy Commissioner of the Northern Territory Police would head up a review of policing levels in remote Indigenous communities.

**Mr Boersig**—I believe that is being addressed by the Office of Indigenous Policy Coordination.

**Senator CHRIS EVANS**—I just thought that because it is policing et cetera you might be in the loop, but that is not your baby?

**Mr Boersig**—No.

**Senator CHRIS EVANS**—Who else from the Commonwealth is involved with the bilaterals?

**Mr Boersig**—There are various departments: Health, Education—

**Senator CHRIS EVANS**—OIPC?

**Dr Popple**—OIPC have been sharing bilaterals from the Commonwealth point of view.

**Senator CHRIS EVANS**—OIPC are playing the lead, are they?

**Mr Boersig**—They are the lead agency for the Commonwealth, yes.

**Senator CHRIS EVANS**—Do you have an interdepartmental working party or something?

**Mr Boersig**—We do.

**Senator CHRIS EVANS**—And you coordinate and then discuss with the states?

**Mr Boersig**—That is correct.

**Senator CHRIS EVANS**—Can someone explain to me the effect of section 212 of the Commonwealth Native Title Act?

**Mr Anderson**—The effect of that section is that states and territories could pass laws that preserve existing public access rights to beaches, public areas and some other types of areas that existed as at 31 December 1993.

**Senator CHRIS EVANS**—Are you aware of whether that has occurred?

**Mr Anderson**—I think as a general rule jurisdictions have passed laws to recognise that public access rights have existed.

**Senator CHRIS EVANS**—Is it fair to say then that public access to those beaches and other areas are protected by that method?

**Mr Anderson**—The key issue here is whether there were valid rights of public access to all beaches. Generally the legislation that has been passed by jurisdictions does not identify particular beaches; it simply uses blanket terms to say ‘existing public access rights over beaches’ et cetera. So you would have to check that each beach, reserve or public area had been validly declared, for example, before you could be sure that it was covered by the state or territory legislation passed in reliance upon section 212.

**Senator CHRIS EVANS**—But that would be more the exception than the rule, then, you would expect?

**Mr Anderson**—Without doing a check you simply would not know.

**Senator CHRIS EVANS**—Why would we have passed the act if we thought it was not going to work? I take responsibility for that; I was in the room when we passed it, as was Senator Ellison. But as I understood the provision this was to provide reassurance that the states could confirm that access.

**Mr Anderson**—It was then a matter for the states and territories.

**Senator CHRIS EVANS**—Yes. So what is the hole in that process as you see it: just that perhaps there had not been proper process prior to that enactment over certain beaches?

**Mr Anderson**—Yes, individual states and territories might not have had a process of declaring public access to particular beaches. There might be access that has been taken to beaches that was not taken pursuant to public access rights. People might, for example, have a habit of going to a particular place or they might trespass to get to a particular beach, but it might not be one that was properly declared as a beach by a state or territory.

**Senator CHRIS EVANS**—So what evidence do you have to support this concern? Or is it just a hypothetical proposition?

**Mr Anderson**—No, it is not a hypothetical proposition. It is simply a statement of fact that we cannot be sure that all beaches that people currently go to have actually been protected under this provision.

**Senator CHRIS EVANS**—Sure, but I cannot be sure the sun is going to come up in the morning. I know lawyers earn their livings by people not being able to be sure, but for you to advance that proposition it seems to me you must have some factual base other than just a doubt.

**Mr Anderson**—If I take you back to Justice Wilcox's decision in the single Noongar claim, he pointed out that to be sure about the application of native title to all the various parcels of land covered by that claim you would need to go claim by claim to search for tenure. You cannot be sure unless you do that or unless you have an agreed outcome. That would be the other way.

**Senator CHRIS EVANS**—If you have these concerns, have you suggested to the minister that we look to amend the Native Title Act?

**Mr Anderson**—The matter is subject to appeal at the moment.

**Senator CHRIS EVANS**—No, putting the appeal over the Noongar case to one side: in terms of the Commonwealth Native Title Act, the department has these concerns about the mechanism the parliament established to provide certainty over public access to beaches et cetera. You now raise concerns that that is not effective. Have attempts been made to convince the government to change the legislation?

**Mr Anderson**—Ultimately that would be a matter of advice to government.

**Senator CHRIS EVANS**—You are raising these doubts with us now publicly. Have these doubts been raised previously?

**Mr Anderson**—The department is not raising anything here; it is simply a matter of fact that Justice Wilcox said in his decision that you could not be sure how native title law would apply to all the various parcels of land without going piece by piece through it on a tenure search, and that was a comment that the Attorney made following the decision: to say that you simply could not be sure.

**Senator CHRIS EVANS**—I did not actually ask you that question. I understand you responding to the context, but I deliberately did not place it in that context. You seem overly defensive about it, to be frank. I am asking you whether there is a deficiency in the act or whether you think the provision, section 212, achieves what we thought it was achieving when we in the parliament passed it. You seem to now be casting doubt over it.

**Senator Ellison**—I think the catalyst was the decision by Mr Justice Wilcox because the government was of the view that the legislation purported to do something, which it now seems it does not. The judgement of Mr Justice Wilcox cast doubt on that to such an extent that it warrants an appeal, and that is the advice the government has. No doubt it is the advice the state government of Western Australia has as well. In these cases it is normal to appeal in the first instance. We have a single judge on the Federal Court. As in other cases, an appeal is the appropriate course of action to take in the first instance. Of course if on appeal that fails then perhaps a review might have to be had. Certainly what has been done in previous cases is the matter has been pursued on appeal. It is only when the matter has run its race that you then look at whether a change in legislation is necessary.

I think Mr Justice Wilcox's decision really was the catalyst for this uncertainty, otherwise everybody would have been of the same view: the state government of Western Australia and the Commonwealth. But with his decision as it is, and with the reasons as enunciated by him, which have been stated clearly today, it was untenable to leave it stand with such a degree of uncertainty. So it is the decision that has brought the uncertainty.

**Senator CHRIS EVANS**—With respect, that is not what the officer said. That is one of the things I am trying to get to. If you want us to discuss the Wilcox appeal, I am happy to discuss that, but I am really trying to get a sense of the Commonwealth's understanding of the act and the state legislation enacted to give that force. I accept that there are concerns about the Wilcox decision and that they are being pursued by virtue of appeals. But I am trying to get your understanding. So, before that decision, did the Commonwealth have any doubts about the effectiveness of section 212 of the Native Title Act? You are saying you disagree with his interpretation. I am just going back a step and asking: was the Commonwealth confident that the provision was effective?

**Mr Cornall**—I think Mr Anderson has explained that the view was that the act depended on the states doing certain things—that is, all beaches being declared for public access and so on—and that is the position we think the law is in.

**Senator Ellison**—The states had to act, of course. If they did nothing, then of course they had availed themselves of that provision. I think we all agree that, as a starting point, the states would have to act. But I think it is agreed that, prior to Wilcox's decision, everyone thought that if the states acted appropriately then that did give certainty. I think that is the position.

**Senator CHRIS EVANS**—That is what I was trying to get at. So these doubts that Mr Anderson expressed to us earlier were subsequent to the Wilcox decision.

**Mr Anderson**—No. The situation is that the section was enacted, and it was up to the states and territories to do something. They did something. It has been recognised by us that it would always depend upon whether they had acted appropriately behind that, in terms of declaring each beach, public place, reserve or what have you. So that issue has always been there. It was cast into sharp relief by the decision of Justice Wilcox. The issue is not so much section 212; the issue is: how do you get to a situation where native title is recognised? The question is really one of consistency in applying the principles of native title law rather than how section 212 operates. That is something that will be the subject of consideration by the full Federal Court in the appeal.

**Senator CHRIS EVANS**—Are there two issues here, Mr Anderson, or one? The minister and I seem to be of the view that there are two issues, but you seem to think there is one issue. One is a process about whether, prior to the enactment of state legislation, the states had done the process correctly in terms of, say, Cottesloe Beach.

**Mr Anderson**—That is a common issue in any native title claim.

**Senator CHRIS EVANS**—That is one issue. Isn't there then a finding from Judge Wilcox and you are saying that that is the thing his decision calls into question?

**Mr Anderson**—There are two issues. In any native title claim there will be an issue as to the extent to which previous tenure, previous decisions et cetera have had an extinguishing effect upon native title. That will be the same with beaches as with other types of title. The other question is the one regarding the Wilcox decision in terms of the broader principles of native title and how the case law is applied.

**Senator CHRIS EVANS**—Are you saying both are now in play or just the latter one, as a result of the Wilcox decision? This is what I am not clear on. Are your comments more general or are you saying Wilcox brings into doubt what we thought to be the understanding—that the states had properly provided for public access to Cottesloe Beach, so that Senator Ellison can continue to jog along the front without being impeded? Did the passage of the state act put that issue to rest, or are you saying that Wilcox's decision throws that into doubt as well?

**Mr Anderson**—No. The first issue has always been there, in that the understanding is that, providing the states and territories have acted properly in validly declaring public reserves, beaches et cetera, there is certainty. However, we do not know unless we actually check all the individual parcels—the individual beaches et cetera—whether they did do that. That issue has always been there. But providing they did then it is certain.

**Senator CHRIS EVANS**—Are you saying Wilcox's decision has any impact on that?

**Mr Anderson**—Not on that aspect, no.

**Senator CHRIS EVANS**—That was my concern. It may be my fault but we had rolled the two issues into one. Senator Ellison and I were on the same track and I was just checking that in your explanation you were not suggesting Wilcox had any implications for that aspect of

the issue. You are more concerned about this question of previous extinguishment and what his decision means for that?

**Mr Anderson**—At the risk of confusing things further, his decision does raise slightly different issues, obviously, about how the High Court's decision in Yorta Yorta is applied—whether you have consistency and certainty of a different nature, in that you have certainty in knowing that the case law will produce certain outcomes based on certain facts. That is a slightly different issue.

**Senator CHRIS EVANS**—That is the basis of the federal government appeal, isn't it?

**Mr Anderson**—Yes.

**Senator CHRIS EVANS**—Do you know when the appeal is going to be heard?

**Mr Anderson**—Probably in February next year, but that is in the hands of the court.

**Senator CHRIS EVANS**—The state and federal government appeals: are they in the same terms?

**Mr Anderson**—They are reasonably similar.

**Senator CHRIS EVANS**—As I understand it, in the original case, you basically acted in concert; is that right?

**Mr Anderson**—We both put a range of similar points to the trial judge.

**Senator CHRIS EVANS**—Did the state lead?

**Mr Anderson**—The state was the primary respondent.

**Senator CHRIS EVANS**—And you joined as a co-respondent?

**Mr Anderson**—We intervened. We have very substantial property interests within the claim area. There are over 300 Commonwealth properties within the claim area. We also have sea interests, because the claim extends out to 12 nautical miles.

**Senator CHRIS EVANS**—Can I check where we are up to with the native title review—the reform package?

**Mr Anderson**—Certainly. There are six different reforms. There is the claims resolution review, which is looking at the relationship between the Federal Court and the tribunal. The report has been published by the government and the government response was announced in August. I believe it was in August, but I will have to check the date. That is going to be put into legislation.

**Senator CHRIS EVANS**—When can we expect to see the legislation?

**Mr Anderson**—It might assist if I come to that. The second element is prescribed bodies corporate—their needs and how those needs are best met. A report on that was published by the government last Friday. To the extent that legislation is required, that will be dealt with in the same bill.

There are technical amendments to the Native Title Act, which are amendments aimed at removing minor procedural glitches rather than substantive changes to the native title law as it is understood. That will certainly need to be enacted, but there will be a further consultative

process for the technical amendments. The intention has been to have an exposure draft for those.

**Senator CHRIS EVANS**—Will they be in the same bill?

**Mr Anderson**—I will come to that as well, Senator. The fourth element is respondent funding. There are revisions to the guidelines for funding of respondents in native title cases—pastoralists and people like that. That might need some very minor legislative amendments, which will be in the same bill. There are amendments to the native title representative body regime, which is administered by FaCSIA. That will be dealt with in the same bill as well. The final one is transparency and communication, which is primarily about how governments and other parties behave. There will be a native title ministers meeting in December to further address the question of behaviour by governments and other respondents.

The intention is that there be a bill introduced this sitting. As to whether it contains all of those elements will ultimately be subject to drafting resources.

**Senator CHRIS EVANS**—So it might be that only part of it proceeds?

**Mr Anderson**—It might be that only part of it gets in a bill in this sitting. The worst case scenario would be that none of it gets in a bill in this sitting. The best case scenario would be that it all gets in a bill in this sitting.

**Senator CHRIS EVANS**—So we may have a bill that has only three parts of it rather than the full six?

**Mr Anderson**—In order to, in particular, deal with some timing issues that might arise for the native title representative body amendments, it is highly desirable that they, at least, be introduced this year.

**Senator CHRIS EVANS**—What is the time pressure on that?

**Mr Anderson**—Some elements might commence at the beginning of the next financial year. That is a matter that you should really address questions to FaCSIA on.

**Senator CHRIS EVANS**—Yes.

**Mr Anderson**—The intention would be that, if other elements get introduced in a second bill in the first sitting of next year, it all would still progress together, if possible. It would perhaps be joined up and be dealt with concurrently.

**Senator CHRIS EVANS**—The former manager of government business probably does not share your confidence.

**Senator CROSSIN**—Mr Anderson, are the reports you mentioned or the exposure draft on the website?

**Mr Anderson**—Everything that has been published is on the website.

**CHAIR**—Senator Crossin, do you have any further questions?

**Senator CROSSIN**—I do not have any other native title questions, but I do have questions on community legal services. I think they come under output 1.1.7. I want to go to the issue of funding for community legal centres. I understand that there has been no additional funding for CLCs in this year's budget. Is that correct?

**Mr Cornall**—There was a two per cent increase.

**Senator CROSSIN**—An indexed amount of only two per cent?

**Mr Cornall**—Yes.

**Senator CROSSIN**—Can you explain to me why there was no new money in the budget for the CLCs?

**Mr Cornall**—It was a decision by government.

**Senator CROSSIN**—Has any kind of review occurred as to what impact that would have in terms of CLCs continuing to offer their services effectively with less money?

**Mr Cornall**—It is not less money. They have more money this year than last year.

**Senator CROSSIN**—They only have a two per cent increase, which is less than the CPI.

**Mr Cornall**—It is about the same as departments get.

**Senator CROSSIN**—About the same or less?

**Mr Cornall**—More, I think. Departments get about 1.7 per cent.

**Senator CROSSIN**—Nevertheless, has there been any analysis of how they would be expected to do their job with that funding?

**Mr Cornall**—They will the same as last year.

**Senator CROSSIN**—I see. What does that mean—that there will be no increase in outputs, performance indicators or the number of clients and there will be the same number of clients and the same indicators as in previous years?

**Dr Popple**—The performance measures that the CLCs are required to meet, if you like, are in agreements that the government has with them. They are three-year agreements that expire on December 2008. So there has been no change from last year to this year because those agreements still remain in existence.

**Senator CROSSIN**—So there is no increase in any outputs required from them?

**Dr Popple**—I would have to take that on notice. We think not because those agreements, as I said, started a year and a half ago, so there has been no change to those, just the two per cent indexation.

**Senator CROSSIN**—So there has been no assessment or analysis of how they might meet growing demand in areas of government changes such as the Welfare to Work or the industrial relations changes?

**Dr Popple**—We have certainly been in discussions with, amongst others, the peak body, the NACLC, the National Association of Community Legal Centres, about concerns that have been expressed about the possible impact upon CLCs of changes like the ones you mentioned, and we have said to them that we will of course monitor that, as they will. We have a reporting system that the CLCs use. We are able from that to determine if there have been any changes in workload in particular areas, and of course they will no doubt advise us if they detect anything similar. We are not aware yet of any such changes, but obviously, if there

were, that is something we would take to government, especially in the context of the preparation of the agreements to replace the existing agreements come the end of 2008.

**Senator CROSSIN**—Are you aware of any unmet demand that CLCs might be asked to meet?

**Dr Popple**—I am certainly aware there have been times when CLCs have indicated that they have more demand than they are able to meet at a particular time, but we do not have any measure of unmet demand.

**Senator CROSSIN**—Are you aware of any regions or particular socioeconomic groups that have more demand than the services can meet?

**Dr Popple**—There have been a number of reviews over the last 10 years or so on a state-by-state basis. Obviously one aspect of those reviews would be some analysis of particular requirements and particular states, and there might also be some of the demographic analysis you mentioned. But we have not had any recent systemwide analysis along the lines that you speak.

**Senator CROSSIN**—What is the position on CLCs participating in any policy debate?

**Dr Popple**—You would be aware, because there was some recent press on it, that the Attorney-General published an article expressing his concern about aspects of CLC activity which he was concerned went beyond participation and debate and went to political activity.

**Senator CROSSIN**—Is there anything in their three-year contract that says they cannot participate in policy debate?

**Dr Popple**—No, but the Attorney expressed his concern that what they were doing went beyond what the funding agreements asked them to do with Commonwealth money.

**Senator CROSSIN**—In what way? Can you give me an example?

**Dr Popple**—Certainly. I will quote from the article that the Attorney wrote for the *PartyRoom* journal. His concern was:

Legal centres must restore their focus onto the interests of their clients, rather than political causes.

... ..

Unfortunately, some centres devote valuable resources to running political campaigns and the promotion of ideological causes, rather than providing legal advice and assistance to Australians in need ...

And he then gave some examples on that page and the next page.

**Senator CROSSIN**—But there are no specific requirements in their funding agreement that say they cannot engage in policy debate. Is that right? They are not actually operating outside their funding agreements?

**Mr Cornall**—They are funded to provide services and to provide some input on law reform issues, but that does not extend to taking part in a political policy debate. They also provide community legal education functions as well, and that is within their funding arrangements.

**Senator CROSSIN**—Mr Cornall, you use the words ‘political policy debate’; I used the words ‘policy debate’ up until now. What do you mean by political policy debate?

**Mr Cornall**—It is a question of what the Attorney thinks it means, and the Attorney felt that in the case in question the CLCs had gone beyond law reform and community legal education issues.

**Senator CROSSIN**—At this stage their funding agreement makes no mention of their participation in policy debates.

**Mr Cornall**—No, their funding agreement talks about providing services, law reform activities and community legal education.

**Senator CROSSIN**—That does not preclude them from having that debate, or being part of that debate if they are going to comment on Law Reform Commission activities.

**Mr Cornall**—It is a question of judgement; it is a question of how they do it.

**Senator CROSSIN**—Has the department been asked to monitor or report on any policy contributions of the CLCs?

**Dr Popple**—We are always monitoring the activities of CLCs; it is part of the agreement we have with them and the nature of our relationship under the funding agreement. We have not been specifically asked to monitor their activities in the way you have suggested.

**Senator CROSSIN**—It is not prohibited in their funding agreement so it is not an area that you would be specifically monitoring. Is that correct?

**Dr Popple**—As I said, we monitor the CLC activities because they are spending Commonwealth money. We have not been specifically asked to monitor their political activities, if I can say that.

**Senator CROSSIN**—Given the recent complex changes in family law and industrial relations and the new Welfare to Work laws, has there been any evidence that there is a greater demand for CLC services?

**Dr Popple**—I think I touched on this earlier; no, there is not, to our knowledge. In our discussions with the peak body we have indicated and they have indicated that they will monitor the situation closely and if there is any change in their workload which is attributable to those changes then we will take that matter up with government in a funding context, particularly in the context of the new agreements that replace the current ones.

**Senator CROSSIN**—How will they advise you of that? Is there a particular reporting requirement or have you asked them to provide you with input after six or 12 months? What will be the mechanism for that?

**Dr Popple**—Each of the centres has reporting requirements but the relationship I am talking about is with the peak body. We have an ongoing relationship with that body and we have regular meetings with them. I am sure they would raise it with us, even if there were not a meeting. We have comments from each of the CLCs but we also have a relationship with the peak body.

**Senator CROSSIN**—I am going to jump a bit as I have only 10 minutes left.

**Mr Cornall**—Before you do that, I point out that in 1995-96 Commonwealth funding for the CLC program was \$15.3 million. It now is about \$22.2 million, and in that time 12 new centres have been established and are funded by the Commonwealth. The other point to make is that the current level of funding by the state and territory governments is only \$17.5 million, and there is no funding for CLCs from Tasmania, the Northern Territory or the ACT.

**Senator CROSSIN**—How many CLCs are in that state and the two territories?

**Mr Cornall**—There are 127 CLCs funded by the Commonwealth altogether.

**Senator CROSSIN**—I asked how many are in that state and the two territories.

**Mr Cornall**—I will check if we have those details.

**Dr Popple**—I have a document that we handed out at the last estimates hearing; it lists all the CLCs by state and includes all their funding. From that you could count the number of CLCs in each state. I am happy to count them now if you like.

**Senator CROSSIN**—You mentioned Tasmania, the Northern Territory and the ACT.

**Dr Popple**—On this list there are eight in Tasmania, five in the Northern Territory and three in the ACT.

**Senator CROSSIN**—Thank you.

**Senator SCULLION**—In view of the fact it seems the Attorney-General is concerned about an extension of the role of the CLCs, in the next funding arrangement will you be altering the arrangement to reflect more clarity in the role that they are to play in those matters?

**Mr Cornall**—We are talking about the end of 2008 so it is some time away, but no doubt all of the issues that are of concern to government will be looked at in those negotiations.

**Senator CROSSIN**—You said that you entertain a dialogue with the National Association of Community Legal Centres. Is that correct?

**Dr Popple**—Yes.

**Senator CROSSIN**—In that context, then, did you recommend any funding assistance for their conference that was held in September?

**Dr Popple**—You would be aware that the conference was not funded as it has been in the past. There was some press coverage of that but I do not think it would be appropriate to indicate the advice that we gave the Attorney about that. The Attorney made the decision, and it was publicly announced, that he would not be providing funding for the national conference.

**Senator CROSSIN**—What was the reason given for not providing funding?

**Dr Popple**—The Attorney indicated at the time that he was concerned that the focus of the conference was more on campaigning than was appropriate for a national conference of CLCs. He had concerns about some things in the brochure for the conference—they were covering topics such as Welfare to Work, family law reform, industrial relations reform, Indigenous justice and security issues.

**Senator CROSSIN**—Was there any indication in the brochure that that would be about policy or campaigning rather than talking about the detail of the legislation and how they might handle the increase in clients?

**Dr Popple**—Yes, that was the Attorney's concern—that it was going beyond just an educational role into a political role.

**Senator CROSSIN**—I did ask whether there was any indication in the brochure that that was going to be the focus.

**Dr Popple**—The answer to that is yes; that is the main basis on which the Attorney made his decision. Certainly, we would have had other information about the conference than was in the brochure, but all that information together was the information the Attorney had when he made his decision.

**Senator CROSSIN**—What was the funding assistance provided to the conference last year?

**Dr Popple**—It was of the order of \$25,000.

**Senator CROSSIN**—And the year before that?

**Dr Popple**—We will have to take it on notice. I think it was a comparable amount.

**Senator CROSSIN**—Was the amount last year given on the proviso that it was tied to particular activities or not particular activities inside the program?

**Dr Popple**—I do not believe so, no.

**Senator CROSSIN**—So there could have been campaigning for policy debate at last year's conference?

**Dr Popple**—There could have been.

**Senator CROSSIN**—Is there any indication that the conference will be supported in the future?

**Dr Popple**—There has been no decision about that.

**Senator CROSSIN**—I suppose it is too early for them to request anything. I want to cover one other area very quickly before we leave. This is under 1.3, Legal services and policy advice on information law and human rights, and my question is in relation to David Hicks.

[10.54 pm]

**CHAIR**—I welcome the officers to the table. Are there any questions on output 1.3?

**Senator CROSSIN**—We only have a few minutes. I may have to put some questions on notice. Can you confirm that Mr Hicks was visited by an Australian official in March this year?

**Mr Cornall**—Mr Hicks has been visited 18 times in Guantanamo Bay by Australian officials, and he was visited on 16 March this year, and he has been visited twice since that date.

**Senator CROSSIN**—What was the nature of those last three visits?

**Mr Cornall**—They were welfare or consular visits.

**Senator CROSSIN**—Take me through what happened on 16 March.

**Mr Cornall**—They are welfare visits by the people from our Washington post who go down to see him and see what his needs might be and what they can do to assist him.

**Senator CROSSIN**—They are welfare/consular; there is not one visit on welfare and one from consular officials?

**Mr Cornall**—No, it is welfare/consular.

**Senator CROSSIN**—I misunderstood your answer. What were the reports of his condition after those three visits?

**Mr McDonald**—I do not have the detail of the March visit. In relation to the June visit, it was observed that he had lost some weight but that he was generally in good spirits. On the 27 September visit he had regained some weight but he was not interested in speaking to the consul.

**Senator CROSSIN**—Can you take on notice to provide some detail of the March visit if you do not have it with you?

**Mr McDonald**—Yes, I can do that.

**Senator CROSSIN**—Can you confirm whether Mr Hicks was moved into solitary confinement at Guantanamo Bay the day after the official visit in March?

**Mr McDonald**—He is not held in solitary confinement. Conditions for prisoners at Guantanamo Bay are equivalent to a maximum security facility in the US, and his conditions are similar to those who are in custody and awaiting trial for terrorism offences in Australia. He is in a single occupancy cell. The cells in the general block area have windows providing natural light. He continues to have access to an exercise facility in a group area. During those exercise periods he can communicate with others. In fact, his conditions are quite similar to those who are in custody awaiting trial for terrorism offences. One example of this is the case of Mr Lodhi, for example, who was recently convicted. During his period of awaiting trial he had a similar period allowed for exercise—90 minutes to three hours per day.

**Senator CROSSIN**—Is that the nature of the cell that he is confined in now?

**Mr McDonald**—Yes.

**Senator CROSSIN**—I would still like an answer to my question as to whether he was moved into solitary confinement on the day after the official visit in March. Or was there no change in his cell arrangements?

**Mr McDonald**—I do not have the exact date that he went into that particular cell block. That is something I will have to take on notice. I do not have any information here to suggest that he was moved into that block on the day after.

**Senator CROSSIN**—Was the Australian government informed by the US authorities of Mr Hicks's relocation to camp 5 at Guantanamo Bay?

**Mr McDonald**—I need to take that on notice as to exactly when we were informed about it.

**Senator CROSSIN**—So the answer is that you were informed but you will take on notice the date?

**Mr McDonald**—Yes.

**CHAIR**—As it is 11 o'clock, any further questions will have to be put on notice. Senator Ludwig will place his questions on notice, as will any other senators who have questions. I thank the witnesses and the minister. I declare this meeting of the Legal and Constitutional Affairs Committee closed.

**Committee adjourned at 11.00 pm**