



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

ESTIMATES

(Additional Budget Estimates)

TUESDAY, 13 FEBRUARY 2007

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**SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS**

Tuesday, 13 February 2007

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

Senators in attendance: Senators Bob Brown, Chris Evans, Fielding, Heffernan, Kirk, Ludwig, Sandy Macdonald, Nettle, Parry, Payne, Siewert and Stott Despoja

Committee met at 9.00 am

ATTORNEY-GENERAL'S PORTFOLIO

Consideration resumed from 12 February 2007

In Attendance

Senator Ellison, Minister for Justice and Customs

Attorney-General's Department

Management and accountability

Mr Robert Cornall AO, Secretary

Mr Miles Jordana, Deputy Secretary, Criminal Justice and Security

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

Ms Jan Blomfield, Acting General Manager, Corporate Services Group

Mr David Finlayson, Assistant Secretary, Corporate Services Group

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

Mr Trevor Kennedy, Assistant Secretary, Financial Management Branch

Mr Graham Fry, General Manager, Information and Knowledge Services

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 Jurisdiction and Federal Courts Branch

Ms Sue Pidgeon, Assistant Secretary, Family Pathways Branch

Mr Peter Arnaudo, Assistant Secretary, Family Law Branch

Mr David Syme, Assistant Secretary, Dispute Management Family Pathways Branch

Ms Alison Playford, Assistant Secretary, Administrative Law and Civil Procedure Branch

Mr Kym Duggan, Assistant Secretary, International Family Law Branch

Output 1.2

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

Dr James Popple, First Assistant Secretary, Personal Property Securities Taskforce/Legal Services Coordination

Mr Richard Glenn, Acting Assistant Secretary, Personal Property Securities Taskforce

Mr James Faulkner, Assistant Secretary, Constitutional Policy Unit

Ms Amanda Davies, Assistant Secretary, Classification Policy Branch

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

Ms Joan Sheedy, 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 Law and Trade Branch

Output 1.6

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

Mr Steven Marshall, Assistant Secretary, Claims and Legislation Branch, Native Title Unit

Mr Geoffrey McDougall, Acting Assistant Secretary, Future Acts and System Coordination Branch, Native Title Unit

Output 1.7

Ms Katherine Jones, Acting First Assistant Secretary, Indigenous Justice and Legal Assistance Division

Mr John Boersig, Assistant Secretary, Indigenous Law and Justice Branch

Mr Albin Smrdel, Acting 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, Special Counsel, Criminal Justice Division

Dr Karl Alderson, Assistant Secretary, Criminal Law Branch

Ms Catherine Hawkins, Acting First Assistant Secretary, International Crime Cooperation Division

Ms Sheridan Evans, Assistant Secretary, Identity Security Branch

Ms Toni Dawes, Principal Legal Officer, Mutual Assistance and Extradition Branch

Ms Sally Nelson, Acting Principal Legal Officer, Mutual Assistance and Extradition Branch

Ms Belinda Barry, Acting Assistant Secretary, International Assistance and Treaties Branch

Mr Nick Morgan, Director, International Assistance and Treaties Branch

Ms Katherine Reimers, Acting Principal Legal Officer, International Assistance and Treaties Branch

Ms Elizabeth Kelly, Executive Director, AusCheck

Output 2.2

Mr Geoff McDonald PSM, Acting First Assistant Secretary, Security and Critical Infrastructure Division

Ms Catherine Smith, Assistant Secretary, Telecommunications and Surveillance Law Branch

Mr Mike Rothery, Assistant Secretary, Critical Infrastructure Protection Branch

Output 2.4

Mr Martin Studdert, Executive Director, Protective Security Coordination Centre

Ms Belinda Moss, Assistant Secretary, Information Coordination Branch

Ms Leonie Horrocks, Acting Assistant Secretary, Policy and Services Branch

Ms Leonie Mack, Assistant Secretary, Security Programs Branch

Mr Lee Gordon, Executive Officer, Executive Services Section

Australian Customs Service

Mr Michael Carmody, Chief Executive Officer

Mr John Drury, Deputy Chief Executive Officer

Mr John Jeffery, Deputy Chief Executive Officer

Mr Neil Mann, Deputy Chief Executive Officer

Mr Jon Brocklehurst, Chief Financial Officer

Mr Murray Harrison, Chief Information Officer

Rear Admiral James Goldrick, Commander Border Protection

Mr Tom Marshall, Director General Border Protection Operations

Ms Marion Grant, National Director, Enforcement and Investigations

Ms Jane Bailey, National Director, Cargo

Ms Jan Dorrington, National Director, Passengers

Ms Sharon Nyakuengama, National Director, Compliance

Ms Sue Pitman, National Director, Trade

Ms Margaret Jamieson, National Manager, Staffing

Mr Jeff Buckpitt, National Director, Intelligence and Targeting

Ms Christine Marsden-Smedley, National Manager, International

Ms Tonie Differding, National Manager, Research and Development

Mr Geoff Johannes, National Manager, Trade Measures

Mr Matt Corkhill, National Manager, Cargo Operations

Ms Jo Corcoran, National Manager, Industry Engagement and User Services

Ms Gill Savage, National Manager, Strategic Development Passengers

Mr Demetrio Veteri, National Manager, Law Enforcement Strategy

Australian Federal Police

Mr Mick Keelty, Commissioner

Mr John Lawler, Deputy Commissioner

Mr Trevor Van Dam, Chief Operating Officer

Australian Transaction Reports and Analysis Centre

Mr Neil Jensen PSM, Chief Executive Officer

Mr Alf Mazzitelli, Chief Finance Officer

Australian Commission for Law Enforcement Integrity

Professor John McMillan, Acting Integrity Commissioner

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 Security Intelligence Organisation

Mr Paul O'Sullivan, Director-General

Commonwealth 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

Human Rights and Equal Opportunity Commission

Mr John von Doussa, President and Acting 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 Susan Roberts, Acting Executive Director
Ms Karen Toohey, Acting Director, Complaint Handling

Office of the Privacy Commissioner

Ms Karen Curtis, Privacy Commissioner
Mr Timothy Pilgrim, Deputy Privacy Commissioner
Mr Mark Hummerston, Assistant Privacy Commissioner
Mr David Richards, Finance

National Native Title Tribunal

Mr Chris Doepel PSM, Registrar and Chief Executive Officer
Mr Hugh Chevis, Director Service Delivery
Mr Max Szmekura, Chief Financial Officer

Australian Law Reform Commission

Professor David Weisbrot, President
Mr Alan Kirkland, Executive Director

Federal Court of Australia

Mr Warwick Soden, Registrar and Chief Executive Officer
Mr Philip Kellow, Deputy Registrar
Mr Gordon Foster, Executive Director Corporate Services
Ms Louise Anderson, Native Title Registrar

Federal Magistrates Court

Mr John Mathieson, Chief Executive Officer
Ms Charlotte Stockwell, Executive Director, Operations
Mr Glenn Smith, Chief of Staff
Mr Russell Nash, Chief Finance Officer

CHAIR (Senator Payne)—Good morning, ladies and gentlemen. I declare open this public meeting of the Senate Legal and Constitutional Affairs Committee. The Senate has referred to the committee the particulars of proposed additional expenditure for 2006-07 for the Immigration and Citizenship portfolio and the Attorney-General's portfolio. The committee may also examine the annual reports of the departments and agencies appearing before it. The committee is due to report to the Senate on 21 March 2007 and has fixed 30 March 2007 as the date for the return of answers to questions taken on notice. The committee's proceedings today will begin with the examination of the Attorney-General's Department, followed by related agencies.

Under standing order 26, the committee must take all evidence in public session and this includes answers to questions on notice. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings:

Any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant for the purpose of estimates hearings.

I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanations from the parliament or its committees, unless the parliament has expressly provided otherwise.

The Senate has also resolved that an officer of a department of the Commonwealth 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. This resolution prohibits only questions which ask for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

If a witness objects to answering a question, the witness should state the grounds upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the grounds which are claimed. Any claim that it would be contrary to the public interest to answer a question is one which must be made by a minister and should be accompanied by a statement setting out the basis for the claim. When an officer is called upon to answer a question for the first time, they should state their full name and the capacity in which they appear and speak clearly into the microphones to assist *Hansard* with the recording of proceedings. For the record, I note that I understand that there are two outstanding responses to questions taken on notice to the supplementary budget estimates round of October 2006.

This morning, I welcome Senator the Hon. Chris Ellison, the Minister for Justice and Customs, also representing the Attorney-General, and Mr Robert Cornall, Secretary of the Attorney-General's Department. Minister or Mr Cornall, do you wish to make an opening statement?

Senator Ellison—I have no opening statement, other than to say that we hope to have answers to those two outstanding questions within the next hour or so.

Mr Cornall—I have no opening statement, but Senator Ludwig asked a question on 8 February concerning official development assistance. One aspect of that question—the first part—involved the department, and I have our answer to that question and can table it now if that would be of assistance.

CHAIR—We will start with general questions.

[9.04 am]

Attorney-General's Department

Senator LUDWIG—Is the issue of identity security best dealt with all in output 2.1?

Mr Cornall—Yes.

Senator LUDWIG—Thank you. I have a general question going to the annual report. We asked a question on 3 November 2006 about whether your annual report was online or not, and question on notice No. 9 from the last round asked about the faulty hyperlink for the 2004-05 annual report. Can you tell us what happened? Did it fall off the web?

Mr Cornall—I will have to ask Graham Fry to come and assist us with that.

Mr Fry—During the redesign of the website I believe that we noted a broken link there and fixed it then. I do not recall the reason for the link being broken other than that during updating at some point the link was not correctly set up. I cannot tell you. I would have to take the exact technical detail on notice.

Senator LUDWIG—That would be helpful. In response to part (c) of the question, the department said: 'For the 2005-06, the contractor was asked to scan the original official Audit Office independent audit report, letter and financial statements to eliminate design reformatting errors.' That makes it a lot more difficult to examine it online, let me tell you. How did the department manage to go backwards in terms of functionality? If you put those in PDF version I can examine them, but if you scan them in it certainly is a lot harder to examine them in any detail.

Mr Fry—I would have to check, but my recollection is that that particular portion of the report was always scanned. That was certainly the advice I was given. I can check, but that was certainly the advice that I was given when we received your question.

Senator LUDWIG—I had a look at Customs and they do not do it. They seem to have been able to avoid the use of the scanned documents.

Mr Fry—I am merely commenting on a procedure that has been in place for, I believe, some years.

Senator LUDWIG—Perhaps you can have a look at that. There is certainly greater functionality if you do not scan the documents but use a PDF version or a version that is able to be put online. Other departments, including Customs, seem to have got around the problem and at least present their annual reports in a version that can easily be utilised. If you are going to provide online documents, it seems sensible to put them in formats such that we can examine them.

Mr Fry—I am more than happy to look into that.

Senator LUDWIG—I draw your attention to page 129 of the 2005-06 annual report by the Ombudsman and to table A1. Without breaching anyone's privacy, can you indicate what issues, laws, policies or practices changed as a result of complaints to the Attorney-General's Department? What were the substances of those complaints and what were the facts of the cases that resulted in apologies from the Attorney-General's Department? You do not need to mention the individuals' names. How do you do that? Do you publicly apologise to someone or do you write to them and apologise?

Mr Fry—I am not aware of the incident that you are referring to.

Senator LUDWIG—Who deals with complaints from the Ombudsman?

Mr Fry—It depends on the nature of the complaint.

Senator LUDWIG—I do not know, because for privacy reasons they do not say, so I am a little challenged in that respect. When you look at the Commonwealth Ombudsman's report, it refers back to the Attorney-General's Department. On page 19 at table A1, they say that there are matters that have been received, finalised and remedied. It is about complaints received about Australian government agencies, and the Attorney-General's Department features in it. Does that help?

Mr Cornall—No, not immediately. Can we take that question on notice and seek to answer it a little later today when we have the material in front of us?

Senator LUDWIG—Just to help, under the heading 'Attorney-General's Department' it says there were three out of jurisdiction and 30 in jurisdiction and that the total received was 33. Under 'not investigated', it has 10 in category 1 and nine in category 2. Then under 'investigated' it has four in category 3 and eight in category 4, with a total of 31. Then it talks about what action has been taken—for example, one apology. It goes through in that fashion.

So there are certainly matters that the Ombudsman has raised with the Attorney-General that have necessitated at least an apology plus an explanation, ranging to law policy or a practice change, even. So there has been some significant work through the Ombudsman's office with the Attorney-General. I was just trying to understand what that was—without compromising people's privacy, just in terms of the issues concerned. That may help.

Mr Cornall—Now that you have given us that further information, there is obviously quite a lot of detail there. I wonder whether it would be better to answer it comprehensively on notice.

Senator LUDWIG—All right. Thank you. In relation to telecommunications interception reports provided by the Attorney-General's Department to the parliament, could you explain the delays in publishing these reports? It seems to me that, on page 26 of the 2005-06 Commonwealth Ombudsman annual report, the Ombudsman says that they have provided reports to the minister on each agency within the nominated time frame.

Ms Smith—The telecommunications interception annual report requires reports from all of the intercepting agencies to deal with all the various requirements under the act in relation to how many warrants were issued, the action taken under warrants, prosecutions and such like. That is quite a comprehensive amount of material that has to be obtained from some 14

intercepting agencies. The delays in issuing the warrants are essentially that we receive those reports from each of those agencies and we have to check all of the information and clarify it. As you may be aware, there have been a number of amendments to the act in the last 12 months that have required additional reporting. As such, we are refining that additional reporting and will provide that information very soon to the Attorney.

Senator LUDWIG—Does this happen every year?

Ms Smith—It is very complicated. It is a very long, drawn-out process preparing the telecommunications interception annual report. A lot of that has to do with change in personnel in our intercepting agencies. We send out a questionnaire as soon as the end of the financial year has happened. We ask for a lot of information; it is a very long survey. We actually check all of that information. Often, the information does not seem accurate or it is not enough information. It is a very complicated process dealing with all of the states, which often have to get their own ministers to approve the information before it comes to us. So it is a long, drawn-out process.

Senator LUDWIG—And you do not see any way around that long, drawn-out process? Otherwise, the Ombudsman is going to raise this every year, I suspect.

Ms Smith—We are hoping that it will be better from next year, because we have again rewritten the survey to try to make it easier. Also, the Secretary of the Attorney-General's Department has taken on a role in that he receives all copies of warrants now, rather than the Australian Federal Police. We hope that we will have a lot of the information in front of us as the year goes on, so it will be easier for us to compare the information they have provided against the actual documentation we have received.

Senator LUDWIG—While we are on telecommunications interception reports, there is another bill due. When is that likely to be in parliament?

Ms Smith—You may be aware that an exposure draft of the Telecommunications (Interception and Access) Bill is out with the public and with all of our stakeholder agencies at the moment. We have asked for comments by this Friday on that bill. Some of the larger stakeholders have asked for an extension of time until the following Friday. We will then hopefully take all of those comments into account and be introducing it in the near future. But I do not have any time line on that at this stage. It is essentially implementing recommendations of the Blunn review, so we are just trying to establish whether our stakeholders are happy with the way that is going at the moment. But at the moment it is out as an exposure draft, so until I know what comes back it is hard for me to determine when it will actually be introduced.

Senator LUDWIG—Are the responses publicly available?

Ms Smith—I would have to take that on notice. I am not quite sure.

Senator LUDWIG—If they are, could you provide them to the committee. If they are not, perhaps you could provide a reason for that. If you put out an exposure draft, perhaps you could say why you would withhold the submissions. The debate is informed by what other people might have to say. Of course, it has to be put in the context of security reasons and the like as to why some of the information may not be put in the public domain.

Ms Smith—Certainly.

Senator LUDWIG—When you ask for submissions, do you ask them to reply in two ways: one that might be a public version and one that might be a separate chapter which raises separate issues?

Ms Smith—We ask for them to be unclassified so that they can be used for parliamentary debates and for advising Senate committees and such. We have not had any requests yet to provide any information on a classified basis. We start at the unclassified and we then ask them to come to us with reasons. In that case, we will normally ask for them to give us two submissions: one which is unclassified and one which is classified.

Senator LUDWIG—That is helpful to know. There should not be too many reasons then why it cannot be made available publicly. I look forward to that.

CHAIR—Any further questions in the general area?

Senator LUDWIG—No, not in the general area.

[9.16 am]

CHAIR—We will go straight into outcome 1 and output 1.1.

Senator FIELDING—I want to focus on the family relationship centres. First of all, how are the contracts for family relationship centres structured?

Ms Pidgeon—The funding agreements for family relationship centres are agreed between the centres and the Department of Families, Community Services and Indigenous Affairs. FaCSIA negotiates funding agreements on our behalf. The actual agreement itself is based on the FaCSIA standard funding agreement, but with additional changes as agreed with the Attorney-General. We work together with FaCSIA to develop the funding agreement before it goes out to the selection process. Essentially, it is a FaCSIA document modified to meet the needs of the Attorney-General's Department.

Senator FIELDING—How much money is directed towards strengthening relationships and marriages and how much is directed towards assisting couples to separate through the family law process?

Ms Pidgeon—There is not a split in money, in that sense. The scope of the family relationship centres work includes information and referral for people who need to have some help strengthening their relationships or to deal with relationship difficulties before they get to the separation process, but there is not a set amount of money for that. They are given core funding to cover the whole scope of their work.

Senator FIELDING—Am I able to get a copy of one of the standard contracts?

Ms Pidgeon—Yes, we will certainly provide that.

Senator FIELDING—That would be quite useful. I understand the centres provide up to three hours of joint sessions free of charge. What does that mean?

Ms Pidgeon—The centres have individual sessions with people and if appropriate they can go on to have joint sessions between parents or other extended family members to help resolve disputes or disagreements between them about children's matters. The three hours free

was, I guess, an inducement or a carrot to encourage people to use the centres. It was not intended as a limit on how much time they can spend doing dispute resolution. All the individual sessions and the preparation for that are not counted in those three hours.

Once the three hours are up, if they still need some more help reaching agreement, they can either continue at the centres—but if they can afford to pay, they will be charged a fee—or be referred to another service. If they are on a low income, they will not be charged a fee, even after the three hours are up.

Senator FIELDING—So the individual sessions are something that people would do on their own—

Ms Pidgeon—They are part of the free service with information and referral. There are individual sessions and there is also group work, where groups come together to do education and training and to address issues. They would generally be free as well.

Senator FIELDING—So it is really the three hours that are free, whether they are individual or group. It is really up to the counsellor and themselves.

Ms Pidgeon—No. The time of three hours is only for the joint dispute resolution. All of the individual work is free, and once you start getting into a room or going through a process—whether it is in the same room or not—for dispute resolution involving another parent or another family member, that is when you start putting the clock on it. But, as I said, it does not mean you cannot continue after the three hours.

Senator FIELDING—To clarify: from what I understood, the three hours was the maximum you could get for free, other than for low-income support—

Ms Pidgeon—No.

Senator FIELDING—What you are saying is that individual sessions are free along the way. They precede—

Ms Pidgeon—The individual sessions preceding dispute resolution are free.

Senator FIELDING—What are the normal fees for that type of counselling?

Ms Pidgeon—It varies. It is up to the organisations to set their fees, as long as they have provision for low-income people not being turned away if they cannot afford the fees.

Senator FIELDING—I am thinking practically that a lot of the preliminary work could be done individually. How did the department come up with three hours and not one, two or more sessions? What was the decision making process?

Ms Pidgeon—It was looking at what would be an incentive, I guess. The original idea of the free three hours was to encourage people, no matter what their income, to come to the centres. If people had to pay for the joint dispute resolution, it would perhaps put some people off and they would not attempt it; they might go straight to court. We did not want them to that. We wanted to encourage people. Three hours was considered to be sufficient encouragement—a shorter time may not have been—and in some cases they will reach agreement in that time or not long beyond that.

Senator FIELDING—I suppose I should preface my comments to make it clear that Family First think that any help we can provide people with is valuable. I want to make that

quite clear. I know I am asking you some specific questions and you may be wondering why the heck I am questioning it. I questioned facts yesterday in regard to how much time we spend afterwards, given that the *Review of the family relationships services program* showed:

... although people could identify—after the event—points where earlier intervention might have been beneficial, in reality most people sought help some time after an initial crisis.

I am focusing on the fact that this is good, but we should be focusing on stuff before they get to this crisis point. So I want to premise my comments with this background. To me, three hours is really a drop in the ocean of what is required. I do not want to go through any personal details, but it takes a lot longer than a free three-hour session to work through a crisis point.

Ms Pidgeon—I think that is why it is not a limit. It is only saying that people who are quite well off will still get those three free hours, but the taxpayer should not necessarily foot the bill for their entire process. It is only a subsidy for people who are well off and able to pay to encourage them to come. It is not a limit on time. They should be referred, if they need long-term work, to one of the many other services that have had expanded funding in expectation of getting referrals.

Senator FIELDING—Could you remind me of the answer as to why it is three hours and not more or less. Why is it three?

Ms Pidgeon—It was seen as a balancing act between having it too short, so that it is not an incentive, and too long, so that the taxpayers are subsidising well-off people who can afford to pay.

Senator FIELDING—The economic costs, the social costs and the emotional costs of relationship breakdown in Australia are humungous; they are unbelievable when you think about the number of relationship breakdowns that we have in Australia. It is not acceptable—and I am not saying you were saying this—just to say, ‘It’s no better in the US or the UK’. I think that for us as a nation this is a No. 1 issue. I am very keen to see us do all we can do because this costs not the individuals but the community as a whole enormous amounts of money ongoing. To provide three three-hour sessions is a good move but it is an awfully small drop in the ocean compared to what relationship breakdown is costing all of us. That is the reason I am asking, ‘Why three and not, maybe, more?’ What research is being done to see whether there would be a higher success rate if there were more sessions?

Ms Pidgeon—Again, it is not more sessions; you can go on to more sessions without that subsidy.

CHAIR—Senator, I think perhaps Ms Pidgeon has answered as far as she can in terms of the detail but the minister or Mr Cornall may wish to add something in relation to your observations there.

Mr Cornall—Perhaps I could simply add that I think the government agrees with the position that you have put. That is the whole purpose of the family relationship centres, which are designed not just to deal with a crisis when a crisis occurs but also to keep marriages together, in terms of some of the information sessions and the other services that Ms Pidgeon has described. Ultimately, the three hours was a judgment call—whether it was to be two hours or three hours or three days was a matter for the government to decide, and that is the

decision that the government made. But obviously also the government will be able to review that, in the light of the experience of the early family relationship centres, when we have got some experience under our belts. So I do not think there is a great deal of difference between the position you are putting and the position that the government has taken in relation to this.

Senator Ellison—I think it is fair to say—and I can only put the government point of view—that this will be thoroughly evaluated, and that that will be done over a period of time. This is one aspect that certainly would be taken into account. The government understands Senator Fielding's comments. He is quite right when he talks about the cost to the community of the breakdown of family relationships.

I note that there have been over 3,000 sessions—the figure of 3,165 sessions was in the brief I have. When you look at the number of people—and again this illustrates Senator Fielding's point—those three hours multiplied by that number of sessions, if that is a way of doing it, demonstrates the enormous time which is being offered at no cost. When I say 'at no cost' I mean at no cost to the individual; of course, there is enormous resourcing in that. In this burgeoning area, of course the cost of providing it is one of the factors. And before you go extending that cost you need to evaluate its worth. So that is what we are doing, over a period of time: having a thorough evaluation. We regard it as extremely important and certainly I will convey the comments of Senator Fielding to the Attorney.

Senator FIELDING—Has the department got any figures on the cost of relationship breakdown so that you can do a cost-benefit analysis? In other words, what I am really worried about—and I will let you answer that question—is that we are actually spending a miniscule amount on something that is costing this community. I see it as the No. 1 issue for Australia. I do not want to talk about the US or the UK, just because theirs is no better than ours. Relationship breakdown has follow-on effects that start to cripple a nation. So I am just wondering: has the department done any cost factors on what relationship breakdown is costing Australian taxpayers?

Ms Pidgeon—Our department does not have that research. We could check with the Institute of Family Studies to see whether that analysis has been done. Certainly, we are very conscious of the fact that the cost is enormous, and certainly that was part of the reason that the government agreed to a very large package of new resources, including family relationship centres, but also a lot more resources for other services, such as early intervention services and dispute resolution—those sorts of services. They are also expanded under this package.

Senator FIELDING—I suppose I have pushed as far as I can. I made it clear yesterday at the community affairs committee that I do not think sufficient work is being done in this area at all. A 40 per cent failure rate is enormous. With respect to having services for when people fall off the cliff—I am not suggesting that we remove those, and that is what much of this is focused on—I hear what you are saying, that it is preventative, but research indicates that people go there at the end, not at the start. I think we need to do a heck of a lot more research on what is driving relationship breakdown and then address those needs and cost it; therefore, we can actually see that we are spending such a small amount on such a crippling area. As I said, I do not hear much about it at all when I walk down the street, or in government, but this is a 40 per cent failure rate, whether they are de facto relationships or more formal in

marriage. If you had a business with contracts, having 40 per cent of your contracts fail is just a joke. I do not think this government is doing sufficient in that regard. I will leave it there. Thank you for your answers.

CHAIR—We are still dealing with output 1.1. Are there further questions in that area?

Senator CHRIS EVANS—I want to ask about some recent publicity regarding the Exclusive Brethren religious sect. As you know, issues have been raised in the Senate a number of times. Concerns have been raised about the operation of family law, concerns about access visits and policy relating to access to children, when the child is with a family or living in the community within the brethren group and the separating partner is no longer with the sect. There has been a lot in the media about these issues and also a suggestion that Mr Ruddock had been approached about them. I want to ask about general policy issues and about engagement with the brethren on these matters. Are you the right person to be directing questions to?

Mr Cornall—I am not sure that we can answer the questions, but if you ask the questions we will see what we can do.

Senator CHRIS EVANS—Was Mr Ruddock approached by the brethren to seek changes to arrangements regarding family law and access to children?

Mr Arnaudo—I am aware that an individual or group representing the brethren did put in a submission to the government's family law consultation process that it undertook, as it was developing the package of reforms before it was introduced, but that was together with a range of other groups as well.

Senator CHRIS EVANS—That is, a submission to the family law consultation process?

Mr Arnaudo—That is right.

Senator CHRIS EVANS—Is that submission public?

Mr Arnaudo—I am not sure. As to whether they were public, I would have to take that on notice. I think they were grouped together with other submissions. Off the top of my head, I do not think they were public.

Senator CHRIS EVANS—I am not familiar with the work of this committee, so forgive me. Please advise me if I am going over ground you have already gone over. People would be aware that there has been a bit of pressure on the Senate to hold an inquiry into these matters, and I would rather inform myself better about the details and the justification for such matters. I am not sure whether we have covered this ground.

CHAIR—Not at this point.

Senator CHRIS EVANS—So could you take on notice for me then whether there was a formal submission from the brethren regarding the consultations on changes to family law and whether you can make that available to the committee? Could you let us know later today whether it will be available?

Mr Arnaudo—I can do that.

Senator CHRIS EVANS—Did the brethren meet with Mr Ruddock?

Mr Arnaudo—I would have to take that on notice. I am not aware of that.

Senator CHRIS EVANS—There are a number of press reports that Mr Ruddock met with the brethren. Can anyone here help me with that?

Mr Cornall—That may well be the case. The Attorney-General meets with many people, where the department has no involvement, so often we are not able to say who he has seen and what has been the purpose of those discussions, and it is probably not appropriate for us to do so, anyway.

Senator Ellison—No.

Senator CHRIS EVANS—But it is usual for the department to help us if the Attorney has been meeting with groups regarding areas in his portfolio. I put to you that there have been a lot of press reports that Mr Ruddock met with the brethren to discuss changes to the Family Law Act.

Senator Ellison—I will take that on notice. We all meet people in our electorate offices and elsewhere, and the department is not with us all the time. We do not inform the department of every meeting that we have. I certainly do not. So I will take it on notice to take it up with the Attorney's office.

CHAIR—Thank you, Minister.

Senator CHRIS EVANS—I accept that, Minister, but this is about consultations regarding changes to the act, and that is the responsibility of the Attorney. It is directly his portfolio responsibility. It is not a matter of whether he met groups in his electorate et cetera. As I understand it, this is about changes to the Family Law Act. I would appreciate it if you could advise whether the Attorney met with the brethren. Can I also be advised whether the Attorney received written representations from the brethren, other than what might be a family law review submission. Was there correspondence to the Attorney?

Senator Ellison—I will also take that on notice. I do not have the answer to that at hand.

Senator CHRIS EVANS—Are we better off doing this later in the day, when there is someone who can help us with this? I have not been the person pursuing this, but I think it is fair to say that the department would not be unaware of these matters. We have had *Four Corners* shows, we have had numerous press reports and it has been a live issue in Australian politics for the last six months, yet I am being told no-one can help me and no-one in the department knows anything about it. I find that staggering.

Senator Ellison—They are helping in relation to the formal process, for which they have a responsibility—that is, the review which was conducted—and I think there has been an announcement that there was a submission from the Exclusive Brethren. As to whether we can reveal that, that has been taken on notice. That is a reasonable answer. As to the contact that the Attorney-General himself had outside of that formal review process, I have agreed to take that on notice. I will take up that with his office, because that is not something which the department has responsibility for. As ministers, we see people inadvertently, bumping into them by arrangement at our electorate offices or by other means—whatever—and we do not keep the department continually updated as to who we have seen and had discussions with.

This is quite a different aspect, which is something pertaining to the Attorney-General's office, and I will take all that on notice.

Senator CHRIS EVANS—With respect, Minister, that is a load of nonsense. I am not asking what he did at his electorate office or who he bumped into on the street. I am asking directly about his responsibilities as the Attorney. You are the minister representing him here, and the departmental officials are here. I asked: in his capacity as Attorney, did he receive correspondence from the brethren? It seems to me I ought to be able to get an answer about that.

Senator Ellison—The Attorney-General receives a lot of correspondence—

Senator CHRIS EVANS—He bumps into a lot of people on the street, but that is why we have estimates—so we can ask questions about it.

Senator Ellison—And that is why we take questions like this on notice—it is not one which we were given any notice of. It goes into a great deal of detail dealing with an item of correspondence. We will search the records and come back to the committee. I do not think we can do more than that, Madam Chair.

Senator CHRIS EVANS—You ought to be able to do better, Minister. It is not as though it has come as a surprise to you.

Senator Ellison—When you look at the thousands of pieces of correspondence the Attorney and I receive, you cannot expect department officials to front estimates and name every item of correspondence and be aware of them. We will check and get back to the committee as soon as we can.

Senator CHRIS EVANS—Maybe we should start from scratch? Has the department ever heard of an organisation called the Exclusive Brethren?

Mr Cornall—Yes.

Senator CHRIS EVANS—What has the department's dealings been with the Exclusive Brethren?

Mr Cornall—I think Mr Arnaudo has already said that we have received a submission from them and we have considered that submission in relation to the family law reforms.

Senator CHRIS EVANS—Is that the only contact the department has had?

Mr Cornall—As far as I am aware, but I have not looked at that question and there is no reason I should have looked at that question prior to these hearings. We will endeavour to answer that question as quickly as we can.

Senator CHRIS EVANS—Do you get media clips delivered to you as a senior officer in the department?

Mr Cornall—Yes, I do.

Senator CHRIS EVANS—Have you seen media clips in regard to the Exclusive Brethren and family law matters?

Mr Cornall—No, I have not personally.

Senator CHRIS EVANS—Have you been out of the country for six months?

Mr Cornall—No.

CHAIR—Senator Evans!

Senator CHRIS EVANS—The standard of accountability of estimates has been declining but this is a new low.

CHAIR—You might like to say that but that is not the case in this committee.

Senator Ellison—We do not set estimates committees while we are reading the press. I think you outlined it very well in your statement earlier, Chair, about the areas of questioning and the ground rules for additional estimates. This issue is in relation to press reports. We will get the information that Senator Evans seeks, but we do not have it here, nor would we. I cannot account for what the Attorney-General does and who he meets. I do not know those things. In relation to the thousands of pieces of correspondence that he receives, we will check the records and find what correspondence has been received. There is nothing unusual in that.

Senator CHRIS EVANS—There is nothing helpful in it, Minister. It is totally evasive.

Senator Ellison—We said we would take it on notice. I think the senators on this committee would agree that we are reasonably good at getting back to this committee in as little time as possible, and we take questions on notice. I do not know what Senator Evans's experience is of other committees, but I certainly stand on the record of the Attorney-General's Department and this committee in the way we have handled these sorts of things.

Senator CHRIS EVANS—I am concerned that the department is living in a bubble if it has not seen press reports regarding family law concerns and the brethren and their activities. Are you seriously telling me that you are unaware of the concern in the community of the activities of the brethren and the attitudes they take to family law and access to children and whether the brethren permit people to see their children after separation? Are you totally unaware of those issues?

Mr Cornall—I only have a general awareness of that issue.

Senator CHRIS EVANS—Is there anybody in your department who is taking any passing interest in these matters?

Mr Duggan—Other than the indications that you have had—that is, that the brethren have been part of the consultation process for the family law review, as have many others—from the department's point of view there is no special or other relationship with the Exclusive Brethren. My former responsibilities were in family law and the reforms you refer to. We have not had any particular contact with the Exclusive Brethren. I have never spoken to someone from that organisation. We will check to see whether the Attorney has met with them. That is a matter we have taken on notice. In terms of any ongoing relationship the department has with that organisation in relation to family law, as far as I am aware, there is none, except for the fact that occasionally the brethren have written to us about certain individual matters.

Senator CHRIS EVANS—Thank you. Perhaps you can tell us what correspondence you have had from the brethren.

Mr Duggan—I will take the question on notice, but my recollection is of a letter relating to a particular matter about access and contact—the issue you raise.

Senator CHRIS EVANS—Was it in the context of the family law submissions or a particular incident?

Mr Duggan—My recollection is that it was in relation to a particular incident.

Senator CHRIS EVANS—We know they made a submission to the family law review. Is that the correct terminology?

Mr Duggan—Yes.

Senator CHRIS EVANS—And you are going to see if that can be made publicly available. What was the period during which the submissions were received?

Mr Duggan—It involved a range of areas. I do not want to mislead you, because submissions were received over periods, depending on the gestation. Mr Syme advises that November 2004 to January 2005 was when they mainly came in.

Senator CHRIS EVANS—November 2004 to January 2005 was the period of the consultations. You received a submission from them. Did officers of the department meet with them or were there public forums at which they were engaged?

Mr Duggan—I will check that to make sure, but not to my knowledge. I certainly have never met with the brethren.

Senator CHRIS EVANS—And you were the responsible officer for the—

Mr Duggan—There were a range of them. Ms Pidgeon and her area were involved obviously in these reforms as well. But, as far as I am aware, there would be no such contact. But we will check.

Senator CHRIS EVANS—In terms of the process, you received submissions—did you then have roundtables, discussions or meetings or was it purely done on the paperwork?

Mr Duggan—No. The area that Ms Pidgeon particularly represents there had an around Australia consultation process with meetings and those sorts of things as well as their written submissions.

Senator CHRIS EVANS—Did the brethren attend those meetings?

Mr Duggan—I do not know the answer to that question. I will have to check.

Senator CHRIS EVANS—Could you take on notice whether they attended, when they attended, how many of those they attended and the dates. Since the family law submission, have you received further correspondence from the brethren?

Mr Duggan—Not to my knowledge but, as the minister has indicated, we will check that.

Senator CHRIS EVANS—Perhaps you could check both as to the department and as to the minister. Are you aware of a letter to Mr Ruddock on 5 May last year where the sect allegedly described the concept of parenting plans as a crucial issue?

Mr Duggan—I cannot recall that particular piece of correspondence. As the minister has indicated, there were a very large number of letters in relation to those reforms. I do not remember the detail of that particular one.

Senator CHRIS EVANS—So you are not sure whether the minister received a letter on 5 May regarding those issues?

Mr Duggan—No. As we have indicated, we will take that question on notice. We will have a record of that if he did.

Senator CHRIS EVANS—Do you know if the minister has corresponded with the brethren?

Mr Duggan—If there has been a letter from the brethren then there would have been a response. Ministerial correspondence is always answered so the answer to your question would be almost certainly yes.

Senator CHRIS EVANS—There are a few people around Australia that dispute that claim.

Senator Ellison—State governments. It does not happen in this portfolio.

Senator CHRIS EVANS—Maybe not in this portfolio, but—

CHAIR—I am not sure it is worth engaging on that point, but thank you, Senator Evans!

Senator CHRIS EVANS—I will send you some of the emails I have received on the subject, Senator Ellison.

CHAIR—There may be the odd backbencher with the odd view about the odd minister, but let's not go there!

Senator CHRIS EVANS—I am glad you got that off your chest, Madam Chair! Can I ask you to take on notice when the minister corresponded with the brethren, the date of it, anything else you can tell me about that correspondence and whether or not you can make that correspondence available? You are going to take on notice whether Mr Ruddock actually met with representatives of the brethren. What about the policy issues involved here—has the department provided advice to the minister on issues relating to difficulties with certain groups, including or broader than the brethren, in terms of enforcement of family law policy and legislation?

Mr Cornall—The policy advice to the government would normally not be a matter that we would provide details of in this committee.

Senator CHRIS EVANS—I did not ask you for that; I asked you whether you had provided that advice, which has traditionally been given to estimates committees. It is a process question. Have you provided advice to the minister on the brethren's interaction with family law?

Mr Cornall—I am not sure whether it is just a process question, because whether we gave advice or not just of itself could be an issue in some sensitive matters.

Senator CHRIS EVANS—Why do you come to estimates if you are not going to tell us anything?

Senator Ellison—I think the issue here is that in a general sense you can say, ‘Has the department offered advice in relation to policy formulation?’ Yes, it has. But in this particular case, there are considerations because the fact is that you are now drilling down to the fact that advice may have been needed and it involves an individual or a group of individuals. That is different to answering a question in a general sense of, ‘Yes, we gave the minister policy advice on the law reform in relation to access.’ But if you say, ‘Did you give the minister advice in relation to the case of *Bloggs v Bloggs*,’ or something of that sort, I think then we have to consider that carefully due to the fact that it drills down to specifics.

But I think that in that case it is a question that really should be taken on notice and we will carefully consider it. Where you have the question of legal advice having been given, we are not in the habit of giving that to committees. That is an old precedent relating to advice to government. As to whether we can say we gave particular advice in relation to an individual or group of individuals, that is little different to saying, ‘Yes, we advise government on general policy formulation.’ So I think we need to be careful in relation to how we deal with these issues where you are talking about particular people. That is a matter that we will take on notice and we will get back to the committee shortly.

Senator CHRIS EVANS—I have no idea what all of that meant.

Senator Ellison—I do.

Senator CHRIS EVANS—It sounded like a tape from *Yes, Minister*. I did not ask for legal advice. I asked: has the department provided advice to the minister on concerns about the Exclusive Brethren and their interaction with the Family Law Act? It is a simple question, answered in estimates hundreds and thousands of times by officers, about whether advice has been sought or provided—not the nature of the advice, not legal advice.

Senator Ellison—It is something that we will take on notice because that is specific; it is not general.

Senator CHRIS EVANS—That is why we are at estimates—you are here to be held accountable!

CHAIR—Perhaps if you just let the minister finish, Senator Evans.

Senator Ellison—We will take it on notice.

Senator CHRIS EVANS—No, that is not what estimates is for. Estimates is not here so you can take things on notice. The thing is that you are supposed to turn up, answer questions and be held accountable.

Senator Ellison—If you gave us notice of the questions you were going to ask then sure, we could have had the detail ready.

Senator CHRIS EVANS—You would have said you were seeking legal advice.

Senator Ellison—I do not think this issue has been at the top of the mind of the Attorney-General’s portfolio for additional estimates. It is not. It is an obtuse issue at best.

Senator CHRIS EVANS—First of all Mr Cornall says he has not seen any media on this. I did not see the *Four Corners* show in full, so I understand that he might not have seen that.

But he obviously does not read the *Sydney Morning Herald*, the Tasmanian papers, the *Age*, the *Australian*. For God's sake, let's not pretend this has not been on the public agenda.

CHAIR—Senator Evans, could we go back to questions, please.

Senator CHRIS EVANS—Yes, I will ask the question again. Thank you, Madam Chair; you are quite right—I accept your advice. Has the department provided advice to the minister on concerns raised about the activities of the Exclusive Brethren relating to the Family Law Act?

Mr Cornall—I do not know the answer to the question. We will have to ask the department to provide that answer to me.

Senator CHRIS EVANS—So, you do not know?

CHAIR—That is what Mr Cornall said.

Senator CHRIS EVANS—Is there anyone who is in the array of officers in the room today who could tell me an answer to that straight question of fact—whether or not you provided advice?

Mr Cornall—As far as I can ascertain, the only issue that we have given advice on is in relation to the ministerial correspondence, which Mr Duggan has referred to. But to confirm that advice we will take that on notice and we will confirm the accuracy of that.

Senator CHRIS EVANS—I am not sure whether we even got to the point of confirming there had been any ministerial correspondence, so that sounds like it is a breakthrough. Are we now saying there was ministerial correspondence?

CHAIR—That has actually been discussed.

Senator Ellison—I think we said that before, if you had listened to the answer.

Senator CHRIS EVANS—Yes, but the family law submission.

CHAIR—That has been discussed.

Senator Ellison—Mr Duggan said that there had been correspondence. As to the date and whether there were others, he said he would check. But he was of the view that there had been correspondence. That was a clear answer, in my recollection.

CHAIR—Indeed.

Senator CHRIS EVANS—I am pleased there was, Mr Duggan.

Mr Duggan—That was intention, Senator—

Senator CHRIS EVANS—I thought you were still discussing it in the hypothetical.

Senator Ellison—No, he certainly was not; it was a clear answer.

Senator CHRIS EVANS—That is good; we have one clear answer. But you do not know the date of that correspondence, Mr Duggan.

Mr Duggan—Not at the moment.

Senator CHRIS EVANS—Do you have a sort of rough time period? Are we talking this year, last year, three years ago?

Mr Duggan—My recollection is that it would have been in 2006, but I have to check that.

CHAIR—But it is reasonable for the officer to be allowed to check that, Senator Evans.

Senator CHRIS EVANS—Certainly. I am just trying to get some sort of context here. Do we know, Mr Duggan, whether there is more than one piece of correspondence, or are you not sure?

Mr Duggan—I am not certain. I have to say that the brethren are not regular corresponders in terms of the correspondence that the department receives.

Senator CHRIS EVANS—Thank you for that. It appears from the evidence that you have given that the actual extent of the contact between the brethren and the department might have been the one submission on the family law review and one piece of correspondence with the minister. Could you also take on notice for me whether there had been any earlier correspondence with Mr Ruddock or his predecessors relating to these matters?

Mr Cornall—Yes, we will take that on notice.

Senator CHRIS EVANS—Has there been any approach to the department or the minister about the possibility of exemptions for sect members from any aspects of the equal opportunity act, the Family Law Act or any act that might be administered by the department?

CHAIR—Mr Cornall, I assume you are locating the appropriate officer.

Mr Cornall—Yes. We are not aware of any. However, we are confirming it with Ms Lynch in relation to the discrimination area. Mr Duggan informs me that in relation to family law there is no such request, but the question was wider than that.

CHAIR—Yes.

Senator CHRIS EVANS—While we are waiting on that, can you tell me how you handle complaints about the operation of the Family Law Act or complaints raised with the department? Obviously some would be raised directly with the courts. I do not have any background in this area, so forgive me if I am asking a foolish question. If there is a concern from a parent that they are not getting access to their children as was expected and they write to the Attorney-General or the department, how do you handle that?

Mr Duggan—It would depend on a number of things. For example, if there were existing court orders and the complaint is predominately about the judicial process then generally the correspondence will be referred to the Chief Justice of the Family Court or the Chief Federal Magistrate for them to provide information and/or a response directly. That would be a normal situation, if there are already existing court proceedings. If there are not then it would be our usual process to refer correspondence of that sort to organisations like legal aid et cetera. The minister does not get involved individually in an individual case of that sort.

Senator CHRIS EVANS—I can understand if it is an individual case. What if it is a broad policy issue—for instance, a concern about the operation of the Exclusive Brethren? I am using them as the example, but it might well be about any other religious or social group and a broader policy issue at stake. Would the Attorney-General's Department handle that?

Mr Duggan—In general terms, the department would handle it when there has been a significant indication to the minister that there are difficulties with the system. Certainly with

the enforcement of Family Court orders, as you will no doubt know, there has been an issue for a long time. The minister regularly receives advice on that issue. Indeed, the reforms that were put through last year contain a range of reforms trying to streamline and improve the enforcement of such orders. The government is constantly on the lookout for ways to improve the system, particularly the enforcement of orders.

Senator CHRIS EVANS—If you were receiving complaints about enforcement of orders in relation to the Exclusive Brethren, where would they go and who would handle them?

Mr Duggan—Given the numbers you would be talking about, they would be complaints on an individual, case-by-case basis. Assuming there are court orders, the correspondence would most likely be referred to the court concerned.

Senator CHRIS EVANS—What if there was concern about treatment of children in those circumstances where one member of the family is a member of the brethren?

Mr Duggan—If someone raises concerns that may relate to child protection issues then we would regularly refer those matters to state agencies and state ministers because child protection matters of course are the primary responsibility of state agencies.

Senator CHRIS EVANS—I was not asking about child protection. I was thinking of things like court orders, access and conditions that might be applied to what occurs while the child is with the other parent in terms of following particular routines et cetera. I know no-one seems to have seen the press, but there have been allegations made that there have been unreasonable demands placed on people: that access has been denied if they fail to agree to those conditions et cetera. Have those concerns been raised with the Attorney-General's Department? If so, what did you do about them?

Mr Duggan—I do not recall that they have been raised in anything other than individual cases. The way that we would deal with individual cases is in the way that I have described to you.

Senator CHRIS EVANS—Could you take on notice to check whether or not they have been raised in a broader context. Can you tell me, in terms of individual cases, have you kept a number of complaints that relate to the activities of the brethren?

Mr Duggan—As I have indicated to you, Senator, my recollection is that there has been minimal correspondence relating to the brethren to the minister and then to the department. I will check that, but my recollection is—and I have been doing this work for some time now—that they are not regular correspondents and neither are those with complaints, particularly about the brethren.

Senator CHRIS EVANS—I will be clear; I am asking about the second category: not correspondence from the brethren, but correspondence relating to concerns or accusations about the brethren and its impact in family law matters. You are saying that there have been only a small number of complaints.

Mr Duggan—In relation to the former, I have indicated to you my answer. In relation to the latter, I cannot recall correspondence of that sort but I will check.

Senator CHRIS EVANS—Could you take on notice to provide what correspondence—the amount and the dates of it—that you have received. I am not after the details, just a sense of

what has been coming in. As a matter of course, you would refer that to the Chief Justice of the Family Court. Is that correct?

Mr Duggan—In a situation where there have already been court orders, we would regularly do that. The other thing that we would do at the same time is refer people in those circumstances to the additional services that the government has recently funded. Contact orders programs, for example, are very successful in those sorts of circumstances in resolving some of those disputes. We would, of course, refer people to those services.

Senator CHRIS EVANS—Forgive my ignorance; how would I find out or track the frequency and/or nature of these complaints? How would we know, for instance, whether the Chief Justice of the Family Court had received complaints or concerns regarding court orders and the activities of the brethren?

Mr Duggan—I would not know.

Mr Cornall—I think you would have to ask the court, Senator.

Senator Ellison—The Family Court.

Senator CHRIS EVANS—So I would just ring up the Chief Justice? Is that the best way of doing it?

Mr Cornall—No, the Chief Executive Officer.

CHAIR—The courts, when requested, Senator Evans, do of course appear before estimates.

Senator CHRIS EVANS—That was what I was going to ask: what my avenues were. Madam Chair, you might be the best person to ask, knowing your expertise in these areas.

CHAIR—I do not believe they have been requested to appear on this occasion.

Mr Cornall—No. They have not been requested to appear.

Senator Ellison—They have not been requested for this session of estimates.

CHAIR—But they are usually attendees at the estimates process, Senator.

Senator CHRIS EVANS—So the best process would be to take that up directly with the Family Court?

Mr Cornall—Or you could put questions on notice here, Senator, I believe.

CHAIR—Certainly.

Senator CHRIS EVANS—Yes. I am starting to lose confidence in the questions on notice process, Mr Cornall.

Mr Cornall—I do not see why, Senator.

CHAIR—You should not here, Senator Evans.

Senator Ellison—If you want to go the other way, you can, but we have offered to be of assistance. That is the best we can do. We cannot do anything more.

Senator CHRIS EVANS—No, I was just saying that I am starting to lose confidence in the process. It took me a year to get an answer out of PM&C yesterday, which was to tell me

to bugger off. I would not have minded if they had told me that after a month, but I waited a year to find out.

Mr Cornall—Senator, all of our questions since the last estimates have been answered with the exception of two, and the minister has said they will be answered this morning.

Senator Ellison—I have just signed off on one and I think the other one has been signed off on and is being cleared elsewhere.

Senator CHRIS EVANS—It is also in part the nature of the answers one gets these days. In terms of the complaints that might have been made to the Chief Justice, we will take that up with the court. Mr Duggan, in terms of the other services you offer, how would people fronting at those services with complaints be tracked?

Mr Duggan—It is more a matter that one of my colleagues, Ms Pidgeon, might have an answer on. Generally speaking those services would be confidential. It would only be in a situation, as I indicated to you before, where there is a groundswell of concern about a particular issue that might be raised with the minister. I do not know if Ms Pidgeon wants to raise anything further to that. It certainly would not be normal for individual matters of that sort to be raised with the government.

Senator CHRIS EVANS—I am not looking at individual matters. Allegations have been made that there is an issue or a problem. I am not a crusader on this issue. It keeps getting raised with me: whether or not we ought to have a broader inquiry. There has obviously been a lot of public and media commentary about these issues. I am trying to understand what the federal government knows about it, what the federal government has done about it and whether the federal government thinks there is an issue that needs to be addressed. So I am trying to track down, through the various departments, what is occurring in relation to these matters.

We have talked about letters to the Attorney-General, and we have talked about whether you have provided any advice. I am also trying to ascertain how the system throws up a broader issue. I do not want to know about the particular case, but if we have had, for instance, five fathers fleeing to Thailand with kids, contrary to court orders, it seems to me that the issue of Thailand and child access becomes a public issue. And no doubt the department would then provide advice and talk to the Thai government and what have you. I am just using that as an example.

I am trying to ask how, if there is an issue with a group in Australia like the brethren, we would track that and how it would be brought to the department or the minister's attention. What do we learn, from our contact through the various departmental services, that would inform the broader or generic debate?

Ms Pidgeon—I think I should explain that the services we fund are run by quite separate community based organisations. We occasionally get advised of complaints about a particular service but there has been nothing brought to our attention about the brethren or anything relevant to what you are talking about. We do not get generic complaints about organisations. We would only occasionally hear an individual complaint about a particular service provider providing a particular service.

Senator CHRIS EVANS—But if a particular service provider had complaints about the brethren or some sort of Thai racket to help people take children out of the country or whatever, how would that be brought to the department's attention? How do you deal with that, or don't you get that sort of feedback?

Ms Pidgeon—We get a lot of feedback from service providers and other stakeholders because we often consult, have forums and meetings and provide other ways of getting feedback about the way the system works—apart from the formal consultation process, which you have heard about—and in none of those has there ever been raised an issue relating to the brethren.

Senator CHRIS EVANS—So no issues in relation to the brethren have been brought to your attention via those forums?

Ms Pidgeon—That is correct.

Senator CHRIS EVANS—Can we go back to this question about whether any exemptions from the legislation have been sought?

Mr Cornall—Mr Govey can answer that question.

Mr Govey—We are not aware of having received any requests for any exemptions relating to human rights legislation. I should point out that the basis on which such exemptions can be sought is very limited. The only one that I am aware of is the Sex Discrimination Act, which contains exemptions from discrimination in work and in other areas for religious bodies, but that exemption is a very limited one. In particular it applies to acts such as ordination, appointment, training or education of religious members and certain other activities which conform to the doctrines or beliefs of a religion. But, as I said, I am not aware of having received any application for an exemption.

Senator CHRIS EVANS—So you have not received any application for exemption. When you say that, is that only in relation to human rights legislation?

Mr Govey—That is the only one I was thinking of in that context, yes. I was not aware of any but we will check to see whether my recollection is correct.

Senator CHRIS EVANS—I was just trying to understand whether your answer was the view of the department generally. For instance, would that cover an application to be excluded from the Family Law Act?

Mr Govey—I think we have covered the Family Law Act, in terms of our knowledge. I am not aware of any other areas in which exemptions could be sought.

Mr Arnaudo—There is no general exception under the Family Law Act for religious bodies. The basic principles under the Family Law Act are what the court apply in regard to the best interests of the child and the determination of parenting matters. The government's reforms last year introduced the two criteria: the safety and welfare of the child and the child having a relationship with both parents. They are primarily the grounds on which the courts determine the best interests for the child. In making their decisions, that is what they are guided by. There is a list of other factors listed in the legislation as well that guides the court.

Senator CHRIS EVANS—There are two questions: you have answered the one about whether there are any exemptions or special arrangements; the other one is whether there are factors that provide special arrangements for particular religious beliefs.

Mr Arnaudo—I think there is a factor that broadly addresses things like cultural background, religious background or family background. That is one factor amongst many other factors that the court could take into account. It is not one of the primary considerations that the court has to take into account when determining what the best interests of the child are.

Senator CHRIS EVANS—It is not like the sentencing act. You can still have issues of cultural background.

CHAIR—I am not sure that is a matter within Mr Arnaudo's area.

Senator CHRIS EVANS—It is covered by Attorney-General's, Chair.

CHAIR—Yes, I think you will find Mr Arnaudo has responsibility within the area of family law. If you wish to discuss the sentencing act, I am sure we can get an appropriate officer at the appropriate time.

Senator CHRIS EVANS—I am just interested in the comparisons. That is actually in the act, is it?

Mr Arnaudo—Yes, it is.

Senator CHRIS EVANS—Is there no further direction in relation to those matters?

Mr Arnaudo—No, other than the courts' interpretation of that provision and the case law itself.

Senator CHRIS EVANS—I thought that was the case. The question was: has the department received any application for exemption or special treatment?

Mr Arnaudo—I am not aware of any application for exemption or special treatment.

Senator CHRIS EVANS—Perhaps you could take that on notice.

Mr Arnaudo—I can take that on notice.

Senator CHRIS EVANS—I accept that you have not granted one.

Mr Arnaudo—I can take it on notice.

Senator CHRIS EVANS—Mr Govey, which piece of legislation are you responding to?

Mr Govey—The human rights legislation.

Senator CHRIS EVANS—Have you received any applications for exemptions from the Exclusive Brethren?

Mr Govey—Not that we are aware of, but we will check to make sure that that is correct. I should say that that applies more generally in terms of the areas for which I am responsible, but I am not aware of any potential areas for which exemptions could be accepted.

Senator CHRIS EVANS—There has been talk of it. As you know, there are exemptions in the electoral act and the industrial relations legislation. I am trying to track down the areas within your portfolio where there may be exemptions. Are there any exemptions and has an

application been made by the Exclusive Brethren or others for exemptions under legislation administered by the department?

Mr Govey—Not that I am aware of, but we will check.

Senator CHRIS EVANS—Perhaps the department could take that on notice.

CHAIR—Thank you, Mr Govey.

Senator CHRIS EVANS—You were talking about the Sex Discrimination Act, Mr Govey. Could you take me through the exemptions in that.

Mr Govey—What I referred to from this brief was that the Sex Discrimination Act contains exemptions for religious bodies from discrimination in work and in certain other areas. It is a limited exemption. It only applies in relation to acts such as the ordination, appointment, training or education of religious members or to certain other activities which conform to the doctrines or beliefs of that religion.

Senator CHRIS EVANS—We had that debate about employment in religious schools a couple of years ago. Was that an application for an exemption or a further broadening of the legislation?

Mr Govey—I would have to ask my colleagues for some assistance on that, and it may be that we need to take that on notice as well.

Mr Cornall—I think that was a matter that was an application to the Human Rights and Equal Opportunity Commission. I think that is where the matter came up.

Senator CHRIS EVANS—That was about the employment of male versus female teachers.

Mr Cornall—Yes. My understanding is that they will appear before this committee during the course of these estimates. I will just check that that is the case.

Senator CHRIS EVANS—I am not particularly interested in that case at the moment. I am trying to ascertain whether someone who wants to make an application like that could apply to have the law changed or seek some action from HREOC.

Mr Cornall—Normally an application before HREOC is to have some action prevented or declare some activity impermissible. But it may be best to address those questions to HREOC when they are here.

CHAIR—They are here later today.

Senator CHRIS EVANS—I intend to do that, Madam Chair. I am trying to be very clear about this. I do not want to be caught this afternoon by HREOC telling me that I should have asked the Attorney-General's Department about that.

Mr Cornall—We will still be here.

CHAIR—They will be equally enjoying the day here with us.

Senator CHRIS EVANS—And I hope officers from HREOC are monitoring the hearings and that way, when they appear, they will be able to say, 'Yes, Senator, I've got the letter here for you.' If someone wanted an exclusion or wanted to apply that provision, is it as Mr

Cornall described, more in the negative, in the sense that someone will take an action to HREOC to say that they have gone beyond the scope of it?

Mr Govey—That is my understanding. Somebody would make a complaint to HREOC and then action would be taken in the light of that complaint.

CHAIR—I understood Senator Evans's question to be about someone wanting an exclusion or an exemption, as opposed to the making of a complaint.

Senator CHRIS EVANS—If there was a concern that some sort of system was being applied, the only way one would get it resolved is by taking an action to HREOC. If someone was interpreting the Sex Discrimination Act more widely than would perhaps be considered by a neutral observer as appropriate, someone would be able to take an action to HREOC as a way of ending that action. Is that right?

Mr Govey—My understanding is that would normally be done by way of a complaint to HREOC.

Senator CHRIS EVANS—But the Attorney-General's Department does not have any role in that?

Mr Govey—That is correct.

Senator CHRIS EVANS—Is there any other act that you administer that has any exclusions on the grounds of religious belief, gender or whatever?

Mr Govey—Not that I can think of, except perhaps for the marriage celebrants legislation, which has specific provisions dealing with religious bodies, and I can refer that to Mr Duggan.

Mr Duggan—There is a provision in the Marriage Act which allows for certain exemptions for particular forms of marriage for certain religious sects. One of those has not been granted for a long time, but we can check to see whether such exemption has been given to the Exclusive Brethren. It is simply about the form, as I recall. I do not have the detail in front of me. I will check as to whether there is anything in terms of the Marriage Act and the way that ceremonies may be undertaken.

Senator CHRIS EVANS—There is no tolerance of the use of the religious belief defence for discrimination on the basis of gender, religion, marriage status et cetera, apart from the one Mr Govey earlier alerted us to.

Ms Lynch—That is correct.

Senator CHRIS EVANS—I will leave it at that until we are able to get some information on the nature of the exchange in correspondence and submissions between the department and the Exclusive Brethren.

CHAIR—The committee will advise you if we do receive any response during the proceedings.

Senator BOB BROWN—The ABC *Four Corners* program contained allegations that, in the past, large amounts of money had been illegally brought into the country and possibly taken out of the country by the Exclusive Brethren organisation. Was that matter raised by the minister or by your department? Has it been investigated and, if not, why not?

Mr Cornall—As to whether it was raised with the department, I do not know the answer to that question without asking officers of the department. We are not a law enforcement agency, and it would be a matter for the AFP, AUSTRAC or an agency with responsibility for dealing with money laundering or irregular dealing with money to pursue any allegation of that nature.

Senator BOB BROWN—But you would pick up on something like that if it was brought to your attention and refer it to the agencies you have just listed, wouldn't you?

Mr Cornall—I do not know whether we did that or not.

Senator BOB BROWN—Could you check?

Mr Cornall—Yes, we can.

Senator BOB BROWN—In responding to Senator Evans earlier, you committed to seeing whether the minister had had meetings with the Exclusive Brethren. There has been a question on notice before the Senate since October last year asking just that question. The minister has not complied with the Senate standing orders, which give a 30-day limit to answering such a question on notice. Why has the Attorney-General not responded to that question on notice in the Senate, and what could give this committee a feeling of confidence, therefore, that we will get an answer to the same question through this system?

Senator Ellison—I am not aware of that question, which, as you say, was to the minister—

Senator BOB BROWN—I do not have it with me.

Senator Ellison—Madam Chair, I understand there was a question addressed to the Attorney-General. Perhaps if Senator Brown could give us the—

CHAIR—I understand that is what the senator said, yes.

Senator Ellison—I was not aware of that being outstanding. We will chase that up. That would have been no doubt put to me representing the Attorney-General in the Senate, I understand. Is it a Senate question on notice?

Senator BOB BROWN—Yes, it was a Senate question on notice and then I raised it in December because 65 days had elapsed with no response from the Attorney-General, and you gave no response, Minister, at that time. I am wondering why the Senate has not had a response and what confidence this committee can have that it will get a response to that question.

Senator Ellison—I will chase that up, Madam Chair, and we will have an answer very shortly.

CHAIR—Thank you very much.

Senator BOB BROWN—Minister, the same question was put to you in October, as to whether you had met or had representations from or communication with the Exclusive Brethren, and you have not answered that question either. Could you tell the committee now what the answer is to the question about any communications you may have had with the Exclusive Brethren?

Senator Ellison—I met them on one occasion when they came to my electorate office.

Senator BOB BROWN—And who was it who came to the electorate office?

Senator Ellison—I cannot remember the names offhand, but the representatives from the Exclusive Brethren came to see me about an immigration matter or a Customs processing matter.

Senator BOB BROWN—Could you find out and let the committee know who it was who came to see you, when that was and what the matter—

Senator Ellison—I will take all that on notice.

Senator BOB BROWN—Why is it that you did not answer that question?

Senator Ellison—I will have to look at the question that was asked, Madam Chair. I thought I was pretty up on all the outstanding questions; I thought I was up to date on all those outstanding questions on notice from October last year. I will check that. I will check that through my office.

CHAIR—Thank you, Minister; can you come back and advise the committee.

Senator BOB BROWN—The fact is that I asked that question of every minister back in October last year, Senator Ellison—

Senator Ellison—Then it might be that there was a whole of government response. Sometimes—

Senator BOB BROWN—and not one minister has responded, and the whole of government has failed to respond. Can you tell the committee why that is so?

Senator Ellison—I think that, in cases like that, you have to check with every minister and, as has been my experience where every minister is asked a question, it is normally done through one entry point, if you like, rather than ministers answering the question in an ad hoc fashion. Therefore I will have to check who was coordinating the answers. But that would be the reason—that there was a check across all the ministers to see who had met and who had not.

Senator BOB BROWN—But it appears that there is stonewalling by the whole of government on answering that question. The question was put in October. After 65 days, in December, I drew to your attention in the Senate and to the attention of all ministers in the Senate that it had not been answered, and here we are now in February with the question still unanswered.

Senator Ellison—In relation to my dealings I have answered the question in a forthright fashion. You have asked it, I have answered it, and the detail you seek I will get to you as soon as I can.

Senator BOB BROWN—Could you find out who is responsible for the whole of government answer and why the delay?

Senator Ellison—I will. Yes, we can do that. There is no stonewalling. Sometimes with a whole of government response you have a lot of ministers to check with, Madam Chair, and there is nothing untoward in this. We have seen it before where questions have been asked across the board. I think on a couple of occasions I have been responsible for coordinating the answers, and that takes some little time.

CHAIR—Thank you. If you could come back to the committee with the detail that would be helpful.

Senator Ellison—We have had a break in between, too, I hasten to remind you.

Senator BOB BROWN—The other question I want to ask is whether the department has had a request for legal advice from the Australian Electoral Office in relation to the Exclusive Brethren's activities in the 2004 election period.

Mr Cornall—We would not provide that sort of advice. If they sought that sort of advice, it would most likely be sought from either the Australian Government Solicitor, which is a separate statutory agency, or another law firm.

Senator BOB BROWN—Going back to Senator Evans's earlier question on discrimination and perhaps an approach to HREOC, the Exclusive Brethren—and there has been no countering of this in the public forum—have a prohibition on married women entering the workforce. That may be an accepted prohibition that the women in the Exclusive Brethren universally accept, but it has also been raised that single women in the workforce may not be in a position in the workforce in which they have authority over males. If that were so—and, unless it is countermanded, that is the information on the public record—what avenue of redress is there for that situation, which is clearly discriminatory?

Mr Cornall—As we said earlier, these matters are normally addressed by a person who is affected by that form of discrimination making a complaint to the Human Rights and Equal Opportunity Commission under the relevant legislation.

Senator BOB BROWN—Yes. We have here, though, a quite repressive organisation in which fear is used to keep people in line. Is there an avenue for somebody observing that sort of discrimination to take action without one of the people who are being discriminated against actually making the move themselves because of the inherent penalty that they may feel that would incur?

Mr Cornall—I think the answer to your question is that a person who is offended by that process could raise the matter with the Sex Discrimination Commissioner and ask her or him to make an inquiry into the matter of their own motion and provide a report to the government as to what the government should do about it, if anything.

Senator BOB BROWN—Are you aware of any minister or member of parliament approaching the family law court on any matter to do with the Exclusive Brethren?

Mr Cornall—No.

Mr Duggan—In relation to Senator Evans's earlier question, according to our records the only direct correspondence—leaving aside issues about submissions, which we will check, in relation to the broader family law reforms—was that the Attorney received a letter dated 3 May 2005 from the Exclusive Brethren. I think you may have been referring to it, Senator. Attached to it were two submissions that they had earlier made to the Family Court, which were dated 15 July 1991 and 8 May 2002. The Attorney responded to that correspondence on 15 June 2005. That is the only direct correspondence that we have record of. I am checking in relation to issues about submissions more generally in relation to family law reforms.

CHAIR—Thank you for coming back to the committee on that, Mr Duggan.

Senator Ellison—I might add, in relation to Senator Brown's question, that I have been reminded that I had a meeting with representatives from the Exclusive Brethren in Canberra as well. I had one in Canberra and one in my electorate office.

Senator BOB BROWN—What was the meeting in Canberra about?

Senator Ellison—I think it was about the same issue, but I will check my records. Other questions have been asked, which I will take on notice. As you would expect, I have a lot of meetings in my Canberra and electorate offices.

Senator BOB BROWN—Could you furnish the committee with the names of the Exclusive Brethren representatives on each occasion?

Senator Ellison—I will take that on notice.

Senator CHRIS EVANS—Can I check that the correspondence to and from the minister were in 2005, not in 2006.

Mr Duggan—That is right. I was a year out.

Senator CHRIS EVANS—So was I. That was why I wanted to double-check.

CHAIR—There is nothing further on that specific matter. We are still, as I understand it, in output 1.1.

Senator LUDWIG—I want to go back to the family relationship centres. There are now 15 in operation. Is that right?

Mr Cornall—Yes.

Senator LUDWIG—Have dates been decided on for when the remaining family relationship centres will be rolled out?

Mr Cornall—The next 25 are due to commence operation on 1 July 2007.

Ms Pidgeon—Just to make a small correction: it will be 2 July because 1 July is a Sunday.

Mr Cornall—I stand corrected.

Senator LUDWIG—Thank you. I would have kept you to that, too! Have the locations of those 25 centres been determined?

Ms Pidgeon—The locations were announced for all 65 centres in 2005. The selection process for the 25 centres is well advanced.

Senator LUDWIG—When will the locations of the 25 centres be announced?

Ms Pidgeon—The locations of the 25 centres were announced in 2005. The service providers in each location were announced on 24 January this year. I can give you that information in a handout.

Senator LUDWIG—No, if you already have or if it is on the minister's website, that is fine. I think the last time you were here, the providers in Townsville and a range of others were using temporary accommodation. Has that now been sorted? Are they in permanent accommodation now?

Ms Pidgeon—Yes, they are.

Senator LUDWIG—Whereabouts are they? Is it in the same accommodation or have they found new accommodation?

Ms Pidgeon—In some cases the service providers were awaiting their permanent premises to be fitted out. Townsville was one example of that, Strathpine in Brisbane was another and Mildura was another. They are all now in their permanent accommodation. They are in the same locations but just not at the same addresses.

Senator LUDWIG—Of those that have now commenced operation, have any of those family relationship centres—other than the ones you have just mentioned—shifted, changed their address or otherwise—

Ms Pidgeon—No.

Senator LUDWIG—Do you still regard the operational 15 centres as pilots?

Ms Pidgeon—We have never regarded them as pilots. In answer to a question from the last estimates we made that clear. They are not pilots. It is a three-year staged rollout rather than a pilot program.

Senator LUDWIG—Do you intend to do a performance review of the operation of the 15 centres?

Ms Pidgeon—Yes. All of the centres, as they roll out, will be subject to performance review. The first performance review for the first 15 centres will be after December this year when we have 18 months information about their operation. From then on, those 15 centres will have annual performance reviews.

Senator LUDWIG—Has there been any determination as to whether there will be an internal staff appraisal of the family relationship centre system? You have indicated that there will be a performance review. What about an internal staff appraisal?

Ms Pidgeon—Are you talking about an appraisal of staff performance or of staff having input?

Senator LUDWIG—Of staff having an input into the program.

Ms Pidgeon—We answered that question following the last estimates. I do not think we have anything to add to that.

Senator LUDWIG—What about the next 25 centres?

Ms Pidgeon—It will be the same for the next 25 and for the 25 that will also be rolled out next year.

Senator LUDWIG—Has there been any change in the applications, the supporting documentation, that were rolled out for the first 15 contracts which might go to the tender for the second rollout of the 25? In terms of significant modifications—I am not talking about minor modifications like spelling corrections.

Ms Pidgeon—For a question on notice from the last hearing, we provided a detailed breakdown of all the differences between the documentation.

Senator LUDWIG—But has anything changed since then? I am trying to establish if there has been any further change from the last hearing—not so much whether you have changed but whether in addition there have been changes since—

Ms Pidgeon—All the changes between the first round and the second round were in our answer to the question on notice. I can provide you with the set of documentation that we used for the selection process, if that would be helpful.

Senator LUDWIG—It would be—thank you. So there has been no change since those changes?

Ms Pidgeon—That is right.

Senator LUDWIG—All the service providers have now been selected for the 25?

Ms Pidgeon—They have.

Senator LUDWIG—Is there a list of all of those available?

Ms Pidgeon—Yes, I can provide that. When I have finished answering questions I will provide the pack I just mentioned, but I can provide you immediately with the list of the next 25.

Senator LUDWIG—Thank you—that would be helpful. Is the minister intending to open each of the remaining FRCs?

Ms Pidgeon—Like last time, the Attorney would like to launch them. They will all start on 2 July. Last time he sought to launch all of the centres and he did 14 out of the 15.

Senator LUDWIG—I was going to ask if he got around to all of them.

Ms Pidgeon—One he did not get to in the time, but with 25 it is a matter for the Attorney whether he gets around to all of them.

Senator LUDWIG—If you recall, we were seeking information about the—perhaps I could use a generic description—merits of the site selection and the information that pertained to that. I take it there has been no change of heart: you are not going to provide that information about the full selection process, the criteria you used and how you determined the 65.

Ms Pidgeon—We provided all the information about how we did that.

Senator LUDWIG—I know you provided that.

Ms Pidgeon—There is no other information.

Senator LUDWIG—But that was material advice from FaCSIA. It did not seem to get to the point of how you then selected the 65.

Ms Pidgeon—As I think I have explained previously and we have explained also on notice, we took into account a range of demographic information and issues such as what other services are there, accessibility, things like whether they are in transparent hubs—that sort of thing—as well as input from the Department of Families, Community Services and Indigenous Affairs.

Senator LUDWIG—I take it you are familiar with the FOI request by Ms Nicola Roxon in relation to location of family relationship centres. Are you familiar with that?

Ms Pidgeon—Yes.

Senator LUDWIG—When you look at the response, it has a significant number of blanked-out spaces: ‘in relation to’ and then it is blank—this is at 3 on page one; ‘in blank, we confirm this is a major commercial and transparent hub blank’; ‘it is also a significant centre in a convenient location for clients in this part of blank’; and 4 then goes on with a long blank or ‘we suggest blank, noting that the centre is also located blank.’ There are a lot of blanks. What is the problem with providing that information?

Ms Pidgeon—My understanding is that the detail of locations under consideration was deleted because it would excite uninformed debate. It would not give the full picture; however I did not make the FOI decision, so I think I should refer you to the actual decision.

Senator LUDWIG—Who made the decision?

Mr Cornall—It would have been made in our freedom of information section.

Senator LUDWIG—Sorry: you might have to explain how that works. If we are seeking information here, can I then ask you to fill in the blanks? There is a game show we could play, but I am sure we could do it in an easier way.

Mr Cornall—Sorry: I thought you were asking about how that answer was prepared.

Senator LUDWIG—Yes, and you have explained that. You have said—

Mr Cornall—You asked who made the decision, and I said it was made by—

Senator LUDWIG—The freedom of information—

Mr Cornall—a freedom of information officer.

Senator LUDWIG—So I then switched. I figured: if freedom of information made the decision to blank it out, can you override that? You can provide the information if you so desire, can’t you?

Mr Cornall—As I understand it, there is a broad principle: the sort of information that is disclosed to this committee is the sort of information you would disclose under a freedom of information request as a rule of thumb, so the information that is provided in there would be appropriate. If it was properly excluded from an information request then it would probably not be appropriate to provide it through this committee.

Senator LUDWIG—So the answer is: no, you are not going to provide the information that I request. What I requested specifically was for the blanks to be removed so we can have a look at the actual process that was gone through. It seems a reasonable request to look at how the sites were selected, what considerations were taken into account and how they were finally determined. That was signed by Ms Pidgeon, the Assistant Secretary, Family Pathways Branch. One of those documents would help explain the site location and why they were chosen, and it is also a matter that should be in the public domain. The government should be able to account for why it selected particular sites as against others. If the department did select a particular site as distinct from another then that is a matter that the government should be able to defend its decision on rather than simply hiding the decision from public scrutiny.

Mr Cornall—What I could say today is that the appropriate way to deal with that would be take it on notice. But, as I have said before and as I understand it, it is a general principle in answering questions before these committees that the freedom of information principles provide some guide as to the sort of information that is appropriately provided. Of course, if Ms Roxon was of the view that the answers were incomplete, she does have the right to challenge the officer's decision.

Senator LUDWIG—Yes, I understand that. I think this is also a first port of call to see if we can find the information out more reasonably rather than pursuing that action. The other issue that arises out of that is peculiar in the sense that—and I am sure Ms Pidgeon may be able to recall this but I am happy to provide it if necessary—an email was also provided by FOI, which was from Ms Pidgeon on Friday 16 September 2005 to a range of individuals and was unclassified. It says: 'Cheers, Tim. Sue, as discussed, please call me to discuss once you have considered okay to talk to FaCS but no more than if necessary and would prefer not to distribute list. AG will meet with Patterson to discuss after receiving your advice and finalising list.' The question that arises out of that is this: what was the purpose of limiting the discussion between AG's and FaCS? It seems to say that it is okay to talk to FaCS but no more than is necessary and that you would prefer not to distribute the list.

Ms Pidgeon—That is because we were at a particular stage of a very long iterative process of getting a lot information from FaCSIA. We had various iterations and various ideas about what would be the best mix to get the 65 spread across Australia. A previous list had gone to FaCSIA earlier. However, it has been superseded. Our concern was that we realised that if you send lists around they start to get a status. That was proved by that earlier list, which did not have any status and yet has been used in this hearing as if it were some final recommendation. We decided that a list on paper has the effect of appearing to be more than just a stage in a discussion; it appears to have status that it does not warrant. That is why we had our discussions at that point with FaCSIA on a round the table basis rather than by giving them the list.

Senator LUDWIG—You did not trust FaCSIA?

Ms Pidgeon—On the contrary. The discussions we had were very detailed. As you saw from the FOI request, there was a lot of information provided at various times by FaCSIA. It is just that when you put things in a list they get a status that is not warranted.

Senator LUDWIG—What status would that be?

Ms Pidgeon—People believe that it is final list or a recommended list. The list that you produced at a previous hearing was an early iterative list and it was given the status by some people of somehow being recommendations. It is what happens when you put things in lists on paper.

Senator LUDWIG—The question really is, though, that in previous estimates sessions the Attorney-General's Department has said that the locations of the FRCs were determined using material advice from FaCSIA.

Ms Pidgeon—That is right.

Senator LUDWIG—That is still right. Then what I do not understand is the fact that the email seems to suggest that it is okay to talk to FaCSIA but no more than is necessary.

Ms Pidgeon—You will see that there are many other emails in which we ask FaCSIA about particular locations. We were constantly going backwards and forwards with FaCSIA with ideas to try and get the best mix of locations across Australia. That particular point was simply that we wanted to have another discussion but we did not want to have a formal list at that point. We were going back to them very much on an iterative basis, as you will have seen from all of the other emails that you have there.

Senator LUDWIG—The document that I mentioned earlier has had locations blanked out. I am just trying to understand the process. Was it a request by you, Ms Pidgeon, that this material not be released through FOI or was this a decision by FOI separately to delete those locations?

Ms Pidgeon—The decision is made by the FOI unit. They consult the line area, which is my branch, and the Attorney's office, but the decision is made by the FOI unit.

Senator LUDWIG—What was the view that you gave to the FOI unit?

Ms Pidgeon—I was consulted. I do not think that that is something—

Senator LUDWIG—I understand that—

Senator Ellison—Perhaps the question can be put differently. It was asking Ms Pidgeon for her personal view.

Senator LUDWIG—It is the department's view.

Ms Pidgeon—The department's view is the decision that was made.

Senator Ellison—Yes.

Senator LUDWIG—The decision is not made in isolation. The FOI office does not simply take a black pen and black out all of the town locations in a document. We know that they do not do that. They will not do it unless the department says, 'We require or request that the locations be kept confidential.' FOI will then consider that request—and correct me if I am wrong—and decide to do it or not, in consultation with the Attorney-General's Department. Am I right about the process? Correct me if I am wrong.

Mr Cornall—Not entirely. The FOI section is a section of our corporate services group, so they are officers of the department. They are experts in freedom of information law. When we receive a request, they are responsible for handling that request, obviously in consultation with the relevant officers. They will review the whole file. They will then consider whether information on that file falls within the requirements of the act for disclosure or falls within any of the areas where disclosure is not required under the act. They will make those decisions after consultation with the appropriate officer.

Senator LUDWIG—You do not have a positive duty to release it?

Mr Cornall—The act starts on the premise that all information will be available unless it falls within an exception.

Senator LUDWIG—That is right.

Mr Cornall—That is the approach that the freedom of information officer takes.

Senator LUDWIG—So what exception does that fall within?

Mr Cornall—We would have to look at that. I am sorry, I cannot recite it all at the present time.

Senator LUDWIG—In terms of the location decisions—Orange, Bathurst, Maitland or Singleton—which are on attachment D? What I am trying to understand is: if it was an iterative process to gain the locations, why did the Attorney-General ultimately decide on which locations on the list provided by FaCSIA?

Ms Pidgeon—FaCSIA did not ever provide a list as such. We had meetings with FaCSIA where they brought along information from their draft needs analysis at the time. We had several roundtable meeting going through their views from their needs analysis and issues such as transport hubs and other services. As a result of that, we produced an initial list, which we provided to them for further comment. Their comments on that, I think, are what the committee has seen before. We did further work and further analysis before we actually provided our advice to the Attorney-General.

Senator LUDWIG—The Attorney-General, in document E, which is described as 5 August 2005 Senate question No. 953—maybe I can do it in a shorthand way: the Attorney-General made changes to an answer to questions on notice adding that the first 15 were placed to ensure that they were not overrun with demand. This is the real substance of the question, not so much the document I have referred to. Has that been successful? Have you been able to assess the demand in those 15 centres?

Ms Pidgeon—All 15 have had very heavy demand—this was not about the location of the 65. Once the 65 had been selected, the decision had to be made which should be the first of those to be rolled out, so we are talking now about the order of rollout. We strongly recommended to the Attorney that we do not have them set in the centre of CBDs of big cities, and that is what has happened. Instead of having them in central Sydney or central Melbourne, for example, the first ones are further out. We cannot compare with what would have happened if we had put them in the CBD, obviously. They have all had heavy demand, but our expectation was that there would have been much heavier demand if we had put them right in the middle of the cities where virtually everybody in Sydney or Melbourne could easily access them.

Senator LUDWIG—How has the demand been controlled? Or are we only talking about during the rollout? In other words, you then rolled it out in a way to control the demand.

Ms Pidgeon—We tried to roll out in a way that did not provide for, as I said, centres being in the centre of major cities—for example, in Sydney there is one in Penrith and one in Caringbah. We do not expect everybody in Sydney to make the decision to go to those two, so it is just a geographic constraint. There is no ban on people going from different parts of the city or different parts of their region to a centre, but we thought there was a natural inclination for people not to travel a long way out of their way. There will be centres, of course, in other parts of Sydney and other parts of Australia as part of the rest of the rollout.

Mr Syme—I should add to Ms Pidgeon's answer that the advertising has been only in the local areas where centres are. There has been no broader advertising and, again, that is to ensure that demand can be managed.

Senator LUDWIG—Do you get figures from the family relationship centres that are currently operating?

Ms Pidgeon—Currently, we are getting manual figures collected by FaCSIA. FaCSIA do the data collection on behalf of the Attorney-General and their automated data collection system is only just becoming operational because they have a new system. In the meantime they have been collecting manually some basic figures from the centres. Once the detailed figures are put into the new system, we will be able to get quite a lot of data. But, essentially, we have just been getting headcounts and counts of sessions and those sorts of things.

Senator LUDWIG—What criteria are being reported on?

Ms Pidgeon—The manually collected information that FaCSIA has been collecting for us has been of people who ring the centre or walk in, as their first point of contact, of individual sessions and dispute resolution sessions, group sessions and those sorts of things. It is really counting throughput.

Senator LUDWIG—Is that information provided to the Attorney-General's Department?

Ms Pidgeon—It is, on a monthly basis.

Senator LUDWIG—Are those figures available for the committee?

Ms Pidgeon—I can provide those figures to you.

Senator LUDWIG—Are those figures above or below what was expected?

Ms Pidgeon—I do not think we had an absolute expectation, especially during the rollout of the new services. The service providers have commented that they were surprised the take-up was so quick. Often it takes a little while for people to get to know about or access new services. The take-up was quite a peak time in the first couple of months, possibly because people had been waiting for this sort of service. There was a bit of built-up demand, which settled down a little over the next few months, although generally the demand has been strong.

Senator LUDWIG—Do any of the 15 centres that are currently in operation have variations of the contract because of the demand or because of the number of people or number of calls that are being taken?

Ms Pidgeon—No, but we obviously need to be monitoring, once we have those first six months out of the way, how it settles down and how the resources to the centres are holding up. We are certainly interested in keeping a good eye on that. But we have not been asked for more resources at this stage.

Senator LUDWIG—Is there any benchmark that you will use or have put in place to determine both the performance of the centre and the capacity that the centre can meet?

Ms Pidgeon—We have different expectations of each centre because they have different populations and demographics, so there is not one benchmark in terms of how much we expect them to do. We do have key performance indicators and we will be doing performance

reviews, as I think we mentioned earlier, and from that we will be developing some benchmarks. But that will have to take into account the difference in the demographics, the catchment areas and the distances that centres have to travel to do their outreach.

Senator LUDWIG—Currently, you do not have any benchmarks?

Ms Pidgeon—No, we will develop them once we have some good, sound data.

Senator LUDWIG—Will the Attorney-General's Department do that or will the Department of Families, Community Services and Indigenous Affairs do it?

Ms Pidgeon—We will obviously be working with them, because they do the data collection, but we will also be using the Australian Institute of Family Studies to assist us in developing some qualitative measures. We do not want to just count heads. So it will be a collaborative process between the two departments and AIFS.

Senator LUDWIG—Is it the intention to make those benchmarks publicly available?

Ms Pidgeon—The key performance indicators are already publicly available. I am happy to hand those up, if you have not seen them.

Senator LUDWIG—Yes, if you would not mind.

Ms Pidgeon—With the actual benchmarks, this will obviously be a process over time with the rollout. I do not think that I can answer that question about the benchmarks, given that—

Senator LUDWIG—I was only trying to get in early to avoid—

Ms Pidgeon—we have to take into account things like differences between catchment areas, and so publicly releasing benchmarks may not be very informative or useful.

Senator LUDWIG—I guess whether people are above or below the benchmark may be informative.

Ms Pidgeon—That would be right if they all had exactly the same catchments and exactly the same resources, but they do not.

Senator LUDWIG—No. Is it the intention to vary the benchmarks to take into account those issues that you have raised to ensure that they are meeting client expectations and the department's expectations?

Ms Pidgeon—We will be establishing benchmarks looking comparatively across centres but we will need to take into account the differences in catchments and resources.

Senator LUDWIG—Minister, it may be that you can help me with this one. It seems that the Attorney-General's Department at the time of the first tender probed the issues that were raised by the backbench committee. Are you able to say whether the backbench committee was involved in those issues?

Ms Pidgeon—The backbench committee has had not involvement at all in the selection of either locations or service providers for the centres.

Senator LUDWIG—What was obtained under freedom of information was that 'the backbench taskforce, the Attorney-General's Department and the Department of Family and Community Services and Indigenous Affairs have been advised by the Australian Government Solicitor that consultations must be conducted in accordance with clearly defined probity

protocols to ensure the efficacy of the selection process for funding recipients'. Why were they raised with the backbench committee?

Ms Pidgeon—The backbench taskforce has responsibilities for providing advice to the Attorney-General and Minister Brough on the implementation of the centres. They wanted to visit some service providers. We wanted to make sure that their role in terms of giving advice generally was understood by the service providers and that they not give the impression that they would be advising on the specifics of who should be contracted to run the family relationship centres. It was a precautionary thing so that they did not give the impression to service providers that they would actually have a role.

Senator LUDWIG—Did the backbench committee know that?

Ms Pidgeon—They certainly did. Obviously, they had that piece of paper.

Senator LUDWIG—So the role of the backbench taskforce was what, exactly?

Ms Pidgeon—We provided the terms of reference to you previously, but we are happy to do that again. Essentially, it is advising the Attorney-General and Minister Brough on implementation of those family relationship centres. That is their essential role. They have provided input to things like the operational framework and brochures and information products. They are interested in a range of things relating to the rollout of the centres.

Senator LUDWIG—Did the backbench committee correspond with your section or through the Attorney-General's Department about any of the issues?

Ms Pidgeon—No. It has essentially been meetings with them. They have provided some comments on various aspects to the Attorney's office, although not directly to us.

Senator LUDWIG—Did they provide a report?

Ms Pidgeon—No.

Senator LUDWIG—Did you prepare a summary of their views for use by the department?

Ms Pidgeon—No. We had meetings with them. If they provided a comment, we would take that on board. But we do not provide a secretariat.

Senator LUDWIG—You have not consolidated any of their comments into a document?

Ms Pidgeon—I do not believe so, no.

Senator LUDWIG—Perhaps you could take that on notice and just check.

Ms Pidgeon—I could check that but I am pretty confident that we have not.

Senator LUDWIG—The department wrote to the Attorney requesting that he write to the backbench committee on probity issues. Is that usual practice?

Ms Pidgeon—Backbench task forces are a fairly new phenomenon and I think we are developing usual practice. I think it should be usual practice, which is why we suggested it.

Senator LUDWIG—Is this the first experience you have had of a backbench task force or a backbench committee?

Ms Pidgeon—Certainly in my experience, yes.

Senator LUDWIG—Is it a usual thing, Mr Cornall, to have a backbench committee?

Senator Ellison—A backbench task force as opposed to a government backbench committee?

Senator LUDWIG—I am not familiar with all the internal phrases for your backbench groups.

Senator Ellison—It is not dissimilar to the previous government's setup.

Senator LUDWIG—I could not comment on that. Is the backbench task force a usual phenomenon?

Mr Cornall—I am sorry, I cannot personally answer that question because it is done at an operational level that I am not involved in directly. I do not know whether anyone else can answer it or whether we should simply take it on notice and answer it that way.

Senator LUDWIG—I cannot recall one in recent times in this area. Maybe I have not asked the question.

Ms Pidgeon—I think there are some in other portfolios but I think this is the only one in this portfolio. That is why it is new to me but I am aware that in other portfolios they do exist.

Senator LUDWIG—Perhaps you could take it on notice, Mr Cornall, to see whether there are backbench task forces, how many have operated in the last 12 months—I do not want to put you to too much task—and in what areas they have operated.

Mr Cornall—Certainly.

Senator LUDWIG—Or in issue, perhaps, as well. Did the Attorney-General's Department write to the task force? Is that the usual way you have dialogue?

Ms Pidgeon—No. We meet with them, along with the Attorney-General's office, FaCSIA and Minister Brough's office. We do not write directly to them. If there is information to be provided, it is through the minister's office—whoever is the relevant minister. Similarly, any comments come back to us through that office.

Senator LUDWIG—And then do you prepare meeting notes?

Ms Pidgeon—No, we just take on board what they say in terms of developing our policy advice or our implementation. We do not provide a secretariat.

Senator LUDWIG—The FOI documents revealed a year-long meeting plan for the backbench committee.

Ms Pidgeon—It was not a meeting plan. I think it was a list of things we expected to run past them.

Senator LUDWIG—It says: 'The task force shall meet on Mondays of parliamentary sitting periods from 4.00 to 5.00 as per this schedule.' Then it has dates from 13 February through to 27 November.

Ms Pidgeon—That was not prepared by us; that was prepared by the task force chair and his office. We did not prepare that.

Senator LUDWIG—I see. Then two meeting minutes were included in the FOI document. Are those meeting minutes forwarded to you, Ms Pidgeon?

Ms Pidgeon—There was one occasion when they asked us if we could provide some notes on the meeting. We only did it once because we did not see it as appropriate for us to be providing a secretariat type of role. I cannot remember having minutes, as such.

Senator LUDWIG—Perhaps you could have a look at that and see whether or not they have corresponded with the Attorney-General's Department and provided their minutes to you—and, if so, whether they are available.

Ms Pidgeon—We will take that on notice. I cannot recall that.

Senator LUDWIG—Which meeting did you provide secretarial support for?

Ms Pidgeon—We did not provide any secretarial support.

Senator LUDWIG—Sorry, I might have misheard you.

Ms Pidgeon—I said that we saw that as not appropriate. There was one occasion when they asked us.

Senator LUDWIG—I see; they asked and it was declined?

Ms Pidgeon—Yes. This was not a committee that the department would be providing support for.

Senator LUDWIG—Did that committee send its minutes to you?

Ms Pidgeon—I am not sure whether they keep minutes. I cannot recall ever receiving any such thing.

Senator LUDWIG—You have never seen any minutes of that backbench task force?

Ms Pidgeon—Not as such. I will check to see whether any came to the department, but I cannot remember offhand. I was not aware that they kept formal minutes of any kind.

Senator LUDWIG—Did they come to you, Mr Cornall?

Mr Cornall—No.

Senator LUDWIG—If it is an FOI request, how do you then end up with them in your records?

Mr Cornall—I am not sure what document you are referring to, but whatever document you are referring to was presumably on our file.

Ms Pidgeon—I would have to check where it came from.

Senator LUDWIG—I have a few comments from the minutes I have incorporated. I will give a copy to SG members this afternoon:

Minutes: Backbench Steering Committee meeting on Family Relationships Centres

Tuesday, 26 July 2005.

Location: Meeting room 1S2 Parliament House ...

It then lists a range of people who were present including you, Ms Pidgeon. The minutes continue:

... background meeting called to discuss the role of Family Relationship Centres and the process and timeframe for implementing the centres and support services.

It then goes on.

Mr Cornall—Who was the request directed to? Was it directed simply to the department or did it include the minister?

Senator LUDWIG—It says:

I refer again to your FOI request to this department concerning the above matter.

Ms Pidgeon—If you remind me of the date of that, we will have a look and see what it referred to.

Senator LUDWIG—I am not sure I have the initial request letter, so it may have also included the ministerial office.

Ms Pidgeon—What was the date of the meeting?

Senator LUDWIG—That meeting minute was from Tuesday, 26 July 2005.

Ms Pidgeon—We will look into that. It may be that there may have been a single request for minutes and some may have been prepared. But we would not normally have done that. I will find out the status of those on notice.

Senator LUDWIG—Perhaps we could also do it in this way: if you did prepare any minutes, including these, could you advise the committee. Ms Leigh, I notice that you were there too.

Ms Leigh—Yes, I attended some of those meetings.

Senator LUDWIG—Were you aware that minutes were being taken?

Ms Leigh—I really cannot recall. I have not attended one of those meetings for quite a while.

Ms Pidgeon—I think that this may relate to that one request that I mentioned before. I may have misremembered that we actually did prepare some. I will have to go and check that. But we consider that that should not be our role, so that would have been a one-off. I will go away and check the exact circumstances and come back to you on notice.

Senator LUDWIG—Perhaps we could then also deal with it in this way: if you could advise what meetings you attended in terms of the backbench task force and advise whether any correspondence has been forwarded from your area or the Attorney-General's Department to the backbench committee and whether there has been correspondence forwarded from the task force to you—if that could be made available. Thirdly, if there are minutes that the department has taken on behalf of the backbench committee, could you provide those or indicate on how many occasions—

Ms Pidgeon—As I said, there may have been that one request that I mentioned earlier, but we certainly did not do that as a matter of practice.

Senator LUDWIG—Minister, you may be able to answer this one. Has that task force been re-established for the rollout of the remaining 25?

Ms Pidgeon—I can answer that. The original terms of reference went to the end of the rollout of the 65.

Senator LUDWIG—So the backbench task force would have been involved in the tender process.

Ms Pidgeon—As for the first round, they are only involved at a very generic level with the overall selection process and documentation. They do not have any role in the actual selection of who should provide the service.

Senator LUDWIG—The department will provide what information it has to the backbench task force. Does the minister get the backbench task force report and recommendations minutes? How does that process work?

Ms Pidgeon—The task force does not provide reports; it provides oral comment. There may well be emails to the Attorney's office that I am not aware of but it is generally either oral comments at meetings or, if they are commenting on documents, they may well send a marked document back to the Attorney's office.

Senator LUDWIG—It also suggests that the department wrote to the Attorney requesting that he write to the backbench committee on probity issues, which is in attachment G. Was that action taken?

Ms Pidgeon—Was that that letter that you were talking about?

Senator LUDWIG—Yes. Is that the usual practice? It seems peculiar to me.

Ms Pidgeon—This is my first experience of a backbench task force. We thought it was appropriate if they were visiting services that they be very careful that they do not give an impression that they have something to do with the selection of service providers, and that is why we suggested it. I would suggest it should be usual practice into the future.

Senator LUDWIG—On the recommendation that you sign the attached letters to each member of the family relationship centres task force, was that action taken?

Ms Pidgeon—Yes.

Senator LUDWIG—So is that the same letter that went to every one of them? It says: 'I write to you in the role as chair of the family relationship—

Ms Pidgeon—Yes, it was a generic letter.

Senator LUDWIG—In terms of the details that were raised in the backbench task force, perhaps we can just use one of them as an example. Mr Fawcett was particularly concerned for the FRCs to emphasise marriage support and not concentrate on divorce. Is that the type of information contained in there—was that what they were requested or sought input to do? And then how is that taken up by the department?

Ms Pidgeon—The task force terms of reference, which we will provide if you do not already have them, were much broader than that. Different members have obviously got particular interests, but the task force as a whole had a wider brief.

Senator LUDWIG—In November 2005 the backbench committee got an update on the Industry Skills Council work for standards for services and staff. Did they provide you with that documentation as well?

Ms Pidgeon—Yes, we were at that meeting.

Senator LUDWIG—Is there an update on that work? Has that continued?

Ms Pidgeon—Yes.

Mr Syme—That project has now been completed. The competencies and qualifications framework is now before the ministerial council for vocational education and training.

Senator LUDWIG—So it is before the training council?

Mr Syme—It is a final step in the endorsement of competencies—

Ms Pidgeon—The ministerial council.

Senator LUDWIG—When do you expect that process to be concluded?

Mr Syme—We hope within the next few weeks. We were told on the last occasion within 12 weeks.

Senator LUDWIG—What will that mean? Will there then be competency standards for family relationship centre personnel?

Mr Syme—No. It will be a nationally agreed set of qualifications and competencies for family dispute resolution practitioners, family counsellors and workers in children's contact services. It will provide, if you like, a benchmark of competencies and skills. Any family practitioners working in family relationship centres would already comply with certain standards. These new standards will provide a benchmark against which people can gain qualifications. But the government has not yet decided exactly the nature of the accreditation regime in which competencies will actually be used as part of the accreditation of family dispute resolution practitioners.

Ms Pidgeon—I should stress that the work of the practitioners in the centres is already subject to high standards through the Family Law Act and the funding agreements. This is a broader exercise for practitioners generally. Up until now this professional area has not had national standards as such before.

Mr Syme—All services funded under the family relationship centre program must have entry requirements for practitioners, including tertiary qualifications and competencies, with some exemptions in the case of people in rural and remote communities or Indigenous communities. In addition, the Family Law Act regulations specify qualifications for family dispute resolution practitioners.

Senator LUDWIG—When that is finalised, can that be made available to the committee?

Ms Pidgeon—Certainly.

Senator LUDWIG—Will that include all staff other than clerical support staff within the family relationship centres?

Ms Pidgeon—Provisions for family relationship centres are already in the funding agreements and in the act. This new set of competencies is a broader, national set. The government are yet to decide how to perhaps map across to the standards that we already have. We were concerned about the need for general standards of competencies across the unfunded system, if you like. The funded system has always had standards. It is not

automatic, that once we have this in hand, then that becomes the standard for the centres because they already have high-level standards.

Senator LUDWIG—To what use will they be put?

Mr Syme—First of all, they will be used in terms of workforce strategies. People will be able to gain recognition of their skills through means other than formal training. There is a variety of pathways to gain recognition through a competency based process—through training courses through registered training organisations. It provides greater flexibility and delivery. We are also considering the way in which those standards would apply to accreditation rules which will apply to family dispute resolution practitioners.

Senator LUDWIG—The backbench committee indicated that it wanted to make sure lawyers were included in the FRC work and that referrals and support on legal matters should be obtained. Was this suggestion acted upon?

Ms Pidgeon—As part of our proposed operational framework for the centres, we already have guidelines on referrals planned, and we have guidelines on referral to legal practitioners. It was simply that the task force referred to it, though there was discussion about it at the task force.

Senator LUDWIG—Are those guidelines available?

Ms Pidgeon—They are available. I have them here and can provide copies.

Senator LUDWIG—Senator Kirk is going to continue some of the questioning in this area.

CHAIR—On FRCs?

Senator LUDWIG—Yes.

Mr Cornall—I am in a position now to table the answers to the outstanding questions 93 and 113 from the last estimates. Just for the record, in the year 2005-06, the department received 25,558 items of ministerial correspondence and in the year to date we have received 12,707 items of ministerial correspondence.

Senator Ellison—That point is well made. If senators come to these committees expecting officials to remember every item of correspondence, it should be borne in mind the amount of correspondence that is received by the department in any given year. It is not because of any lack of preparation; it is just that it is huge amount of correspondence. As it turns out, we were only talking about one piece.

CHAIR—Thanks very much, Minister. Senator Ludwig, you suggested that we might go to Senator Siewert on FRCs. I am happy to do that and then come back to you and Senator Kirk.

Senator LUDWIG—Thank you.

Senator SIEWERT—I want to follow up some questions that were asked yesterday of FaCSIA about the family relationship services program online and the collection of data, and specifically the collection of data from the family relationship centres. I was told yesterday that this information is in fact voluntary. Is that your take on it as well? I am talking about the more detailed information that is now being supplied through this program to FaCSIA.

Ms Pidgeon—I will have to refer you back to FaCSIA. The FRSP online is a FaCSIA data collection system. We rely on FaCSIA to provide information to us, but we are not involved in the detailed day-to-day administration of their data collection system. I do not know what requirements or rules they have put upon the service providers. They do all that on our behalf.

Senator SIEWERT—I understand that AGs gets information from that collected by FaCSIA.

Ms Pidgeon—FaCSIA collects information and forwards information that we want to us.

Senator SIEWERT—They said yesterday that it is voluntary. Very late in the evening, when I did not have an opportunity to go back to them, they provided a copy of the client registration form. Have you seen the client registration form?

Ms Pidgeon—Yes, I have.

Senator SIEWERT—Are you aware of what it says at the beginning of the client registration form?

Ms Pidgeon—You may need to remind me. I know the client registration form does—

Senator SIEWERT—At the beginning, it says: ‘The services provided by—insert organisation name—are funded or partially funded by the Commonwealth government under the family relationship services program. The information you provide in this form—

CHAIR—Senator, I cannot understand a word you are saying, and I am unsure how the officers can.

Senator SIEWERT—Sorry. That is an outline of the program. The important bit is coming. It says, ‘The information you provide on this form will be forwarded to the Department of Families, Community Services and Indigenous Affairs and the Attorney-General’s Department for statistical and service evaluation purposes only.’ It then goes on. My reading of that form does not give the client the necessary understanding that this information provision is voluntary.

Ms Pidgeon—I cannot really comment on your questions because we do not administer that process. We have seen that form and have commented on the form, but I do not know what rules FaCSIA applies in relation to its data collection. It really is not a question that we can answer.

Senator SIEWERT—The reason that I am asking it here is because it goes to the effectiveness of the FRCs. If you have not looked into it, I would be interested in knowing why. People in highly emotional states are being asked to provide confidential information and the form is not clear. I would have thought that that would affect the effectiveness of the FRCs.

Ms Pidgeon—A number of people who use the FRCS do not have to give any information at all. If they are using the FRCS for information or to be referred to another service they will not provide any of that information. They will be counted, as a headcount, but they will not provide any information on forms or otherwise. It is only when people sit down to have an individual interview, and if they go on to further services, such as dispute resolution, that they

are asked to provide that sort of personal information. As I said, I really do not feel that we can answer questions about FaCSIA.

Senator SIEWERT—So you are not worried about the effectiveness of the service that is being provided at FRCs if clients do not feel comfortable that their confidential information is now being provided to FaCSIA?

Ms Pidgeon—If the information is for evaluation and similar sorts of purposes, clients can still be given the service. If they decide not to give information or to give false information—if they want to do it that way—it is not going to affect the service that they get.

Senator SIEWERT—Why do you think that?

Ms Pidgeon—It is just a fact that if somebody decides that they do not want to give their personal information they are not going to be turned away into the street.

Senator SIEWERT—It is not clear from the form that they do not have to give the information. The form is not consistent with the voluntary nature.

Ms Pidgeon—You only read part of that form. The form that I have seen, the one that is currently in use, goes on and gives them a couple of options.

Senator SIEWERT—With all due respect, if you are reading this form, particularly in a highly emotional state, it does not. I do not see any way that you can interpret from this form that people would have an idea that they would not have to give this information.

Ms Pidgeon—Can I just repeat that this is a FaCSIA form. I am not aware of any difficulties. There is no feedback that it has affected service delivery. Therefore, my answer has to be that I do not have any reason to think it is going to be a problem, but you should talk to FaCSIA about the form.

Senator SIEWERT—Have you seen a letter that has been sent to FaCSIA by relationship services that articulates, on behalf of industry peak bodies, extreme concern with this process?

Ms Pidgeon—I have seen a letter that refers to privacy. It does not refer to the issue you have just raised with me, from my recollection.

Senator SIEWERT—It actually goes into a lot of detail about a number of issues, including privacy.

Ms Pidgeon—I recall the privacy issue. We have helped FaCSIA look into the privacy issue.

Senator SIEWERT—I was told yesterday that FaCSIA has not consulted the Privacy Commission about the new process. Are you aware of that?

Ms Pidgeon—The advice that this department gave FaCSIA was that, rather than going to the Privacy Commissioner, they should be doing a privacy impact statement. That is likely to be what the Privacy Commissioner would have advised if they had gone there. We suggested that they do a privacy impact statement.

Senator SIEWERT—Could I ask why you advised them to do that rather than to go to the Privacy Commissioner?

Ms Pidgeon—It was the Information Law Branch. It is not my area of expertise. My understanding is that the Privacy Commissioner would want them to have done a privacy impact statement as a first step. That is my interpretation of the discussion.

Senator SIEWERT—Can I ask you another question on staffing. I apologise for going back to that. When we were debating the changes to the Family Law Act and the issues to do with the family relationship centres, issues were raised about the number of staff that were available with the expertise that was necessary, particularly the more intense skills that are required—I do not like to be hierarchical—for domestic violence. Are you keeping an eye on whether services are able to access the experienced counsellors needed to address some of these complex issues?

Ms Pidgeon—What seems to have been the case is that experienced professionals with a good range of skills have been attracted to the centres. In most cases, there was very strong interest in positions in the first 15. The other ones have taken a bit longer to get all their staffing on board. We are also supporting them with a screening and assessment framework and with training.

In terms of expertise and competence, at this stage we are pretty confident that those issues are being addressed. One thing we will be looking at into the future, with respect to using the new competencies that are about to be finalised for practitioners generally in this area, which include some specific ones around domestic and family violence, is which ones will apply directly to centres.

Senator SIEWERT—Have you a way of monitoring whether there is a shortfall of counsellors or staff in this area?

Ms Pidgeon—I do not think you can talk about shortfall. Some of the centres staggered their recruitment take-up, partly because they expected a slower start-up. It is not really so much a shortfall as, I think, throughout the 15 centres around the country only a handful of positions are not currently filled. We certainly would be concerned if it looked as though there was a real shortfall, but that is not the case.

Senator SIEWERT—I should have been clearer. I meant into the future. I appreciate the answer that you previously gave. Into the future, do you have a process in place that will actually pick that up?

Ms Pidgeon—Yes, centres do report regularly. We also have regular teleconferences with all the centres. There are a number of ways whereby we can monitor that. They also need to ensure that the staff they do use meet the professional standards that are required under their funding agreement.

CHAIR—Are there further questions on family relationship centres in output 1.1?

Senator KIRK—Interestingly, you provided us with this list of a breakdown of walk-in clients, telephone clients, interviews et cetera for the period July through to December. I wonder whether you keep more detailed statistics, particularly in relation to the reasons why people have approached the centre, whether it be by telephone or by walking in.

Ms Pidgeon—That is the sort of information that is collected on the electronic data collection system, and it has been collected ready to be input. That has not happened yet. We

do not have that detailed information. Currently, we have only manually collected very basic data.

Senator KIRK—It has been collected, and it is in the process of being put into the system? Is that what you just said?

Ms Pidgeon—Yes. Since the centre started, they have been keeping that information, but they are keeping it in paper form ready for the FaCSIA system when it is ready. The FaCSIA system is now in production and the data is starting to go in.

Senator KIRK—When will that be available?

Ms Pidgeon—We are reliant on FaCSIA for that, so I cannot give you a definite time.

Senator KIRK—So if I asked for this information now, you would be able to get it because you said it is available manually?

Ms Pidgeon—The only information that is being collected manually is the basic information available about walk-ins and the number of sessions and things like that. For the detail that you are talking about, we will have to wait until all the forms go through data entry. It will then be in a database, so we can ask FaCSIA for reports.

Senator KIRK—That will be available—

Ms Pidgeon—We do not know because it depends, firstly, on FaCSIA, but, more importantly, on the service providers themselves.

Senator KIRK—So are we talking about the time of the next estimates hearings or—

Ms Pidgeon—I would be very hopeful, but it is not something within our control, so I could not guarantee that.

Senator KIRK—If and when I asked for the information, say, in May, would you be able to provide it to me or would I have to request it from FaCSIA?

Ms Pidgeon—If it is about the family relationship centres then we would be getting detailed information from FaCSIA. It depends on the question you ask, of course. If it is not amongst the questions we have asked information on then we will not be able to immediately answer it. But you can certainly ask us and, if we have it, we will tell you straightaway. If not, we will get it on notice.

Mr Cornall—If we take on notice a question that is directed to FaCSIA then we have to answer it, and it is difficult for us to do that at long range.

Senator KIRK—That is what I was trying to establish: if I am asking it of you, yet it is someone else who has to provide it, then that could be problematic.

Ms Pidgeon—We will have a range of information, subject to it being available from the service providers inputting it into the FaCSIA system, at next estimates hearings, and we will obviously be able to update you at that time. If that is not complete then I will ensure we come along with some estimate of time as to when it will be complete.

Senator KIRK—Currently, would you be able to give me a breakdown of information as to those people coming in who are couples about to get married and seeking information

about premarriage education or who are families wanting to improve their relationships—that kind of information?

Ms Pidgeon—That sort of information is not going to be captured because that is the group that do not have to give information about themselves. They will be given information about services that are in the area. They will be given information about strengthening relationships or premarriage education. But they will not be filling in forms about their situation. When we are doing evaluation of the services, though, we will be trying other ways to get more information—for example, through surveys and so on—on the people who come in who would not normally be filling in forms with their information that will go into the data system.

Senator KIRK—Have there been any such surveys as yet?

Ms Pidgeon—No. It is a bit too early for that. It will be part of the evaluation process.

Senator KIRK—So what you are saying is that a lot of people who come in are just seeking information and you do not really even have very much idea as to exactly what it is they are seeking to find out.

Ms Pidgeon—We do not in the department. Obviously, the service providers themselves do. Over time, we will be getting feedback from them.

Senator KIRK—So you are saying that the centres themselves do not really keep records of people who come in off the street?

Ms Pidgeon—I could not tell you what each service does. They may keep a whole range of records for their own purposes.

Senator KIRK—But that is not something which is passed on to the department?

Ms Pidgeon—The numbers of people coming are, but not—

Senator KIRK—But not the information they have sought.

Ms Pidgeon—Yes.

Senator KIRK—We were talking earlier about the free sessions that couples are entitled to. Are there any limitations placed on couples in terms of their access to the free joint sessions?

Ms Pidgeon—We answered that question following the last estimates hearings. I do not think we have anything new to add to that answer.

Senator KIRK—What proportion of these cases are considered to be resolved during the first three hours of the counselling?

Ms Pidgeon—We also answered that question on notice.

Senator KIRK—Last time around?

Ms Pidgeon—Yes.

Senator KIRK—Unfortunately I was not here last time—

Ms Pidgeon—We answered it in writing, though.

Senator KIRK—Okay. I will follow that up. In circumstances where a couple or individuals are referred to an alternative service outside of the FRC, is there any ongoing

monitoring of the outcome of that case or, once the matter has been referred, has it gone and nothing else is known about it?

Ms Pidgeon—We would expect the centres to be following up in some cases, particularly the more complex or difficult cases, to see if the referral was effective and whether the person took up their referral. They would not do it in every case. They would not have the resources to do it. But we would expect that they would be doing some of that case management role for some of the more difficult cases particularly. We will also be following up the effectiveness of referrals as part of our evaluation and performance monitoring.

Senator KIRK—How is a decision made as to whether or not a matter is sufficiently complicated, difficult or what have you that there ought to be follow up?

Ms Pidgeon—The centres really need to make that judgement. It also depends on the demand on the centre at the time and their capacity to do that.

Senator KIRK—So it is very much left in the hands of the centre rather than having any kind of direction from government.

Ms Pidgeon—They have guidelines, but they have to decide on a day-to-day basis which ones they can and should follow up.

Senator KIRK—So there is going to be a fair bit of variation then between the way the centres operate, isn't there? As you said, it depends on demand and also just management and the efficacies concerned.

Ms Pidgeon—The government was very clear that it wanted the centres to be able to develop their own service models, because that is how you get effective development and innovation. If you start trying to have a one-size-fits-all, it does not, and you also end up not having the improvements in performance that you get when people are able to develop their processes. We will be looking, though, at the outcomes. Those that have the best processes will obviously by definition have the best outcomes, so our evaluation will be very outcome focused.

Senator KIRK—It is difficult in that situation if you are referring on a matter to an outside provider and then not having sufficient resources to monitor it. How do you actually assess the outcome of that matter?

Ms Pidgeon—We will be using a number of different ways of following up in the evaluation, including surveys of those other organisations that have had people referred to them, about the appropriateness of those referrals, and following up a sample of clients.

Senator KIRK—How are these surveys going to be done and when are they going to start to be conducted?

Ms Pidgeon—I will hand over to my colleague.

Mr Syme—We are in the process of settling with the Australian Institute of Family Studies an evaluation framework which will need to be cleared by the relevant ministers. They will be looking at a range of methods for looking at client surveys, service provider surveys and so on. We cannot provide the details of that at this stage but we hope that once cleared by the relevant ministers it can be provided to you.

Senator KIRK—When is it proposed to introduce and conduct these surveys?

Mr Syme—The final framework has not been settled.

Ms Pidgeon—There has already been a base survey.

Mr Syme—A baseline survey was conducted in the middle of last year.

Senator KIRK—A baseline survey has already been conducted—is that what you said?

Ms Pidgeon—Yes. There was a general population survey in the middle of last year and also some other survey work to provide some baseline data so that we have something to evaluate against.

Senator KIRK—Are you aiming for a 12-monthly review or something of that nature, given that they come on board in July?

Ms Pidgeon—I think I mentioned earlier that, for performance reviews of the centres, we are giving the first one 18 months because we need things like the data to be settled and available, and for service provision to settle down. So the first one will be at 18 months—that is, after December this year. After that they will be annual.

Those are performance reviews. The evaluation is much more substantive and long-term. We would expect to have some results in a couple of years. The evaluation is of the whole family law package so there is a lot of research involved. There will be several timeframes for that so there will be some initial information, probably, in two years and then in five years and, funds allowing, going on to 10 years.

Senator KIRK—Given that it was the government's intention to establish FRCs as a single entry point to make it easier for people to access the relationship services, of the people who have accessed the FRCs to date, do you know how many are new clients who have not used a relationship service before, as opposed those who have—

Ms Pidgeon—That is the sort of data that will be available, we hope, through—

Senator KIRK—Through the FACSIA system?

Ms Pidgeon—Yes.

Senator KIRK—Has there been any assessment done of what might be described as the 'displacement effect' on people accessing FRCs instead of going to other family relationship services?

Ms Pidgeon—It is too early to be able to determine anything of that nature at this stage.

Senator KIRK—When can those sorts of assessments start being made?

Ms Pidgeon—When we get the data through FRSP Online we can start having a look at that. There are a lot of different factors that you have to take into account. It is not automatic that any variations are to do with displacement. That will take a fair bit of analysis.

Senator KIRK—So there has been no consideration given to how client numbers may have dropped in other services at this point?

Ms Pidgeon—We do not have any sound data on that.

Senator KIRK—What is the average waiting time for appointments for clients across the centres, or does it vary according to—

Ms Pidgeon—We do not have that sort of data. It is difficult to compare waiting times because it depends on the service model. Most centres would have a triaging approach, wherein urgent cases people are seen straight away and then other people, depending on their need, wait for an appointment. It is not a simple matter of a single waiting list or something like that. So you have to be very careful about how you interpret waiting times.

Senator KIRK—I have some questions about advertising. How are the individual FRCs going about promoting their services? Is it an overall government advertising campaign?

Mr Syme—It is a mixture of both. Each centre, under its operational framework, is required to network and engage with its local community. They do a range of community development activities. In addition, as part of the national education campaign, the government has actually been advertising in the local area, in each of the catchment areas where centres are located. That can be a mixture of radio, bus advertisements, public display ads and so on.

Senator KIRK—When new services are introduced by FRCs, is there then a separate or additional advertising campaign?

Mr Syme—At stage 2, as the next tranche of 25 is established, a similar process will be established to advertise those new services only in those localities to avoid creating an expectation that people can go to a centre no matter where they are.

Senator KIRK—I have some questions in relation to how the FRCs deal with what might be described as safety concerns—in other words, when people who approach the centre may exhibit some signs that there may be, for example, domestic violence or family violence issues. My first question is: in what kinds of circumstances are clients perhaps declined service because there are those concerns? Or are clients not yet declined services but some kind of safety measures have been put into place to ensure that, if there are these risks, they do not manifest themselves?

Ms Pidgeon—You would not be declined a service because of safety issues. Of course, services include individual sessions. You would not ever be declined service, unless it involved safety of the actual staff and the person is being threatening. If there was a risk to staff, that would be a ground to decline service.

Mr Syme—Guidelines do include: ‘A centre may decline a service to somebody who is threatening either to another client or to staff,’ but they would not decline a service for somebody who is experiencing violence.

Ms Pidgeon—All centres are obviously required to screen for violence, child abuse and similar issues. They need to have safety plans in each centre and they all have. They are also required to obviously take into account the result of that screening in deciding what sort of services are appropriate and also what referrals are appropriate—for example, referring people to domestic violence support services.

Mr Syme—I should also add that the family law regulations require any practitioner, whether in a centre or elsewhere, to make an assessment as to suitability for a matter to

proceed to family dispute resolution. If, for example, violence interferes with the person's ability to negotiate fairly then they are under an obligation not to provide that dispute resolution process.

Senator KIRK—With the safety plans that you spoke of, are they just generated within the FRCs themselves or is there some kind of standardised safety plan that is used by all?

Ms Pidgeon—The safety plans need to be generated by them because they take into account their actual geography—where they are located in the street, where they are located in a suburb or a centre. There is a framework for screening and assessment, but the safety plan itself is very localised.

Senator KIRK—So the process of screening and assessment is across the board? All of the FRCs have the same processes?

Ms Pidgeon—They have a common framework.

Senator KIRK—Do all FRCs currently have safety plans?

Ms Pidgeon—Yes.

Senator KIRK—Is the process, which is in place for when it is deemed necessary to make an urgent referral to, say, as you said, a domestic violence centre or some other agency or authority that might need to deal with something which is clearly a risk, incorporated in the safety plans?

Mr Syme—The safety and security guidelines provide that centres are required to have in place arrangements for making urgent referrals to appropriate organisations and services.

Senator KIRK—That is in the safety plan or is that a separate—

Mr Syme—That is a requirement in the guidelines that they shall have those processes in place. The nature of those processes will depend on, for example, what is available in the local service, what emergency services exist, even down to how close a police station is.

Senator KIRK—They are localised.

Mr Syme—They have to develop the actual details of it, but the overall framework says that they must have in place processes for making urgent referrals.

Senator KIRK—Is monitoring done by the government as to whether or not these safety plans and the like are in place? You said that they all have them, but I wonder whether there is any compliance.

Ms Pidgeon—We do address it. For example, when we train staff ourselves, we always have induction training for staff of family relationship centres, which we did both initially and we also had a further session later last year for those who could not get to the initial induction training. We do cover the importance of the safety plans and so on.

Mr Syme—It is also incorporated within the approval requirements for centres. There are auditing processes for ensuring that appropriate standards are in place, and those standards of course include safety standards.

Senator KIRK—I was going to ask about that. How often are these sort of audits done? It seems to me that these are very important matters that must be in place. It is one thing to say

that you have a plan, but it may not be a very good one and it might not be adequate for the circumstances. I am just wondering how often these things are checked and monitored.

Ms Pidgeon—FaCSIA is responsible for that. My understanding is that all the new services are audited and then after that it depends on whether they were found to be compliant or not as to how quickly they are followed up. I think FaCSIA is actually looking at what its arrangements should be for the future at the moment in terms of performance auditing and so on. I do not know what the future will hold for that at this stage.

Senator KIRK—What about internal complaints procedures—for example, if a person comes in and they are not happy with the service that has been provided to them. To whom do they complain if they are concerned about it?

Ms Pidgeon—Their first port of call is the actual service itself. All services have to have a complaints process which they make known to their clients. However, if clients are either not happy with the result of that or feel they cannot go to the service—they may feel too uncomfortable to do that—they can complain to the FaCSIA state or territory office. FaCSIA will then endeavour to resolve that complaint. If something is not resolved and it is about one of our funded services, it would be escalated to our department. I am not aware of any such complaint being escalated for the centres. We have not had that situation.

Senator KIRK—So when a person comes in or avails themselves of a service they are given information as to the complaints procedures available to them.

Ms Pidgeon—The centres are required to make their complaints process known. Whether that is through a bit of paper or whether it is up on the wall, I do not know what they all do.

CHAIR—That concludes the questions on the family relationship centres. I thank the officers for appearing here today. We will continue on output 1.1. I understand that Senator Heffernan has some questions on output 1.1. I believe they pertain to the courts, broadly speaking.

Senator HEFFERNAN—In November of the year before last—I have been very patient with this—I sent some documents to the Attorney-General's Department and the Australian Federal Police. I understand that the Attorney-General's Department is not very interested in these documents, but I asked if you would kindly authenticate the documents. The reason I am coming back to this is that I am not going to give up on the fact that, while there is a sensitivity in the separation of powers and public confidence in the judicial process, there is continuing evidence of the inability of a method of dealing with the human failings of people involved in the judiciary—whether it is through old age, cocaine sniffing, drug taking, just being tired and worn out or whatever it is. I want to come back to that. I just wondered whether the Attorney-General's office has a view on all of this.

Recently, there was a judgment that was suppressed in the New South Wales District Court, in which a person was found guilty of assaulting his daughter. Part of the assault was sexual assault with a firearm. That person was given a suspended sentence and allowed to go back to the matrimonial home and back to work. His job—which I will not define; nor will I define where or how or if—is one that has a lot of public contact with places which have young people in them.

In the documents that I gave you in November before last—which I have asked you and everyone else to verify, but no-one will—there is a letter from the Wood royal commission to the New South Wales Police. It is dated 25 August 1997 and it is signed by a very prominent QC. It would not be hard to verify it; you would just ring the QC and ask: ‘Did you sign this letter?’ You would also ask the service solicitor at the New South Wales Police Service and the person who annotated the letter on 4 September 1997: ‘Is it a true document?’

This particular document sets out a list of police intelligence. It states that it is noted that this information is disseminated to the police service pursuant to section 30(iv)(c) of the royal commission—blah, blah, blah. I have no idea about that. But in this list, as well as notes from interviews, there are 27 names. Twenty of them are judges and lawyers. There are a couple of people with political connections and a couple with policing connections. Some of it is hearsay evidence, but I think the public would love to know what was done about it.

The document states that it is a list of people allegedly involved in the sort of stuff that that person was given a suspended sentence for. In the notes that follow, it states that a certain judge frequented Costello’s, and it is stated that he picked up boys at the toilets opposite Marcellin College, Randwick. What would be the view of the Attorney-General’s Department if that person, who is currently a judge in New South Wales, was sitting on cases of sexual assault?

Mr Cornall—Senator, we have been over this before—

Senator HEFFERNAN—What do you think the parents of these kids would say—or the grandparents of that case the other day who tried to get the safe custody of that little child whose mother’s boyfriend had 350,000 images of female child pornography on his computer, and the excuse given was that the child was ‘safe’, as it were, to go back home because the man was only interested in little girls? How much of this crap are ordinary Australians supposed to put up with?

Mr Cornall—It is not up to us to speculate on that sort of question in estimates.

Senator Ellison—Madam Chair, I think there is a jurisdictional issue here, without being too legalistic. In the first instance, one would want to ask the New South Wales Attorney-General, the New South Wales Minister for Police, the New South Wales government and the New South Wales police what they were doing in relation to these sorts of issues to the extent that a sexual assault is a state matter. I understand that the prosecution—and I am open to correction—was not a Commonwealth one.

Generally, I would say it is abhorrent, and I share Senator Heffernan’s concern. I have no power whatsoever, no jurisdiction whatsoever, to deal with it any further because it is not in the Commonwealth jurisdiction, as I understand it. The only thing I can say is that the handling of that case is a state matter. The police who deal with sexual assault are not the Australian Federal Police but the New South Wales Police, and everything that has been described so far pertains to the New South Wales jurisdiction. Having said that, I am not dismissive. I share the concern that Senator Heffernan expressed and the community would too. One would hope that the New South Wales government would act accordingly.

Senator HEFFERNAN—This is a sort of ‘picture paints a thousand words’—the problem that we have in the Murray-Darling Basin, where it is someone else’s problem all the time.

Why are we not entitled to a system in which the public is entitled to know the state of the mind of the judge who is sitting in judgement on a thing like that? It beggars belief that you would let a kid who was assaulted in all sorts of obscene and horrific ways back into the matrimonial home to face up to it all again. Every time the poor little bugger went to bed she would be worrying about what was going to happen next.

CHAIR—I assume that is a question you are directing to the minister, Senator Heffernan.

Senator HEFFERNAN—No, it is not; it is commentary.

CHAIR—I am keen on questions.

Senator HEFFERNAN—I note in recent days, the problem of Mrs Catts. And I note the problem at the DPP's office in Sydney. I know that some good, well-meaning police in New South Wales did not like to refer some issues to the DPP's office in New South Wales because they knew the likes of this person, who has pleaded guilty to these charges, is in there. And they saw that there was a problem.

Senator Ellison—I just want to clarify that that is the state DPP.

Senator HEFFERNAN—It is indeed.

Senator Ellison—I am very anxious to make that clarification.

Senator HEFFERNAN—That does not help the people. This Mrs Catts was locked up for 10 years and then the court decided that perhaps they should have not have locked her up.

Senator Ellison—The only thing I can see, of a Commonwealth complexion, is in relation to the Family Court order or a decision that was made—

Senator HEFFERNAN—The 350,000 images is a federal matter.

Senator Ellison—If they are on a computer it certainly is, and that is something that can be taken up with the AFP.

Senator HEFFERNAN—It just beggars belief. You know, Madam Chair, about the law: every now and then the truth and the law intersect, but you get a lawyer to go to court because it is about the law and good lawyers can avoid the truth. Where does it leave the grandparents of this kid, who are begging the system to help them protect this child? The mother is a stripper or something and the boyfriend is God knows what, but he certainly has 350,000 images. Professor Freda Briggs has said that 70-odd per cent of people who look at these images are also perpetrators. Where does that leave the grandparents?

You do not have to respond to that. My point is: why can't the Attorney-General or the Attorney-General's Department be bold enough to say, 'Senator, the documents you have are authentic'? Why can't you say that? Ring up Gary Croke QC and ask him whether he signed it.

Mr Cornall—The only documents you gave me, you gave to me in confidence some time ago. I read them and returned them, and I told you that I had not kept a copy because of the nature of the documents.

Senator HEFFERNAN—Fair enough.

Mr Cornall—So I do not have the documents.

Senator HEFFERNAN—But I did ask for them to be authenticated. Now, no-one is capable of authenticating these documents.

Senator Ellison—On that point, can I say that that is a matter for the Australian Federal Police, who have been looking at that. In fairness, that should be raised—

Senator HEFFERNAN—I have no complaints—

CHAIR—Senator, can we just let the minister complete that point?

Senator Ellison—I think the authenticity of the documents is one for the AFP and not the Attorney-General's Department because they were not documents generated from the department.

CHAIR—I understand that has been made clear previously, Minister.

Senator Ellison—I am not saying that this is not a legitimate question that Senator Heffernan is posing about the authenticity; it is just a matter of who that question should be directed to. The AFP is the one that I think can deal with that.

Senator HEFFERNAN—All right. I think the AFP have been very helpful. Can I just turn to one of these unauthenticated documents? It is obviously authentic; it is the Royal Commission into the New South Wales Police Service. It is the separate report, which has not had a lot of publicity. In it the commission concludes: 'It is clear that Mr Gordon Vivian Stewart had referred a person to counsel under a name that he knew was not his true name.'

What this is all about is a person who appeared in two courts where the solicitor who took him to court knew that he was putting him into the court under a false name. And then a barrister, who later became a royal commissioner and a judge, represented this person in court. And the person got out of it and for 20 years he became a serial abuser and he left behind a long line of devastation in kids. He eventually died in jail. But here, as cool as a cucumber, the royal commission is saying that it is also clear that this bloke had referred him to counsel under a name that he knew was not his true name.

So I wrote to the police. This is a question of what we are supposed to do about all this. I said to the police, 'Please find enclosed some documents which set out that this Gordon Stewart represented the bloke under a false name.' And they wrote back and said:

In examining the matters you raise, consideration was given—

I know this is a jurisdictional thing—

to the common law.

The letter quotes, 'offence of perverting the course of justice.'

I would have thought that any reasonable person sitting at the back of this room would have thought that if you knowingly took a person to court under a false name—this guy also happens to be a consul general to a foreign country—you would be perverting the course of justice. Would that be a fair assumption, Mr Cornall?

Mr Cornall—I could not comment on that without knowing considerably more about it.

Senator HEFFERNAN—Righto; do not comment. But the person down the back is nodding their head. I would have thought that if you deliberately took a person to court under

a false name it would be some sort of offence. So the police wrote back to me and said, 'Can't help you, old bud. Sorry.' They said:

In such matters the prosecution must establish an intention to pervert the course of justice—

Senator Ellison—Which police? I just want to clarify, Madam Chair.

Senator HEFFERNAN—New South Wales Police.

Senator Ellison—Senator Heffernan, please be careful when you are talking about the DPP and police.

Senator HEFFERNAN—Okay.

CHAIR—I think it is important to confirm, Senator Heffernan, that, as I understand the documents to which you are referring, they are matters relating to the New South Wales royal commission—just to clarify the minister's point.

Senator HEFFERNAN—To which?

CHAIR—To make it very clear that these are matters pertaining to the state of New South Wales, not the Commonwealth.

Senator HEFFERNAN—Yes, but they are matters that go to the heart of public confidence in the judiciary and law and order. This letter is signed March 2005. I have been very patient about it and I am going to continue to be very patient about it because I have a box of documents at home. If you think these are interesting, wait till you see the rest of them. This letter says:

I am advised that the prosecution ... on the material provided by yourself the only evidence that supports the allegation is a finding of the royal commission which itself may not be admissible in prosecution.

The prosecution says that it is clear that this guy had referred a bloke to the court under a false name. It is black and white. I will not bore you with all the detail of how they proved that. The letter continues:

The royal commission inquiries, however, revealed that this character had carried out numerous transactions in the name of Philip Hill, including renting properties, purchasing and selling properties and motor vehicles, establishing and maintaining bank accounts, transferring property, making gifts to companies controlled by him. On one occasion he signed a transfer under the Real Property Act as transferor in the name of the false name and transferee in his real name. None of these transactions or the reason for the use of the name was ever investigated by the police.

So I ring up the police and say, 'How about it?' They say to me:

I am advised that the prosecution always retains a discretionary power not to proceed with an indictment, notwithstanding there may be a reasonable prospect of conviction.

How am I expected to have confidence in the system?

Senator Ellison—Madam Chair, I am looking for the question here from Senator Heffernan. What assistance can either I or the department render in relation to this matter, which is obviously a state matter? I am not being dismissive to the extent of saying that it is not a serious issue, but I stress that it is a question of what jurisdiction we have. If Senator Heffernan wants me to take up the matter with the Attorney-General of New South Wales or

the Minister for Police I am willing to do so, but there is no responsibility in a clear sense, that I see, which is Commonwealth, albeit that these are very serious matters.

CHAIR—Minister, this is not the first occasion on which these matters have been raised through this committee by Senator Heffernan in the context of estimates. I understand Senator Heffernan's concern to go to the question of the capacity for there to be, at the Commonwealth level at least, a judicial commission. It is a matter he has pursued on several occasions before the committee. I understand Senator Heffernan's questioning to be contextualising that matter again for the benefit of the committee and you and Mr Cornall. I do not expect that Senator Heffernan has a view that particular action be taken in relation to New South Wales, but if I understand it correctly—and, Senator Heffernan, I am pleased to be advised otherwise by you—that is the gist of the matters of concern.

Senator HEFFERNAN—Thank you.

Senator Ellison—To the extent that state judges can hear federal prosecutions there is a relevance for state judges, because, when a Commonwealth prosecution is brought, those judges then deliberate and hear those cases.

Senator HEFFERNAN—Let us keep going. We will fine it up so that it does come into your bailiwick, if these documents are true. This is a police running sheet. It talks about the particular person we have just been talking about, who happened to be on the front page of the *Weekend Australian* on 31 July 2004. He was described as 'the 75-year-old former high-profile lawyer, honorary consul general for the Dominican Republic and a Rolls-Royce driving millionaire'. Good luck to him!

Of this particular police interview—and it gives the details of who conducted the interview and where—it says:

He appeared extremely nervous ...

Blah, blah, blah.

During 1995-96, he was approached and recommended by a certain judge to travel to London, England, to manage a fraud prosecution involving the sum of \$US60 million in trust funds on behalf of—

I will not say who.

By his own admission, he saw this as an opportunity and a personal challenge to see if he still had the capacity to function successfully as a lawyer and that monetary considerations were secondary. He then travelled to England to initiate the inquiries. By his own admission, he then advised that the case had been substantially more complicated than he had been led to believe.

He had to do a bit more for his money, I guess.

He subsequently sought the assistance of a judge—

whom I will not name—

to draft a submission to the lawyers in England. Stewart advised that this report was rejected initially, but after some mutual modification was accepted and the judicial process concluded. According to Stewart, the final report did not differ a great deal from the original one he had submitted with the judge's assistance. Prior to terminating our interview with him, he indicated, rather sheepishly, that the judge in question would not want it to be known that he was involved and gave certain advice in the

matter concerning ... as some of these matters may eventually appear in the court in which this judge sat.

Of course, that is exactly what happened: he sat in judgement on his own advice. Could you explain to me how that is tolerable and how that is not a matter for the federal Attorney-General? Here it is in black and white, and I gave it to you two Novembers ago.

CHAIR—That is a specific question that we can deal with.

Senator Ellison—Yes.

Mr Cornall—My recollection is that there was some examination of that issue at the time and that the parties themselves did not persist in their objections.

Senator HEFFERNAN—When that happened some time ago, I rang the people who were involved on one side of the argument and said, ‘Did you know that judge So-and-so gave advice? The judge said it was ‘inconsequential advice.’ There is a letter, which I have seen from the London lawyers, which says to the person concerned, ‘The advice was critical in settling the matter.’ I would have thought that that was highly intolerable.

Mr Cornall—As a general proposition, you are quite right. There is no issue about that.

Senator HEFFERNAN—The defence was, ‘I declared an interest.’ I wondered how I would test that and I thought I would ring up the people concerned, and I did. I rang up the senior law firm partner who was involved in this matter and I said, ‘Did you know that the judge’—and I quoted the police interview; the judge part-wrote the advice that he sat in judgement of—‘had been involved to that extent?’ He said, ‘Most definitely not and we would have done something about it had we known.’ Some of these people lost millions of dollars as a result of this .The person I had been talking to allegedly lost a million dollars—some personal disappointment.

I said, ‘If you want to review this, get back to me.’ He rang back in a few days and he said, ‘I’ve come under great pressure’—and this is the senior partner of a law firm—‘not to proceed with this matter because we have other matters we have to deal with and we don’t want to prejudice ourselves.’ I think that is a compromise of the highest order. Would someone kindly authenticate these documents and other documents so the public can at least know that we are fair dinkum. I am interested to know. You can reflect on all that—you do not have to talk about it here—and I will come back to you in due course at an appropriate time. But I think it is a disgrace.

Senator Ellison—I think we cannot take that much further. Senator Heffernan has put the issue to us and we understand that it is now in the jurisdiction of the Commonwealth. If Senator Heffernan has any further information he wants to put to us, he can do that out of session.

Senator HEFFERNAN—Madam Chair, my point is that this is in a police running sheet. I could give you other stuff and also name the files that they come out of. I am going to deal with police intelligence with the AFP later. I would have thought it was patently obvious that it is a difficult matter for the police, because it is in no-man’s land. So the police have to say, ‘It’s not a matter for us; it has to be a criminal matter.’ And that is fair enough. But it most definitely is a matter for public confidence in a judicial process. I could sit here and go on for

a couple of days about other instances of the double standards in all of this stuff. How does a policeman deal with that? Does he say, 'Strewth, the system's pretty crooked, isn't it' and go home and have a beer? That is about all he can do at the present time. There is no way to deal with it.

Senator Ellison—Madam Chair, I think the relevant aspect for this part of estimates is the question of a conflict of interest, which was dealt with in a case in the Commonwealth jurisdiction. The parties at the time, I understand from the secretary, did not raise an issue. Senator Heffernan said that in providing lawyers for one of the parties with subsequent information, things might well have been different in the past if they had known that, and that there has been pressure exerted on a senior partner of a law firm. If that senior partner is willing to provide a letter, certainly that can be—

Senator HEFFERNAN—He is no longer the senior partner.

Senator Ellison—The fact is this: we cannot—

Senator HEFFERNAN—This is difficult stuff.

Senator Ellison—I know. A statement has been made, and I do not think we can take it much further at this point without any further questions or information.

CHAIR—I understand that, Minister, although I think it is fair to say that both Senator Heffernan and the committee are concerned to see, as far as is possible, the matters dealt with that are of concern to Senator Heffernan that have federal/Commonwealth implications.

Senator Ellison—Yes, that is why I say—

Senator HEFFERNAN—My final comment would be—

CHAIR—If I am not mistaken, this is potentially the sixth time the matter has been discussed through the estimates process. Mr Cornall, did you wish to add something?

Mr Cornall—I just wanted to say, as was said before, judges may be removed for proven incapacity or misbehaviour. If there is any information that leads to the conclusion that a judge should be looked at for that reason, then that information should be forwarded to the Attorney-General.

CHAIR—I would like to see what can be refined and/or distilled out of this discussion to address these matters.

Senator Ellison—I do understand there has been further information that Senator Heffernan has provided to us today. Although this has been raised on previous occasions, there are some other aspects that Senator Heffernan has raised today which I think bring your comments into relevance.

CHAIR—Thank you, Minister.

Senator HEFFERNAN—Madam Chair, can I say it was delivered in written form two Novembers ago! Finally, and a matter for the Commonwealth, how is it that a person that a royal commission concludes represents someone in court under a false name can be a consul-general in the diplomatic set-up? Do you think that person is fit and proper? That concludes my questions.

CHAIR—Thank you, Senator Heffernan. Are there any further questions on 1.1?

Senator KIRK—Yes.

CHAIR—Could you give me some indication, Senator Kirk, of the period of time you expect to take in 1.1?

Senator KIRK—The questions that I have could take 20 minutes to half an hour. The questions I want to ask are in relation to marriage celebrants. As I understand, there are now approximately 5,000 registered marriage celebrants in Australia. Does that sound accurate?

Mr Arnaudo—That sounds correct. Yes, I think it is.

Senator KIRK—I understand that in the past few years there has been a significant increase in the number of marriage celebrants. Do you have figures for the last five years and how those numbers have increased?

Mr Arnaudo—I think we provided an answer to Senator Crossin at the last Senate estimates, on 31 October. It was question on notice No. 12. That gave an idea of the numbers there. I can repeat them again just from the question on notice. In September 2003, 3,454 marriage celebrants transferred from the old system to the new register of marriage celebrants. On 31 August 2004, there were 3,629. On 31 August 2005, there were 3,868. On 31 August 2006, there were 4,056.

Senator KIRK—So the number of 5,000 that I cited is a little high, or has the number increased since mid-way through 2006?

Mr Arnaudo—It varies depending on people resigning, passing away or deciding to no longer be marriage celebrants. That number does fluctuate on a weekly basis.

Senator KIRK—I am wondering about the support that the government provides to marriage celebrants, whether it be through the provision of training so that people can get themselves qualified or through ongoing assessment of competency once people are qualified. Could you fill that in for me.

Mr Arnaudo—In order to become a marriage celebrant, a person has to demonstrate that they have attended a course that has the core competencies that the government has set under the regulations. They also have to demonstrate that they are a fit and proper person. There is also a requirement under the regulations that the marriage celebrant undertake five hours of ongoing professional development every year. Two of those hours are set by the Registrar of Marriage Celebrants, who is an officer of the department, and involve a variety of activities to be undertaken by the celebrant. For the remaining three hours, the celebrant is free to choose from a list of training activities that are listed on the section of the department's website for marriage celebrants. That is monitored through the returns that the celebrants provide every year.

Senator KIRK—There is a marriage celebrants section of A-G's?

Mr Arnaudo—That is part of the Family Law Branch.

Senator KIRK—How many people are working in that section?

Mr Arnaudo—I think we provided that answer at the last Senate estimates, and there has been no significant change. From my recollection, it was around 10 full-time equivalents. I can take it on notice, but I do not think there has been a significant change from that.

Senator KIRK—I will accept that answer. My concern is in regard to the suggestion that there is an oversupply of marriage celebrants, that there are a lot of people who are undertaking the course that you referred to and are becoming registered as marriage celebrants, only to find that there is not a lot of work because weddings are decreasing. I have read reports that indicate some celebrants would only conduct, say, four, five or even six ceremonies per year. I wonder what the government's response to that is.

Mr Arnaudo—When the civil celebrants program was reformed in 2003-04, the government decided to impose a cap on the new appointment of celebrants. That cap for the first few years was 10 per cent—that is 10 per cent of the current number. Even though a person might be a fit and proper person and have completed the training required, the registrar would not be able to appoint them if doing so would result in the cap being breached. Last year the cap increased to 20 per cent, mainly because of concerns the government had that waiting lists for people wanting to become marriage celebrants were quite long. The cap will expire in September 2008.

Senator KIRK—After 2008 the number will be unlimited—is that right?

Mr Arnaudo—As long as people who wish to apply meet the requirements set out in the legislation—that is, that they are a fit and proper person, they have completed the training and they continue with the ongoing obligations imposed on a marriage celebrant in terms of the activities that they have to undertake.

Senator KIRK—Is there any sort of assessment done by A-G's before authorising a person—I suppose that is the way to describe it—to act as a marriage celebrant, of the 'market', for want of a better word, as to whether there are adequate numbers of marriages taking place to warrant increasing authorisations of people to become marriage celebrants? Especially once the cap has been lifted, even if the person is a fit and proper person then if there are not really the numbers out there to warrant an increase—

Mr Arnaudo—The department is very much guided by the regulations in the legislation in terms of who the registrar can admit as a celebrant. The process pre-2003 was very much along the lines of looking at the market and those processes. The government went through a very extensive consultation process leading to 2003 to decide that this was a better approach to undertake. A celebrant is authorised to conduct marriages across Australia, so it is not as if they are designated for a specific area. Once they are appointed they can carry out marriages in any part of Australia.

Senator KIRK—Has there been any review of how the system has been working since 2003? Given that, as you said, the new system came into effect then and it was different prior to 2003, has there been any sort of review undertaken as to the effectiveness?

Mr Arnaudo—We have ongoing reviews and we monitor the program itself. And of course we have obligations under the legislation to review the performance of the celebrants as well. The celebrants have obligations in terms of returning information about their activities and what they do. In terms of an overall review I suspect it is a bit too early at this

stage. We are, with the cap still imposed, in a transitional phase to a situation in September 2008 where there will not be a cap.

Senator KIRK—I also wanted to ask a few questions about marriage celebrant trainers. How many are there out there and what sort of assistance is provided to them by the department?

Mr Arnaudo—In terms of the assistance provided by the department, we hold a regular yearly meeting with the major training providers. We had one last year in about March and we are finalising arrangements for one coming out in the next couple of months as well. That is to inform the training providers in the sorts of issues that are out there in marriage celebrancy and also to keep them up to date on developments in marriage law and those sorts of issues. In terms of the actual number—

Senator KIRK—Is there any funding provided by the government to them?

Mr Arnaudo—To the training providers?

Senator KIRK—To the training providers, yes.

Mr Arnaudo—No. It is part of their business in terms of providing other training activities. They could charge a fee if that is what they chose to do. In terms of the actual numbers of training organisations, I think the number is 47. I will have to double check that. I can check it here today and correct it.

Senator KIRK—You can take that on notice. My understanding was that it was around 40 but I was more interested in the increase in the few years since 2003.

Mr Arnaudo—My colleague has just advised me that it is 45 as of 17 January 2007.

Senator KIRK—Thank you. Do you have figures as to how that number has increased since the system was implemented in 2003?

Mr Arnaudo—I would have take that on notice. I do not have those figures with me here today but I would be happy to take it on notice. I should point out that before 2003 we did not have training organisations in the field. The figures will be from 2003. I can get the numbers since the new system has come into place.

Senator KIRK—That would be good, thank you. I have a few more questions but I will put them on notice in view of the time.

CHAIR—Do matters pertaining to David Hicks come under 2.2?

Mr Cornall—Yes, 2.2.

Senator LUDWIG—Then the general questions about the tribunals. Where would the appeals from the SSAT to the AAT come?

CHAIR—In this part, I believe. Is that correct, Mr Cornall?

Mr Cornall—Yes, we can deal with courts here, although the SSAT is not one of our tribunals.

CHAIR—Appeals to the AAT would be dealt with here.

Mr Cornall—Appeals to the AAT are, yes.

Senator LUDWIG—That is the one that relates to the Legal Service Directions. Is that appropriate here.

Mr Cornall—Yes. It is in this section. It is 1.2.

CHAIR—If we are going to move to 1.2, though, Mr Cornall, I would like to close the book on 1.1.

Mr Cornall—Jolly good.

Senator LUDWIG—Community legal centres are in 1.7, so we can leave them till then.

Mr Cornall—Do you want to ask about tribunals?

Senator LUDWIG—Yes, I do. I think we were following this up last time. The model litigant obligations are outlined in the Legal Services Directions 2005. My understanding of the obligations, broadly speaking, is that they require that government agencies, in conducting litigation, act as model litigants. If that is right, does this obligation extend to litigation before tribunals?

Mr Cornall—I think it covers everything.

Mr Govey—The answer to that is yes.

Senator LUDWIG—Is it the case, under the model litigants obligation, that Commonwealth agencies should avoid, prevent and limit the scope of legal proceedings wherever possible?

Mr Govey—That accords with my recollection.

Senator LUDWIG—In ensuring that this obligation is met, do you assess or check more broadly the role that departments play? That is why I mentioned the SSAT matters. Do you examine any of those to ensure that the Commonwealth is meeting its obligations as a model litigant, or do you not have an oversight role in that?

Mr Govey—We generally act when a matter is brought to our attention. I am not aware of my colleagues in that area conducting some sort of a self-initiated audit. Rather, if a matter was brought to our attention then we would investigate it. That has been the way in which we have investigated complaints.

Senator LUDWIG—Have any matters been brought to your attention in terms of the Social Security Appeals Tribunal in recent times?

Mr Govey—There is some background to this, which Dr Alderson can perhaps help us with. Dr Alderson has recently moved out of the position of the head of the Office of Legal Services Coordination.

Dr Alderson—At the last estimates hearing a number of questions were raised about the number of matters that were being appealed from the SSAT to the AAT. I think that, in particular, there was some question about a number of matters involving the Department of Employment and Workplace Relations. That, I suppose, fell into the category of matters where, because some question had been raised, we pursued it with the relevant agencies. But, essentially, our inquiries identified no breach of the directions. One of the limiting factors was that the nature of the allegation made concerning the Department of Employment and

Workplace Relations was very general. It was simply that the number of matters going to the AAT had increased over a period of three years. We did some investigations to check those numbers, and we have some figures that we might be able to make available. We then followed that up by asking DEWR some questions about its processes and so forth. Neither the allegations that were made nor the inquiries that we made identified any breach of the directions.

Senator LUDWIG—It might be helpful if you had those figures. My question related to that follow-up, so I appreciate the work the department has done in respect of that. There does seem to have been an increase in appeals. Some of the questions go to that issue. The decision is made by the Department of Employment and Workplace Relations as to whether they appeal, not by the AGD. Is that right?

Dr Alderson—None of those decisions are made by AGD. In fact, there are a number of agencies involved in these matters because the day-to-day handling of them is actually undertaken by Centrelink. But, generally speaking, it acts on instructions of the department that administers the provisions in question—for example, the Department of Employment and Workplace Relations. But that is right; AGD has no direct role in those matters.

Senator LUDWIG—In short form, the only guidelines would be either those held by the Department of Employment and Workplace Relations into how they would determine their appeals process or the model litigants obligations. There are no others produced by the department—that is, AGD—to assist departments in making decisions of that type?

Dr Alderson—That is correct. I suppose the primary document made by the Attorney General's, and which guides the actions of agencies, is the Legal Services Directions. Since early 2006 they have had expanded model litigant obligations within them on a number of topics. Under the directions, the Office of Legal Services Coordination then issues supplementary guidance—we call them 'guidance notes'—which we put on our website and send to agencies. I think we do have one guidance note of some relevance that supplements the directions. We have one that talks about when it is appropriate to initiate proceedings. It is about a page long. So, again, that is something that we could provide to the committee. Apart from those two documents, I am not aware of the department having issued any other document relevant to the question of when one might appeal a tribunal decision.

Senator LUDWIG—In terms of compliance—perhaps we could use that word—with the model litigants obligations, does the office do any work to ensure that?

Dr Alderson—I would make a couple of comments. The first one Mr Anderson has just reminded me of. There are a range of agencies, some of which have a large volume of litigation, and a number of those have quite extensive internal guidelines. So, agency by agency, they have geared to their specific circumstances quite detailed guidelines about their practices, taking into account the model litigants obligations. I am sorry, Senator, could you remind me of your last question?

Senator LUDWIG—I think I asked this a number of times when you were with that section. In terms of compliance, it seems that since I have been asking this the office has moved from—my words—a general overview, hands-off approach to your model litigants obligations. The guidelines have certainly been strengthened in the last couple of years—more

recently, in 2006. It also seems that your activity in liaising with departments has increased. I think that is evidenced by you going back and talking to the Department of Employment and Workplace Relations specifically about the SSAT, and I thank you for that work. The next point relates to actual compliance activity, where you would then go and audit those. Has any type of work been undertaken along those lines?

Dr Alderson—The principal thing that has occurred along those lines is that the ANAO audit of the Commonwealth legal services market recommended a model in which agencies should have to conduct an internal audit or review and issue a compliance certificate to the Office of Legal Services Coordination. That has been quite an effective process in that, for a lot of those, the certificates have been received and a number of agencies did in fact identify issues or problems with their compliance with the directions that had not previously come to their attention. So we view that as quite an effective process.

That was a model which, following the ANAO's recommendations, was consciously implemented in place of an alternative model that had been mooted, which was audit activity by OLSC. One reason for going down that route is that it is a lot easier and you can more effectively grapple with allegations or problems or something specific. To go to an agency that has a large volume of litigation and tens of thousands or hundreds of thousands of documents and to say, 'We are looking to find within this some breach,' would be unlikely to be an effective process.

Senator LUDWIG—Yes, although accountants seem to have green pens and seem to be able to manage something.

Mr Anderson—If I could add something that: the department does not conduct a full audit process but an inquiry process in which, as Dr Alderson indicated, if something comes to our attention—whether it is through a media report, a complaint, a decision of a court or tribunal or something like that or, indeed, is raised by yourself in this committee—we will go and make inquiries with departments. So we still go out and look at what agencies are doing and see what they have to say about particular issues that we detect. It is not that we have no outreach process at all, but we do not do a full audit.

Senator LUDWIG—My recollection is that that seems to have advanced over the last couple of years, quite frankly, and that is pleasing to see. Are those certificates from each individual department that has provided available for the committee to look at?

Dr Alderson—I think we might take that on notice.

Senator LUDWIG—They may contain information which obviously would be subject to privacy issues. So if you could provide one, or if you could provide a redacted form, we can have a look at what type of information they contain. I am particularly interested in them meeting the model litigants obligations and other requirements in the legal services direction more broadly. Then, of course, we could always burrow down from there.

Mr Cornall—Could I just sound out this note of caution: we would want them to be full and frank in their reporting to the Office of Legal Services Coordination and would not want to put in place a process which caused them to be less than completely open about these matters.

Senator LUDWIG—No. That matter did cross my mind. That is why I understand the reason why you might want to take that on notice, have a look at the information that is provided and decide on whether you can liaise with the department itself as to what form you may want to present that information in. If you cannot present the information in a form that is suitable, perhaps you could come back to the committee about that issue.

Mr Cornall—Thank you.

Senator LUDWIG—That may not mean I will not want it at some point, but we can certainly start at that place. I might put the rest of my questions in that area on notice. That will mean I have completed output 1.1.

[12.47 pm]

CHAIR—Thank you. As there are no further questions in output 1.1 we will move on to output 1.2.

Senator FIELDING—Family First is interested in what I describe as raunchy—some people even describe it as soft porn—ads on television at night designed to sell dating services, phone sex and mobile phone screensavers. What can you tell me about such ads?

Mr Cornall—This department's responsibilities extend to the classification of film, literature and computer games. Matters that appear on television fall within the responsibilities of the Department of Communications, Information Technology and the Arts. Within that area, television is largely an area subject to self-regulation under various codes of practice. Mr Anderson wants to add to that.

Mr Anderson—To add one thing to that: there is a process through the Advertising Standards Board by which complaints about television advertising and, I think, other forms of advertising can be made as well. They have a process through which they inquire and then deal with the television stations if they uphold a complaint. But, as Mr Cornall mentioned, that is not a matter within this portfolio.

Senator FIELDING—Do the Office of Film and Literature Classification look at films and books?

Mr Anderson—They do not look at books; they look at magazines. They can look at books, but publications is a potentially narrow category. It is mainly computer games, DVDs, public exhibition films.

Senator FIELDING—Predominantly people watch a lot of the films on television. I understand that the industry rates its own ads—is that right?

Mr Anderson—The television industry is self-regulated.

Senator FIELDING—Do they use any of the Office of Film and Literature Classification ratings to marry up with your specifications?

Mr Anderson—They are required to have regard to the classification guidelines that are used by the Office of Film and Literature Classification, but they are applied by their own assessors and some of the TV stations under their code of practice have additional classifications that are not used for by the Office of Film and Literature Classification.

Senator FIELDING—Has your department had any complaints in regard to these sorts of ads late at night? In Canberra, I think these ads are being aired as early 9 pm.

Mr Anderson—I am not aware. It is possible that people might have made complaints to the Office of Film and Literature Classification itself, but if they had they would have been redirected to the Department of Communications, Information Technology and the Arts or to the Advertising Standards Board, or alternatively to the TV stations under their codes of practice.

Senator FIELDING—Does the government play any role in who is on the committee or board that rates its own TV ads?

Mr Anderson—It is not a matter for this portfolio. I do not know how those people are appointed.

Senator FIELDING—I was in another committee and they pointed me to this area. It sounds like you are pointing me back to the other committee.

CHAIR—Are you saying you were in the communications committee yesterday?

Senator FIELDING—Yes.

Mr Cornall—If that is the case, I am surprised because it is very clear that we do not have any role to play with respect to television regulation.

Senator Ellison—I think what I can do to assist Senator Fielding is to take it on notice and check with that committee. One way or another between us, we will come up with the answer.

Senator FIELDING—My concern is that obviously films quite rightly are looked at because they have influence on people but it seems to me that ads are left up to the industry. With no hands-on role from the government, I think you have the fox guarding the hen-house. I am really concerned. I have had a lot of complaints. I am sure that most members of parliament would be getting complaints about these sorts of ads that some have described as soft porn or raunchy ads masquerading as date services are a concern to Australian families and my concern is that I do not think the government is looking at it hard enough. I will be keen for the minister to take it up with the other committee.

Senator Ellison—It is an important issue and one which I know is of concern in the community. From the point of view of the Attorney-General's Department, the issue is not within its responsibility. However, sitting here as minister I will take it on board and we will develop a whole-of-government response for Senator Fielding because it is an important issue.

Mr Cornall—I flick through all of the correspondence we draft for the Attorney and I do not recall any answers for the Attorney to this sort of question. I have just asked Mr Anderson and he does not recall any either. So I do not think these issues are being raised with the Attorney-General.

[12.54 pm]

CHAIR—Chronologically speaking, we move to output 1.3—Legal services and policy advice on information law and human rights.

Senator LUDWIG—I can put those questions on notice.

CHAIR—Are there any comments on output 1.4—Legal services and policy advice on international law?

Senator LUDWIG—Likewise, I will also put those questions on notice.

CHAIR—Are there any comments on output 1.5—Drafting of legislative and other instruments, maintenance of the Federal Register of Legislative Instruments, publication of legislative materials and provision of related legal services?

Senator LUDWIG—Likewise, I can also put questions relating to output 1.5 on notice.

CHAIR—Are there any comments on output 1.6—Legal services and policy advice on native title?

Senator LUDWIG—I will ask some questions on that.

CHAIR—I am minded to suspend proceedings until 2 pm and, when we resume at 2 pm, we will start with output 1.6.

Proceedings suspended from 12.56 pm to 2.01 pm

CHAIR—We will resume, as I indicated before the break, in output 1.6. I indicate, Mr Cornall, that there will not be questions in 1.3.

Mr Cornall—Before we recommence, can I table the terms of reference for the family relationship centres task force and the long-form funding agreement that Miss Pidgeon referred to this morning?

CHAIR—Thank you very much. I apologise for detaining those officers in relation to 1.3, but there were some matters I needed to check. Okay, we will move to 1.6.

Senator CROSSIN—Native title. I just want to tidy up some bits and pieces about the new Native Title Amendment Bill.

CHAIR—We are slightly constrained in relation to discussion of bills which are before the committee for inquiry, based on advice from the clerk which I will place on the record now. Then we can decide what happens in relation to the specific questions that you have. The clerk advises:

Where a bill is before a Senate committee, this means that the Senate has given that committee the task of conducting an inquiry specifically into that bill. This indicates an intention that any inquiry into the provisions of the bill be conducted at hearings and meetings of the committee specifically designated for that inquiry, and not pursued at estimates hearings which interested senators might not be able to attend and for which there is usually no notification of such specific subject matters of inquiries.

I note that and also add that the committee has yet to table its report and complete the inquiry on that bill, so that also puts some caveats over what we are able to pursue in the estimates discussion.

Senator CROSSIN—The questions might be general enough around the interaction between AGs and the NNTT, so we will see how we go.

CHAIR—Thank you.

Senator CROSSIN—My question goes to the department's decision to improve the claims resolution process by expanding the powers of the Native Title Tribunal. I just want an understanding of how it is that the department came to that as being the preferred option.

Mr Anderson—There was a review conducted by two independent consultants: Dr Ken Levy and Graham Hiley QC. They travelled around Australia and met with a range of interested parties. They took written submissions, then they provided a report to government, and that made a number of recommendations to do with the role of the National Native Title Tribunal and its relationship to the court. Amongst other things, they recommended that there should be some additional powers for the tribunal. That report went to government. Government has published that report and also a response to that report, and the government adopted those recommendations that go to the role of the tribunal in terms of additional powers.

Senator CROSSIN—So it comes straight off the back of the Levy report and its recommendation?

Mr Anderson—Yes, that is correct.

Senator CROSSIN—Do you keep statistical evidence on the average length of time that is taken for mediation with the NNTT vis-a-vis the Federal Court?

Mr Anderson—We do not. We are seeking to compile more statistical information about the operation of the different parts of the native title system, but for those sorts of data we would go directly to the tribunal or to the court.

Senator CROSSIN—I think by the time I ask you to do that it will be a bit late, so I will not.

Mr Anderson—People from both will of course be appearing later today.

Senator CROSSIN—All right, I will ask them then perhaps. Do you believe the changes will actually make the tribunal process quicker and more effective?

CHAIR—Senator Crossin, I do regard these questions as going to the inquiry that the committee is conducting into the bill and, based on the advice of the clerk, I am concerned not to go down that road.

Senator CROSSIN—Let me ask you then: how do you currently assess how the mediation process of the NNTT is working?

Mr Anderson—The fact that the government is making proposals for some additional powers for the tribunal and for a slightly different relationship with the court is a reflection of the fact that the government believes that the processes generally within the native title system, but particularly those with the court and tribunal, could be more effective to expedite agreement-making by parties.

Senator CROSSIN—How do you assess how they are currently working?

Mr Anderson—The assessment is informed by the consultation process as it was carried out over the last year-and-a-bit during the reform process, but I cannot say much more other than that the government would like to see those processes working more quickly. They would like to see the court and the tribunal working together more closely because all the

matters are matters before the court. It is intended that they decide, between the court and the tribunal, what is the most effective way to address a particular claim—whether it is hiving off a question of law for the Federal Court, having mediation, using experts or not using experts. Different claims will call for different treatment, and the desire is to have these two institutions, who are both central to the treatment of claims, working together more closely.

Senator CROSSIN—Is there an additional amount in the PBS, in these additional estimates, for the NNTT?

Mr Anderson—It will not receive any additional funding.

Senator CROSSIN—I think we covered the rest of the questions during the hearing. I might just move to another area. This goes to native title advice. I want to ask you about section 312 of the Commonwealth Native Title Act.

Mr Anderson—Do you mean section 212?

Senator CROSSIN—Section 312.

Mr Anderson—There isn't a section 312. Do you mean section 212?

Senator CROSSIN—I have 312 in this briefing. It goes to the confirmation of any existing ownership of natural resources by the Crown, any existing right of the Crown in that capacity to use, control and regulate the flow of water and any existing fishing rights. Can we just check? I do not have a copy of the act with me.

Mr Anderson—I think we are talking about section 212.

Senator CROSSIN—My apologies if that is the case. In that section there is a reference to all state and territory jurisdictions having legislated to confirm access to beaches and other public areas, as you would be aware. I have a list of the dates of the bills of the states and the territories. Can you provide for me, on record, an explanation of the effect of section 212?

Mr Anderson—The effect of section 212 is that where a state or territory has legislated to confirm the validity of public access to an enjoyment of the listed categories of areas, and where the underlying public access was itself valid, then there is no question about the public access. The effect of the state and territory legislation depends upon the underlying public access. For example, they could legislate to say simply, 'We confirm public access to beaches,' but there might be a beach where there was no valid public access and which was not therefore picked up by that.

Senator CROSSIN—So it confirms any existing public access and enjoyment to what sorts of areas? Are we talking about beaches?

Mr Anderson—It confirms that public access to that was valid at the time. So, for example, if someone had been trespassing to get to a beach, that would not have been a right that was confirmed by legislation. But it is waterways, beds, banks, foreshores of waterways, coastal waters, beaches, stock routes or areas that were public places at the end of 31 December 1993.

Senator CROSSIN—All eight state and territory jurisdictions, I understand, have legislated under this section to confirm public access to beaches and other areas. Is that your understanding?

Mr Anderson—I believe that is correct.

Senator CROSSIN—So is it the case that laws have been in place for many years, and all over Australia, that confirm public access? That would be a fair statement?

Mr Anderson—Laws that confirm public access where that was valid public access at the time—31 December.

Senator CROSSIN—If I look at the dates, they were enacted in 1993, 1994 and 1995, with the latest being 1999 in the Northern Territory. Can you tell me what public access is confirmed under section 14 of the Titles (Validation) and Native Title (Effect of Past Acts) Act in Western Australia?

Mr Anderson—I cannot say that from memory. I would have to take that on notice. I am assuming that the effect of it is to confirm public access to these sorts of areas that was valid public access at the time. As I say, I would have to check that.

Senator CROSSIN—I have got it here. It actually validates access to and enjoyment of the following places: waterways, beds, banks or foreshores of waterways, coastal waters, beaches, stock routes—areas that were public places at the end of 31 December 1993. How does that interact, then, with section 212 of the Commonwealth Native Title Act?

Mr Anderson—That would have been state legislation intended to do what the section provides for: to confirm existing rights of public access as at 31 December 1993.

Senator CROSSIN—I want to take you to a public statement that the Attorney-General made. I want to ask you if his views would be consistent with legislation we have just talked about. The *Australian Financial Review*, on 22 September, reported that, following the *Bennell v State of Western Australia* decision, the Attorney-General said:

It is not possible to guarantee that continued public access to all such areas in major capital cities in Australia would be protected from a claim to exclusive native title.

Would that statement be consistent with the legislation we have just talked about?

Mr Anderson—Yes, it is consistent, because you would need to be sure that, when the state or territory legislated, the places that they were having regard to were places where there were valid rights of public access. For example, some people might regard an area as a beach because it has sand on it. It might not, though, be gazetted as a beach in the relevant jurisdiction. So you would need to go through a process of tenure searching or talking to the state and territory about their understanding of tenure to be absolutely sure. On the face of it, the state-territory legislation confirms the public access, but you just do not know for sure unless you check the public access to the particular places.

Senator CROSSIN—On average though, by and large, would you know of any such areas—and I think we are talking about public beaches here—that are excluded from the Western Australian legislation?

Mr Anderson—No, but Western Australia has a very large coastline and—

Senator CROSSIN—We are talking about the native title decision around Perth, aren't we?

Mr Anderson—That decision is a decision in a claim that covers the south-western corner of WA. It is actually a very large area of land.

Senator CROSSIN—Would the majority of places have public access, though?

Mr Anderson—I am not in a position to say.

Senator CROSSIN—Is it something you could take on notice for us?

Mr Anderson—We could seek to find out. It would be quite a resource intensive task to check the tenure of the WA coastline that is covered in that claim, as you would appreciate. We could make some inquiries.

Senator CROSSIN—Would you know of any areas that specifically are not available for public access?

Mr Anderson—As I indicated, I am not aware of any specific places that are not, but we have not checked the tenure of the WA coastline. It is really just a matter of caution that you cannot say precisely what is or is not covered by the state legislation without checking.

Senator CROSSIN—Following the decision, no doubt you would have briefed the minister about the impacts of it.

Mr Anderson—We gave advice to government about the decision.

Senator CROSSIN—What advice was provided in respect of this state?

Mr Cornall—It is not our practice to provide details of legal advice given to government.

Senator CROSSIN—But you did provide advice about access to public places?

Mr Cornall—Mr Anderson said we gave advice about the impact of the decision.

Senator CROSSIN—Can you take on notice for me, then, the areas that you might believe are specifically excluded from this statement?

Senator Ellison—I think we have already covered that. We are not going to take on notice something which requires going through information with the Department of Lands Administration in Western Australia to examine every piece of coastline. There is about a 2,000 kilometre coastline in Western Australia. We will make inquiries and see what we can come up with, but we are not diverting resources in the Attorney-General's Department to go through and do a land title study and then give legal opinion as to what we think will be caught and what will not.

CHAIR—I do not believe the committee has an unreasonable expectation in that regard. I think, Senator Crossin, the committee would seek any information that is obtainable by the department. But I do not think—correct me if I am wrong, Senator Crossin—the committee expects the department to do a land title search of the entire south-west coast of Western Australia.

Senator CROSSIN—With all due respect, that is not what I asked for. I did actually ask if it was possible for you to contact Western Australia and see if there are any areas that the Attorney-General's statement would specifically apply to.

Mr Anderson—We will certainly contact Western Australia and ask.

Senator CROSSIN—That is all I have for 1.6.

CHAIR—Are there any matters in 1.7?

Senator LUDWIG—There are.

Senator CROSSIN—There are.

Senator LUDWIG—In terms of the community legal centres, have there been any announcements of new money since the last budget? I have not seen any, but I just wanted to confirm that there were not any.

Mr Boersig—There have not been any.

Ms Jones—No, there has been no announcement in relation to additional funding for community legal centres.

Senator LUDWIG—When was the last increase? Do they get an increase to meet their CPI—that is, the consumer price index?

Ms Jones—There was a two per cent increase in their funding in 2006-07.

Senator LUDWIG—In terms of the demand for the community legal centres, do you tabulate the responses from the community legal centres about their workload and the issues that they face? Do you keep a performance watch on them?

Ms Jones—We maintain information that we collect through the community legal services information system. All community legal centres report on a range of factors—workload factors and performance factors that are required under their service agreement.

Senator LUDWIG—I take it that the workload factors and, I guess, their performance are on a database of some description. I think we have talked about this before. Is that generically available to the committee? Can we find out whether it has been a flat line, whether they have increased or decreased their workload?

Ms Jones—We do not compile a broad record across all the community legal centres but we do keep information on the individual centres. In terms of providing that information to the committee, it is across a whole range of workload factors, but we could look at that.

Senator LUDWIG—Having looked at those figures yourself, have you found that the workload has increased across the community legal centres or has it been uneven?

Ms Jones—It is fairly uneven because there are different types of models of community legal centres. Some are generalist, some are women's legal services and some are tenancy services, so there are different levels of workload across the various community legal centres across the sector.

Senator LUDWIG—Do the community legal centres raise workload issues with your section directly?

Ms Jones—We do have direct contact with community legal centres, but we also talk with the National Association of Community Legal Centres, which is their peak organisation. We meet with them regularly. They raise a range of issues in relation to the operation of the centres. There have been no recent issues raised directly with us about workload factors.

Senator LUDWIG—Do you keep minutes of those meetings with the national organisation?

Ms Jones—They are not formal minuted meetings; they are basically consultations between the department and the national association on a regular basis.

Senator LUDWIG—Goodness me. A meeting you do not keep a minute on. I am shocked, really! Do you take away a summary of that meeting in any way; in other words, to inform the minister?

Ms Jones—We certainly take the information that comes from those consultations. It assists us in our overall management of the Community Legal Services Program.

Senator LUDWIG—Is that summary of the issues written down anywhere? Yes, you have had a meeting. Yes, you take on board the issues. Do you then write it down so that you can convey it to the minister or to the relevant head of your area and say whether things are going well or are not going well?

Ms Jones—We do not prepare a set report out of these meetings. The general discussions inform the work that we do and the advice that we prepare.

Senator LUDWIG—What is the purpose of the meeting? Is it just a talk?

Ms Jones—Essentially, it is an ongoing consultation with the peak organisation in order to receive information from them and also for us to be able to provide them with information.

Senator LUDWIG—What I am trying to understand is: is it a one-way flow of information? Do you provide them with information and they say, 'Thank you very much'? Do they provide information to you? I expect they would think that it would be used or would go somewhere. Are you telling me it is just taken on board and sits there in the ether?

Ms Jones—I would not say it sits there in the ether.

Senator LUDWIG—I have not yet found where it has gone. Can you help me with that?

Ms Jones—It informs a general consideration of policy issues. In particular, it informs the management of the program. There is a network of state program managers for the community legal centres and we receive information from them, but it is also used in our discussions with them.

Senator LUDWIG—In terms of the directions to the community legal centres more broadly, do you advise them on whether they should or should not make submissions to government inquiries to other matters? Is there a policy position that you have adopted in respect of what work the CLCs should do?

Ms Jones—The work of the CLCs is guided by the service agreements that they enter into. There are guidelines underneath those service agreements that set out the nature of the activities that they can enter into. Essentially, our role is to ensure that they keep within the parameters of the service agreements and operate under the guidelines.

Senator LUDWIG—Have those guidelines changed recently in respect of what public work the community legal centres can enter into, such as making submissions to inquiries by the Senate Standing Committee on Legal and Constitutional Affairs and the like?

Ms Jones—They were updated in a minor way, I think, about 12 or 18 months ago, but not to change the nature of the work that the CLCs could undertake. I could provide a copy of those guidelines to the committee, if you require.

Senator LUDWIG—The National Association of Community Legal Centres had a conference in 2006, in Wollongong. I think it was in September. Did the department provide any funding for that?

Ms Jones—No.

Senator LUDWIG—Do you normally provide funding for their national conferences?

Ms Jones—We have provided funding in the past, yes.

Senator LUDWIG—How much has that been in the past?

Ms Jones—I think it has varied over time. We responded to a question on notice from the committee after the last estimates hearing in relation to funding for the 2004 conference, and I think we noted it was in the range of \$20,000.

Senator LUDWIG—Was there a request made by the National Association of Community Legal Centres for funding for the September 2006 conference?

Ms Jones—Yes, there was.

Senator LUDWIG—And the answer was no?

Ms Jones—That is right, yes.

Senator LUDWIG—Was there any reason given?

Ms Jones—It was a decision of the Attorney. He had expressed some concerns about some of the agenda items on the program for the conference.

Senator LUDWIG—What were they?

Ms Jones—I think it was particularly in relation to some of the agenda items, such as campaigns on workplace relations legislation and other recent government legislation that had been passed by the parliament. There were sessions on those matters.

Senator LUDWIG—Minister, you do not like public inquiry and discussion about your legislation in that sense, so you do not want to fund community legal centre national conferences on that basis.

Senator Ellison—I understand the Attorney has provided an answer on this. He has said that the CLCs must restore their focus to their clients rather than focusing on political issues and that some centres devote considerable resources to running political campaigns. That is not what they were designed to do. Community legal centres were designed to assist individuals who have a legal problem and were in a way supplementary to legal aid. They were particularly designed to pick up those people who could not get legal aid. That was what they were supposed to do and always have had to do. Unfortunately, some of them did not see their charter quite that way.

Senator LUDWIG—The question was specifically in relation to a national conference, where you would imagine that they could raise a broad range of topics, and they have been funded in the past for it. It seems disappointing that the minister has made a decision not to

fund it on the basis of the topics that might be covered. It seems a bit like censorship by the government in respect of a CLC being able to canvass all issues, including the good, the bad and the ugly of the current government's legislative programs.

Senator Ellison—I think they can be advised to stick more to the legal issues confronting average men and women of Australia who do not have the wherewithal to go to a lawyer and seek advice. They would be better advised to look at things which crop up, like tenancy or things of that sort—

Senator LUDWIG—So not unfair dismissal.

Senator Ellison—rather than government legislation. I think that is where you test the real worth of these organisations. I used to work in legal aid and I know what people are basically interested in. It is those sorts of things which affect their daily lives and not esoteric ideas about government legislation. I understand that the conference will go ahead anyway.

Mr Cornall—Went ahead.

Senator Ellison—Went ahead, I should say.

Senator LUDWIG—Has there been some interest by the Attorney-General in the new funding proposal for the CLCs? Is that currently being investigated by the department?

Mr Cornall—The current funding period expires towards the end of 2008, and the department is looking at the issue of funding recommendations for the coming period of the next four-year agreements.

Senator LUDWIG—What can you say about the current work? Is there a current work underway or is there a view about how that funding should be done? I know these are early days yet.

Mr Cornall—There is work underway within the department. One of the issues that we are looking at is whether the current basis of allocating funding between CLCs is still an appropriate basis or whether there should be some review of how that is done.

Senator LUDWIG—Will that also take into consideration the state funding?

Ms Jones—We are taking into account the state funding in those states which contribute funding to the Community Legal Services Program. Obviously, it is a joint program between the Commonwealth and the states.

Senator LUDWIG—I think there is still a rule that exists between how you use federal funding and state funding in particular matters. Are you looking at that rule?

Mr Cornall—With legal aid commissions?

Senator LUDWIG—Yes.

Ms Jones—In terms of that strict divide between Commonwealth and state funding, it does not apply in the same strict sense in relation to community legal centres.

Senator LUDWIG—No, but are you going to look at that?

Ms Jones—No.

Senator LUDWIG—Thank you. I do not have any further questions on output 1.7.

CHAIR—Anything further in 1.7?

Senator CROSSIN—I will just go back to Indigenous legal aid. Can you tell me what the budget for Indigenous legal aid was in 2004-05?

Mr Boersig—I do not have the figures here for 2004-05, but we could supply those readily.

Senator CROSSIN—Do you have figures for 2005-06?

Mr Boersig—We do.

Senator CROSSIN—And that is?

Mr Boersig—In round terms, \$48 million.

Senator CROSSIN—And 2006-07?

Mr Boersig—\$49 million.

Senator CROSSIN—If you could provide me with 2004-05 figures, that would be useful.

Mr Boersig—Certainly.

Senator CROSSIN—Is it possible to do a table for me going back to 2001?

Mr Boersig—We can make inquiries about that. It will depend on our grant management system.

Senator CROSSIN—What was Commonwealth funding for mainstream legal aid provision for 2005-06?

Ms Jones—For 2005-06, the amount was \$148,517,000.

Senator CROSSIN—And the figure for 2006-07?

Ms Jones—The budget figure is \$155,051,000.

Senator CROSSIN—That is an increase there of \$7 million for mainstream legal aid?

Ms Jones—That is correct.

Senator CROSSIN—But only \$1 million for Aboriginal legal aid services?

Ms Jones—That is correct.

Senator CROSSIN—My analysis of the figures from 2000-01 to 2004-05 show that there has actually been a 20 per cent increase in Commonwealth funding for the mainstream legal aid services, but only about a two per cent increase for the Indigenous legal aid services. Can you provide me with an explanation as to the differences?

Mr Boersig—The context of that needs to be considered in the light of the expansion of the Family Violence Prevention Legal Service as well. In that period you are describing, there has also been an increase in that amount, bearing in mind the nature of the workload. In fact, when you look at the legal aid landscape, you are looking at both what the Indigenous legal aid providers provide specifically in criminal law and civil and family law, and the work done in family violence so that expands the amount of money included.

Senator CROSSIN—So you are saying that the workload is higher in the mainstream legal aid area? I am not quite sure I understood what you are saying.

Mr Boersig—The provision of legal aid is a relative term. The amount of money that you put into any particular area is determined by the amount of money ultimately allocated. That is a relative term. When we look at legal aid, we see that it is very difficult to speak in absolute terms.

Senator CROSSIN—What is the difference between a two per cent funding increase, as opposed to 26 per cent? Are you saying to me that the 26 per cent increase is because mainstream legal aid have more programs to manage in that period?

Mr Cornall—When did you say the two per cent increase was calculated from?

Senator CROSSIN—I am comparing 2000 to 2005—the 2001 budget year, right through to the 2004-05 budget cycle.

Mr Cornall—I do not think we could say whether we agree with the two per cent increase because we do not have those figures here. This program was not of course with this department for some of those years, so we would have to go back and check those figures. I think the point Mr Boersig is making is that, in addition to our basic Legal Aid Program for Indigenous people, we have also had a considerable amount of expenditure on domestic and family violence prevention centres for Indigenous people, which is another form of legal aid. And, if you are talking about legal assistance for Indigenous people, we should factor in all of those programs rather than just strictly focus on what is called the Legal Aid Program.

Senator CROSSIN—I understand that, but I do not want to look at crime prevention. I am looking at—

Mr Boersig—No, this is family violence prevention advice about matrimonial matters and family violence, which is very much legal advice and the sort of legal advice that legal aid commissions give to non-Indigenous people.

Senator CROSSIN—What I want to look at is the funding and the resources of Indigenous legal aid operations. Even your 2005-06 figures you gave me show a \$1 million increase but a \$7 million increase for mainstream legal aid. Given that incarceration rates of Indigenous people are through the roof, I am trying to work out why you are giving one sector more money than the other sector.

Mr Cornall—That is a budget decision that the government takes.

Senator CROSSIN—Based on what?

Mr Cornall—Based on the government's consideration about its budget decisions.

Senator CROSSIN—Are you suggesting to me that the priorities of this government that you are working under are to provide more assistance to mainstream legal aid than to Indigenous legal aid?

Mr Cornall—No, not at all. I am saying if you look at the totality of the matters which are funded in respect of Indigenous legal assistance, they are very considerable.

Mr Kennedy—I just want to clarify one aspect of the increase in mainstream legal aid funding. The figures that were provided for 2005-06 and 2006-07 are correct as stated, but there was a movement of funds, a carryover, if you like, from 2005-06 to 2006-07. I do not have the exact amount but it would distort the \$7 million increase that you mentioned.

Senator CROSSIN—So you do not know how much of that is a carryover amount?

Mr Kennedy—No. I will try to find that out and get back to you.

Senator CROSSIN—My understanding is that some of the states provide funding for the mainstreaming of legal aid services, but the responsibility for Indigenous legal aid services rests solely with the Commonwealth. Is that a correct statement?

Mr Cornall—The Commonwealth has accepted that responsibility over a long time, but I should also point out that a number of the legal aid commissions in their mainstream work also provide assistance to Indigenous people.

Senator CROSSIN—The research I have undertaken shows that the Office of Indigenous Policy Coordination have increased their money provided to the Native Title Program that is run through Indigenous legal aid services. It actually provides for a five per cent salary increase, but I cannot see any comparable acknowledgement of the funding increase from the Attorney-General's Department. In fact, when I have a look, it looks as though there has been no provision in the funding for a salary increase for staff in Indigenous legal aid centres.

Mr Boersig—The figures for legal aid are as they indicated. There has been a CPI growth.

Senator CROSSIN—Which is much less than five per cent. That is all that has been accounted for in funding increases; is that correct?

Mr Boersig—That is correct.

Senator CROSSIN—What about assistance for any court filing or transcript fees? I understand that the states exempt mainstream legal aid from paying those fees, but the Aboriginal legal aid services have to pay those fees. Has there been any representation by the department to the states to get them to make an exemption across-the-board?

Mr Boersig—There have been discussions over many years about that issue. That is a state related issue because they are state funded transcription services. In relation to Commonwealth matters that are funded, the Attorney did allow a waiver in relation to those transcript fees for Aboriginal legal aid.

Senator CROSSIN—Yes, I understand that. What sort of pressure, though, are you putting on the states to suggest to them that, of all areas that should be exempt from paying these fees, Aboriginal or Indigenous legal services—I would have thought—should be a high priority?

Mr Boersig—I have to concede that the cost of transcripts varies in relation to the nature of the work done. I would not have expected it to be a large issue in relation to the kinds of work that the Aboriginal legal services do. The bulk of their work is directed to minor or criminal matters, not to appellate matters. It is in appellate matters where you tend to order transcripts.

Senator CROSSIN—Is it a standing agenda item on the ministerial council of Attorney-General's, or SCAG, I think it is called? Is it an agenda item there? Do you keep actively pushing for the states to come to some resolution about this?

Mr Boersig—No, it is not a standing item.

Senator CROSSIN—In your eyes, how do we make it an issue to push the states to actually exempt Indigenous legal aid services from this?

Mr Boersig—We have certainly now drawn it to their attention, and it is a matter that will need to be considered.

Senator CROSSIN—I would have thought that every cent they could save means the more representation they can make. It seems to me that, if you wanted to exempt any service from fees, it would be that rather than mainstream. Perhaps I have my priorities wrong.

Mr Boersig—I think the wider purpose of the tendering process that was gone through was to provide a more efficient service on the ground. That was the intention. So in that sense, it was intended to be a more efficient, effective service, providing that service on the ground and, largely, that has been the case.

Senator CROSSIN—It could probably be more efficient if they did not have to spend money on court fees and transcript fees, I suspect. In terms of long service leave for Indigenous legal aid staff, is that an ongoing contingency that they must find in just the CPI increase you give them each year?

Mr Boersig—One of the provisions or the terms in the tender was that the organisations would be able to address those issues within their budget. That is one of the issues we looked at when we considered the tenders. In addition, during the transition, quite a number of those costs were met in relation to the older services, where that was needed, and we are still working those out.

Senator CROSSIN—I know the Indigenous legal aid services went out to a tender process. Is there any attempt now to review that process?

Mr Boersig—Yes. We have been looking at the process in terms of how we did it. We expect that we will also be reviewed as to how that was conducted as part of the ongoing running of the program, and also in terms of the next phase in relation to those contracts. They expire in mid-2008. We will have to look at the next stage, which can be either a further tender process or a renegotiation process and an extension of contracts.

Senator CROSSIN—What does the department do in terms of looking at either the quality of service or the nature of the service that Indigenous legal aid provides?

Mr Boersig—The terms of the tender provides for targets in terms of the amount of work done and the nature of the work done. It also provides for a qualitative process where we look at whether they provide a professional and culturally appropriate service in particular—there were quite high weightings on those two factors—and also whether the services are directed at the government's priorities—and those are set out—and whether they were cooperative with the other service providers. So any kind of review would use that as a key to how an assessment was made. Then the fundamental principle would be value for money to the Commonwealth.

Senator CROSSIN—In the review do you look at the level of staff that Indigenous legal aid centres can hire? My understanding, from having a look at some of the Indigenous legal aid centres, is that not a lot of them can afford to pay someone more than \$100,000, because they just do not have the funds to do that. In a mainstream legal service you might actually have anywhere up to 12 staff who are paid in excess of \$100,000. So do you look at the

experience of staff and the quality of staff versus salaries? There is a view in Indigenous legal aid that they are being 'juniorised'—that is the only word I can think of.

Mr Boersig—Certainly one of the ongoing long-term concerns is to do with issues in relation to quality of staff, particularly in rural or remote areas. We commissioned a report some time ago to look at that particular issue and we are starting to consult with them about that. Their views are certainly taken into account as part of the process.

Senator CROSSIN—Let me get this right: you will do an evaluation of the tendering out service—

Mr Boersig—Yes.

Senator CROSSIN—in preparation for the next round that will commence in mid-2008, is that right?

Mr Boersig—That is correct.

Senator CROSSIN—That will include looking at staffing salaries and levels, as well as efficiencies?

Mr Boersig—It will include a whole range of factors, and one of those factors certainly will be the delivery of a professional and culturally appropriate service which will include the kinds of issues you are talking about, which relate to inexperienced staff. The key is providing the best possible services with the dollars that are available.

Senator CROSSIN—I think that is all the questions I have there. Thank you.

[2.48 pm]

CHAIR—We will move onto outcome 2, commencing with 2.1. I know you have some questions in that area, Senator Ludwig.

Senator LUDWIG—You may recall at the last estimates that a range of issues about national identity security strategy were raised by the committee. Is there an intergovernmental agreement in place?

Mr Jordana—At a COAG meeting in 2005, leaders called for an intergovernmental agreement on identity security. That is an issue which is currently under negotiation between the Commonwealth and the states and territories.

Senator LUDWIG—When will it be finalised?

Mr Jordana—Much of that will depend on the outcome of the negotiations. We are hoping for an agreement in the first half of this year, but again that will depend on the positions taken by the various participants in the states and territories.

Senator LUDWIG—Will it need to go back to COAG?

Mr Jordana—It will go back to COAG.

Senator LUDWIG—That is when, at the next meeting?

Mr Jordana—There is a capacity to take these types of issues to COAG, as I understand it, either at their formal meetings or potentially out of session. So it will be as soon as we have completed the negotiations.

Senator LUDWIG—Is there any consideration being given as to whether the intergovernmental agreement will be made public, should there be one?

Mr Jordana—I would be surprised if it went to COAG that it would not automatically become public. That may not necessarily be the case across the board, of course.

Senator LUDWIG—I know this might be a little premature, but does it cover all of the objectives of the identity of security strategy? I know it has not been finalised, but is the intention to cover all of those objectives?

Mr Jordana—Which objectives?

Senator LUDWIG—In particular, sharing of data. Also, you will recall you discussed the five working groups and the progress that was being made. They then all had framework. I will get to some of those other issues shortly but, in terms of having an overall intergovernmental agreement dealing with identity security strategy, are all of the objectives that were set out as the goal being met or to be met?

Mr Jordana—In each of the five areas that have been identified the aim is to try to enunciate, to the extent that we can, the current thinking that is in each of those areas. In a sense it is bit like taking a snapshot, a photograph in time. People who have been working on these issues for years know that, consistent with their character, there is movement with technologies and so forth over time and therefore things have to be kept under review. So the aim is to get as far as we can by a particular point in time and to take a snapshot of it, but also to recognise that the guidelines that are being set or the standards that are being set will need to be reviewed on an ongoing basis.

Senator LUDWIG—Will it include the national document verification service?

Mr Jordana—Certainly, our intention is to make reference to that. As you know, the establishment of a document verification service is something which has a time line in the order of four years. So where we can get to this year, if we do manage to complete an IGA, will need to in a sense recognise where our discussions have got to, including those with our state and territory colleagues.

Senator LUDWIG—Is it the intention to cover the management operational details or will that still be left with the AGD?

Mr Jordana—Could you clarify your question please?

Senator LUDWIG—In terms of the intergovernmental agreement, we can use the document verification service as an example. I will come to some of questions on that, but it is in a development phase at the moment; I think I can loosely put it like that. Will the intergovernmental agreement cover the document verification service in terms of its ongoing management and operation, or is the intention to be a more or less strategic document that will not cap the management operation of elements such as the DVS?

Mr Jordana—Certainly, the IGA itself is meant to be very much pitched at a strategic level. There is of course quite detailed work taking place in each of the working groups. So, again, at the point where those working groups have got to at the time that the IGA is completed, there will be a kind of a snapshot taken of where we have got to in those discussions. To the extent that some of the issues you have raised with respect to the DVS

have been canvassed by that time, they will be reflected—perhaps not in the overarching strategic document, but in the separate schedules that are being developed.

Senator LUDWIG—I think I understand that. In terms of the proof of identity, has that POI framework been agreed at an intergovernmental level between the states and the territories and the Commonwealth?

Mr Jordana—Certainly amongst Commonwealth agencies there is an agreement to an approach. The status of the work that we have done in each of the working groups and the attitude of the states and territories to the status of that work is still the subject of discussion.

Senator LUDWIG—I am sorry, what does that mean?

Mr Jordana—As you can imagine, if you have developed a set of best practice guidelines as they might apply to a particular area of activity, it is one thing to actually agree those best practice guidelines. The next question is: to what do those best practice guidelines apply? That is a discussion which currently we are still having with the states and territories. In a sense, the status of where we have got to in each of the working groups is still a discussion that we are having with our state and territory colleagues.

Senator LUDWIG—In short you would agree that a proof of identity framework has not been signed off by the states and territories?

Mr Jordana—I think it is probably fair to say that at this stage, yes.

Senator LUDWIG—There has been no decision as to what documents will be included in the proof of identity framework and for what purposes they could be used in relation to the Australian government's requirement for proof of identity?

Mr Jordana—There is a general consensus certainly around Commonwealth agencies. I would also suggest there is a general consensus around Australia as to the types of documents that might be presented for proof of identity purposes. So we have got a pretty clear idea about where people are coming from in that regard. But again, having reached this stage with the work, there is the issue of how do we depict where we have got to with the work? In response to your question, I think there is a general level of consensus.

Senator LUDWIG—Is there an agreed POI system or document that the committee can look at?

Mr Jordana—If you are talking about the work of the working group, it has not reached the stage where we can show that to you because it is still under development.

Senator LUDWIG—In terms of what documents might constitute a POI, has a document been agreed to which might set out those documents, or at least that the Australian government believes are the ones that should be agreed to nationally?

Mr Jordana—There is no document—and I stand to be corrected—that I would be able to lay my hand on and say, 'This has been formalised' in some shape, form or another through some kind of government process. But as I say, there is a general level of understanding amongst practitioners as to what constitutes an acceptable document for identification purposes or processes that might be used. There is a good deal of consensus around that.

Senator LUDWIG—Is it correct to say that there is a COAG proof of identity which is still under negotiation? What about the federal government POI?

Mr Jordana—I guess it is useful to point out that there is no one-size-fits-all in this particular endeavour. The types of processes and the types of standards that are used at the end of the day for a particular purpose depend very much on the policy issues that surround a particular document or system and both the business requirements and the client requirements around a particular process. So it would be wrong for us even to aim, I guess, as a group of practitioners to develop something which is meant to be rigidly applied. This is a general area of endeavour that recognises that you have got to tailor the product to meet the particular needs of that product; there is no one-size-fits-all. So it is worth pointing that out I think in the context of the questions you are asking.

Senator LUDWIG—So have all federal agencies or departments agreed on a POI framework, system or document?

Mr Jordana—I don't think I would put it that way for the reason that I am saying. For example—

Senator LUDWIG—No, I understand the explanation you are giving me, but I am making sure in my mind and clarifying it, so that necessitates the question. We can do it by you telling me there is or there is not, or we can use the negative and I can ask you whether you have and you can say yes or no.

Mr Jordana—Okay, the strict answer to your question is that there is no one document that I can put my hand on and say that that is something which is agreed.

Senator LUDWIG—There is no agreement between the agencies or the departments about a POI framework?

Ms Evans—You may recall that a POI framework was actually endorsed by the standing committee of Attorney-General in 2004.

Senator LUDWIG—Yes.

Ms Evans—That framework is constantly under review and is used in different ways by the agencies. At the same time, what we have been doing within the Commonwealth and with the states has been endeavouring to develop what we call a gold standard enrolment framework, which will set out the principles for enrolling people to a high standard for high integrity proof of identity documents. So there are sort of two concepts of a framework. What we are calling the gold standard enrolment framework is currently endorsed not by the Australian government per se, but we do have the agreement of all relevant agencies of the Commonwealth level, and that is actually out with states at the moment for review. We would be hopeful of including that or aspects of that in our intergovernmental agreement.

Senator LUDWIG—Will that include what will constitute POI documents? In other words, what you will then use to verify POI—the primary documents.

Ms Evans—That at this stage does not list the documents. What we are trying to do is develop a standard—a high integrity or a gold standard for high integrity POI documents. It becomes difficult if you specify at the beginning what those documents are because there are clearly resource implications and vested interests in those negotiations. What we are trying to

do is develop a standard which can either be aspirational in nature or can be adopted and adapted by different agencies and by governments as new POI documents come on to the market.

Senator LUDWIG—Has that document been finalised?

Ms Evans—It is with the states now for comment.

Senator LUDWIG—That is available to the committee?

Mr Jordana—No, that is still subject to discussions and negotiations between ourselves and the states and territories.

Senator LUDWIG—I appreciate that, but I always ask. In terms of the Australian government, has it decided whether that gold standard enrolment framework will apply to getting a Medicare card or applying for an access card, or has the Australian government determined what POI documents will be required for a Medicare card or applying for an access card?

Mr Jordana—The government indicated at the time the announcement was made about the development of an access card that they wanted the access card to be robust in terms of its identity characteristics. As I said before, however, the nature of a passport, the nature of an access card or the nature of a drivers licence means that those particular business processes are going to require their own particular approaches to a registration process—what is going to be required by them to find who will be issued with a card or a drivers licence or a passport. So, as I mentioned before, there is no one-size-fits-all in this regard.

Senator LUDWIG—If one size does not fit all, what have you decided to do about POI documents for the Medicare card or an access card? Do we know what they will be?

Mr Jordana—It is probably a question better directed towards the Department of Human Services.

Senator LUDWIG—All right. Do the Department of Human Services come back to you and say, 'Does this meet the relevant standard?'

Mr Jordana—We have had an ongoing consultation with the Department of Human Services throughout the course of the development of their own processes, and we have been able to share with them where thinking has got to in terms of the types of gold standard processes that we have been trying to identify. They have, as is the character of these things with the benefit of where our thinking has got to, looked at their own particular needs and requirements and developed those themselves. As I say, it was never meant that we would be producing something that would be rigidly applied to another process, but certainly the aim was to provide some kind of guidance for agencies that were involved in this kind of exercise based upon current thinking by the best practitioners around. That is a process that we have been consulting with the Department of Human Services on.

Senator LUDWIG—When do you think the gold standard enrolment will be finalised?

Mr Jordana—That is the subject of an ongoing discussion with the states and territories.

Senator LUDWIG—Can you give me a deadline?

Mr Jordana—No, because we are dealing with negotiating partners over which we have no control.

Senator LUDWIG—Surely you have some.

Mr Jordana—With respect to Commonwealth government thinking, we have agreed amongst ourselves on what a gold standard might look like, but we are still in the process of discussing that with the states and territories.

Senator LUDWIG—What about the departments and agencies like the Department of Human Services? Is the gold standard applicable to them and have they agreed to it? I understand that the talks are still under way with the states and territories, but has it been finalised in terms of what the Commonwealth will meet?

Mr Jordana—Certainly the Department of Human Services is part of the consultative group that has been participating in the development of these standards, and so at a Commonwealth government level we have reached an agreement as to what these generic gold standard processes will look like. The Department of Human Services have been part of that.

Senator LUDWIG—Are you able to say whether or not the access card or the systems developed by Human Services for the access card meet the gold standard?

Mr Jordana—They will meet a gold standard, but if you are looking for what is being produced by our working group to be something which can be sat over the top of the access card process and will look exactly like that, then it certainly will not be the case. As I said, there is a need to adapt the kinds of standards that we are developing to the particular circumstance that is being considered. So there is not an exact replica here, but certainly the aim of the government has been to develop the access card to a very high standard.

Senator LUDWIG—That will also include some of the tricky issues about overseas birth certificates, marriage certificates and so on—when people are born overseas they may not have that documentation?

Mr Jordana—Those are certainly all issues that I know the Department of Human Services is grappling with.

Senator LUDWIG—The gold standard deals with those issues?

Mr Cornall—The Department of Human Services is going to enrol something like 16 million Australians in the access card.

Senator LUDWIG—Probably both you and I.

Mr Cornall—When you look at the different groups, you will see you have different issues. As you quite rightly point out, there are people who are born overseas, people who are born some time ago. They may not have ready access to birth certificates, they may not have access to marriage certificates and so forth. So they are looking at these various groups and ascertaining the best way to ensure that those people meet a robust standard of identification, to ensure that the enrolment in the access card is a valid enrolment and that people are clearly identified. We can then deal with them—or Human Services can deal with them—for the provision of services or government benefits knowing, with confidence, that we are dealing

with the one person and only the one person. The point Mr Jordana is making is that you cannot have, let's say, three or four principles and apply them to all the 16 million people because they are in different groups. You will have to look at how you deal with the differences in those specific groups.

Senator LUDWIG—Is there an example of how you would deal with someone who has been born overseas?

Mr Cornall—I think the detail of this is best directed to Human Services. Mr Jordana is on a committee at deputy secretary level; I am on a committee at secretary level. But it is quite an involved process, and it is changing as it evolves. I think we run the risk of not giving you the most accurate information, and I think it would be better for those questions to be directed to the Department of Human Services.

Senator LUDWIG—How would the standard deal with something like that?

Mr Cornall—We have advised them about the gold standard. We have advised them at various levels of how to best identify people with varying problems, when you look at the broad sorts of identification documents that are normally available. They are working within those parameters to the extent that they can to ensure that the person they enrol is the person who they think they are enrolling. One of the key issues is that the gold standard does permit the recognition of what we call the 'known customer' and that, if they have a long record of dealing with, for example, the Department of Veterans' Affairs or the Department of Human Services or Centrelink, that itself creates an identity with government that can be part of their identification process. So we are confident that the process will be a robust process, as we have always requested that it be, of identification for people as they are enrolled. Much of this discussion about the difficulty is very much at the margin. It is a very small percentage of people who are creating these difficulties in terms of identification. The bulk of Australians—we think well over 95 per cent—will be able to be quite simply and clearly identified in the normal identification processes.

Ms Evans—Just to reinforce an issue, you are probably familiar with the 100-point test that the financial institutions have been using for some time. In the same way that that has traditionally provided flexibility in that everybody does not have to turn up with exactly the same documents but a combination of documents to satisfy a level of identity, the same processes will apply in the registration of the access card.

Senator LUDWIG—To sum up, we are negotiating the implementation of a gold standard for the states and the Commonwealth government, but there has been no work done on a point system test, or a standard, for using as an assessment process on how you then use it?

Mr Jordana—I think it would be fair to say that, amongst practitioners in the field, there has been a movement away from a strict application of something like the 100-point test because, as the secretary pointed out, there are a number of ways to skin the identification cat. One of them is through a process of requiring people to produce a set of documents. However, that is not the only way nor the only legitimate way to identify someone. Equally as accurate or as valid is to perhaps look at what their social footprint might be in the community, particularly with respect to their dealings with government over a long period of time. If there

is an indication of someone having dealt with government over a long period, that might be an alternative and equally valid way of identifying somebody.

Senator LUDWIG—Has the trial of the DVS finished?

Mr Jordana—The prototype has been completed, and I will ask Ms Evans as to the status of that. I think we have completed a report on that.

Ms Evans—Yes, an evaluation has been done.

Senator LUDWIG—Is the evaluation available to the committee?

Ms Evans—Yes.

Senator LUDWIG—That would be helpful. So you will have a gold standard, as the security standard, for the POI in terms of personal identification and for the creation and issue of a document. You will have a POI gold standard, and the DVS will be the verification of that document service, so they will run together. Is that the concept that you are moving forward with?

Mr Jordana—To all intents and purposes, I think that would be correct. Obviously, a document verification system is a thing. It is a system. It is a living entity, in a sense, whereby people will be using the document verification system to verify that the document that is being presented has been issued by the issuing agency. That is the aim of the document verification system. So it is actually a system that will be used. The work being done on enrolment and proof of identity is trying to set a kind of a gold standard or standards to which high-integrity or high-risk documents or processes can be developed. They are slightly different animals, but I think the way you have put it is probably quite valid.

Senator LUDWIG—In terms of the evaluation—you may have answered some of the questions that I have, so bear with me—and from the information I think you have provided to the committee on previous occasions, it is a blind system in the sense that they do not share documentation through the DVS. It is a yes or no response?

Mr Jordana—That is quite correct.

Senator LUDWIG—It assesses, based on a yes or no response? There might be multiple yeses and it will flag a no or a red colour, if there is a problem?

Mr Jordana—That is right.

Senator LUDWIG—That is my understanding of how the DVS will work. Did that all work according to Hoyle? Did your evaluation find that it came in on time, on budget and with 100 per cent accuracy?

Mr Jordana—We were quite pleased with the outcome of the evaluation. Clearly, it threw up a few issues. It certainly will not surprise you to know that, when the question is being asked by the operator or details are being put in, they have to be put in a way which is recognised by the database at the other end. So if you do not put in the correct information in the proper format then it will not be recognised. Certainly there are issues like that that arose out of the—

Senator LUDWIG—If you did not use the correct date format?

Mr Jordana—Exactly. Or the number of zeros in front of a card number. Are they the correct number of zeros, or are they being recorded at the other end in the database as having zeros in front of them? Issues like that came to our attention.

Senator LUDWIG—Is the budgeted amount still \$24.8 million over four years?

Mr Jordana—We have not received any more money.

Senator LUDWIG—Will that be sufficient to build the DVS? Are there any assessments? You have done the evaluation; you know what still needs to be done. Has the evaluation determined that you can still use the \$24.8 million over four years to come up with a DVS, or has there been any consideration or return—we will be in budget mode soon, I suspect—for additional funding to ensure that the DVS will work and be available by, I think, 2010.

Mr Jordana—We are working to the budget that we have received.

Senator LUDWIG—Your answer was shorter than my question.

CHAIR—That is good.

Senator LUDWIG—Are you still on track to meet 2010?

Mr Jordana—We have been given money to do it over a four-year period and we are confident that we will be able to deliver a document verification service in that timeframe.

Senator LUDWIG—Have states or territories been asked to kick in?

Mr Jordana—The way in which the states and territories will participate in this is obviously still going to be a subject of quite an interesting discussion with them. Clearly there are a range of issues around the document verification system—questions about whether or not records are in electronic form, about the costs of the connection and about the financial arrangements surrounding the actual verification of a document. So there are a range of issues around the financial area that are still to be discussed with the states and territories and finalised.

Senator LUDWIG—There are issues such as how the BDM certificates would be checked if they are not online. There would be a certain date when they would have started processing them electronically in the BDM issuing offices, but before that date they would probably still be manually kept.

Mr Jordana—That is correct and that varies from state to state as well.

Senator LUDWIG—How are you going to overcome some of those problems, or are you working on that?

Mr Jordana—We are working on that. Clearly those documents that have been recorded in electronic form can potentially be linked into the system. For those that are not part of an electronic system there are manual ways of still verifying them, but that is obviously a more labour-intensive way of doing it. Certainly the preference would be to have all birth certificates around Australia in electronic form. That is not the case at the moment and it is certainly going to be one of the things for discussion between us and the states and territories.

Senator LUDWIG—So it is still on track to be finished by 2010?

Mr Jordana—Yes, it is.

Senator LUDWIG—Could you just recap on how you see the system will work, particularly whether or not it will use existing documents or keep them on the system.

Mr Jordana—By way of recap, the idea would be that someone potentially enrolling for a particular process would present themselves with, for example, a New South Wales drivers licence. A person who takes the client will be able to type in the details that are on the front of that particular drivers licence—name, address and drivers licence number. Then they will press a ‘send’ button and those details will be communicated electronically to the document issuing agency and basically the electronic question is: ‘Did you issue a document with these particular details on them?’ The electronic message coming back to the operator is either yes or no. Yes is a green light; no requires some follow-up. No does not necessarily mean that the document being presented is a forgery or a false document. It could be that there has been some kind of error in the details that have been recorded either by the operator or indeed in the way it has been recorded in the original database. So there needs to be a manual follow-up process to try to sort out those issues.

Senator LUDWIG—Is it intended to use the DVS for the access card registration?

Mr Jordana—We would hope that there would be some components of the DVS which could indeed be used for the access card process. Because it is a four-year endeavour—and as you know the timeframe for the access card is shorter than that—there is no expectation that the full operational DVS will be available for the first run of enrolments for the access card. But it should be possible by that time to have at least a partial system, particularly with respect to Commonwealth agencies.

Senator LUDWIG—In terms of overseas countries, is there to be work done trying to link with overseas births, deaths and marriages issuing agencies or departments?

Mr Jordana—That is the kind of thing that people are beginning to talk about as a future possibility, but I would have to say to this point we have not done any serious work on that. We still have a lot of work to do, obviously, for the domestic system.

Senator LUDWIG—So at this point in time you cannot say for certain whether all POI documents will be checked against a DVS in terms of something like an access card?

Mr Jordana—The DVS is one system that will enable online real-time checking. There are other ways you can verify documents, and it would be surprising if the Department of Human Services did not use these alternative techniques with the access card. For example, there currently is a system called a certificate validation system—a CVS—which is actually, in essence, the combination of databases of births, deaths and marriages. So there is still a way that you can go and verify documents against that database without using the DVS. The same goes for drivers licences. There is now a national system that links up the databases of drivers licences. So there are alternative ways of verifying a document where you do not have to use the document verification system.

Senator LUDWIG—So the certificate validation service is a different system then?

Mr Jordana—It is a system that has effectively linked all the databases of all the births, deaths and marriages around Australia. The DVS would eventually link that database through to people who wanted to use that database and have cross linkages coming back. In relation to

births, deaths and marriages, if you want to get a new birth certificate—if you have lost your old one—you have to present evidence of your identity to BDMs. So they, too, would want to use a document verification system to check against others. So the idea is to bring all these systems together.

Senator Ellison—Just to follow up from previous questions on notice, the secretary has some answers.

CHAIR—On this matter?

Mr Cornall—No.

CHAIR—Let me just ascertain where Senator Ludwig is up to in his questioning.

Senator LUDWIG—I have finished that area and I think Senator Kirk had questions in respect of Mr Hicks.

CHAIR—Okay, so we are still in output 2.1. I will come back to you in a moment, Mr Cornall. Do we have further questions in 2.1?

Senator CROSSIN—I do. I have something for the National Community Crime Prevention program.

CHAIR—Okay, let us take Mr Cornall's responses and then we will go to questions.

Mr Cornall—I just wanted to follow up on the issue of the Exclusive Brethren. I have made inquiries of the Attorney-General and he advises that he did meet with representatives of the Exclusive Brethren in April 2005—as he does with many stakeholders on a variety of issues. The family law legislation was not amended as a result of that meeting. This information has previously been provided in answer to an FOI request and also to the press.

I have also got copies of press articles to hand up. One is the *Age* of Wednesday, 27 December 2006, headed, 'Brown demands sect inquiry: top Green targets Exclusive Brethren.' The other is the *Sydney Morning Herald* of the same day: 'Sect asked for power to prevent child visits.' The other point we followed up on is in terms of correspondence. The Attorney has recently received five letters about the Exclusive Brethren, not from the Exclusive Brethren. There were three letters: 27 December 2006, 3 January 2007 and 18 January 2007. And there were two emails: one dated 15 January 2007 and one dated 27 January 2007. Thank you.

CHAIR—Thank you, Mr Cornall. We need Mr Jordana, do we?

Senator LUDWIG—Yes.

CHAIR—Just when you thought it was safe.

Senator LUDWIG—In terms of the POI there are really a couple of issues. We can perhaps try to summarise, in dealing with fraud or that area, how you would deal with the proportion of BDMs that might be already out there that are considered to be or may be fraudulent—or, where they are already being produced, drivers licences. I was wondering about those sorts of issues in terms of how the DVS will operate. In other words, is there an estimate of what type of fraud already exists in ID cards or ID more generally? When you start your DVS, when you do your gold standard, do you do an assessment of what fraud currently exists in identity cards?

Mr Jordana—That forms a backdrop, obviously, to all the work that we are doing. At the end of the day, no system is going to be capable of weeding out all fraud. The aim over time is to improve the quality of our systems so that you start to eliminate the scope for fraud and certainly that you try to keep up with people's use of technology in terms of improving the quality of their forgeries as well. So really the aim of the game is to have in place a combination of ways of seeking people to identify themselves so that by having that combination you are raising the bar over which people who might want to defraud need to jump. I guess that is the best way to describe the approach that has been taken. There have been various studies done at various times to try and calculate the impact of fraud in some areas, and I think we may have even discussed those at previous estimates. But I guess that is the general backdrop to the way we are trying to do our work.

Senator LUDWIG—Have you done any work on the gold standard enrolment or the DVS in terms of what level of fraud currently exists in any of those agencies we have been talking about, such as the welfare agencies or social security—or in fact any of those being issued as proof of identity to the AGD?

Mr Jordana—That is not something that I am aware of.

Senator LUDWIG—There was one scoping identity fraud that was published back in 2001.

Mr Jordana—Yes.

Senator LUDWIG—Have there been any recently?

Mr Jordana—No, not in our department. As you can imagine, the issue of identity fraud, document fraud, is a big issue for a whole range of different entities, not only Commonwealth agencies but state and territory entities and also the private sector. So I cannot say with any huge degree of confidence that we are conscious of all the work that has been done, but we are ourselves have not done substantial work on that since that time.

Senator LUDWIG—Thank you.

CHAIR—So that deals with those issues, does it, Senator Ludwig?

Senator LUDWIG—Yes.

CHAIR—Senator Crossin, you have further questions in 2.1.

Mr Jordana—Excuse me, Ms Evans is aware of one other piece that has been done.

Ms Evans—We have previously provided it to the committee. Some consultants did some work on behalf of the AUSTRAC POI group on the cost of identity fraud in Australia. I think it was 2003 and that has previously been provided to you.

Senator LUDWIG—Thank you.

CHAIR—Thank you. Okay, Senator Crossin. I note for the record we are still in 2.1.

Senator CROSSIN— I have some questions on the National Community Crime Prevention Program. I am wondering if the department has actually received an application from the women at the Wadeye community under this program.

Dr Heriot—The fourth round of grant applications is open. We have received an application, I understand, from the council.

Senator CROSSIN—From Thamarrurr Council?

Dr Heriot—Yes, Thamarrurr Council.

Senator CROSSIN—When did you receive that?

Dr Heriot—I do not know the date we received it. We certainly received it by the closing date for the round, which was 1 December.

Senator CROSSIN—Do you have any details with you about how much the council have requested?

Dr Heriot—No.

Senator CROSSIN—Can you take that on notice.

Dr Heriot—The round is currently open and it is currently being assessed, so I think at this point it would probably be best to defer that sort of information until it was no longer being actively considered.

Senator CROSSIN—So it is closed, though.

Dr Heriot—The applications have closed but the assessment is under way at the moment.

Senator CROSSIN—Okay, I see. I actually raised this at the last estimates. I was going to ask you whether you thought the issues relating to Thamarrurr Council had been resolved. You may remember the incident around them not getting funding last year.

Dr Heriot—Yes, I do. I am cautious of what I might say around an assessment process.

Senator Ellison—Perhaps I can help. Senator Crossin has asked me some questions before about this—and, indeed, I think questions without notice in the Senate. There was an issue and we discussed it at length. I now understand from information I received that there has been a change to the community and that, as a result of the change, this application has come in and it will be assessed in the normal fashion. That will come to me for decision. I do understand that there has been a change, but don't ask me the extent of it. That is all I know: there has been a change and they have put in an application. I do not know if that helps you much.

Senator CROSSIN—So that might have resolved something.

Senator Ellison—As Ms Heriot says, we cannot pre-empt the outcome, but certainly circumstances are different, I understand, to what they were before. You will recall that, as a result of those circumstances, the matter could not proceed. It certainly is an area in need; that is stating the obvious. There is no pre-empting anything with me saying that, and no-one should read anything into that.

Senator CROSSIN—When will those grants actually be announced?

Dr Heriot—The timing of the announcement is at the minister's discretion, but the assessment process is still under way. The advisory group has a second meeting coming up for some of them. If I could add to my previous answer: it may help clarify things—it may not, of

course—if I say that that application is being assessed with all the other applications in the standard way.

Senator CROSSIN—I actually have some questions of the national crime prevention unit. Same people?

Senator Ellison—Yes.

Senator CROSSIN—Not the community crime, just the national crime prevention.

Senator Ellison—Same thing. The National Community Crime Prevention Program.

Senator CROSSIN—This is the crime prevention unit.

CHAIR—It might be a different outcome.

Senator Ellison—I don't think there is one.

CHAIR—I don't think that is a title that we use, Senator Crossin.

Senator LUDWIG—I noticed in the portfolio additional estimates that there is a rephrasing of about \$6 million out of the National Crime Community Prevention Program. Is 'rephrasing' the right language, or has that been carried over to the next year?

Mr Cornall—I think that is the current language, yes.

Senator LUDWIG—I think I have had that discussion with a range of your accountants and auditors in the past. What does that mean? Was the money not spent?

Dr Heriot—The program awards grants of periods up to three years. So, while all the funds are committed in a single financial year, they are disbursed according to contract milestones over a period that can last up to three years, which means that to adjust the payment structure over the life of a contract, some of the funds are rephased.

Senator LUDWIG—Are you able to identify which contracts? I am happy for you to take that on notice. There may be a little bit of work involved. What you have said is money that might be over three years would then require rephasing—ie moving to the next year—but some might relate to moneys unspent.

Dr Heriot—We could break it down into those which are rephased because of contract commitments and those which are rephased due to an underspend. We do have 172 contracts though, so it would take considerable effort to actually go through which are rephased by which particular project. But we could do the blockings, if that was sufficient for your purposes, because each contract will have different payment schedules.

Senator LUDWIG—I see. We might have a look at the latter cut first, which is the least work, and then if we want more we can come back.

Dr Heriot—I am certainly not trying to be unhelpful, but I am minded that each contract is special and unique and it will take a lot of—

Senator LUDWIG—I understand that. I was more interested in those which were underspends or whether there was money that was not spent.

Dr Heriot—Yes.

Senator Ellison—The rephrasing does not necessarily mean an underspend. It is more an invention of the department of finance, I suppose.

Senator LUDWIG—It might though.

Senator Ellison—It could, but don't necessarily read it as that. We know what you are after and we will try and accommodate that as best we can.

Dr Heriot—We will take it on notice.

CHAIR—Thank you very much.

Senator LUDWIG—Who has general responsibility for that area? Is that you, Ms Blackburn?

Ms Blackburn—The National Community Crime Prevention Program is part of program 2.1.

Senator LUDWIG—Yes.

CHAIR—Do we want to come back and clarify what you were pursuing there, Senator Crossin?

Senator CROSSIN—Yes, these are actually questions about the raid at Mutijulu, so it probably relates to the AFP more.

Senator Ellison—Okay. More so ACC really—the Australian Crime Commission. You are talking about that unit that has been set up Alice Springs and brings in Northern Territory Police and South Australian Police.

Senator CROSSIN—No, I am not talking about that. I think it is the AFP I am after.

CHAIR—Just so long as we clarify it eventually.

Senator Ellison—It is not Attorney-General's Department.

CHAIR—No. We will move on. 2.2. I understand Senator Kirk is going to start there.

Senator KIRK—I understand that the Commonwealth DPP has given advice that Mr David Hicks would not be prosecutable under Australian law. Is that correct?

Mr Cornall—Yes, that is correct. He did advise this estimates committee to that effect in February 2005.

Senator KIRK—Is it the case that the Commonwealth DPP has actually seen any of the evidence against David Hicks that is in the possession of the US authorities?

Mr Cornall—In his answer to the estimates committee in 2005 he said he had considered all the material that was available and, on the basis of that material, there were no charges that could be brought against Mr Hicks in Australia.

Senator KIRK—So just to clarify: the material that he had in his possession at that time was material provided by the US administration or material that had been gathered by Australian authorities?

Mr Cornall—As I understand it, it was material gathered by Australian authorities, but I think Mr Bugg is coming to estimates and you can ask him directly. I think that would be the better course of action. One of the principal issues was to consider what sort of offence could

have been committed by an Australian in another place outside our jurisdiction. The principal offence was related to the foreign incursions legislation and, on any view of the circumstances as we understood it and as he understood it, the actions alleged against him could not have constituted a crime under Australian law at that time.

Senator KIRK—We have called many times for this advice to be made public. I ask again whether or not it will be provided to this committee.

Mr Cornall—No, but, as I say, Mr Bugg advised you of the substance of the advice two years ago.

Senator KIRK—The difficulty that there is of course is that there is quite a body of contrary advice, particularly by academics who say quite the opposite to what the advice of the Commonwealth DPP is.

Mr Cornall—I might say every time there have been public reports about that we have carefully considered those public reports, and none of the reported opinions have changed the view taken within the government.

Senator KIRK—You mentioned the Crimes (Foreign Incursions and Recruitment) Act 1978—is that the one that we are speaking about agreeing?

Mr Cornall—Yes.

Senator KIRK—Has there been consideration given by the Commonwealth DPP as to whether or not a charge may be brought against Mr Hicks under, for example, the Geneva Conventions Act?

Mr Cornall—Yes, all of the relevant legislation was considered. Can I stress again—by all means ask Mr Bugg when he is here.

Senator KIRK—I will, thank you. I also have a question about the Military Commissions Act of 2006, which has recently been enacted by the congress, and the legislation under which Mr Hicks has been charged, or at least draft charges prepared. There has been some uncertainty, I suppose you might call it that, as to whether one charge in particular that Mr Hicks has been charged with—namely, the offence of material support—is a retrospective law or whether it merely reflects an existing US law. I understand that members of the government have said that this offence is the same as an existing US federal crime that predates the MCA. I would like to get some clarification in relation to that. Is it the position of the Attorney-General's Department that this law is merely an existing law?

Mr Cornall—The position of the Attorney-General's Department is that that is the advice we have received from the United States. It is the advice that has been published by an academic in the United States to that effect. There are some sample cases that we have where we understand that law has been applied since 1994. But most importantly, in my view, the act itself recites that this is not retrospective legislation, and that is legislation endorsed by the United States congress. I do not think it would be appropriate for this department to seek to go behind the view expressed by the United States congress in its own legislation.

Senator KIRK—If the law is not retrospective and if the law has always existed—I think you mentioned since 1994 it has been applied to other cases—why on earth was this law not applied to Mr Hicks five years ago and why was he not brought before a US federal court?

Mr McDonald—I think the answer on that is that the US authorities wished to have these matters dealt with by a military commission and so consequently they had a model for the military commission, which of course has experienced some difficulty in the US Supreme Court. This is now the current model and of course the offences that have been characterised for the purpose of that military commission are outlined in this.

Senator KIRK—I take it that you have just agreed that the offence of material support merely reflects an existing US law. You would say that there is no difference between the two provisions?

Mr McDonald—I am not saying that. What the US is saying is that this is a codification of what they understood to be their law.

Senator KIRK—Has there been an analysis done by the Attorney-General's Department of the similarities or differences between these two provisions?

Mr McDonald—I do not think we get into detail of what we advise the Attorney on these matters. Obviously we have gone through the legislation very carefully.

Senator KIRK—Has the Attorney-General asked for you to undertake an analysis of this law?

Mr McDonald—We have examined the Military Commissions Act very carefully in the rules as a matter of course.

Senator KIRK—I understand also that it has been conceded that material support is not a war crime which makes me wonder then why it is that we are accepting that this material support charge is something that ought to be heard by a military commission. If material support is also reflected in existing US law, it brings me back to my point: why is it not the case that Mr Hicks has not been brought before a US federal court?

Mr Cornall—We are not able to answer detailed questions about how the United States came to the decisions they have come to—

Senator KIRK—I accept that, but what questions have you asked of them?

CHAIR—Senator Kirk, will you let Mr Cornall finish.

Mr Cornall—but this legislation has set out as a matter of codification all of the relevant criminal offences that the United States congress thinks are appropriate for people who may be brought before military commissions and that offence is one of those offences.

Senator KIRK—So I take it that we—Australia, and you, the Attorney-General's Department—have merely accepted that, that there has been no independent analysis. Or, if there has been an independent analysis of it, I take it that you have formed the view that the view the Americans take is correct.

Mr McDonald—I think to answer that would be to outline exactly what our advice to government is and I do not think we can do that.

Senator KIRK—You just suggested that the two offences were similar if not the same. It is actually the case that the two offences are quite different in terms of the elements of the offence and also the punishment which attaches. Is this something that you have taken into

consideration when you have accepted the view of the United States that it is merely a codification—I think that was the word you used—of existing law.

Mr Cornall—I do not quite understand the point of your observation. The fact is the United States congress has passed a law which says that this chapter does not establish new crimes that did not exist before its enactment but rather codifies those crimes for trial by military commission. I do not think the Attorney-General's Department of the Australian government is in a position to go behind that decision by the United States.

Senator KIRK—I am not suggesting that it ought to. What I am suggesting is, given that it is an Australian citizen who is going to be subjected to this, that perhaps the government might attempt to form an independent view as to whether or not this is fair in the circumstances, especially if the conclusion reached is that an Australian citizen could have been brought before an American court five years ago. I would have thought that this is something a view might have been formed about and perhaps communicated to the US administration. That is the purpose of my question. I am not suggesting that you should say to the US congress, 'Why don't you rewrite your law?'

Mr Cornall—Previously the United States government was of the view that the appropriate way to deal with conduct arising from the battlefield was to deal with it through a military commission. That was the course that the United States took and that was the course that the Australian government supported. Whether there was an alternative course to take, that was the choice made until the time when the United States Supreme Court ruled those commissions inappropriate.

Senator KIRK—Just on the military commissions, again there has been a great deal of commentary in relation to the processes and procedures of the new commission—a lot of criticism about the sorts of evidence that can be admitted, coercion and the like. I would like to know what the view of the Attorney-General's Department is. Does it accept, as it has in the past and been proven to be wrong, that this system is in fact constitutional and acceptable?

Mr Cornall—When you say that we have accepted before and we were wrong, the fact of the matter is that the United States Attorney-General assured our Attorney-General that this process was an appropriate and a legitimate process. It was a process that was upheld in a number of court decisions. When it was finally decided to the contrary in the United States case, *Hamdan v Rumsfeld*, it was on a 5-3 decision—plus of course the United States Department of Justice. So there was a lot of very respectable American opinion to the effect that this was a valid process and the Australian government relied on all of that advice.

Senator KIRK—At that time did the Australian government seek its own independent advice in relation to that? You said you were happy to take the word of the US administration, but was independent Australian advice sought?

Mr Cornall—We considered the advice and we looked at the rules and we sought various means of improving the rules. The minister was involved in that process. But ultimately we relied on the assurances from the United States Attorney General. I think that is quite appropriate.

Senator KIRK—I take it that you are doing the same in this instance under the new Military Commissions Act?

Mr Cornall—Yes, and also on the fact that these new laws were passed by the United States Congress.

Senator KIRK—Okay, so again you are just prepared to take the risk that it might be declared unconstitutional down the track?

Mr Cornall—I do not think there is any option but to work on the basis of the law as recently passed by the United States Congress.

Senator LUDWIG—Is that US advice available?

Mr Cornall—No.

Senator LUDWIG—Why not? I know you do not make the Australian advice available.

Senator KIRK—Good question.

Senator LUDWIG—America seems to be the land of freedom of information.

Mr Cornall—The advices between governments are of course not released anyway, but the advices I am aware of were largely in meetings face-to-face with United States Attorney General Gonzales.

Senator LUDWIG—So it was not written—

Mr Cornall—Not that I am aware of, no.

Senator KIRK—I wanted to go to the question of Mr Hicks's welfare. Again, there have been conflicting reports as to whether or not our government has sought an independent medical assessment. I should perhaps say that I am assuming that it would be the Attorney-General's Department who would be seeking such independent medical assessment if that were to happen, or would that be DFAT?

Mr Cornall—Consular matters are the responsibility of the Department of Foreign Affairs and all of the visits to Mr Hicks—the 18 visits—have been undertaken by consular officers.

Senator KIRK—In that case I will move on to my next point. I understand from what I have heard and read that the Prime Minister has actually admitted that it is his choice as to whether or not Hicks is repatriated to this country, that the government of the United States would permit him to be repatriated if that were the wish of the Prime Minister. Is my understanding correct?

Mr Cornall—That, as I understand it, is from press reports of a party meeting that I obviously have no direct knowledge of. The Attorney-General has issued some comments in relation to those assertions and he said that he felt that it was perfectly appropriate to say that if the Attorney-General or the Prime Minister requested the United States to give consideration to that, then that would be considered at the highest level. And the United States ambassador has agreed that that would be the case. The Attorney has also pointed out that now that there are charges being framed against Mr Hicks it is not clear that that would be the case.

Senator KIRK—You mentioned the charges which have been laid. As I understand it, they are merely draft charges and these charges do have to be confirmed; is that correct?

Mr Cornall—I said 'charges which have been framed' not 'laid.'

Senator KIRK—Okay, framed. At what point will they be confirmed, laid or whatever the jargon is?

Mr Cornell—That needs to take place within 30 days from the date on which they were put forward. Mr McDonald can confirm that.

Mr McDonald—I will just clarify that. It is 30 days from the day that they are served on the—

Senator KIRK—And the date was?

Mr McDonald—The charges are currently before the convening authority. That convening authority can modify those charges if they wish or they can confirm them. Once they have confirmed them, then they get formally served. Then the process, which has the time limits, starts.

Senator KIRK—You said the convening authority can modify or confirm the charges. I understand the convening authority could also dismiss the charges.

Mr McDonald—The convening authority could take the view that the charges are not justified, yes.

Senator KIRK—Is there any timeframe set out from the point at which the charges are framed—as we have established they have been—and the time for the convening authority to make his—I am assuming it is ‘his’—decision as to whether or not they are going to proceed?

Mr McDonald—There is nothing specifically prescribed in the legislation.

Senator KIRK—So could it be six months or 12 months?

Mr McDonald—I have answered your question. It is just prescribed.

Senator KIRK—There is nothing in the legislation. Okay. Have you sought any assurances or have you questioned—

Mr McDonald—The government has continuously sought assurances about this being dealt with expeditiously and, to date, the sorts of targets that have been put forward by the United States as to when they would do things have occurred. They have indicated that they would get the charges formulated by about now. That has occurred. They have also indicated to the government that they are going to get these matters moving quickly. So we expect that this will not take long, but we do not have a specific period. And, of course, a convening authority may ask for extra information—who knows?

Senator KIRK—So, again, it is out of our hands as to how long it is going to take for the convening authority to—

Mr McDonald—It is in a different jurisdiction.

Senator KIRK—As all these matters are.

Mr McDonald—Yes.

Senator KIRK—Once they are served, it is then 30 days?

Mr McDonald—Yes. After 30 days the accused has to be brought before the court, before the military commission judge, where the charges are read and the accused is called on to

enter a plea. Then, within 120 days of the service of those charges, the military judge must announce the assembly of the military commission, which is basically the appointment of the members of the military commission.

Senator KIRK—Once the military commission is assembled, what period of time does the legislation provide for the military commission to actually sit and begin hearing the matter?

Mr McDonald—It does not specify exactly when, as far as I understand it. However, obviously we would have a situation where that military commission has been formed for this particular case. So we would not expect that to take long. Our experience with the previous process was that, once they put the military commission together, they got on with that process fairly quickly—within weeks.

Senator KIRK—So, really, the earliest time by which the military commission could sit is how long, on your estimation?

Mr McDonald—Just based on these time scales, it would be about four months. That would be the earliest based on these time scales and if we got a quite quick decision.

Senator KIRK—I want to go back to the question of Mr Hicks's possible repatriation. I think Mr Cornall said that there have been some media reports as to what the Prime Minister may have said, and I take it you are saying that Mr Ruddock has not confirmed or agreed with the statements that have been reported as what the Prime Minister has said.

Mr Cornall—I think he issued a press release to clarify the position.

Senator KIRK—The position being?

Mr Cornall—The earlier reports about what had been said.

Senator KIRK—Sorry, could you clarify that for the record?

Mr Cornall—There was the assertion that you put about what the Prime Minister has said. The Attorney-General put out a press release clarifying what was said or how it was to be interpreted.

Senator KIRK—What investigations have the Attorney-General's Department made independently of comments that might have been made by Mr Bellinger, who I believe is counsel for the state department?

Mr Cornall—Yes.

Senator KIRK—My understanding is that he has made comments publicly to the effect that if Australia were to ask for Mr Hicks to be repatriated then the United States government would agree to that. Have you made inquiries about or followed up on those media reports?

Mr McDonald—I cannot specifically recall that statement. That is something we would need to check.

Mr Cornall—Can you say where he said that?

Senator KIRK—I do not have it here. I remember hearing it myself on radio. It was an interview with Mr Bellinger.

Mr McDonald—When was that?

Senator KIRK—It was late last year. You are doing the questioning now!

CHAIR—No, I think the officer is actually seeking more accurate information from you, Senator Kirk, so that he can identify the comments.

Senator KIRK—I asked him whether or not they were aware of it. That was my question.

CHAIR—They have asked you for further information. I do not think that is unreasonable, Senator.

Senator KIRK—I am answering their question.

Mr McDonald—If it was some time last year, it could have been at quite a different stage in the process to this, but before I try to answer any question like that I would need to look at exactly what was said and look at the context.

Senator KIRK—If you wish, I am happy to email you the link to the transcript.

CHAIR—Perhaps you could assist the entire committee with that, Senator Kirk.

Senator KIRK—I am told it was September 2006.

Mr Cornall—I should say we have met with Mr Bellinger a number of times in the United States, and when I have been in meetings with him he has never made that statement.

Senator KIRK—He has never said that the US would be happy to repatriate Mr Hicks to Australia if we were to make that request?

Mr Cornall—In the meetings that I have been with him in the United States that has never been suggested.

Senator KIRK—In relation to the repatriation of Mr Habib, what documents needed to be prepared in order for Mr Habib to be returned to Australia?

Mr McDonald—With Mr Habib, the US decided not to proceed against him, so consequently his transfer back to Australia did not involve a prisoner transfer arrangement or anything like that. However, when Mr Habib was released, clearly there had to be an acknowledgement signed that he had left the particular establishment. But, apart from that, there is no formal arrangement or documentation.

Mr Cornall—Is that what you are getting at, Senator?

Senator KIRK—Yes, whether or not, upon his release, there needed to be any kind of documentation prepared?

Mr McDonald—No.

Mr Cornall—We had to make special arrangements for his repatriation to Australia. As you will recall, we organised the flight and we had to make arrangements as to where the flight could land to refuel. It was not allowed to land in the United States, and Mr McDonald accompanied him from Guantanamo Bay to Australia.

Senator KIRK—Did we pay for that return flight and everything associated with it?

Mr Cornall—We paid for the costs, but we were reimbursed for part of it by the United States. That is on the record and the estimates records from previous hearings.

Senator LUDWIG—I have a follow-up to a question that I asked. I asked only one short question, and you indicated that you received advice from the US in a meeting. Just to rule it out: was it written advice that you received in the meeting?

Mr McDonald—We do not have any written advice.

Senator NETTLE—Has the Attorney-General ever asked for David Hicks to be returned to Australia?

Mr Cornall—No.

Senator NETTLE—With regard to the recent comments of the Prime Minister that were reported, and then the Attorney-General's confirmation of that, has the department done any analysis or provided any advice on the basis on which David Hicks could be returned?

Mr Cornall—That is advice to government, which we do not normally divulge.

Senator NETTLE—I am not asking what the advice is. I am asking whether any advice in that area has been given by the department?

Mr Cornall—On what basis? A lot of work has been done on the basis that, if he were to be convicted and imprisoned as a result of that conviction, we would transfer him back to Australia to serve his term in Australia. A lot of work has been done on that, and there was an arrangement reached in relation to the former military commission arrangements. Now that they have changed, that agreement needs to be slightly redrafted and we are working on that. We have done that sort of work. Is that the sort of work you are talking about or other things?

Senator NETTLE—Thank you for that answer. I am also interested in whether the department has done any work about his return to Australia prior to any commission process?

Mr Cornall—No.

Mr McDonald—Obviously, we think about all contingencies and so, consequently, in providing advice you look at what all the options are.

Mr Cornall—To add to that, it has always been the government's position that he should be charged and prosecuted or released. I think that has been on the record many times. Obviously, if he was to be released, as Mr Habib was released, we would make arrangements for his return to Australia.

Senator NETTLE—Statements have been made—and I do not have one here in front of me—from the government, saying, 'He can't be returned to Australia because there is nothing he could be charged with.' I wonder whether you have looked at that.

Mr Cornall—Yes, we have.

Senator NETTLE—Such a statement made by a minister would be based on your advice that he cannot be charged with anything if he returns.

Mr Cornall—That is on the record in many places.

Senator NETTLE—I am just trying to check the basis of the statements by the Prime Minister that, if we asked for Hicks to come home, he could come home. Another matter that has been raised is whether he could be placed under a control order. Is that something that has been looked at?

Mr Cornall—Yes, it has been. The Attorney has made it very clear that the process for seeking a control order is initiated by the Australian Federal Police and then, with his consent, the matter is brought before the court and the court makes a decision as to whether there would be a control order placed on the person who is the subject of the application. It is not just a decision of government to do that.

Senator NETTLE—The Prime Minister made a comment or reports, generally, saying that, if we asked for him to come home, he could come home. Have you done any work on how that would occur?

Mr Cornall—How he would be brought home?

Senator NETTLE—Yes. If the government were to ask for David Hicks to be brought home, have you done any work on how that would occur?

Mr Cornall—I would imagine it would happen in pretty much the same way as we brought Mr Habib home.

Senator NETTLE—Not just the physicalities of putting somebody on a plane and flying them to Australia, but the processes that would need to be gone through. You describe the situation in relation to Mr Habib—that there was no documentation that had to be done because the US did not intend to proceed with charges. I imagine the situation would be different in relation to Mr Hicks.

Mr McDonald—That ends up being quite speculative and then there could be a situation where charges are withdrawn. There could be a whole heap of different situations, so it is very hard for us to speculate on what you would expect.

Senator NETTLE—Has the department explored various options?

Mr Cornall—No, we have not.

Senator NETTLE—Was that a yes?

Mr Cornall—No, we have not, because at this stage the government's position is that they would like Mr Hicks to be charged and they want that to happen as quickly as possible. The American government is responding to that and is in the process of doing that. What I have said is that, should the position change—we were able to make arrangements for Mr Habib to return to Australia quickly—and should that situation arise, I would imagine we would be able to make similar arrangements again very quickly.

Senator NETTLE—Are you talking about the transportation component of it, or are you talking about the processes you would need to go through to allow Mr Hicks—

Mr Cornall—All of it.

Senator NETTLE—You outlined the position in relation to a control order and the role that the AFP would have in that. Have there been any discussions with the AFP about that matter?

Mr McDonald—The AFP have discretion to initiate this sort of process, so obviously it is not something that we would be looking to try to initiate. It is something which is their responsibility to initiate, and then of course it gets brought before the Attorney for his

consent. So it is really an operational type discretionary matter where it is not appropriate to be dealing with it in a political or hypothetical way.

Senator NETTLE—So it is something that only the AFP could initiate, or could another part of the government initiate that process and then the—

Mr McDonald—The legislation is very clear: it is the Australian Federal Police. So they make that decision about initiating that based on the criteria that is in the legislation. I should have mentioned, of course, the matter goes before a court. A court makes the decision about whether there is a control order.

Senator NETTLE—Obviously. What I was trying to understand was whether the Prime Minister's reported comments, and then subsequently the Attorney-General's comments, were based on some advice that had been provided to them by the department.

Mr Cornall—Which comments are you now referring to?

Senator NETTLE—Returning Hicks to Australia.

Mr Cornall—I am not quite sure how that links up to a control order. That is what was confusing me.

Senator NETTLE—I accept that I have been jumping between the two. Going back to the recent comments reported to have been made by the Prime Minister last week and then the Attorney-General's comments on it, my questions in that area were seeking to find out whether those comments made by the Attorney-General and the Prime Minister were based on advice provided to them by the department.

Mr Cornall—They were comments by the people who made them. The Attorney-General is very well across all of the legalities in this area and he is very well able to issue press statements or to answer press inquiries in this area without direct reference to us.

Senator NETTLE—But is he able to do that? You have previously provided him with advice on the matter.

Mr Cornall—We have had a control order in respect of Mr Thomas, and he is well aware of how all that worked. We have also been over, in the media, in the department and in government no doubt, many times all of the issues to do with Mr Hicks. The Attorney is fully across all of the issues.

Senator STOTT DESPOJA—Are you aware of any members of the government or cabinet who have requested the opportunity to inspect or visit the Guantanamo Bay facility?

Mr McDonald—We have seen reports that some politicians—

Senator STOTT DESPOJA—Government members?

Mr McDonald—No, I am not aware.

Senator STOTT DESPOJA—Minister Ellison, have you made an application?

Senator Ellison—Certainly not ministers, and I am not aware of government members or senators.

Senator STOTT DESPOJA—I am not aware of any Australian politicians who have been granted permission, but I am aware of Australian media having access to Guantanamo Bay. I

wonder whether the government is aware of examples of other countries where there have been political delegations, visits or inspections at that facility that have been supported by and in fact agreed to obviously by the United States government.

Mr Cornall—There was a visit to Guantanamo Bay by the House of Commons Foreign Affairs Committee, and an extensive report was published by the House of Commons on 10 January 2007 reporting the outcomes of that visit. That is one that I am aware of.

Senator STOTT DESPOJA—Would the Australian government support the opportunity for the right of Australian politicians, as well as the Australian media, to apply to the United States or in fact the Department of Defense or the Secretary of State—whichever department is considered relevant? Would the Australian government have a problem with Australian politicians seeking access to that facility?

Mr Cornall—I think the Minister for Foreign Affairs wrote to Senator Brown advising him to do that if he wanted to do so.

Senator STOTT DESPOJA—So the Australian government has no intention—and I am happy to direct this at the minister, if it is considered not necessarily a policy question—of requesting an opportunity to visit Guantanamo Bay? I am not talking about specific detainees or indeed the Australian citizens detained there but to actually inspect the facilities in the way that other countries have done so.

Senator Ellison—The way we do it is through our foreign affairs officials. We have had 18 occasions where Australian officials have visited David Hicks and had an opportunity to look first hand at the conditions of his incarceration. That is normally how we do things. We rely on our consul general or the mission to send someone along from DFAT.

Senator STOTT DESPOJA—Could you perhaps outline for me the most recent visit by a consular official to Guantanamo Bay?

Mr Cornall—Yes. It was 30 and 31 January.

Senator STOTT DESPOJA—Who was involved in that visit?

Mr Cornall—The Consul from the Washington embassy.

Senator STOTT DESPOJA—Who is?

Mr Cornall—Mr McAnulty.

Senator STOTT DESPOJA—Did that coincide with the visit of David Hicks's lawyer to Guantanamo Bay?

Mr Cornall—It was at the same time, yes.

Senator STOTT DESPOJA—Was that by accident or design?

Mr Cornall—I think it was just the way it occurred. The Hicks family and lawyers were notified that the visit was taking place at that time.

Senator STOTT DESPOJA—Were they notified at the time or were they given prior notice of that visit?

Mr Cornall—I understand that they were given prior notice.

Senator STOTT DESPOJA—How did the consul get there? He was not on a private jet. He obviously was on a civilian aircraft.

Mr Cornall—I do not know; I am sorry.

Senator STOTT DESPOJA—Could you take on notice his mode of transport and how it was paid for?

Mr Cornall—We could. You could ask Foreign Affairs. That might be the more appropriate way to do it.

Senator STOTT DESPOJA—Will do. I am curious as to whether or not the consul reported back to the Attorney-General's Department or the Attorney-General. I understand that some of this may relate to the foreign affairs minister and that department and I am happy to take that up. But I am just wondering whether the Attorney-General received any specific reports about that visit.

Mr Cornall—Yes, we have. We have received regular reports on the welfare visits to Mr Hicks by people from the Washington embassy.

Senator STOTT DESPOJA—I understand that he was given a tour of camp 6. Is that the case?

Mr Cornall—I am not entirely sure exactly how you would describe it. He did conduct inspections at camp 6. He was able to report quite extensively on the conditions that he observed—the cell conditions and so forth. But it would probably be better to direct those questions to Foreign Affairs, who could give you a more comprehensive answer.

Senator STOTT DESPOJA—I will try not to double up on any questions that my colleague Senator Kirk has asked, but I just want to go back to the issue of retrospectivity. More generally, has the department done an analysis of the federal law offence to which Senator Kirk referred,—the US federal law offence—and the specific charge that may be laid against Mr David Hicks? In terms of the description of material support, have you looked at how that particular charge—whether it is laid formally or not—is enshrined or encapsulated in the federal law and how it is being applied through the military commission process? Is there a distinction between that offence and what Mr Hicks has been charged with? Just assessing the US federal law and what has been charged, it looks like a slightly different offence.

Mr McDonald—The offences are not identical but the question here is whether the type of conduct is caught by the two offences and there is no question that the type of conduct is caught by the two.

Senator STOTT DESPOJA—I understand your latter point about the type of conduct. They are not identical; thank you.

Mr Cornall—In relation to the US Constitution, US citizens have rights to be tried in the US courts. In relation to noncitizens who might commit what are perceived to be offences against the United States outside the United States, there is a question of whether the US has jurisdiction to try them in their courts. The military commission legislation gives them that authority. So there is a question of what is the proper constitutional authority to deal on the one hand with citizens and on the other hand with non-US citizens.

Senator STOTT DESPOJA—I accept that there is a distinction. I was not necessarily going into—in some respects—the jurisdictional difference. I was interested in the letter of the law and how that federal law offence in relation to material support predates the MCA—which obviously the United States has argued and I which believe the Australian government agrees with—and that particular offence even though it is not replicated in the act. Obviously, you have given me your reasons why that is the case. Do you have anything that you could make available to the committee or table in terms of advice received or analysis or inspection done by the department on those two provisions and how they may or may not differ?

Mr McDonald—I cannot provide the advice.

Senator STOTT DESPOJA—As opposed to: you have it but you cannot provide it?

Mr McDonald—Yes, we cannot provide—

Senator STOTT DESPOJA—I understand that. I am just clarifying the difference between whether this is advice that the department has provided as opposed to an analysis or advice that has come from the United States government, for example.

Mr McDonald—You asked I think whether we had analysed considered issues. I think I have indicated that we have looked at all the legislation involved here and considered issues. There are varying aspects to considering issues and providing advice, but the long and the short of it is that we cannot indicate and we cannot provide detail of the advice.

Senator STOTT DESPOJA—I understand. That probably explains why the government support my return to order. Shucks! Can I just go back to a question that Senator Kirk asked but did not pursue because it related to Foreign Affairs? I just want to clarify the issue of the request for an independent health assessment. I would have thought that was something that could be answered here today, because it is my understanding that it was the Attorney-General who said publicly that he had requested an independent health assessment of Mr David Hicks. Is that not something with which the Attorney-General's Department has dealt?

Mr Cornall—My understanding is, firstly, that as part of the preparation of the defence under the previous military commission charges, Mr Hicks's defence team arranged for him to be seen by a psychiatrist. That was the subject of a report in a newspaper just recently, although I was not aware of it until I saw it in the newspaper. Secondly, the United States's position has been that it will provide medical assistance for the people in Guantanamo Bay, and that it will be high-quality medical assistance. My understanding is that Mr Hicks was assessed by a US-appointed psychiatrist on 30 January and—without going into what might be regarded as personal or private details—my brief is that his general health was assessed as pretty good. But that assessment was not made by an independent psychiatrist; it was by a US-appointed psychiatrist.

Senator STOTT DESPOJA—By virtue of the Attorney speaking favourably in terms of an independent health assessment for Mr David Hicks—I understand the United States had a prerogative, and they have exercised it, to provide their own medical assessment—are we right in saying that the Australian government's request has been denied by the United States government?

Mr McDonald—As we understand it, the response was that these independent assessments are not normally given except in the context of the medical health professional in the defence team, and of course the previous assessment which was referred to was part of the defence team preparation of their case. So we have been advised that, given that these are new charges and this is a new process, it can be expected that a health professional would be included in the future defence team. Certainly on the basis of the earlier visit, where it was allowed, this is probably something that will occur. The precise arrangements and what will happen will obviously depend on the process with the charges and the like.

Senator STOTT DESPOJA—I understand that we do not have precision and we do not have a guarantee, but I just want to go back to that question. I understand, Mr McDonald, that you are saying it is not considered appropriate—that it is not the done thing. Was Australia refused a request to provide an independent assessment? Attorney-General Phillip Ruddock has, very clearly, made it sound as though he has made this request. I want to know whether it was denied or simply not insisted upon. Are you able to tell me that?

Mr McDonald—I do not have sufficient detail on it. Foreign Affairs have the intricate detail on it. I have a general outline here, but I think it is best that you check with them.

Senator STOTT DESPOJA—I will. I appreciate that. I only brought it up because the Attorney has made this public, but I am happy to—

Senator Ellison—If Senator Stott Despoja has a copy of the press release that she is referring to, that would be helpful to us. I do not have that press release. I do remember the Attorney-General putting out a press release but having it in front of us might be of assistance. I have asked to get a copy of that, but if one is available—

Senator STOTT DESPOJA—Sure, transcripts from broadcast radio and TV.

CHAIR—Do you mean the Attorney's press release of 19 January, Senator Stott Despoja?

Senator STOTT DESPOJA—I am assuming that that is the date, but I actually have transcripts of his comments. But I am happy to google.

Senator Ellison—I thought it was a press release that I saw, which might be what you are thinking of.

Senator STOTT DESPOJA—Yes, and then he has made statements. Thank you, Chair. As always, the chair is assisting.

Senator Ellison—Can we just see a copy of that?

CHAIR—I will just read it into the record.

Senator STOTT DESPOJA—I will also provide on record the transcripts, because I think that the Attorney-General was quite strong in this regard.

CHAIR—I think Senator Stott Despoja is referring to the Attorney's press release, dated 19 January, the final paragraph of which says:

The Australian Government continues to provide consular assistance to Mr Hicks and money for his defence. In addition, the Government is seeking to clarify Mr Hicks' conditions of detention and access to appropriate medical and other care, in response to concerns expressed by his family.

Mr McDonald—That talks about appropriate care.

Senator STOTT DESPOJA—Chair, I will provide some further information to the committee of the Attorney-General's comments.

Senator NETTLE—Just on the matter of the media release, which we just heard about, is there concern that the length of detention or conditions of detention—because that press release was about the conditions and the welfare of Mr Hicks—will affect the outcome of the case or his capacity to stand trial? Is that a concern?

Mr Cornall—The Military Commissions Act—either that or the regulations—does contain provision for the conduct of the commission, subject to the fact that the person is able to stand trial and answer the charges. There is provision for that sort of examination to be undertaken. The capacity of the person to face the charges and answer the charges is to be determined if that is brought into question. But, on the basis of the psychiatric assessment done on 30 January, that does not appear to be an issue at this stage.

Senator NETTLE—Your answer was that the Military Commissions Act allows for that matter to be addressed?

Mr Cornall—Yes, it does.

Senator NETTLE—My question is more about any actions on the part of the Australian government in relation to that issue, not so much what is in the US legislation about it.

Mr Cornall—Mr Hicks has a defence team—which includes an Australian consultant—who are taking responsibility for his defence to the charges, and I am sure they will be making those sorts of applications if that was thought to be appropriate.

Senator NETTLE—Comments have been made about Mr Hicks's defence team seeking to challenge the legality of the new military commissions. I may be wrong, but I think they have made a statement to say that they intended to challenge the legality. I might have just been inferring that from a statement that I heard. Does this create any difficulty on the part of the Australian government? Previously, the Australia government has made comments criticising the legal team in challenging the status of the previous military commissions, which were found to be illegal. I wonder what the situation is this time.

Mr Cornall—The Attorney said that challenges cause delay and but equally he has recognised that that is the entitlement of the defence team and an accused person to take those challenges if they believe that they are appropriate. So the Attorney has had two views about that, and they are quite consistent. Similarly, if they believe it is appropriate to challenge this legislation that is a decision for them but a consequence of that may be that there is further delay.

Senator NETTLE—I have certainly heard the Attorney-General's comments in relation to delays being a consequence of that. Those comments were prior to some different comments that we have been hearing from the government about their concerns around delays, so I thought now if we are operating in a climate where there is a concern around delay the response may be different.

Mr Cornall—It is still a matter for the defence team as to how they conduct the defence, and that would be the Attorney's first position.

Senator NETTLE—You talked before about the government seeking to set timelines around the charges. Are there any timelines in relation to the military commission trial going ahead?

Mr Cornall—There was a media interview with the Prime Minister where he was stressing the government's request that this matter be expedited and that the matter proceed as quickly as possible. One of the points at that stage was whether or not the charges would be framed and given to the convening authority and so on by a certain date. The Prime Minister was asked, 'Well, what are you going to do if that does not happen by then?' He said: 'Let us take it all a step at a time. We'll see what happens then.' I think we are in unusual circumstances and the government's position is very clear—they want this matter resolved as quickly as possible and in a fair manner to Mr Hicks. But because we are not in control of the process and because the United States government itself is not in control of the process if there are legal challenges, all the government can do is continue to reinforce that intention that this matter be resolved quickly.

Senator NETTLE—When you were answering Senator Stott-Despoja you talked about the military commission legislation creating the power for foreigners to be tried in US courts.

Mr Cornall—Yes.

Senator NETTLE—Is the military commission deemed as a US court?

Mr Cornall—If I said 'court', you are quite right. It should be: 'Before a US tribunal with the power to convict them of an offence.' The remark that I had in mind when I said that was an observation made by Attorney-General Gonzales at the Judge Advocate General's Corps Leadership Summit on 23 October 2006, where he talked about the variations to the military commission process, which he said were justified by wartime circumstances, and he went on to say that:

Many witnesses before the commission are likely to be foreign nationals not amenable to process, and others may be unavailable because of military necessity, injury or death.

It was that sort of idea that I was thinking of when I made those remarks.

Senator NETTLE—In relation to Mr Hicks's welfare and health, you made some comments about the role that any medical officer as a part of the defence team may have. We are all aware that there have been a number of statements made by Mr Hicks's defence team and family about his treatment. Have any inquiries been made into his health and welfare, other than asking United States authorities to determine that?

Mr Cornall—As the minister pointed out, the Australian embassy from Washington has visited Mr Hicks on 18 occasions since he has been in Guantanamo Bay, and on many of those occasions they talked to him about his circumstances and conditions. In the most recent two visits, he has declined to talk to the embassy official, but the embassy official was able to at least see him and observe him and form the view—as well as you can by simply seeing someone—that he was in reasonable health.

Senator NETTLE—Is the embassy official medically—

Mr Cornall—No, and there is no suggestion that he is.

Senator NETTLE—Have there been any attempts to verify the statements that have been made about his health and welfare by the Australian government other than by asking the United States for an answer?

Mr Cornall—He is in United States custody and the United States government assure us that they are providing adequate medical care and attention for all the detainees. We have talked with this committee over time about the sort of medical treatment and assistance that Mr Hicks has received. If he has ever raised an issue of concern with the embassy official in relation to his situation, we have immediately referred that to the United States. As you are aware, when there were allegations of abuse there were two occasions on which quite thorough investigations of those allegations were carried out at the government's request. The government thinks it has done as much as it can do to ensure that he is being fully and carefully looked after while he is in United States custody. It is interesting to note that the recent British Foreign Affairs Committee made a finding in that regard. It says:

Guantanamo scores highly on diet and on health provision; but it fails to achieve minimum United Kingdom standards on access to exercise and recreation, to lawyers, and to the outside world through educational facilities and the media.

The report specifically focuses on health provision. The United Kingdom Foreign Affairs Committee found that Guantanamo scored highly on health provision.

Senator Ellison—In relation to the conditions in Australia, I want to refer to Mr Lodhi, who has been sentenced for an extensive period on terrorist related charges. He spends 22 to 23 hours a day in his cell under video surveillance. He has access to a tiny exercise yard for four hours a day at the most. He is not allowed to leave his cell after 3.30. Visits from his family are videotaped and are within the hearing of guards. His cell is searched daily. He is dressed in orange overalls and shackled whenever he is moved. He has no access to computers. His phone calls are taped. His mail is read. He eats his meals by himself. He cannot work in the prison system. He is not allowed to speak to an official visitor. There is an article in the *Sydney Morning Herald* which outlines this dated 24 August 2006, and I table it. I table that to demonstrate that there are conditions in Australia in relation to maximum security similar to those that are experienced overseas. In this case, it relates to Mr Lodhi.

Senator STOTT DESPOJA—That is a person who has been charged and convicted.

Mr Cornall—Yes, that is true.

Senator STOTT DESPOJA—So the comparison seems interesting.

Mr McDonald—He was held in custody in that sort of security.

Senator Ellison—On remand.

Senator STOTT DESPOJA—For what period?

Mr McDonald—It was a considerable period.

Senator STOTT DESPOJA—Roughly five years?

Mr McDonald—Not quite that long.

Senator Ellison—You can have maximum security on remand as much as you can on being sentenced.

Mr Cornall—On your questions about conditions, the International Committee of the Red Cross has I think been a regular visitor to Guantanamo Bay and has, in accordance with its normal practice, viewed the conditions under which people are held and passed on any remarks it wished to make about that to the United States authorities. As you know, they do not make those remarks public, but I do understand that the ICRC has been a regular attendee at Guantanamo Bay. Coming to the comments by Senator Stott Despoja, I have a transcript of the Attorney-General's interview on *PM* on 30 January 2007.

Senator STOTT DESPOJA—Yes, I have the media from 30 and 31 January.

Mr Cornall—I have not read it all but some parts have been highlighted for me. Mr Ruddock said:

I've asked that an assessment be carried out and that that be dealt with as a matter of urgency.

And I think informed views on this matter should await some more detailed assessment.

Later in that transcript he said:

Well, we would like to see Mr Hicks properly examined and we've sought assurances that that assessment will be carried out. Now who should carry out that assessment is a matter for the United States.

They are direct quotes from the ABC *PM* interview.

Senator NETTLE—Minister, you just made some comments about the conditions in Australia for people who are detained. Are you saying that the conditions in Guantanamo would be acceptable if they were the conditions in Australia? Is that the comparison you are trying to make?

Senator Ellison—What I am saying is—and it follows on from the secretary's comments—that the visit to Guantanamo Bay by the House of Commons Foreign Affairs Committee found that the conditions were similar to maximum security conditions in the UK. I was adding that these conditions are similar to maximum security conditions in Australia and that these applied to Mr Lodhi, who was a sentenced prisoner, and also applied to him prior to his being convicted and sentenced.

Senator NETTLE—It was that comparison with Australia that I was interested in asking you about. In your comments about Mr Lodhi's conditions and the conditions here, you were seeking to make a comparison between those two. Are you saying that the conditions in Guantanamo Bay would be acceptable if they were the same conditions that prisoners experienced in Australia?

Senator Ellison—Prisons are run by state authorities, and that is a matter for the state authorities who run prisons. I merely pointed to the conditions in maximum security in this country to say they are similar. Whether or not a state prison system would follow Guantanamo Bay's conditions exactly is a matter for them. But, when you look at what I have cited there in relation to Mr Lodhi, you see that there are similarities with the detention. The Foreign Affairs Committee from the House of Commons expressed a similar view when it said, 'Look, Guantanamo Bay is not identical to what they have in the United Kingdom but it is similar to maximum security conditions in that country.' I am saying the same thing in relation to Australia.

Senator NETTLE—Are you saying that Guantanamo conditions are similar to those in Australia?

Senator Ellison—To maximum security in Australia. I just went through the details concerning Mr Lodhi, and the details concerning Mr Hicks have been canvassed publicly. Those details that have been canvassed publicly in relation to Mr Hicks and his detention and the conditions thereof are quite similar to the conditions that I have read out in some detail in relation to Mr Lodhi.

Senator NETTLE—Would you be happy for Guantanamo conditions in Australia?

Senator Ellison—I think that you adapt things for your own circumstances and the provisions you have in your own prisons here. Obviously they have built Camp 5 and Camp 6, which are the newer detention facilities in Guantanamo Bay. The states have their own current provisions in their prison system. It depends on their own facilities. But the similarities remain. You cannot get away from the fact that Mr Lodhi spends 22 to 23 hours a day, as I understand, in his cell alone. That is very similar to that experienced by Mr Hicks. That is a situation which already is in existence in Australia in maximum security. He has his own exercise yard and is not allowed to leave his cell till after 3.30 pm. I will not go through that again, but when you do go through that you find there are strong similarities to the conditions experienced by Mr Hicks.

Senator NETTLE—So you would be happy for Guantanamo conditions in Australia?

Senator Ellison—I accept maximum security conditions such as those which Mr Lodhi is experiencing, and they are similar to those of Guantanamo Bay. But, when you say 'identically', it depends upon the prison. I do not run prisons; the Commonwealth does not. We rely on the state governments. But we do not argue with the state governments in relation to the way they run their prisons in maximum security. I am not taking issue with that. That is a fact. I have seen maximum security myself, visiting prisons over a long period of time, and I have seen them in older prisons, shall I say. The maximum security Fremantle Prison which was built in the early 1800s was pretty tough indeed. And that was provided over a lengthy period of time, recent times, in my home state of Western Australia. So maximum security provisions around this country certainly are stringent, and that is the point I am making. It is not as if this is something which is totally unique. The United Kingdom has recognised that those conditions exist, or are very similar to conditions in their own country. I am saying the same for Australia. Whether or not you transpose them exactly depends upon your prison system, obviously.

Senator NETTLE—But you would you be happy with conditions similar to Guantanamo Bay conditions here in Australian prisons?

Senator Ellison—I have answered that. I have said we do have them—we have them now. And I am not arguing with them. We have similar conditions in maximum security in this country, and I do not argue with them.

Senator NETTLE—David Hicks is chained to the floor in the interview room in Guantanamo Bay. Is that acceptable here?

Senator Ellison—That is a matter for the authorities and their assessment of the security risk at the time. I can tell you that I would not be surprised if that was not done in Australia. In fact, as I understand it, Mr Lodhi is shackled whenever he is moved. As to whether he is shackled during an interview or meeting with his family, I would have to take that on notice. But certainly, from the information we have, it is not that dissimilar in Australia.

Senator NETTLE—Do interrogations occur with dogs in Australia?

Senator Ellison—I am not aware of any.

Senator NETTLE—Would that be acceptable? You are making the comparisons between what occurs there—would that be acceptable in Australia?

Senator Ellison—The security arrangements surrounding interviews in Australia are assessed by the prisons, and I am not aware of dogs being used. However, I am aware that there have been interviews with shackled prisoners—with prisoners with guards standing by them within earshot. There may well be the occasion where a prisoner in maximum security is even shackled to the ground or to a secure area—that would not surprise me. But I am not aware of dogs and I do not think prisons in Australia have seen the need to use dogs. But certainly there have been security arrangements for interviews and visits where you have high-security prisoners.

Senator NETTLE—But sensory deprivation with hoods?

Mr Cornall—Perhaps I could interpose here that one of the conclusions of the United Kingdom Foreign Affairs Committee was:

We conclude that abuse of detainees at Guantanamo Bay has almost certainly taken place in the past, but we believe it is unlikely to be taking place now.

The second point I want to make is that, as I understand it, Camp 6—which is the new camp at Guantanamo Bay—is modelled on maximum security prisons within the United States mainland.

Senator Ellison—I hasten to add that in no way would we condone abuse in any shape or form—that is not part of it. We are talking about the security arrangements in relation to Mr Hicks. There have been a number of inquiries in relation to alleged abuse, and I think two of them have been at the instigation of the Australian government.

CHAIR—Thank you. Shall we go back to questions on this matter, Senator Nettle?

Senator NETTLE—Yes. The United Nations says that torture occurs at Guantanamo Bay—is that acceptable in Australia?

Mr Cornall—No, it is not.

Senator Ellison—No, it is not.

Senator NETTLE—You talked about the UK delegation. Has the Australian government had interaction with the UK delegation or government about how they have dealt with the issue of Guantanamo Bay conditions or legal procedures?

Mr Cornall—I am only reading to you from the report printed on 10 January 2007. That is the origin of my remarks.

Senator NETTLE—But you are not aware of any other communications with the United Kingdom government—

Mr Cornall—No, not that I am aware. Sorry, would you finish your question?

Senator NETTLE—about Guantanamo Bay other than reading the report of the delegation on the website?

Mr Cornall—The reason I hesitated was that we have had meetings with the United Kingdom over a period of years which have included discussions about Guantanamo Bay on a minister to minister basis. But this report was only published a few days ago, and, no, I do not believe anyone has had any discussion about that.

Senator NETTLE—You are outlining minister to minister discussions between Australia and the UK on Guantanamo Bay—can you provide any more detail on that?

Mr Cornall—No, I cannot. The Attorney-General and the Minister for Justice and Customs have made remarks from time to time about that. Whatever remarks they have made are on the public record, but it is not appropriate for me to speak about their meetings.

Senator NETTLE—You were talking before about visits by Australian consular officials, and we are all aware of the comments that Mr Hicks has made about being punished after having been visited by Australian officials. Has there been any investigation into this?

Mr Cornall—We do not have any evidence of that. Indeed, one of the assertions was that Mr Hicks was punished after the March visit last year and yet in the June visit there was no issue of concern raised then. In terms of the issues raised with the Foreign Affairs official, we do not believe that there are any issues that they have not followed up on but, once again, you should direct those questions specifically to Foreign Affairs.

Mr McDonald—When we inquired about it, the US specifically stated that they did not do these moves for punitive reasons.

Senator NETTLE—They did not do which moves?

Mr McDonald—They did not move him on the basis of any form of punishment. The move was part of a camp consolidation from older to newer purpose-built facilities. The moves involved a majority of the detainees. So we have enquired of the US about whether it was a punishment. They have been quite clear in their response, saying that it was not.

Senator Ellison—There was a claim, I understand, when Mr Hicks was moved to Camp 5 in March 2006, that that was punishment for speaking to the Consul-General. This was apparently a reason why Mr Hicks refused to speak to the Consul-General in September 2006 and during the current visit. But the advice we have is that Mr Hicks spoke freely with the Consul-General for 90 minutes during the 8 June 2006 consular visit—that is, in between March and September he spoke for 90 minutes. That was despite him having said that in March he was moved and that he would not talk now because he was moved as punishment because he was talking to people.

Senator NETTLE—I was about to raise that issue, because in the previous answer you said that claims were made after the March visit and that when he was met in June he did not make any claims about having been punished. It just sounds a bit circular to me, if he is

saying, 'I am being punished for talking to you,' and the next time you talk to him he does not say, 'I am being punished for—

Mr McDonald—Sorry; we have got all the time sequence out of sync here. There was a visit on 16 March 2006, and shortly after that visit he was moved. Then there was another visit on 8 June where Mr Hicks chatted away for 90 minutes with the Consul-General and did not raise any concern about this. Then there was another visit in September where he did raise concerns and suggested that he had been punished by being moved on 17 March. What we need to understand here is that as of the 8 June visit there was not any awareness of this allegation. Foreign affairs can give you more detail.

Senator Ellison—This gives us a bit of an outline as to the sequence of events, but it is best taken up with the Department of Foreign Affairs and Trade. That is a summary of it, as Mr McDonald has outlined.

Senator NETTLE—Can I just check something? You have probably got this in the summary: what was the next visit after the September one? Mr McDonald is saying that the concern that he was being punished was first raised in the September visit. What was the next visit after that?

Mr Cornall—This most recent one: 31 January 2007.

Senator NETTLE—That why I was pursuing it—because I thought your earlier answer was that he did not raise it the next time, but there has only been one other visit since you are saying he raised those concerns. You also said that there has not been any evidence that he has been punished for talking to the consular official. On the basis of media reports, I thought that the consul, when they visited last time, was given a letter from David Hicks about him being punished for earlier visits. Is that correct?

Mr Cornall—When you say 'last time', do you mean January?

Senator NETTLE—No—the most recent visit, at the same time as when David Hicks's legal team were there. On the basis of media reports, I have the impression that the consul was given a letter penned by David Hicks about him being punished.

Mr Cornall—That is true.

Senator NETTLE—Is that not evidence of him being punished for talking to the consul?

Mr Cornall—No. This letter was dated 30 February 2007, but it would have been 30 January 2007. It did say that he was afraid to speak to the consul and would not speak to him, so he did not speak to him. As I have said before, whenever there have been any issues raised about Mr Hicks's treatment, we have immediately raised it with the United States, and where it has been something that could be remedied they have very largely remedied it. But the details of that consular and welfare assistance have all been provided by the Department of Foreign Affairs and Trade and they would be able to give you more details.

Senator NETTLE—But whenever those questions have been raised you have asked the United States about them. As you said before, you have never done anything other than ask the United States about them.

Mr Cornall—What would you have us do?

Senator NETTLE—I am asking you about what the department has done.

Mr Cornall—The Australian government has always referred any complaints or concerns that have been raised by Mr Hicks with our officials to the United States and asked them to address them, and, as far as we are aware, they have been addressed.

Senator NETTLE—I wanted to ask you about the visits by delegations—and we are talking about the United Kingdom. Previously Senator Stott-Despoja was asking about visits by Australian parliamentarians and you referred to the request by Senator Brown. My understanding is that Senator Brown wrote to the foreign minister—maybe it was the Attorney-General; I am not sure—and the response was to ask the United States about visiting. When he wrote to the US ambassador he was told to talk to the Australian government. Can you shed any clarity on whether politicians—because you were talking about delegations of politicians—should talk with the Australian or the US government on that matter?

Mr Cornall—It is a Foreign Affairs matter; I think you should take it up with Foreign Affairs. My understanding was that the letter to Senator Brown came from the foreign minister.

CHAIR—Which it is possible to do on Thursday, Senator Nettle, I understand.

Senator NETTLE—Okay. But the Attorney-General's Department would not have any problem with Australian parliamentarians seeking to visit Guantanamo Bay?

Senator Ellison—That is not a matter for the department; it is a question that should be directed to the government.

Senator NETTLE—Okay, sure.

Senator Ellison—And the minister for foreign affairs is dealing with that. Each one—not that there has been more than one; I am only aware of the one that was written to the minister for foreign affairs by Senator Brown—will be dealt with by the minister when he receives it. Apparently Senator Brown has written to the minister for foreign affairs, and I will take that up with the minister. It really should go through the other estimates committee, but I will pursue it for you and get back to you.

Senator NETTLE—Thank you. I was just asking because there was some discussion earlier about Australian parliamentarians.

Mr Cornall—I understand that the United States draws a distinction between parliamentary delegations that are inspecting the facilities at Guantanamo Bay and how it all operates, and a request to interview a specific detainee. My understanding is that Senator Brown asked specifically to see Mr Hicks and that that put that into different category to, for example, the foreign affairs committee visit.

Senator NETTLE—I just wanted to ask—we were talking about people visiting before—is there a Muslim chaplain at Guantanamo Bay? We were talking about comparisons with Australian prisons, and of course there are chaplains here.

Mr Cornall—I am not 100 per cent sure. There has always been appropriate recognition for the detainees' religious requirements, and they are able to follow their religion. We will have to take that specific question on notice, or you could refer it to Foreign Affairs.

Mr McDonald—I think you should refer it to Foreign Affairs. I am almost certain that the answer is 'yes', but that should be asked of Foreign Affairs.

Senator NETTLE—Minister, would you have any problem with delegations of Australian parliamentarians visiting Guantanamo Bay?

Senator Ellison—Bearing in mind the distinction the secretary has just made in relation—

Senator NETTLE—That is why I asked 'delegations'.

Senator Ellison—I assume that they would be inspecting it as opposed to speaking to a specific inmate. I do not want that to be misunderstood. From my point of view, I do not see any problem with it, but it depends on the request that is made, because you have to deal with each one. It depends what demands they make and what they want to do while they are there. That is a matter for the American authorities. But one is assuming that it is a reasonable request. Security considerations would have to be taken into account. It is much like when you visit a prison in Australia—it is under certain conditions for security reasons. But it depends on the nature of the request.

Senator NETTLE—You just said it would be a decision of the American authorities?

Senator Ellison—If they say, 'We want the prison opened up for a day for us to have a picnic in there,' of course it would be an unreasonable request.

Senator NETTLE—I am just trying to check who is—

Senator Ellison—The people on the ground who run Guantanamo Bay would have to be satisfied that security arrangements were in place. They allowed ABC TV in the other day. They allowed in the foreign affairs committee. I cannot say, 'Yes, they will let a certain person in.' It is up to them and it depends on the request that is made. If you are trying to get me to agree to any old request, I am sorry, no, I am not going to give a blank cheque here for some—

Senator NETTLE—No, I am not trying to do that. Minister, I am just trying to find out who is responsible. You said to me earlier that it would be up to the American authorities, so I am just checking.

Senator Ellison—But you asked about our attitude. That is different to who makes the decision.

Senator NETTLE—I did.

Senator Ellison—We cannot make a decision as the Australian government. But you asked me what my attitude is.

Senator NETTLE—I did.

Senator Ellison—My attitude is that a reasonable request should be okay, depending on the requirements demanded by the authorities on the ground at Guantanamo Bay. ABC TV did it the other day, and they got access. No doubt they met the requirements of the local

authorities, as did the House of Commons foreign affairs committee. The only thing I will say is that the decision is not made by the Australian government. It depends upon the nature of the request and the decision by the local authority. But, in principle, my attitude is not opposed to it.

Senator NETTLE—Thank you.

CHAIR—I am going to take one question from Senator Stott Despoja and then I will come straight back to you.

Senator STOTT DESPOJA—It wanted a clarification but, Minister, I think you have probably sorted it out for us. My understanding is that it does not matter whether or not you or the government has a view on a parliamentarian visiting. For example, when Senator Kirk applied to the US government, she was denied the opportunity on a basis on which she can elaborate if she chooses to. So any further applications, I presume, go through the Department of Defense and other US agencies. I would not imagine that I, or anyone else for that matter, would have to apply to the government.

Senator Ellison—That is right. You have to go back to the original question. I was asked about my attitude to an Australian parliamentary delegation visiting Guantanamo Bay, and I said, ‘I, myself, have no problem with that.’ But the decision does rest with the authorities in America and it depends on the nature of the request. It has to be a reasonable request, no doubt. Obviously, the ABC TV who were there recently and the House of Commons foreign affairs committee made requests that were considered reasonable and they were allowed to visit—not the detainees, but to inspect the premises.

Senator NETTLE—And it was your answer that prompted me to check that question about who is responsible, to which you answered ‘the US authorities’. The reason I ask that is this: when Senator Brown wrote to the US ambassador, he said, ‘Ask Australia.’ That is why I was trying to find out from you who you think is responsible.

Senator Ellison—I think foreign affairs estimates is the place to really nail that down because I cannot talk to that. I do not know whether Senator Brown has asked for the assistance of the foreign affairs minister, and that is something quite different.

Senator STOTT DESPOJA—I am happy to take this on notice but I am curious to know if the department and the Attorney-General or the minister were aware of the claims over the weekend by Mr Peter Vickery, QC and his suggestion that the Australian government—or indeed individual members of the government—might be liable or culpable in terms of our commitment to war crime treaties and various international conventions. I am just wondering if you have looked at that and if there is some advice on that. What is your understanding of the government’s culpability?

Mr Cornall—I think that the Attorney has said that he thinks that it is highly unlikely that asking that someone be dealt with by an expeditious and fair process could constitute an offence under our Criminal Code.

Senator STOTT DESPOJA—Sorry—are you suggesting that Mr Hicks’s case is expeditious?

Mr Cornall—No, I am saying that his statement was that it be dealt with expeditiously and fairly and that that request would not constitute an offence under the Criminal Code.

Senator STOTT DESPOJA—I think there is a distinction between the request and reality. But you believe the Attorney-General is covered in that respect?

Mr Cornall—I do.

CHAIR—There being no further questions on this particular aspect of 2.2 or any other questions in relation to 2.2 generally, I thank the witnesses. If there are other questions, I have been advised that they will be placed on notice. If there are questions for 2.3, which is emergency management, amongst other things, they will be put on notice. On 2.4—protective security policy—I myself, Senator Ludwig, was intending to seek some information in relation to provision of security for the upcoming APEC conference, but if you would like me to place that on notice I would be very happy to do that.

Senator LUDWIG—No, I would be fascinated!

CHAIR—I do not think you should mislead the record, Senator Ludwig! I will place those on notice.

[5.16 pm]

Australian Customs Service

CHAIR—We welcome Mr Carmody and the officers from the Australian Customs Service. We will start with questions from Senator Ludwig.

Senator LUDWIG—Perhaps it is worthwhile starting with the ANAO report. Has all the development work on the CMR project now been completed?

Mr Carmody—I think you are aware that there continue to be issues that we are working through with industry that are designed to meet the need to make the system operate easier for them. In that sense, we continue to make enhancements to the system while also looking to a future design with industry.

Senator LUDWIG—Can we have a list of those issues that you referred to in terms of the continual—

Mr Carmody—The Industry Action Group continues to operate and it has a list. I do not know whether we have it available, but we can certainly make it available to you.

Senator LUDWIG—Why not?

Mr Carmody—Sorry?

Senator LUDWIG—You can make that available?

Mr Carmody—I said that I am sure we can make that available, yes.

Senator LUDWIG—What date do you expect the modifications to be completed by?

Mr Carmody—You have probably been around systems long enough to know that the world continues to move on and that no system maintains in its present state indefinitely. Indeed, they continue to evolve. I would also point out that there are some areas in which we are not only working with industry to provide them with greater certainty and more timeliness

but also looking and working, as I have announced, with industry in this area so as to look at whether there are different points at which and parties from whom we collect the information we need to do our job that would better fit within business models. The system is going to continue to develop for as long as I will be in the job and probably after that.

Senator LUDWIG—I understand the response in terms of continual development but, in the case of certain functionality, that was promised as part of the 12 October live turn-on of the system. As to that functionality, we have seen two audit reports now. When will the complete promised functionality be available?

Mr Carmody—I am not sure I can answer in that sense. Perhaps Ms Bailey can.

Ms Bailey—I can give you an idea of what work has been completed. I guess then that there are some other issues to be completed.

Senator LUDWIG—Just to be precise: this is what was promised in terms of the functionality as at 12 October and which still remains not delivered.

Mr Carmody—I am not sure whether it is possible to categorize it that way because what has occurred, I suspect, is that the major issues that industry have expressed concern about were that the design did not fit easily with industry practices—that is, a range of the cascade reporting. In a sense, that was designed to operate in that way, but it does not and it has not worked well for industry practices, so we are having to develop that. From where I am sitting, it is more in the sense of those things that we are working on at the moment.

Senator LUDWIG—Perhaps we could even categorise between those—which industry, as you have described—and those whose functionality was expected to be there on 12 October and was not there, and whether or not it has been completed to date.

Mr Carmody—I think I would have to take that level of detail on notice.

Senator LUDWIG—There has been a range of dates in terms of costings, but it seems to be in the audit report you signed off on 28 February 2006. What costings have continued on since then? Is it able to be broken down between those ones which are still meeting and those ones that do not meet the system or the functionality that was provided as at 12 October 2005; those which now industry say do not meet their requirements and therefore require a modification; and those which are in continual development in the broader category?

Mr Mann—I think the ANAO report referred to \$205 million up to February and then another amount of \$212 million by the end of June. That is the amount spent in the last financial year. We have provisioned around \$15 million additional work in maintenance and enhancement on the ICS for this financial year, and that would include all of those changes, whether or not they were, as you described them, original functionality or other enhancements agreed with industry or our own staff.

Senator LUDWIG—So the figures are as at 28 February \$205 million plus a further \$7.7 million. And then from June 2006 onwards?

Mr Mann—For this financial year?

Senator LUDWIG—Yes. There is another \$15 million on top of that.

Mr Mann—Yes.

Senator LUDWIG—And that still will not see the system up and running in that sense, the way the industry would expect it to be.

Mr Mann—I think there are a couple of categories. There were at the time that the system went live in October 2005 something like 113 ‘workarounds’, as they have been described—that is, functionality that was not provided for the system. Since then, we have resolved 73 of those. So from the functionality, if you like, that was looked for as at October, we are down to something like 40 workarounds. Since then, with the establishment of the industry action group by the minister, there has obviously been an ongoing discussion around, as the CEO was saying, ‘Is this the way that we would like the system to work, given the fact that perhaps there were commercial issues that had not been adequately taken into account?’ We have agreed with the IAG a work program that takes us up to the end of this calendar year. They would include things in addition to the, if you like, lack of original functionality. The third area that we are starting to look at is some forward looking future direction projects to see whether or not more fundamentally we can address some of industry’s concerns. All of those potential changes, if you like, were to lead to any changes to ICS within that \$15 million provision.

Senator LUDWIG—In terms of the expenditure between June 2006 to date and the projected expenditure from today to—there may not be a completion date. I may not accept that, but I understand your answer in respect of the completion date in terms of the workarounds, industry expectations of what they were going to get on 12 October and the functionality that was not there as of 12 October. Notwithstanding the future developments or the future directions, is there a way to project how much that will cost and, if so, have you projected it and what is the cost?

Mr Mann—No. It would be fair to say that we are constantly prioritising the program to meet the most pressing short-term impact improvements that we can make for industry. As well as balancing that, we are looking to put in place some changes for our own staff to ease their interaction with the system. We do not have, at this stage, a financial estimate by project for the rest of the financial year. We are working release by release at this stage.

Mr Carmody—This fits into our general budgeting and planning cycle. Mr Mann has indicated what was factored in for this year, and we are currently moving into our budgeting and planning cycle for the coming year and the sorts of issues that have been raised—including a significant business case that is being developed with industry to look at what has been termed alternative forms of reporting and including building on the US pre-load arrangements—will be factored into our planning and budgeting for the coming financial year.

Senator LUDWIG—I asked that because of what is in the board report at page 41 and particularly at page 17 with regard to the project parameters. If you look at that—and I am sure you have—the ANAO audit report found at paragraph 12 on page 17 that:

...project lacked many of the basic fundamentals necessary to successfully implement a large ICT project. The outcomes to be achieved and the expected benefits from the project were never clearly defined. There was no overall CMR project plan, financial management plan, project budget or proper assessment of the risks facing the project. There was also a lack of supporting documentation surrounding contractual arrangements.

In your response, as I understand it, to the ANAO report, there appears to be no disagreement with the ANAO's findings in that regard. Am I correct in saying that Customs's findings on all these accounts are accepted and agreed to? I will pause there because I do not want to go on to another matter. Is that the point we are at now?

Mr Carmody—Even in their findings they note that things improved in a range of areas throughout the projects, including in the financial side and other sides. The ANAO report indicates that things have improved. You would be aware that last year I commissioned the Booz Allen Hamilton report, which was fairly consistent with this report. As a result of that, we have put in place a number of things at program level, including the appointment of Neil as deputy chief executive officer and the development of the program. Just to show you how things are different, I mentioned to you already that we have been exploring with industry alternative means of reporting. That is now being done through a joint development of a business case to ensure that we have all those fundamentals in place as we move forward.

Senator LUDWIG—What I am trying to do, though, is get an understanding in terms of the ANAO's findings. At that time they, Customs agreed.

Mr Carmody—I would say that while things improved throughout the life of the project there were deficiencies in areas as raised by the ANAO.

Senator LUDWIG—Let me be clear that I am not holding you personally responsible—you were not here.

Mr Carmody—I know you are not, but I think we have made it clear that things could have been done better.

Senator LUDWIG—I think you have said that a couple of times.

Mr Carmody—The ANAO graphically illustrated that things could have been done better.

Senator LUDWIG—I think you have made that abundantly clear, but I am happy for that to be continuously made clear on the record. I am just trying to work out where we have got to and then we can move to where we might be going next. So that was accepted and agreed—I think you have answered positively to that.

Mr Carmody—I have indicated that those types of failings were evident, yes.

Senator LUDWIG—It also appears from the ANAO report at 3.21 that the initial cost estimate for CMR was approximately \$30 million and that on the basis of this estimate Customs made the decision to fund the project internally. I accept again that you were not there, but the ANAO seems to point to that. I asked about this figure previously; this is not a new question from me. I asked about the then CEO Mr Lionel Woodward on 24 May 2005 in the context of the cost blow outs, and in his response on 24 May Mr Woodward said to me:

The \$30 million figure that you refer to was very much a stab in the dark at that time.

It would seem that it was at this point that Customs first got it wrong. You can correct me, but I asked Customs how they calculated the \$30 million figure and the response was that it was a 'stab in the dark'. It did not in fact dawn on me that there was no financial management plan at that time. The ANAO asked, 'How did you approve internal funding?' and Customs said, 'On the basis of this stab in the dark estimate, we made the decision to fund the project internally'. At 3.4 on page 56, it says that the 'tender evaluation report and probity audit had

been destroyed'. Then it says in the footnote that this was done 'in accordance with archival legislation'. In relation to this tender, when did the tender expire?

Mr Carmody—I do not know whether someone has that detail. There is a lot of shaking of heads, Senator. We will have to take that one on notice.

Senator LUDWIG—Were the original documents taken into account in any way in the determination of the subsequent successful tender with EDS?

Mr Carmody—I certainly cannot answer that question. I will have to take that on notice.

Senator LUDWIG—When were the documents destroyed?

Mr Carmody—I do not have that level of detail. I am happy to take it on notice.

Senator LUDWIG—Understand that I am not asking you personally.

Mr Carmody—Yes, I understand that.

Senator LUDWIG—There is a corporate memory, though, I imagine in Customs.

Mr Carmody—I am more than happy to take it on notice. It would be better for us to take this level of question on notice so that we can be absolutely certain.

Senator LUDWIG—It should have been plain that these were the questions you were going to get today.

Mr Carmody—Sorry?

Senator LUDWIG—It should have been plain that these were the questions you were going to get today.

Mr Carmody—There is a lot of detail in this report. I am not sure I contemplated at that level.

Senator LUDWIG—We do have a little while ahead of us.

Mr Carmody—I just do not have that level of detail Senator.

Senator Ellison—If we can find it in the meantime we will get back to the committee as soon as we can.

CHAIR—Thanks, Minister.

Senator Ellison—I notice there is a dinner break coming up.

CHAIR—In about 57 minutes.

Senator LUDWIG—Do we know who made the decision to destroy the documents? Do we have any record of that?

Ms Bailey—I think there is an archiving schedule in the department that sets out which files were destroyed in which years and the process. I imagine that operates across most departments—I guess we would need to verify that and find the details.

Senator LUDWIG—Perhaps you could explain who destroyed the documents and explain how that was done in accordance with the relevant legislation at that time and how that legislation applies—in other words, the decision-making process that led to the destruction of those documents.

Ms Bailey—We can provide answers on the sentencing policy and its relationship to the legislation.

Mr Carmody—We will take that all on notice. I assume the point of the footnote in the report from the ANAO was that it was done in accordance with the legislation.

Senator LUDWIG—Yes, that is why I have asked you to confirm whether the regime makes the destruction of such documents mandatory, or whether there was a formal decision to destroy the documents.

Mr Carmody—As I say, we will take that on notice but I am sure that if there was any question about the appropriateness or legality that would have been raised by the ANAO in their report.

Senator LUDWIG—I would like to know whether there was a formal decision-making process involved and the steps involved in that and whether any discretion was applied in the decision to destroy the documents.

Mr Carmody—We will take that on notice.

Senator LUDWIG—How is it that Customs made a decision to internally fund the project when the only costing that was done was described by the then CEO as a stab in the dark?

Mr Carmody—I do not know that we can answer that here. There were processes—John, are you able to assist?

Senator LUDWIG—When was the decision made?

Mr Brocklehurst—I believe that the decision was made at the commencement or in the early stages of the project, associated with the fact that the organisation, as any agency does, has funding available to it through depreciation type funding and I believe at the time it was considered that, based on the information available at the time, it could be funded through those sources.

Senator LUDWIG—When was that—do you recall?

Mr Brocklehurst—The project commenced in the early 2000s, I think. I believe the \$30 million arose from the outsourcing arrangements back in 1998, but the decision to commence the project was probably in the early 2000s. At that time, the decision was made, I believe, on the basis of the funding that the organisation had available to it.

Senator LUDWIG—Do you know whether there was any documentation or how the decision came about?

Mr Brocklehurst—No, I do not.

Senator LUDWIG—So, Mr Carmody, you are going to take all of that on notice to see if we can have a look at that.

Mr Carmody—I am.

Senator LUDWIG—At 3.5 on page 57 of the ANAO report it says that, in relation to the \$30 million estimate, Customs:

... could not provide details of how the estimate was determined or the cost of individual components.

Is that because—and I guess it is multiple choice—(a) there was no documentation at all, (b) there was documentation but it was destroyed or (c) there was documentation but it was lost?

Mr Carmody—Sorry, but I do not have that level of detail with me. I am happy to take the question on notice.

Senator LUDWIG—Do you know whether or not it was in the form of a written proposal?

Mr Carmody—I have not gone through that level of detail. You would understand that, since coming to the job, my focus has been on looking to make sure the system operates well for industry and for the organisation, on how we move forward from there and on making sure that we have the governance and other arrangements in place to do that successfully.

Mr Mann—My understanding is that the point that the ANAO is making, and with which we agree, is that there was no overall financial plan for all elements of the project at that time. And I am not aware of any detailed workings behind the \$30 million figure other than that it was the estimate of the development costs of building the ICS component of the project. That is as much as I could help you with here tonight.

Senator LUDWIG—Can you imagine what this sounds like to me? Estimates is about the committee's ability to ask you questions about your various outputs; this is one of them. There is now a significant ANAO report which deals with this issue. It leaves a lot of questions unanswered. Estimates is an opportunity to find the answers to those questions. I know they may not be questions that you want me to ask, but in fact I can ask them—

Mr Carmody—Absolutely.

Senator LUDWIG—and I do expect an answer where I can have one. I would have expected, in this instance—especially given the ANAO report—that you would have been in a position to answer some of these questions.

Mr Carmody—I apologise. As I have said, I have indicated where my focus has been, but there is no intention to conceal anything and we will be happy to provide detailed responses.

Senator LUDWIG—I will ask a couple of questions because, if I do not ask them, it might be said that you did not need to provide such information because I did not ask for it. Was the decision to fund internally made? Was it made at a meeting? If it was made at a meeting, do we have the minutes for that meeting? Perhaps you can respond by indicating whether you are willing to take that on notice.

Mr Carmody—I will need to take that on notice.

Senator LUDWIG—How was the decision communicated and disseminated? Who was it disseminated to? Decisions like this would have had supporting documentation and announcements accompanying them. If any of those are available, could they also be provided at the same time?

Mr Carmody—I will take that on notice.

Senator LUDWIG—The real question then, amongst others, is how can a \$30 million project be approved on the basis of what the then CEO described as a 'stab in the dark'?

Mr Carmody—I think I would need to look to the detail of the answers to your question, before I could make any comment on that.

Senator LUDWIG—This is not to single anyone out, but we have talked about documentation and whether there was a meeting. Do we know who was at those meetings as well in terms of who made this decision? The corporate knowledge must reside somewhere. I know that you were not there, Mr Carmody; I am certain of that. You were in the ATO at the time. But I do not know whether those people who are behind you were there and what corporate knowledge they have in respect of it. I would ask if there were any meetings—

Mr Carmody—If anyone here has that detail and can assist, they can come forward.

Senator LUDWIG—I am sure that they would come forward. If there are meeting notes or minutes, it is also a question of who was in attendance at those places.

Mr Carmody—In the detail that I have promised to respond with, we can cover that.

Senator LUDWIG—At 3.21 of the ANAO report, it says that the project was initially funded out of considerable cash reserves that Customs held at the time. Can the committee be provided with a corrected list of Customs' cash reserves itemised for each of the financial years between 1995-96 through to 2003-04? Is that available?

Mr Brocklehurst—Yes, that will be available through annual reports and so on.

Senator LUDWIG—In terms of the decision makers making that decision at that time, there must have been an executive. I know that the CEO, Mr Woodward, was in the chair. But, in terms of the management structure that was available at that time for that decision to be made, who was there? I am sure there will be a diagram or a range of public servants who were—

Mr Carmody—We have already committed to provide you with all that detail.

Senator LUDWIG—According to the audit report, there was no formal decision to fund this project at cabinet level until 2003 and there was no new policy proposal or submission. Therefore, when was the minister first made aware of this project?

Senator Ellison—It would have been an incoming brief to the minister when I became minister in January 2001, as I recall.

Senator LUDWIG—So you were aware of the project before 2003.

Senator Ellison—Yes, I would have been, for sure.

Senator LUDWIG—What level of ministerial approval—I think this is more to you, Mr Carmody or the minister—did you have available for the decision to fund internally? Minister, is that a matter that you had to make a decision on?

Senator Ellison—Just from my own recollection, I was briefed on the progress of CMR and the fact that there had been contracts entered into and that, when I became minister in 2001, it had already gone down the path quite a bit. I do not recall approving the actual contracts. It was a Customs decision. The CEO kept me advised.

Mr Carmody—In the normal course of events—I was not there, obviously—that would be a decision within Customs.

Senator LUDWIG—In terms of the actual people involved at the time, I guess there would have been a project team. Could we have a list of the names of those people who would have made the decision internally at that time.

Mr Carmody—I think that is incumbent in what we have promised to pursue.

Senator LUDWIG—And, if there was any correspondence at that time between the project and the minister seeking ministerial approval or information or advice to the minister, that this was a decision that the project would be funded internally?

Mr Carmody—We will take that on notice.

Senator LUDWIG—What documentation was supplied to the minister in support of the proposal prior to the decision being made, if it was put to the minister before the decision was made?

Mr Carmody—As I said, I doubt whether it was put to the minister. That would not be normal. But we will take that on notice.

Senator LUDWIG—If it was not put to the minister at that time, whether there was any explanation why a \$30 million project would not have been advised or put to the minister for tick off and why the minister was not informed of that.

Mr Carmody—As I have said, in the normal course of events that would not be a matter that would be approved by the minister, but we will look at the record.

Senator LUDWIG—Why wouldn't a project of that size have been brought to the attention of the minister or otherwise have been approved by the minister?

Mr Carmody—I am only thinking that, in my former life, much larger investments were a natural part of the responsibilities of the CEO and the senior management of the organisation.

Senator LUDWIG—I think that was a large project for Customs at the time. It may not have been for the ATO, but that will be something to look at.

Mr Carmody—I am just saying that, under the way I read the responsibilities of a CEO in these sorts of issues, this is very much what I am paid for.

Senator Ellison—Obviously, Madam Chair, the CEO kept me informed and I had briefings from time to time, because there were variations as the contract went along. We have mentioned 1998, back at the start, and 1999 was when I think the cost decision of \$30 million was made. Then there was a variation after I became minister and subsequent variations. It went to cabinet in 2003. As to the history of how that developed, we can take that on notice and advise the committee.

Senator LUDWIG—Thank you, Minister. You say you were aware of the project prior to 2003. Did you tick off on it then for it to be internally funded?

Senator Ellison—No. It was already running when I became minister and had been in train for some years.

Senator LUDWIG—The internal funding of it?

Senator Ellison—No. I was advised as to the measures that were being taken that it would be funded internally and the variations to the contract. What I am saying is that I was kept

informed and briefed. The ANA report makes mention of it going to cabinet, and we can take on notice as to how all that was done and confirm that with the committee.

Senator LUDWIG—It seems, especially given the disaster that it turned into and the cost blow-out that followed, that no-one wants to take responsibility for when this project first became internalised—that is, the \$30 million was internalised and the project started. That is what I am trying to establish, Mr Carmody, and that seems to be the problem.

Senator Ellison—That was almost 10 years ago.

Senator LUDWIG—Yes, but we are now living with that. It seems to be the case that no-one wants to take responsibility. Quite frankly, I think that has been the problem all along: no-one has actually wanted to put their hand up and say, ‘I’m responsible.’

Senator Ellison—I think the CEO has quite fairly said that we have learned from the two reports that we have had: Booz Allen Hamilton and also the ANAO report. But we now have to work with industry in present day and look to the future. We have had sufficient reporting on how this all happened, to make governance and management changes and they are being done. But the trick now is to make it work to the expectation that we want it to and to look to the future. To continue to go back 10 years or nine years or eight years will not really move it forward for industry, and that is what we are about today.

The ANAO report recognised that this has great potential benefit for industry, so did Booz Allen Hamilton. The United States is transforming its processes in a similar fashion. The rest of the world, I would venture to say, will go the same way. This is something that is worth while pursuing, but it will only ever deliver those benefits if we now concentrate on the present and on the future in the way we can work with industry. That is, I think, what the CEO is saying.

Certainly, we can take these questions on notice and we will answer them; there is no question of that. But, as a priority, from the ANAO report, how can we move this forward and deliver the benefits that we want? We have had enough of looking back and going over what happened since October 2005. It is now February 2007 and we are moving forward. With respect to the outage that Qantas had, there were congratulations from industry and other people on how Customs dealt with the Qantas outage. That demonstrated, I think, an improvement in the situation. That is how I would put it in context for the benefit of the committee, Madam Chair. Of course things could have been done better—that has been said by the CEO—but the thing is now to concentrate on working with industry, and industry has acknowledged that. In fact, the ANAO report recognised that, too, in fairness to Customs.

Senator LUDWIG—Yes, Minister, and we will move on to industry benefits; that I can assure you. But in terms of the cabinet decision, only taking the period up to the point when you went to cabinet with the matter, can you provide an explanation to the committee or a list of what funds or reserves it was intended that the project be funded from and the extent of those funds.

Senator Ellison—We can take that on notice.

Senator LUDWIG—Minister, in reply to the speech, that is what I think the Booz Allen Hamilton report was about: where to next? I understand that. But there are a couple of places

we need to visit before we go there. Regarding the ICS at 3.34 on page 64, for each of the financial management, communications, risk management, procurement and change management plans required under the project management body of knowledge, are you able to identify when it was decided that a plan was not needed? Who determined that a plan was not needed?

Mr Carmody—Is this 3.3?

Senator LUDWIG—At 3.34 on page 64. You will see for each of the financial management, communications, risk management, procurement and change management the plans required under the project management body of knowledge. It is that decision-making issue again.

Mr Carmody—It notes that a number of them were implemented and supported. Remaining plans were developed but not always fully implemented.

Senator LUDWIG—So the question remains: when it was decided that plans were not needed, if it was not fully implemented, there was a point where either it was seen as not needed—I do not want to put words in your mouth, Mr Carmody—or it was abandoned or it was forgotten. I do not know. There is a question mark that surrounds that.

Mr Carmody—Unfortunately, I do not know, but I will pursue the trail to determine whether there is anything we can enlighten the committee with.

Senator LUDWIG—And, whether there was anyone who was responsible for the approval or the abandonment of particular plans, as the case may be. Regarding the comments concerning the integrated cargo system component of the ICS, at 3.32 on page 64, that the PRINCE2 project management methodology was abandoned very early in the project, who made the decision to change to the operation of the project management body of knowledge methodology?

Mr Carmody—We will have to take that on notice.

Senator LUDWIG—It seems as though you are engaged in planning in tandem with actual development. Is that a fair statement?

Mr Carmody—I think I would be more cautious. I was not there at the time, and I do not understand the full detail. To appropriately answer that, I would have to go through all that detail, and I have not done so.

Senator LUDWIG—Regarding contract management, on page 87, at 4.35, there were 65 instances where Customs was unable to provide either a business case, a method of procurement or approval of details. On how many occasions then did Customs fail to meet its legislative requirements?

Mr Brocklehurst—I think the point that they are now making here is that we could not provide the documentation to support the decisions to approve the expenditure. They are not saying that we failed to meet the legislative requirement; they are saying we did not have the supporting documentation to demonstrate it.

Mr Carmody—Just for the public record, they go on and say that improvements occurred through the life of that project on those issues.

Senator LUDWIG—Were you able to identify how many legislative breaches there were in terms of your requirements under the FMA Act? That is the difficulty, isn't it? Can you say of those 65 whether they did constitute a legislative breach?

Mr Brocklehurst—Each of those contracts and variations were signed by people who had the delegation to sign those things. With respect to the requirement that we did not undertake, within Customs, we have a process for a method of procurement or a business case to be provided for each item of expenditure that we go into. Our business case will go through a number of obligations that we have to comply with, such as the Commonwealth Procurement Guidelines, FMA requirements, the actual process that you will use for the procurement, whether or not you have the budget. That documentation was not prepared. But in each case the contract or the variation was signed by somebody who had the delegated authority to spend that money.

Senator LUDWIG—On page 87, at 4.35, there were 65 instances where Customs was unable to provide either a business case, a method of procurement or approval details. On how many occasions did Customs fail to meet its legislative requirements?

Mr Brocklehurst—There were 39 instances where we were not able to provide the supporting documentation, out of those 65 variations and 13 contracts.

Senator LUDWIG—So 39 instances represented a breach of your legislative requirements?

Mr Carmody—No. There is also a qualifying footnote—I think, footnote 107.

Mr Brocklehurst—Yes, I am not aware of a legislative requirement that we breached. The point the ANAO are making is that we did not have an internal document prepared that demonstrated that we were complying with all obligations that we were required to comply with. That is different from saying that we actually failed to meet one of those requirements.

Senator LUDWIG—You are not aware of whether you failed any of the requirements?

Mr Brocklehurst—I am not aware that we did fail any of them. Certainly, the people who signed those variations in those contracts had the delegated authority to spend that money.

Senator LUDWIG—Have you now put in place legislative requirements for each of those instances?

Mr Carmody—In fact, the report notes that Customs is taking steps to improve its procurement management processes. They have also suggested that we review—

Mr Brocklehurst—In late 2003, early 2004, Customs carried out a significant review of its procurement practices. Since that time we have complied with every requirement for each of those contracts and variations that related to our CMR that the ANAO looked at. So we have improved our processes. We are a lot more centralised in the way that we manage the production and approval of those documents.

Senator LUDWIG—So you have none; is that the answer?

Mr Brocklehurst—If the question is: have we breached any legislative requirements, I believe the answer to that is no, we have not breached any legislative requirements through the issues that the ANAO raised here.

Senator LUDWIG—Just moving to the project design, when was Customs first made aware that cascade reporting was an issue?

Ms Bailey—I would have to check the exact date, but I believe there was some correspondence earlier than go-live date where the issue about cascade reporting had been raised with Customs.

Senator LUDWIG—Regarding, I think, 2.13 on page 50, industry warned Customs in 2000 that cascade reporting would be a major problem in the proposed business model. Why did you not listen to them then?

Mr Carmody—Ms Bailey was not involved at the time.

Ms Bailey—I was not involved then.

Senator LUDWIG—When I say ‘you’—

Mr Carmody—I know you are saying ‘Customs’.

Senator LUDWIG—there are no ‘yous,’ unfortunately.

Mr Carmody—I understand that.

Senator LUDWIG—I know it seems personal, but let me tell you it is not. It is simply a question that I seek Customs to answer.

Mr Carmody—Yes, I understand.

Ms Bailey—The debate I have heard, since I arrived at Customs, suggested that there was a range of people who had concerns about it, and there were other people who were able to meet the requirements. I read Customs consideration of meeting industry’s requirements with their border security requirements. Beyond that, I cannot speculate.

Senator LUDWIG—Perhaps you could have a look at that and get back to the committee.

Ms Bailey—I will, yes.

Senator LUDWIG—Was there a decision then to proceed with the system of cascade reporting, in any event, despite industry’s warnings at the time? If there was, who made that decision? Clearly it was made.

Mr Carmody—I had someone in my ear explaining their understanding that the people involved at the time are no longer with us, but I will need to check that.

CHAIR—Or at least not here this evening, Mr Carmody!

Mr Carmody—I should not have expressed it like that—perhaps ‘no longer employed with Customs’ is a better expression. I am sorry, Senator, I did not hear the last question.

Senator LUDWIG—It is really a case of who made the decision to proceed with the system of cascade reporting, despite industry’s warnings?

Ms Bailey—We will need to look at that and verify it in the design brief.

Mr Carmody—We will have to take that on notice.

Senator LUDWIG—On page 113 to 114, at 6.4, it is my understanding that, rather than rebuild the program that does the risk assessment, Customs made a decision to purchase an

off-the-shelf product to conduct Australia's risk assessment on cargo. The change of software, in turn, meant that you had to change the format of existing risk profiles to fit the new program. At 6.6 on page 117 it seems to state that, in subsequent testing of the risk profiles, Customs had determined that the new profiling engine was coming at significant CPU cost. The profile evaluation reform was based on only 10 per cent profile matching and retroactive profiling. What additional CPU capacity was installed into the system between the test and the turn-on?

Mr Harrison—The question was: what capacity was turned on in the system from—

Senator LUDWIG—No. Page 117, 6.16. The question is: what additional CPU capacity was installed into the system between that test and turn-on on 12 October?

Mr Harrison—There was no additional capacity provided for the system between August 2005 and 12 October.

Senator LUDWIG—Because it seems to say that, in subsequent testing of the risk profiles, Customs had determined that the new profiling engine was coming at significant CPU cost. The profile evaluation reform was based only on 10 per cent profile matching and retroactive profiling. So there was no additional CPU capacity installed between that test and the turn-on.

Mr Harrison—No. The projections that we made at the time were such that the capacity that we went to 12 October with would be sufficient, but we had made some contingency arrangements whereby we could increase that capacity at short notice, if required, and that is what in fact occurred. The capacity was increased, in detail, from 3,100 mips—millions of instructions per second—on the main frame to 4,100 the first week in.

Senator LUDWIG—So why would you not have looked at the CPU capacity?

Mr Harrison—All our projections were such as to indicate that the capacity that we had in place would be sufficient.

Senator LUDWIG—From the ANAO report, can you explain why, if that was the result of the testing, another test was not conducted before the turn-on? What I am trying to understand is that the new profiling engine was coming at a significant CPU cost. The profile evaluation reform was based only on 10 per cent profile matching and retroactive profiling. Your answer is that you looked at some projections and then would consider it post-12 October.

Mr Harrison—The people who did that capacity review recommended that the capacity that we had available to us would be sufficient.

Senator LUDWIG—Why would you not have done that before the first weekend?

Mr Harrison—Why would we increase it?

Senator LUDWIG—Why would you not have looked at increasing the CPU?

Mr Harrison—As I say, in terms of the capacity of the system that we required, the capacity reviews themselves—which were done by a firm under contract—recommended that the capacity that was available to us—that is 3,100 million instructions per second on the main frame—would be sufficient.

Senator LUDWIG—There was no subsequent testing before 12 October as to whether that was sufficient?

Mr Harrison—There was extensive testing on the capacity. That is what that particular contracted firm's job was. But, frankly, I thought it was wise, nevertheless, to have a contingency in place whereby we could increase that very quickly if necessary. The reality is that, under normal circumstances, such an increase could take up to six weeks. We put the arrangements in place to ensure that we would not have to wait that period of time, and we in fact did it overnight on the Saturday after the go-live.

Senator LUDWIG—When was the last capacity review, prior to 12 October?

Mr Harrison—I will take that on notice. I am not sure. I think there was one in August or September as well. We were running them monthly, from memory, at that stage, but I need to take that on notice to give you an accurate answer.

Senator LUDWIG—In fact, your testing showed that the new profiling engine was causing significant CPU burn. Is that right?

Mr Harrison—Yes.

Senator LUDWIG—We have already seen leaked copies of a Customs' internal report that showed there was insufficient CPU power on the main frame. My question is: did the risk-profiling engine itself ever cause the system to fail, due to memory capacity constraints?

Mr Harrison—No. With respect, the leaked report that you refer to did state, 'There is insufficient capacity on the main frame.' It also then went on to state, 'unless you do this'. We did all of those things that that report recommended be done.

Senator LUDWIG—I think you said in a 2004 speech to the Australian Computer Society that there would be links with other intelligence holdings. At 6.16, it says:

CPU projections were also reliant upon the intelligence data holdings functionality remaining off.

Who made the decision to proceed with a system that would only work while the intelligence data holdings were turned off, and when did you do this?

Mr Harrison—If we are talking about the profiles and alerts within the system—

Senator LUDWIG—I can only look at what the ANAO report says at 6.16. I am not sure the minister will let me into Customs.

Mr Harrison—I assume the intelligence data holdings relate to the system of profiles and alerts that we have within our system that were reported on later in the report as being turned off at a point in time after 12 October? If I can proceed to answer your question on the basis of that assumption, I will check that. Your question was: who made the decision to turn those profiles off?

Senator LUDWIG—Yes.

Mr Harrison—It was a decision that was taken—

Senator LUDWIG—It goes back from that. Who made the decision to proceed with the system that only worked while the intelligence data holdings were turned off?

Mr Harrison—I understand.

Mr Carmody—I think we need to take that on notice.

Mr Harrison—I do not have the answer on the tip of my tongue; I need to take that on notice.

Senator LUDWIG—And then when the decision was made. At 6.24, it says that, shortly after turn-on, it became apparent that there were significant problems with the risk-profiling functionality and Customs then made the decision to turn off 3,200 air cargo profiles without telling AQIS, law enforcement agencies or even Customs' own regional offices. Who made that decision?

Mr Harrison—I have confused the picture in my previous answer. The intelligence data holdings relate to our internal intelligence system, not to the profiles within the ICS. I am sorry to have confused that. We have another internal system that stores intelligence data. As to who made that decision, the decision was taken at a time on the first afternoon of the turn-on of ICS, where the responses to air cargo reports were about to exceed the two-hour screening period that was mandated. The reason they were about to exceed the two hours in response to air cargo reports was the impact of the profiles within the system at the time. I advised Phil Burns, who was the National Director of Cargo and Trade at the time, that this was occurring, and that one option would be to turn the profiles off at that point, and Phil agreed to do that.

Senator LUDWIG—What time was that?

Mr Harrison—Around about two o'clock on the 12th.

Senator LUDWIG—Why did you make that recommendation to Mr Burns?

Mr Harrison—Because when an air cargo report is lodged—bearing in mind that air travel is faster than sea travel—the system allows a two-hour screening period for us to do our risk assessment before we provide a response to the person who lodged that cargo report, to say that whether their item is clear or held. We were in danger of exceeding the two-hour screening period before we were able to provide a response, because of the operation of the system at the time that was being affected at the time essentially by the profiles.

Senator LUDWIG—You told me that it had sufficient CPU power before, and now you tell me it did not then.

Mr Harrison—No. I am telling you that the way the profiles worked in the system on the day, along with a number of other issues that were occurring on that day, had the effect of not allowing the system to provide response within the time period that was allowed. There were a number of reasons for that. One of them was that the profiles themselves were not tested adequately and they were put into the system in some cases where they had not been through an adequate test and were performing inappropriately. They were rewritten once they were deactivated and reintroduced, and then did work appropriately. So there were a number of things that were contributing to this.

Senator LUDWIG—Was one of those also sufficient CPU power?

Mr Harrison—An accumulative effect was that CPU power was under pressure, which is why we took the decision to increase that on that weekend. But there were a number of issues. That was simply one of them.

Senator LUDWIG—Can you list the number of issues then. You have indicated that the profilings were not checked. Would it have been usual practice to check those profiles before loading them onto the system?

Mr Harrison—There was a percentage check. They were not all checked.

Senator LUDWIG—Is it usual practice to check all of the profiles before they go on the system? Do you have a guideline that indicates whether or not they should be checked?

Mr Harrison—‘Yes’ is the answer. In some cases you could test some and assume the rest were written in the same way, and there were some assumptions made that were not correct.

Senator LUDWIG—Why would you muck with national security in a fashion like that, where you would just assume that the profiles would work?

Mr Harrison—I am not sure I wish to answer. We did not believe we were mucking with national security at the time.

Senator LUDWIG—But that is what the profiles do, though, don’t they? They run profiles of counter-terrorism. They run profiles for firearms. They run profiles for a range of security-related issues, and you do not own them. That is right, isn’t it?

Mr Carmody—The answer to the question is that one would expect there to be testing of these, and clearly the Booz Allen Hamilton report stressed the need for a proper testing engine. I think when you go to the profiles, the audit report outlines that there were a large number of community protections—ones that go to linking with requirements for permits and therefore enabling us to follow up on those. There are a large number of those that remained on the whole time. Then if you go through them, certainly for sea cargo, 3,200 were turned off. And you are right, the AQIS ones were turned off, but they were very quickly—it was a matter of hours for the key ones—brought back on.

Senator LUDWIG—Was the minister or his office informed that the profiles were turned off?

Mr Carmody—I would have to check that.

Senator LUDWIG—Minister, do you recall?

Senator Ellison—I will have to take that on notice because a lot was going on at that time, as you might recall, and—

Senator LUDWIG—It is a bit like, ‘I remember where I was—

Senator Ellison—Exactly. That is going back to roughly the days of 12 October and the two weeks after that. I would have to take on notice as to what I was advised. Obviously we were concentrating on moving the containers on the wharves and you have to remember that air cargo was not such a problem—it was the seaports of Sydney and Melbourne, and Brisbane to a lesser extent. So there was continual contact in relation to that and in relation to the hotline. In fact, I had a member of staff go down to the hotline in Sydney.

Senator LUDWIG—So it was everybody manning the pumps.

Senator Ellison—It is best that I take it on notice. There was a lot going on and to give you an accurate answer I will take it on notice.

Mr Carmody—I guess it also needs to be noted that there is a very high proportion of air cargo that is subject to x-ray screening at the same time, and during this period that continued.

Senator LUDWIG—The other matter of course, Mr Carmody, is that the ANAO report shows that there was testing of these profiles in the days leading up to 12 October, and there were problems shown then.

Mr Carmody—I cannot answer—

Senator LUDWIG—That is what the ANAO report says and I would like you to have a look at that.

Mr Carmody—What I am saying is what I said before: you would expect there to be strong testing of these before being implemented.

Senator LUDWIG—When was AQIS notified that their risk profiles were turned off?

Mr Mann—I understand it was at about 4 o'clock that afternoon.

Senator LUDWIG—What was their response? Was there correspondence or was it verbal?

Mr Carmody—The expression is that they were 'not happy', as you would imagine.

Senator Ellison—They were at the ministerial roundtable, as I recall, because we had a couple of those meetings at around this time. I would stress that preserving border security was an absolute priority, and of course there was a lot of cargo to move at the time. But I do remember having a ministerial roundtable meeting and I know that we had AQIS in on those, if not from the very outset—there were six in all—at least at the last three. I will check that.

Mr Mann—I might just add that the air cargo profiles of AQIS were reactivated at 8.30 that evening. So obviously we were working very hard to reactivate those profiles. In addition, some 200 of the high risk profiles had been reactivated by four o'clock that day. These were predominately targeting risks such as illicit drugs, national security and organised crime.

Senator LUDWIG—What did the AQIS risk profiles cover, the ones that were turned off? The significant ones.

Ms Bailey—I do not have a detailed knowledge, but they have a charter to look at any organic matter entering the country, so it covers food stuffs, wood, timber, packing, a whole range of items that they would have been profiling to make sure they could inspect and understand what was coming into the country.

Senator LUDWIG—What about diseases and the like?

Ms Bailey—I do not have the detail on that, but I could check on it. I would imagine they would have had ones in relation to that.

Mr Carmody—It is also relevant, of course, that the report notes that the profiles when there was a subsequent matching by AQIS to ensure there were no issues of concern and that was the case.

Senator LUDWIG—Thank you, Mr Carmody. I was just trying to establish what types of risk profiles AQIS covered. Would they have covered things like bird flu, foot and mouth disease, fire blight, anthrax?

Mr Carmody—It was the full range of AQIS profiles.

Senator LUDWIG—So I am right about that: it would have been those types, as well as the others.

Mr Carmody—I do not have the full detail about AQIS. Looking at the AQIS charter, it was the full range of their profiles.

Ms Bailey—So they would have been looking to identify cargo that may have come from suspect countries or had packing. I do not think anyone would have been lodging that they were bringing in fire blight, but they would have been looking for indicators to say, ‘Yes, it is a consignment we should check.’ And any source country where it has been to on the way. It was only in air, the AQIS ones.

Senator LUDWIG—With regard to the customs profiles, do they cover things I mentioned before, such as new ones like child pornography, guns, ammo, rocket launchers, illicit drugs?

Mr Carmody—As I said, the full range of community protection, which I have mentioned before, requiring permits and the like, and some of the issues you have raised, are issues where permits and others are required. So all those remained on throughout this period, but then the sort of risk profiles that do not confirm there is a problem but are risk indicators and, to combine those indicators, some of those were turned off. I think the percentages are shown—you can derive those from the footnotes—but the initial numbers turned off of these types of profiles I have talked about were about 261 of 1,130, or if you add the AQIS profiles it was 261 of 1,500, or so, which is somewhere between 17 per cent and 23 per cent. The import declarations: it was 584 of 2,100, or if you include the AQIS, 2,400. So it was somewhere between 19 per cent and 27 per cent, and then within a few days you will notice from the chart that the larger number of those were put back in place.

Senator LUDWIG—Do you still have any risk profiles turned off?

Ms Bailey—The population is dynamic, so it changes over time. I think the latest figures I have seen are in the same ballpark figure but some would have been reassessed and either joined or replaced by others. But it is a fairly dynamic population so it is just reviewed continually and the population does change, depending on the risk or identification of issues. To my knowledge, there are none that were on that day that have not been either reinstated or overtaken by events.

Senator LUDWIG—All right, can you check on that again.

Mr Carmody—For the record, as noted by the audit report, while that percentage of risk profiles was turned off and then brought back progressively over the following days, there were manual operations put in place that involved some screening. In addition, subsequent to that event, we again ran it past our business continuity database, which contains the core risk profiles, and that analysis indicated that there were no issues revealed.

Senator LUDWIG—I will come to that in a moment, but do you still have the intelligence data holding functionality turned off?

Ms Bailey—We have our system for NIS. I am not aware of the discussion you had earlier about whether it was turned off or turned on. We do have an operational national system. I could not answer as to the linkages or whether it was ever intended to be a link.

Mr Cornall—In the portfolio additional estimates statements there were some minor typographical errors, which I regret, and we would like to just table a corrigendum correcting the errors. They are not matters of substance in terms of the figures or anything of that nature.

CHAIR—Thank you, Mr Cornall. The Committee will take it as a tabled document.

Proceedings suspended from 6.30 pm to 7.31 pm

CHAIR—I call the committee to order. Minister, you had something to say?

Senator Ellison—I was asked a question earlier by Senator Ludwig in relation to the risk profiles. I indicated that there was a lot going on and that I thought I had been told, but I wanted to make sure. I am able to confirm that my office was informed at the time that the profiles had been cut back. I was informed that countervailing security measures had been taken by Customs. These measures included a heightened physical presence by Customs officers at the border and back checking of transactions. At the time that I was advised, I was also assured that profiles were being reinstated as a matter of priority. This was a subject of discussion with the then CEO, Lionel Woodward, and myself. That was over the period of days following 12 October.

Senator LUDWIG—Thank you, Minister. Were those risk profiles ones like the AQIS ones which covered bird flu and foot-and-mouth disease?

Mr Carmody—I think we have some information on the AQIS profile.

Ms Bailey—I sought some advice from AQIS. I think their advice was that, while they do not have specific bird flu type profiles, what they look for is the type of used goods in particular—a description of the goods, the country of loading, food type products, who produced the goods and what the packaging is. From those, I guess they draw a view about what risk that might pose to the border for things like avian flu.

Senator LUDWIG—And the things they are looking for are exactly that—and they draw on that information to be able to identify whether it is a significant risk. For example, if it is birds from a particular location then they can look at it for bird flu; if it is other animals then they can look at it for foot and mouth disease—

Ms Bailey—That is correct.

Senator LUDWIG—If it is apples from a particular country—

Ms Bailey—Fresh food, fresh flowers—all of those things.

Senator LUDWIG—There could be fire blight or anthrax, or mad cow disease if it is meat from a particular location. They use those profiles to be able to find it, to be able to check it and then to determine whether it might have that type of disease.

Ms Bailey—There are a whole range of responsibilities in terms of border security.

Senator LUDWIG—Is that the same for the Customs profiles as well? Does the same hold—that you search for a range of items to give you a clue as to whether or not it is child pornography or firearms or ammunition—

Ms Bailey—Yes. Ours are more risk indicators. The way that AQIS profiles typically run, people are generally accurate for AQIS purposes. They are not trying to misdescribe or

disguise their goods. Customs profiles are slightly different. They are looking for a range of risk indicators that may suggest that there is something that is not as portrayed in that documentation that would require us to have a look at it.

Senator LUDWIG—So would the risk profile help you determine or find whether or not it was an illicit drug, such as heroin, crack, ice or ecstasy—those types of things?

Ms Bailey—We look for a whole range of things, from illegal drugs to revenue.

Senator LUDWIG—Page 121 of the audit report shows that there were three types of report that are usually screened for risk that were affected by the turning off of the risk profiles. These were sea cargo reports, air cargo reports and import declarations. At paragraph 6.30 it says that the sea cargo reports for the period where the risk profiles were turned off were retroactively screened against the profiles once the system was going again. I will come back to that in a minute. With regard to air cargo reports and import declarations it says:

... it was decided not to replicate this exercise—

that is, the retroactive screening—

for air cargo reports or import declarations.

That is to say, some air cargo reports for the period 12 October to 22 November were not screened at all, either as they went through or retroactively. Is that right?

Ms Bailey—There was always a range of community protection profiles running against the import declarations. On the air cargo reports there was a short window when some cargo reports would have been processed. That may not have run across the air cargo profiles, but they were quickly restored—and I think within five or six hours we had nearly half of those returned. I think by the 14th we had returned quite a significant number.

Senator LUDWIG—How many individual reports does that represent? There was no screening of air cargo for a period.

Mr Carmody—As has been indicated, all were screened against the community protection profiles—they are described as ‘profiles’ in the report. There is something like 6,300 of those, and they are in the 14,000 referred to by the Audit Office. They were not turned off. They are the ones that are checked against.

Senator LUDWIG—We are talking about the ones that were turned off. They were never screened for those that were turned off, for the air cargo reports.

Mr Carmody—For those particular profiles there would be some, but it is almost impossible to give you a breakdown because within three or four hours 47 per cent of them were back on and then progressively the others were made up. In terms of the border, I think the point I mentioned before the break was that during this period we continued to X-ray a very large percentage—I think it was around 70 per cent that we were X-raying at the time—of air cargo, which is a further method of identifying risk air cargo.

Senator LUDWIG—But in terms of the air cargo reports for the period 12 October to 22 November—which were not screened at all, either as they went through or retroactively—how many individual reports does that represent?

Mr Carmody—We have not done that analysis because, as I say, all of them were subject to some screening. Within two hours, or one hour and 45 minutes, the first 200 profiles were reactivated—and they were done on the basis of the more significant risk profiles of those that had been deactivated. So the more significant ones were turned on first, and within a few hours all the AQIS reports were turned on. Within two days 57 per cent had been turned on. All of them were subject to some screening and to varying levels of screening over that period.

Senator LUDWIG—Could you have a look at and take on notice how many individual reports that represents?

Mr Carmody—We will see whether we can estimate across the profile and give you the percentage of—

Ms Bailey—Those that may have been—

Mr Carmody—As I said, they will all be subject to some, and they will be subject to increasing profiles, but we will see what we can do.

Senator LUDWIG—It is also clear that some import declarations were not screened at all, either as they went through or retroactively. How many individual import declarations does that represent?

Mr Carmody—Again, the 6,300 remained activated throughout, and within one day on import declarations we had 39 per cent up and so on. But then, as indicated, and as you have already said, after the event we ran them through the business continuity database, which has our core risk profiles, and what was said there was that no major issues were found. So there were some profiles that were always on and an increasing number were brought back on. And, as I said, for the import declarations—if you include AQIS—I think a total of 19 per cent was the highest number that were off, initially. Then that 19 per cent was brought on progressively. And, in addition, Customs ran it across the core risk profiles after the event. I should say also, as was indicated in the response by the minister, that during this period we also had more manual processes in place for held cargo.

Mr Mann—I think at the time there were 1,500 import declaration profiles for sea cargo and 261 were deactivated.

Ms Bailey—I think it is worth noting that it is a two-stage process. So the profiles are run against cargo reports as the initial assessment, and then they are assessed against the import declaration for a range of other information and payment to get release of the goods into home consumption. So I imagine only a small percentage, in those few hours, would have run against neither. There was a high degree of manual intervention because all air cargo basically has to move under bond—which requires Customs authority to move it off the airside, to the depot and then into home consumption. So it is not immediately released to the public.

So there were various steps in the process. It would have undergone profiling against the air cargo report and the import dec. And as that came back up quite quickly, I imagine that for the air cargo profiles there was only a limited amount that may have been able to move in that time, but we can check for you to see if we can find the number.

Senator LUDWIG—When you talk about that limited number, do they represent those where the profiles had been turned off and they therefore were not screened for those profiles?

Ms Bailey—For those profiles there may have been a small percentage that were subject to a less than complete risk assessment, but it is a very small number. We could see if we can establish that. It was some hours in that first 24 hours.

Senator LUDWIG—And that is in relation to air cargo reports?

Ms Bailey—And import declarations.

Senator LUDWIG—Do the import declarations relate both to air and sea?

Ms Bailey—That is right.

Senator LUDWIG—So you will take it on notice and look at what percentage—or, if you have them, the individual report numbers—of both reports and declarations were not screened for those risk profiles.

Mr Carmody—As I said, it will be a complex chart because the percentage of profiles that were not applied will increase over the period.

Senator LUDWIG—Yes. I think that is also reflected in the ANAO report.

Mr Carmody—Yes, it is. I am just saying that trying to compile that will be interesting!

Senator LUDWIG—You said, in relation to the business continuity plan, that those risk profiles were not run again?

Ms Bailey—It is a subset of the risk profiles because it is the 2,600 critical profiles that we have agreed are the primary ones to allow the first movement of cargo to happen in an outage of ICS or a client's system. They are the critical ones that have been agreed between AQIS and Customs that would be the minimum set of profiles to risk assess cargo reports.

Senator LUDWIG—So in terms of the air cargo reports and the number that were run at the time the risk profiles were turned off, how many went through?

Ms Bailey—That is a number I would have to check.

Mr Carmody—I think we have already promised to see if we can provide you with answers. As I said, some were screened again. There were profiles on and there will be a different percentage that we will have to look at. Whether we can get it hour by hour is a bit problematic. We are talking, in relation to air cargo, of a couple of hours here or there, so we will see what we can do.

Senator LUDWIG—Where those risk profiles that were turned off then gone back through and reassessed?

Mr Carmody—As the report indicates, AQIS were provided with those with the highest profile. But as is also noted in the report—and you have quoted this—while the reports were run across the business continuity database profiles the decision was taken, given the volume of air cargo and the times involved, not to attempt to go back and revisit that. It is not mentioned there, but there is also the fact that we had 70 per cent X-ray screening during that period.

Ms Bailey—Much of the cargo was moved to the next stage under bond, and there were significant staff involved in x-raying in our normal course of duties or extra duties to compensate for any risk that may have arisen.

Senator LUDWIG—At 6.29, it says:

Customs advised that it did not retrospectively review the cargo reports and import declarations received during the two week period over which profiles were manually reinstated because of the volumes involved.

Ms Bailey—For air cargo.

Mr Carmody—As the report says in the next paragraph, it was run against the business continuity database. That does not contain, as Ms Bailey has already indicated, all the risk profiles. It contains the ones that are seen as the core risk profiles. While it was not necessarily run against all the risk profiles, it was run against the core risk profiles.

Senator LUDWIG—At 6.30, it says:

When the initial workloads/issues surrounding CRA had stabilised, Customs assessed sea cargo reports for the period 12 October–22 November against the risk profiles in the Business Continuity Database. The database contains Customs core risk profiles (approximately 2 600). Customs advised that no major issues were found. With the volume of air cargo being significantly higher and, based on the sea cargo results, it was decided not to replicate this exercise for air cargo reports or import declarations.

So they were not screened.

Mr Carmody—That is what I said. I answered that. While not noted there, we also have our high percentage of air cargo being X-rayed that continued during this period—70 per cent.

Senator LUDWIG—‘Or import declarations.’ So you only went back and did it for sea cargo.

Mr Carmody—It says ‘sea cargo reports’.

Ms Bailey—With import declarations, there was only a minority ever deactivated and it was for a short time, so of the total population it was only a small percentage. Import declarations were reactivated reasonably quickly and it was a much smaller percentage. The normal process for import declarations would have returned fairly quickly.

Senator LUDWIG—Minister, you told the ABC news on 9 February:

... after the system was back and working, Customs went back through cargo that was processed at the time and reassessed it—no major problems were found.

But in fact they did not screen all the cargo, did they?

Senator Ellison—I was talking in the context of sea cargo. If you look at the whole transcript of that interview, I mentioned at one point that it was sea cargo that was being talked about. I did two interviews that day. In the one, I am sure that I made it very clear that there was a difference. I am trying to recall—I will have to have a look at the whole transcript. I am not sure that they broadcast the complete interview; they might have only taken an excerpt. I am sure that in both interviews I made those statements in the context of sea cargo.

Senator LUDWIG—You told *AM* on 9 February the following:

Well the thing is that when the system was running fully they went back through the cargo that had been assessed, manually, by Customs officers and they applied the system to it. So they ran another ruler over it, if you like, and were of a view that there were no major problems.

You went on to say:

Now of course they've got records of a cargo coming in and where it went and of course if there are any issues, they should've been able to follow it up.

Senator Ellison—I would have to get the transcript of the whole interview, but I am sure that elsewhere in the interview I referred to 'containers'. It was in the context of sea cargo, but I will check that.

Senator LUDWIG—In both of those statements you mentioned the word 'cargo' with no qualification?

Senator Ellison—Yes,

Senator LUDWIG—So air cargo, you agree, went through unscreened. You concede that?

Senator Ellison—I concede that. In fact, if you look at another interview I did later, I am sure I made the positive distinction. If I recall correctly, I am sure elsewhere in that interview I made the point that it was containers or sea cargo that we were referring to.

Senator LUDWIG—What we now know is that there were a percentage or number—although, we will get that on notice, if we can—of import declarations and a percentage of air cargo reports that were in fact not screened at all.

Senator Ellison—That was a prerecord which I did about five in the morning in Perth, and it was done later on. That one was not a live interview.

Mr Carmody—Just to be clear, terminology used by the ANAO talks about 14,061 effective active profiles. There were a large number of those and, within that category, some 6,300 were never turned off.

Senator LUDWIG—In another interview on 21 October 2005, on 2GB and Mr Jones, there does not appear—although, Minister, you can have a look at it—the same qualification.

Senator Ellison—I think you will find that the context of the interviews—which I had with Alan Jones, which ran for five days and, again, I did around five in the morning in Perth—was sea cargo. He was talking about the containers in Sydney. The complaints he was getting were in relation to containers. There was not a great deal of complaint about air cargo at the time; it was all about containers. I remember clearly a caller in one of the interviews saying, 'There were no trucks down at this place because there was nothing to pick up.' I got P&O to check and it was a total fabrication, and P&O can verify that. All the questions, as I recall, during that period were concentrated on sea containers and it would have been in that context.

Senator LUDWIG—The question was put:

Is there any risk to our security by accelerating the clearance rate because of the backlog?

You replied:

No, Alan, that was the first thing I raised with Customs and told them that we cannot diminish in any way our security. All cargo coming into Australia is being risk-assessed and we will continue with our measures, our container examination facilities are still operating and, in relation to air cargo, 70% as

usual is being x-rayed but certainly there are some problems there which industry have put to us and we're working on them.

You had an opportunity of explaining it, Minister, and you did not.

Senator Ellison—No, I did. I said—

Senator LUDWIG—Do you want to correct the record—

Senator Ellison—I said 'air cargo'.

Senator LUDWIG—that, in fact, air cargo now came in unscreened?

Senator Ellison—I said, 'Air cargo—70 per cent—is being X-rayed.' I think the CEO has just verified that. I highlighted the fact that there were problems, which had been raised. In relation to the comment about border security, the discussions I had with the CEO at the time were to the effect that, whilst these profiles had been cut back, countervailing security measures had been put in place and Customs officers—a huge number, as I recall—were being put manually on the job, and that there would be back-checking, anyway. A variety of other means were being employed, which could address any security concerns. In hindsight, the ANAO report, as I understand it, reported that Customs had responded in an appropriate fashion, and that Customs' view is very firmly that there were no serious issues found when there was a back-checking done of the sea cargo.

Senator LUDWIG—There was not in respect of the air cargo import declarations, though.

Senator Ellison—It was X-rayed. It had the same X-ray rate as it has today.

Senator LUDWIG—Was all of it X-rayed?

Senator Ellison—Seventy per cent, which is what we do normally.

Senator LUDWIG—That is not all.

Senator Ellison—It is the same as what we normally did.

Senator LUDWIG—So the risk profiles were turned off and did not operate.

Senator Ellison—But the X-ray was there. It was a different situation. You had 70 per cent of air cargo being X-rayed, which is a very high percentage indeed. That is what we do normally. To that extent, there would no change in the X-ray rates. If the rates of X-raying had changed, then that would be a serious issue. But they had not, and that was the point that I was making.

Senator LUDWIG—Perhaps you should have made more of an effort. The ANAO report says that there was no back-checking of air cargo reports or import declarations. That slipped through. They went through without back checking.

Senator Ellison—The issue lay more with the sea cargo containers than with air cargo because of the much higher rate of X-raying that you had with air cargo. That is why, as Customs has explained, the back-checking was not carried out. It was sea cargo that needed to have the back-checking because it did not have that higher rate of X-raying. X-raying, after all, is about the best examination that you can carry out. What more could you do? If you had a risk profile, and it said, 'This is dubious,' you would X-ray it. So in any event, 70 per cent of air cargo is being X-rayed, which is what we do normally.

Senator LUDWIG—That is exactly what your risk profiling is all about. It is not about a blind stab in the dark; it is about using your risk profiles to determine where your priority 1, priority 2, priority 3 and priority 4 containers or, in this instance, air cargo problems might be and then using a physical examination or an X-ray to determine. That is the overall program. The intelligence—the risk profiles—which is used for targeting and identification was turned off in this instance for air cargo and import declarations. And that is your major front line, not the physical examination by Customs officers and not your checks. That is your major targeting and identification process, Minister. You know that and Customs knows that.

Senator Ellison—Even with the back checking of the sea cargo, Customs has said—and Customs can correct me if I am wrong—that there were no serious issues discovered. They back-checked the sea cargo and nothing serious was found.

Senator LUDWIG—The ANAO seemed to say it clearly. At 6.31, in respect of targeting risk cargo, they said:

The deactivation of over 4,000 risk profiles over a period of several days presented a considerable risk to Australia's border security and Customs' revenue collection responsibilities.

Minister, do you accept that? ANAO have made that plain and Mr Carmody agrees with their recommendations.

Senator Ellison—I think that—

Senator LUDWIG—These profiles covered areas such as counterterrorism, illicit drugs, revenue, prohibited items and compliance. Minister, it is about time that you took the brave step and apologised for what you said, because it was not right at the time. You should correct the record. That is what the ANAO report says.

Senator Ellison—No, it does not. It says a lot more than what it says at just paragraph 6.31. It goes on to say a lot more than that and—

Senator LUDWIG—And it only gets worse.

CHAIR—Senator Ludwig, it would be appropriate to at least let the minister finish his response.

Senator Ellison—You said in the Senate the other day that it took 12 days. It did not. We had 57 per cent of the profiles that had been deactivated coming back on within two days—that was with air cargo. In relation to sea cargo, it was 64 per cent within four days. Very quickly, large numbers were reactivated. The fact remains that Customs back-checked the sea cargo and nothing serious was found. If they had found something serious, that would indicate that the manual checking and everything else did not work and that they had let something through. It has been said fairly squarely that even with the back-checking nothing was found. That is when you would find it.

Senator LUDWIG—I am not talking about the deactivated profiles. I am talking about the report that you never ran the activated profiles against. So the back-checking was never done.

Senator Ellison—With the air cargo, 70 per cent of them was X-rayed anyway, and that is what is done normally.

Senator LUDWIG—We should discuss this part—

Senator Ellison—Leaving the risk assessment aside, the fact is that 70 per cent of them were X-rayed.

Senator LUDWIG—To achieve a 70 per cent X-ray, how is that made up?

Senator Ellison—The 70 per cent X-ray?

Senator LUDWIG—Yes.

Senator Ellison—Customs will be able to tell you that.

Ms Bailey—It is comprised of a range of products. General air cargo and reportable documentation are the two major categories that we use to X-ray to comprise the 70 per cent.

Senator LUDWIG—What is the percentage of X-rays that are Australia Post?

Ms Bailey—We screen 100 per cent of Australia Post.

Senator LUDWIG—What about private contractors? I do not want to name them. How much are of those?

Ms Bailey—At the big four express air couriers we have in line processes in which we do both our mass screening and our targeted screening jobs every day. We get the 70 per cent from a range of activities across all of those depots across the weeks and the month.

Senator LUDWIG—So it is an average, and it is made up 100 per cent of Australia Post. And, of the remaining private contractors, it is not 100 per cent.

Ms Bailey—No. Australia Post is counted separately. The 70 per cent of air cargo does not include the Australia Post screening and X-raying. That is a separate undertaking. So 70 per cent of all air cargo that arrives in Australia is X-rayed. Our target is 100 per cent in the postal environment.

Mr Carmody—At that time it was 70 per cent.

Senator LUDWIG—Has that changed?

Mr Carmody—I think there has been increased volume, so it may be slightly lower than that. But it is still a very high percentage.

Senator LUDWIG—There is a gap that you never ran a profile against; we have all established that. And you never ran risk profiles against air cargo—

Mr Carmody—Certain profiles, yes.

Senator LUDWIG—How did you target screening on air cargo?

Mr Carmody—I think that would have continued the way it was going. The 70 per cent is by and large and overwhelmingly not a targeted process.

Ms Bailey—I think it would less than 10 per cent that is targeted, but I would have to check that. Mostly it is just selections of consignments at the depot as they arrive off the flights. In terms of achieving our numbers for the day, we usually have two shifts run in our big depots, so that process is there. There was quite a bit of manual intervention in air cargo by Customs officers. There was an underlying issue with the capacity of airlines to move some of the goods under bond, so we had to undertake some manual processes. That required a degree of risk assessment as well.

Senator LUDWIG—Do you have a division of statistics between air couriers and other air cargo?

Ms Bailey—I would have to check. I know that we operate in what we call ‘the big four’ in line with their processes and we attend other depots depending on which flights they receive and the frequency of the cargo, but I have to check. It is accounted for in the same 70 per cent target, but I am not sure about how we actually divide it up. I think it is driven by the amount of freight arriving in those depots outside the big four and so by which flights are arriving there and at what risk.

Senator LUDWIG—Could you take it on notice to provide that.

Ms Bailey—Could you please clarify the question.

Senator LUDWIG—You mentioned that there were statistics available. Do you have a division of statistics between air cargo, couriers and other air cargo?

Ms Bailey—Sure.

Senator LUDWIG—Does the new CMR system eliminate the possibility of late cargo reporting?

Mr Carmody—It does not stop people reporting late, but it has consequences if they do not report on time. That is the best I can say. If they have not reported then the containers will not be cleared.

Senator LUDWIG—Do you have a percentage of what is reported late?

Mr Carmody—I might have that.

Senator LUDWIG—While you are getting that, there was another question in terms of trying to sort out this air cargo and the stats. Do you have a percentage of the big four that are screened?

Mr Carmody—Sorry?

Senator LUDWIG—I thought ‘the big four’ was a new way of describing them. I am using your language.

Ms Bailey—It is perhaps a Customs colloquialism.

Senator LUDWIG—It saves me mentioning them by name.

Mr Carmody—Certainly the bulk of any air cargo arriving would be through those. As Ms Bailey has indicated, we do online X-raying there. They would make up a very large proportion of it, but we would have to take that on notice.

Senator LUDWIG—All right.

Senator Ellison—From what I have seen at some of the big four depots, it is typical to have Customs officers in the warehouse carrying out the examination of air cargo as it comes in on the conveyor belt. From what I have seen myself there is no weeding out of particular ones for X-ray. It goes straight through the X-ray and is examined. At Australia Post of course it is 100 per cent.

Senator LUDWIG—In terms of Australia Post, is that mail or air cargo? I did not want to confuse the two.

Ms Bailey—Mail is considered cargo under our legislation, but it is counted differently from air cargo. We count international mail as one cohort and air cargo as another. We count them separately.

Senator LUDWIG—What is the percentage that relates to those two, then, if you count them differently?

Ms Bailey—The 70 per cent is an absolute stand-alone outside the mail stream, and the mail is 100 per cent.

Senator LUDWIG—Sorry, I am missing this.

CHAIR—Could you provide the committee with a flow chart, Ms Bailey?

Senator LUDWIG—No, you would not want to see it.

CHAIR—They print them in colour at Customs; it can be quite impressive.

Senator LUDWIG—In terms of Australia Post mail, you indicated they count them differently. It is all considered air cargo but there is mail and then there is—do you call it ‘nonmail’ or do you have a colloquial expression?

Ms Bailey—The post is referred to as parcel post and letter class mail. They are usually the two product ranges in the mail.

Senator LUDWIG—Do you screen 100 per cent of both?

Ms Bailey—We screen 100 per cent of both.

Senator LUDWIG—X-ray?

Ms Bailey—We sometimes use our dog teams on some letter class mail.

Senator LUDWIG—They are not X-rayed, then?

Ms Bailey—Sometimes it is more effective to use the dogs than to put big trays of letters through the X-rays, because of the visibility.

Senator LUDWIG—And that is in respect of letters?

Ms Bailey—That is right, yes.

Senator LUDWIG—Is there a percentage of those letters that are X-rayed?

Ms Bailey—I would have to check. There is a percentage. It sometimes depends on the way they are packaged when we get them, the visibility on the X-ray and other reasons as to whether we would run the dogs as opposed to X-raying, but I would have to check on the percentage.

Senator LUDWIG—And in respect of the parcels in Australia Post—

Ms Bailey—They are all X-rayed.

Senator LUDWIG—So it is 100 per cent for those.

Ms Bailey—The parcel post, yes.

Senator LUDWIG—Moving to the big four, do they do letters?

Ms Bailey—No, they do not have any letter post.

Senator LUDWIG—They do parcels or air cargo?

Ms Bailey—They do parcels and a category called reportable documents, and they are all X-rayed.

Senator LUDWIG—The reportable documents are all X-rayed?

Ms Bailey—That is right.

Senator LUDWIG—What percentage of the work is that? Is that a significant amount of the work that the big four do?

Ms Bailey—It is, because it is quite a lucrative product line for them. It is quite a significant proportion of the product range in those depots.

Senator LUDWIG—Can I ask what is in those documents? I am just trying to understand what it is.

Ms Bailey—I have not looked in them, but I take it—

Senator LUDWIG—No, neither have I, and I did not think you had either.

Ms Bailey—they would be things like business contracts, manuals or—

Senator LUDWIG—I understand.

Ms Bailey—People prefer it I guess who have chosen to use an air courier company as opposed to sending it—

Senator LUDWIG—So they are business documents.

Ms Bailey—Yes, that is the intention.

Senator LUDWIG—In terms of the parcels of the big four, how many of those are X-rayed?

Ms Bailey—I guess that percentage varies depending on how many reportable documents are done, the bulk of the targeted jobs and then the rest of the cargo that goes through. To aim for our 70 per cent target we have committed to 100 per cent of the reportable documents, the targeted jobs and then the general air cargo to make up the shift work for that day in terms of achieving our percentages. It would vary from day to day. There probably is an average percentage; I am just not aware of it.

Senator LUDWIG—Perhaps you could take on notice what that breakdown is.

Ms Bailey—As I said, it would vary from day to day, but I can have a look at that for you.

Senator LUDWIG—Unless this is a Customs secret, why do you screen 100 per cent of the documents?

Ms Bailey—I think it was before my time, but I understand it was related to IQI—quarantine intervention—following foot-and-mouth disease. I think that was the original imperative. I would have to check, but that is my understanding.

Senator LUDWIG—And the percentage that makes up of the work of the big four through any one day.

Ms Bailey—That would depend on their cargo load for the day. Some days they may have a lot of documents; some days they may have less. It just depends on what they are bringing in on those flights.

Senator LUDWIG—We did not finish the ‘reported late’ figures, did we? Are we going to take that on notice? I think you had those figure and were about to give them to me before I got distracted, sorry.

Mr Carmody—The October-December 2006 quarterly average percentage ‘on time’ for air cargo was 93.2 and for sea cargo it was 83.1.

Senator LUDWIG—How many containers does that represent?

Mr Carmody—I do not have that figure on me.

Senator LUDWIG—If you wouldn’t mind, Mr Carmody—

Mr Carmody—We will take it on notice.

Senator LUDWIG—They are 20-foot equivalent containers?

Mr Carmody—Yes, I do know that—TFEs.

Senator LUDWIG—I thought I would not use the acronym. With regard to the cargo screening on 14 February 2005, the then Customs CEO, Mr Woodward, told the committee:

With the new CMR systems and the new CMR legislation, the ability for anyone to report late will be significantly diminished or perhaps not exist at all.

We do not seem to have got there yet, do we, Mr Carmody—in fact, it seems to have been proved false.

Mr Carmody—The figures are as I have quoted to you. I think there has been some increase after a dip during the October period. But I think for September 2005 it was 83 per cent of air cargo and 73 per cent of sea cargo. So there has been a reasonably substantially improvement, but it is certainly not 100 per cent.

Senator LUDWIG—So is there work being done to rectify that?

Mr Carmody—Yes, there is a compliance program underway. I do not believe you ever get 100 per cent in anything. Remember we are talking about timing of reports, so I do not know that 100 per cent is realistic; however, there is a compliance program going on. But, because of the difficulties that industry experienced—and some difficulties that they continue to experience—we have had to sort of slowly introduce and take account of people’s attempts and their history before applying infringement notices. But there is a program going on to improve that now.

Senator LUDWIG—I will leave this area shortly—

CHAIR—Do you mean Customs?

Senator LUDWIG—No, just this area, as I said.

Mr Carmody—There are a lot of cheers from other agencies behind you, let me tell you! We were very popular during the break.

CHAIR—False dawns are down to a fine art, I'm afraid!

Senator LUDWIG—We have had our turn with other agencies before, Mr Carmody. I think tonight was clearly Customs night!

We have now seen an ANAO report and a Booz Allen Hamilton report. Do you agree with the comments made by the Deputy Prime Minister, Mr Vaile, to the *Sydney Morning Herald* on 24 October 2005, that 'broker and agents who had failed to collect containers were mostly to blame'? In light of both the ANAO report, the Booz Allen Hamilton report and what we have heard tonight, do you agree that the remarks by the Deputy Prime Minister to the SMH on 24 October 2005 that 'brokers and agents who had failed to collect containers were mostly to blame'?

Senator Ellison—I would like to see the comments made by the Deputy Prime Minister in full. Senator Ludwig quoted the Alan Jones interview. If you look at the context of the comments made by Alan Jones about sea cargo and the comments that I made, you will see that I admitted that there were problems. Certainly there are problems which industry have put to us, and we are working on them. So I did acknowledge that there were problems. I mentioned the 70 per cent X-ray of air cargo and the fact that the CEFs were still functioning, which they were. I did not paint a picture which was all sweetness and light. When you look at it in that context, it gives a different portrayal from that which was put to me earlier on. The other interview was a short excerpt from quite a lengthy interview that I did, which was prerecorded. In relation to the reported comments by Deputy Prime Minister, I think we have to see what he said in context.

For my part, there were a number of factors to the build-up of containers on the wharves. I remember at the time that one of those factors was that we could not get extended shifts over the weekend for the containers to be collected, which would have helped in moving them. It could have been done, but obviously you had to get people to be there to drive the trucks and to carry on all the processing. You normally do not have a seven-day week on the wharves for the collection of containers. What would happen is that by Friday, you would be right down in your numbers; ships would come in on the weekend and the numbers would build up again.

There were a number of other factors, and there is no denying that the new system was a contributor. In trying to move things along, I remember vividly dealing with transport people, the stevedores, the customs brokers, the freight forwarders and that there was a problem in trying to get some extra shifts in place. Customs put on extra people over extended periods. That was the situation we faced. Without pointing the finger at any particular person, even if you had collected a container on the weekend and delivered it to a small business, chances were that no-one would be there to sign the receipt for the container, because it was Sunday. That was a real issue in trying to move those containers at the time. I distinctly remember the build-up over the weekend and then on Monday and Tuesday there would be frenzied activity to try and clear them.

I would remind Senator Ludwig that the then Leader of the Opposition, Mr Beazley, and others were saying that ships would be turned away and delayed and that there would be no

stock for Christmas. None of that happened. P&O and Shipping Australia said to me that not one ship was delayed or turned around because of it and that all the stock that came in made it for Christmas—that was because of a lot of hard work by a lot of people. I acknowledge the efforts of everyone in the industry and in Customs who worked overtime.

There were logistical problems as to why some containers could not be collected and there was a problem in getting those extra shifts organised. If they could have been done seven days a week, that backlog would have been shifted a lot quicker than it was. But for a lot of reasons that could not be done. Extra shifts were put on. I remember it vividly, and that is about as accurate an assessment of it as you can get.

Senator LUDWIG—Minister, you can argue over the transcript and the history, but the fact is that you imposed it on industry. You turned on the system before it was ready. It is hardly a case where you can say, ‘Industry wasn’t working seven days because I didn’t tell them I was going to turn on a system that wasn’t ready and which caused a backlog.’ It seems that industry was not to know that it had to work seven days a week because you were going to turn the system on when it was not ready.

We now know what happened as a consequence of that. It is quite clear from the evidence tonight, the ANAO report and the Booz Allen Hamilton report, that on 12 October, before the system was ready, you turned it on. The profiles were not even checked to make sure that they worked. We heard that tonight as well. So it is hardly a case where you can sit here and say, ‘Industry wasn’t working seven days.’ Industry did not expect that, on 12 October 2005, it needed to work seven days. No notice was given, and the consequence was that industry ground to a halt. You caused significant cost and delay. You are still paying out significant money to industry. What is the figure now, Mr Carmody?

Mr Carmody—It is \$1.5 million paid or in the process of being paid.

Senator LUDWIG—Minister, you were hours away from pulling the plug on the whole system and going back to the old COMPILE system if the delay continued. That is where you were at the time.

Senator Ellison—If we are going to go into history, there was a lot of conjecture that this would cost hundreds of millions of dollars in compensation. So far, a vast number of claims have been paid out. It is \$1.5 million. There are some in the pipeline, I think, which are being negotiated. I am not going to pre-empt what may or may not happen there.

The \$1.5 million payout, which relates to quite a number of claims, demonstrates a more realistic situation. We have never for one moment said that this did not have problems. I used to chair the round tables. There were in fact eight; I said ‘six’ before but there were six before the changeover and two after it. At the last round table before the switch-over date, it was agreed that we should continue with that changeover date. We had all the industry reps around the table. We asked: ‘Do we go with that date?’ and they said, ‘Yes’. The CEO of Coles Myer called me from his car phone and said, ‘You must stick with that date.’ Industry were demanding that we proceed with it. We had the software developers there. I can tell you that, around the table, there was a decision and support for that changeover date. I do not think the people who were involved in the development of the software saw what was coming. Customs certainly did not see what was going to eventuate. This has been the biggest change

to occur in Customs since Federation. The United States are doing the same thing for \$1.7 billion, and it is taking 10 years.

Of course there were things that could have been done better and there were problems with it—the ANAO report reveals that. I have a list of all the comments that the ANAO report stated, which was positive about the efforts of Customs. I think that should be remembered too. I am just trying to put it in a bit in perspective. I said earlier that I did not point the bone or the finger at any particular person. There were many people involved in it. It is a system which is worth persevering with. It has potential benefits, which are recognised by Booz Allen Hamilton as a platform for—I forget exact the words—

Mr Carmody—A sound platform for the future.

Senator Ellison—A sound platform for the future. I do think that it is time to move on and look to the future.

CHAIR—I am going to draw this debate, as it is now, to an end and ask Senator Ludwig to return to asking questions, please.

Senator LUDWIG—I was going to do that. I can say that they are using—

CHAIR—Senator Ludwig, I am not entirely sure what part of ‘return to asking questions’ was not clear there, but I do not want the debate to continue. This is not the place. The chamber is the place.

Senator LUDWIG—Yes, Chair. In terms of the accredited client program, we have been back to Treasury on that one a couple of times.

Senator Ellison—Ask Treasury.

Senator LUDWIG—I think that I am going again tomorrow. Wish me luck.

Senator Ellison—You can tell them that I told you to ask them.

Senator LUDWIG—I will, Minister; I will try but I am not sure that it carries as much weight there as it does here.

Senator Ellison—We do not mind.

Senator LUDWIG—To recap, at budget estimates last year it was explained that the \$89 million figure over four years was made up of duty that would be pushed from one budget to the next, that being the duty payable in the month of June. Do you understand the process, Mr Carmody? I am not sure that I have to go through the detail again.

Mr Carmody—We went through all of this and suggested that you speak to Treasury, because they are really the people who did this.

Senator LUDWIG—I did; I have.

Mr Carmody—I am not sure that we can help with those figures.

Senator LUDWIG—We might try again, because I have been to Treasury and I have asked them and I am going back to Treasury again tomorrow.

Mr Carmody—That is your best course, because they are the people responsible.

Senator LUDWIG—I will take that sentiment from you to them.

Mr Carmody—With my pleasure.

CHAIR—You can take it from the entire committee, Senator, if you wish. We are very keen for them to give you an answer.

Senator LUDWIG—Where we got to is that the minister indicated in the debate last week that Customs and Treasury arrived at the costings together and were in full agreement on the way that the system works, which is that in the first year of operation approximately \$20 million in duty is deferred, which shows up as a loss for the budget of that year. Then it continues on.

Senator Ellison—I did send Senator Ludwig a letter. I want to ensure that he received that letter.

Senator LUDWIG—Yes, I did, thank you, Minister. That is what generated the question.

Senator Ellison—Okay. I should not have been so quick with it.

Senator LUDWIG—Perhaps not. I did not say that on the transcript!

CHAIR—There is nothing funny about this.

Senator Ellison—We aim to please.

CHAIR—Next thing I know, you will be saying, ‘I’m from the government and I’m here to help you.’

Senator LUDWIG—I can find the *Hansard* if you require it, but I am sure that the minister will be happy to provide the way that worked. I might leave that—you are right. I will try Treasury again. It is going to take too long.

Mr Carmody—And we will see you in May?

Senator Ellison—You might do better than me.

Senator LUDWIG—It will take too long to go through that and to get back to where we were.

CHAIR—I think so; I think that you are right, Senator Ludwig. You are right: it is going to take too long.

Senator LUDWIG—Perhaps we could try the foreign fishing vessel apprehensions and see if we can get some statistics on that.

Senator Ellison—There is a good story.

CHAIR—Does that mean that we are going to talk about—

Senator LUDWIG—The changes to performance information outlined in the 2005-06 portfolio budget statements at table 2.1 on page 70 says that the number of apprehensions of foreign fishing vessels could not be estimated. I note that there is an explanation given for the downward revision of the number of illegal foreign fishers apprehended and number of vessels apprehended. Is there a formula behind those targets or forecasts? How do you arrive at the numbers? What we see in the—

Mr Carmody—I think that they are at page 70.

Senator LUDWIG—It shows a revision.

Mr Carmody—It shows the number of apprehensions is forecast at 400, which at a broad level is based on the apprehensions to date this year and a projection as to the apprehensions in the balance, particularly in light of the significant reduction in sightings that has occurred.

Senator LUDWIG—Is there a formula you use or do you work off the number of sightings? Perhaps you could update us on the number of sightings.

Mr Carmody—I think the best way that I can describe the number of sightings is by comparing the 2005 calendar year with the 2006 calendar year. There was a decrease in sightings of around 35 per cent, from over 10,000 to 6,588. If you look at it in terms of flying, it is almost a 40 per cent reduction over those two calendar years in terms of the sightings per hour of flying. The hours flown in these particular areas that we have been focusing on over those two years have increased by seven per cent.

Senator LUDWIG—Is that the only data you use, or is there other input?

Rear Adm. Goldrick—The original targets for apprehensions were based on estimates of the capacity of the response assets based on experience, and the development of capacity ashore to deal with apprehended fishing vessels and fishing boats was really a target that was attainable, given the current rates of intrusion by illegal fishing vessels. With the systematic campaign of apprehensions, we believe we are having a significant effect on the number of illegal fishing vessels, and that is reflected in the number of sightings. So now we have reviewed the results and set new forecasts based on what we think is a likely upper total of apprehensions. Indeed, I will say that the number of sightings has continued to reduce in the last couple of months and weeks. Apprehensions, in fact, concomitantly are down even further as well.

Mr Carmody—I don't think there is a mathematical formula. It is a matter of looking at the number of sightings and then applying our expectations based on the trend in sightings.

Senator LUDWIG—Does the explanation given say that the revision of the forecasts reflects a significant number of FFV incursions? Does that suggest that they are in proportion to the number of incursions?

Mr Carmody—Sorry, can you say that again, Senator?

Senator LUDWIG—The explanation says that the revision reflects a significant number of FFV incursions. Does that suggest that they are in proportion to the number of incursions?

Rear Adm. Goldrick—There is not a direct relationship. Our intent is to try, as far as possible, to equate the number of incursions with the number of apprehensions we achieve.

Mr Marshall—And, as we are seeing a lot less, we would expect to apprehend less.

Senator LUDWIG—I am sorry; you what?

Mr Carmody—As we see less, we would expect to apprehend less.

Senator LUDWIG—So how many were originally forecast?

Mr Carmody—As it says here, the target was 570, and it is now forecast to be 400, again reflecting the significant reduction in the number of sightings. There just are not the number of incursions that there was previously—which, as the minister said, I think, is overall a positive.

Senator LUDWIG—So there is no other data that you used—in other words, verifiable data—to determine that figure?

Mr Carmody—Which figure?

Senator LUDWIG—Sightings.

Rear Adm. Goldrick—We have a study by the CSIRO, which is nearing completion, which is developing a methodology to estimate the number of intrusions from the number of sightings. Every time a fishing vessel is sighted it is reported as a sighting. Quite often a fishing vessel will be seen more than once in a day and the same fishing vessel may have been seen over a couple of days. With what the CSIRO are doing for us—and they have nearly finished; I have seen the first estimates of data, although they are not willing to yet go firm on them for scientific purposes—we will be able to relate the number of sightings to an estimate of the number of fishing vessels that that actually meant.

Mr Carmody—I think that is an issue we have discussed over some time. To get back to your original question, the answer is as has been said: this is a forecast, with all that that word implies, based on the trend in sightings that we have seen.

Senator LUDWIG—I will put the rest of the questions in that area on notice. Advice suggests that Coastwatch has averaged a cancellation rate of 30 per cent planned flights over 100 per month, due to the inability of the contract to retain staff. Can you explain to me why you are able to estimate or forecast the number of flying hours for Coastwatch contracted aircraft but not the number of sorties? Look at page 115 of the 2005-06 annual report.

Rear Adm. Goldrick—Would you repeat the question, please.

Senator LUDWIG—I was just looking at the annual report. Can you explain to me why you are able to estimate or forecast the number of flying hours for Coastwatch contracted aircraft but not the number of sorties? It is on page 115. Have you tried forecasting the number of sorties?

Mr Marshall—We will take that question on notice, if we can.

Senator Ellison—Just so that I understand the question, you are talking about each mission and why we cannot forecast the number. Certainly, the flying hours time is understood. Is the question asking why we could not say, 'We'll do X number of sorties on an average of so many a month'?

Senator LUDWIG—Yes. I was just looking at the annual report and trying to make sense of the number of sorties for the past and how you then forecast the number of sorties.

Rear Adm. Goldrick—We will take that one on notice to explain to you the issues behind the footnote, which points out that they cannot be forecast with any reliable statistical or other method. We will go through the factors behind the reason for that footnote.

Senator LUDWIG—So you have tried forecasting?

Rear Adm. Goldrick—I would imagine that we have, but we will have to go back and look at that. We will take that on notice.

Senator LUDWIG—Do you set annual targets?

Mr Marshall—Our contract with Surveillance Australia deals in numbers of hours, not necessarily numbers of missions flown. We do not know, looking forward, exactly how many missions we need, because it depends on the threat at the time. We can always count backwards to look at how many we have actually done, but we cannot look forward over a year and say that we expect that we will fly that number of missions.

Senator LUDWIG—I notice that in the PAES, Customs revised down the number of flying hours forecast for Coastwatch contracted aircraft. Is there a reason for that?

Mr Marshall—The main reason for the prediction downwards is the ability of the contractor to fly out the hours we would like the contractor to fly out. The contractor at the moment is under a lot of pressure to maintain and recruit aircrews because of the environment at the moment—expanding business from other companies. We are unable to fly the number of hours we would like to fly, because we do not have the aircrew in place for that.

Mr Carmody—Having said that, as you would expect, we have put a number of arrangements in place, including working with AMSA to use their Dornier aircraft. We have also been ensuring flying coverage and flying hours in the higher risk areas, in particular illegal fishing—that there is a concentration there. As I have said, notwithstanding those issues, there is a seven per cent increase in flying hours in the major risk areas for illegal fishing.

Senator LUDWIG—There was not a note to that effect in the PAES; it certainly looks as though there was room. I do not understand why you have put a note for some and not for this one as well.

Mr Carmody—I will be completely open with you. When I saw it, I thought that that would come across as though we are flying less than previously and that that is the reason the number of apprehensions is down. I wanted to make it clear that that was not the case.

Senator LUDWIG—So you include explanations which might reflect—

Mr Carmody—Positively. We need a bit of positiveness.

Senator LUDWIG—You leave out those that are embarrassing.

Mr Carmody—No, we were quite open about the reduction in flying hours.

CHAIR—We are very glass-half-full here at the estimates committee.

Senator LUDWIG—Presumably aerial surveillance coverage was revised down as a consequence of reduced flying hours—is that right? The notes say that revised aerial surveillance coverage ‘continues to exceed last year’s outcome, notwithstanding a small reduction in forecast flying hours’.

Mr Carmody—That is right.

Senator LUDWIG—On my calculation, that is a downward revision in the order of about 11 per cent.

Mr Carmody—Over last year. There are two figures there. One is as against those projected for the year, which is the first column, which is significantly down, from 24 to 21. The footnote—again, because of the relationship to apprehensions last year—was compared

with last year's actual. So the footnote relates to a comparison of last year with this year as opposed to this chart, which shows revised forecasts for this year.

Senator LUDWIG—So, with regard to the downward revision of the order of 11 per cent, which does not seem to be a small reduction, is that your forecast?

Mr Carmody—I have not done the calculations you are referring to, but the Coastwatch contracted aircraft forecast was 24,220 and now it is 21,000. That is because of the reasons that have been spoken about. The footnote—again, perhaps trying to be positive but to prevent misapprehensions—relates to the present revised forecast compared with last year's actuals and, even though it does not state it, it does include the contribution by the AP3s so as to be completely upfront. If you look at the combined Coastwatch and AP3 flying hours last year and what we are forecasting this year, there is a slight reduction.

Senator Ellison—I would also point out, Madam Chair, that we have had delivery of our first new Dash 8, which is the first of 10 new aircraft which will have better technology. Some of them will have much longer legs than the old ones we have so that the quality of airtime we get will be greatly improved. This is the new contract that we entered into for \$1 billion over 12 years. As well as that, the point was made to me that a number of flying hours have been lost through adverse weather conditions. If the weather is that bad, it is doubtful you will find illegal fishing during a cyclone, although many fishermen have perished at the hands of a cyclone.

Senator LUDWIG—Let us turn to the planning and preparation that go into Coastwatch surveillance. How are civil maritime surveillance plans coordinated?

Rear Adm. Goldrick—There is an interagency process based on methodology called the common risk assessment methodology. There is a regular meeting of the operations planning working group, and the threat assessment basis is agreed between the agencies involved. Basically, it is done on an area basis around the coast, around the exclusive economic zone of Australia. Each agency assesses each area according to the risks from its perspectives—for example, Environment, Immigration; all the other agencies who are involved. Those risk factors are then compared and balanced and a risk score is devised for each area. Then the surveillance program is put together, with agency agreement and endorsement, based on those risk levels for the areas—for example, areas in the north tend to have much higher risk scores than areas in the south. The program is then carried out on that basis.

It is looked at again at regular intervals and, indeed, can be adjusted according to changing threats, practically without any notice at all. We may well require to change the flying program in order to provide what is called forward air support for the response assets. I should also add that there is a parallel process in terms of planning for the response assets, because we are always trying to ensure that the response assets are positioned in the appropriate areas. That is a coordination between, in particular, Customs, Navy and Defence. Again, that is worked through and can be reworked at any moment. Indeed, we have just had the example of the operations teams involved working together to adjust the dispositions of the surface units of Customs and Defence, with Navy providing extra assets, with the recent problem we have had with the Armidale class.

Senator LUDWIG—So all these agencies then rely on Coastwatch to deliver according to the plan? That is how it fits into the scheme of things?

Rear Adm. Goldrick—Yes.

Senator LUDWIG—And they are clients of Coastwatch?

Rear Adm. Goldrick—Yes.

Senator LUDWIG—How often are those plans prepared?

Rear Adm. Goldrick—They are being worked on all the time, but I think—

Mr Marshall—There is a three-month forward plan that is revised every month. An operations working group looks at the forward plan and looks at the results of the previous plan to help devise different flying routes into the future.

Senator LUDWIG—How are the priorities of each of those plans determined for the agencies?

Rear Adm. Goldrick—It is based on that common risk assessment methodology that I have discussed. That provides the risk scores for each area.

Senator LUDWIG—But how is that related back to the agency that might want to contract you for the work or as part of their work?

Rear Adm. Goldrick—Effectively, they have put their contribution with their risk score into the whole so that the risk score for each area is based on the total—

Senator LUDWIG—You mean the area as in the area of interest for—

Rear Adm. Goldrick—The area of interest, yes. How many areas are there around the coast?

Mr Marshall—There are seven large areas.

Rear Adm. Goldrick—There are seven large areas. I would be able to give you on notice the number of subareas. Basically, each agency is exposed to and involved in that process. Effectively, the aircraft are multitasked. If they are flying in an area primarily because one agency is allocated a high risk but they find something that is of interest to another agency, obviously it is still reported and acted on.

Senator LUDWIG—Are they revised? You indicated that they are projected forward three months and they are looked at each month. Are they revised outside of that at all?

Mr Marshall—They are revised as a routine each month, but there is provision to be able to revise them daily if need be.

Senator LUDWIG—Does that occur?

Rear Adm. Goldrick—Yes. Indeed, every working morning there is a videoconference involving Canberra Border Protection Command at which there are not only Defence and Customs representatives in Canberra but also the embedded staff officers from Fisheries Management and Quarantine with Northern Command in Darwin, where the results of the previous day are discussed, the program for the next day is discussed and any issues are

foreshadowed. There is also a weekly meeting of the operations teams where we look at the last week, look at the results and, again, look to the next week.

Senator LUDWIG—Does that lead to cancellations of planned flights? You mentioned some of the reasons.

Mr Marshall—Some of them would be rescheduled rather than cancelled. If we had planned seven flights for tomorrow and then another priority came up, we would probably still end up with seven flights. One or other of those would have been rescheduled. We would not cancel them; we would rescheduled them.

Senator LUDWIG—What could be some of the difficulties that arise? Are there difficulties that arise on a daily basis?

Mr Marshall—The one thing that we do have to take account of is the hours that the various crews can fly. They are limited to a particular number of hours. When those hours run out we need to make sure that we are not scheduling the aircraft where we do not have crews to fly them. That is one particular concern. Admiral Goldrick mentioned before that we may wish to provide forward air support to help us relocate a fishing vessel. That might mean that instead of an aircraft flying north it might have to fly east or south or whatever. We have to make sure that it does not conflict with any other flights that we have in the area.

Rear Adm. Goldrick—In addition, there are times where, at the request of AMSA, the RCC, we may well retask an aircraft to assist in a search and rescue incident. We do that frequently. Particularly in the Torres Strait area it is not uncommon for all or part of a sortie to be retasked for that. Similarly, at this time of year with the weather conditions, there is often what is called increased holding time at the various airfields. The surveillance time may be slightly reduced in order to keep the fuel stocks for the aircraft.

Senator LUDWIG—All of these things, though, you would have imagined that they are contracted for—the number of flying hours available, the scheduled flights and your priorities on the types of flights. But, in terms of cancellations or a reprioritisation of a flight, how often does that happens on the daily, weekly or monthly basis?

Mr Marshall—We would have cancellations notified to us regularly on a daily basis.

Senator LUDWIG—How many relate to where the crews' hours run out or expire?

Mr Marshall—The exact number I would have to get to you on notice. But we recognise in our flying program that there will be occasions when the aircraft cannot fly for a number of reasons, so we overprogram to try to make up for that. We recognise in our program that there is capacity for flights to be cancelled and for it not to affect the program overall.

Senator LUDWIG—You would plan for that in advance, surely? Is that how you do it—by overprioritising or overscheduling flights?

Mr Marshall—Yes, that is a method that we use.

Senator LUDWIG—Can you give me a rough idea of how many?

Mr Marshall—It does vary, but we would probably plan to 106 per cent to 110 per cent.

Senator LUDWIG—How many flights—or sorties; I am happy to adopt your terminology if it is explained—would that be?

Mr Marshall—Our Dash 8 flights are probably in the region of about 130 a month.

Senator LUDWIG—Which are the overplan?

Mr Marshall—No.

Senator LUDWIG—You do about 130 a month of the Dash 8s.

Mr Marshall—We would expect to get about 130 a month, so we would plan to 106 or 110 per cent of that.

Senator LUDWIG—Have you analysed the figures to determine what the main causes of the cancellations or reprioritisations are? There is one element, which is that you overplan. There are the flight crew hours that expire, and I imagine you would take that into account in any event. I presume you would know the logbooks of the pilots and understand how many hours they can fly. What other reasons are there?

Mr Marshall—We do not have direct access to crew flying times. All of that is handled by the contractor. Generally, the three reasons why a flight might be cancelled or curtailed are crew availability, aircraft serviceability and, as the minister mentioned, weather. They are the three things that might impact on a flight.

Senator LUDWIG—What comes under crew availability?

Mr Marshall—In a Dash 8 crew they have four people in the crew. There is the pilot, the copilot and two people in the rear of the aircraft. It could happen that one of those people calls in sick at the last minute, and that would prevent the flight from going ahead unless there was someone else at the base who could take his or her place. Sometimes there are duty hours. We might have a tactical mission on in which we are required to cover an area continuously over a period and it gets to the end of a crew's hours, so we have to do some readjustments there. On those occasions we would endeavour to fly crews in from interstate to cover those losses.

Senator LUDWIG—What about aircraft? There were three reasons. There was the aircraft, the crew and the third one was the weather. I do not need to ask about weather; that seems self-evident.

Mr Marshall—Aircraft serviceability can be anything from an engine to mission equipment to communications equipment.

Senator LUDWIG—I will put the rest of my questions in that area on notice.

Mr Carmody—In light of your admonition about there only being positive steps in our footnotes, I should note that while we believe the increased apprehension is an impacter on the number of sightings, there would be other factors, including that there has been an information campaign conducted in Indonesia through the Department of Foreign Affairs and Trade and ourselves, and there are always issues of weather and fuel prices. So it would be a combination of all of those things. However, we do believe that the strong enforcement presence has been a significant contributing factor.

Senator Ellison—The anecdotal evidence that we have had from fishermen in the north is that they are seeing results. I have particularly had that feedback in the north-west of my state. We are not saying that it is over. We have a long way to go, but there is certainly progress.

Senator LUDWIG—I will watch it and see what happens.

Senator Ellison—So will we.

Senator LUDWIG—The words on these transcripts can sometimes come back and haunt you. In regard to the CMS04 contract and question on notice 103, which I asked at additional estimates last year, Customs indicated that the CMS04 service A with Surveillance Australia Pty Ltd was valued at \$1,187 million and included the 10 aircraft as well as the surveillance information management system. But there was a press release on 7 February which states a separate contract for the surveillance information management system has been signed with Galileo Avionica, an Italian company. Is there a contradiction in that and, if there is, is it explicable?

Senator Ellison—I think Rear Admiral Goldrick can help here.

Rear Adm. Goldrick—The surveillance information management system contract has been signed by Surveillance Australia with Galileo as a subcontractor to provide the system. Due to the initial process of the contractor and the requirement to get the service A contract going, the subcontract for the surveillance information management system was separated to allow negotiation to be completed to mutual satisfaction. Effectively that is a contract change to the main contract, which has now been signed. That installation will begin towards the end of 2008 with a progressive installation of the capability in all the aircraft over the following approximately 15 months.

Senator LUDWIG—Will it cost the government any more money?

Mr Carmody—I think that was separated out from the original CMS04. I think it was acknowledged at that time that the SIM was to progress subsequent to that.

Rear Adm. Goldrick—There was separate funding allocated for the SIM.

Senator LUDWIG—Was it part of the original contract?

Rear Adm. Goldrick—No.

Mr Carmody—It was part of the initial negotiations but it was segregated out to enable the major contract to be completed. It was removed to subsequent negotiations, which have now been concluded.

Senator LUDWIG—Was the original contract revised down if it was part of the original contract?

Mr Carmody—I am not quite sure what it was revised down from. The original contract provides for the services other than the SIM.

Senator Ellison—I think it was a package within a package. If I remember correctly, the SIM was able to be extracted from the original quite easily. Although it did not stand alone, it was its own discrete package of communications. It was simply taken out of the original contract and dealt with separately.

Rear Adm. Goldrick—I think we can reply on notice to look at the amounts concerned, just to confirm that we are looking at the right figures.

Senator LUDWIG—When was it removed or separated out?

Senator Ellison—It was before the final contract was determined, I think.

Mr Carmody—Yes, it was before the final contract was determined.

Senator Ellison—It was during the course of consideration of the contract—where exactly we would have to take on notice.

Senator LUDWIG—Was that clear in the original request for tender?

Rear Adm. Goldrick—No, it was not intended during the original request for tender. The process of selection and the information management system proved more complex and protracted than had been expected. We wanted to make sure that we had got the best available information system meeting the requirements of the tender. In order to do that, to properly assess the competing systems and work it through to completion, it was viewed that the best way to go was to separate it out from the rest of the contract, proceed with the negotiations for the rest of the contract, sign the service A agreement and then proceed with the information management system under a contract change negotiation. That was completed just before Christmas.

Senator LUDWIG—It appears to me that you would have had to revise the service A contract downwards because it no longer contained the full agreement which is now service A and service B.

Mr Carmody—The amount of the contract reflects the services that were provided. So payments under the first contract would have reflected exclusive of the SIM. I am sure that that is the case, but we will look over this. It was all conducted, I can assure you from what I have seen of it, with complete propriety and following all sorts of probity—

Senator LUDWIG—No qualifications, Mr Carmody!

Mr Carmody—We will give you the precise details.

Senator LUDWIG—Was there anything wrong with the original Surveillance Australia contract which necessitated the—

Mr Carmody—Not so much the contract. I think it was the question of the SIM that was being offered at that stage where people had major concerns about its viability.

Rear Adm. Goldrick—Yes, the initial proposal was viewed as high risk.

Senator LUDWIG—I will put a few questions on notice here, just to make that clear. Finally, how do the new contracts compare with the original plan and the original budget? Will it cost more or less? By how much?

Rear Adm. Goldrick—I would have to take that one on notice, it being before my time.

Senator LUDWIG—Question No. 103 states that the SIM was to be available by 1 July 2008. But now your minister's press release suggests that it is to be fitted into only one aircraft by October 2008.

Rear Adm. Goldrick—Then there will be a progressive fit in the remaining aircraft.

Senator LUDWIG—Why the difference?

Rear Adm. Goldrick—I think it was inevitable in the sense that the time it took to achieve the judgement on the most appropriate information management system that was low risk, high capability and met the requirement meant that it became impossible for that information

management system to be developed completely and installed within the original time for the Dash 8 aircraft to be either modernised or brought into service. So, effectively what is happening from 1 January 2008 is that the aircraft will fly in an interim configuration. They will have full use of their sensors, including much improved radar over the current Dash capability and much improved electro-optics and communications. They will have an information management system that is either at least as capable as or more capable than the current aircraft, but the first aircraft will get the full information management system in October.

Senator LUDWIG—On a progressive roll-out. When will they be fully fitted out?

Rear Adm. Goldrick—I think by the middle of 2010 for the complete fit.

Senator LUDWIG—What date does the contract require them to be fitted by? Is there a contract date for completion?

Rear Adm. Goldrick—That reflects the current contract.

Senator LUDWIG—So is that on time and on budget?

Mr Carmody—It has been entered into fairly recently. That is what is in that contract.

Rear Adm. Goldrick—Indeed, part of the negotiations and part of Surveillance Australia's work on negotiating with their subcontractor was to be sure from their point of view that they had an achievable and workable program.

Senator LUDWIG—In terms of the original Surveillance Australia contract, which from my recollection started some way back in 1995: given the CMS04 service contract was originally commenced on 1 July 2007—

Rear Adm. Goldrick—No, it is 1 January 2008 for Surveillance Australia.

Senator LUDWIG—Was it originally 1 July 2007?

Rear Adm. Goldrick—Yes, it was.

Senator LUDWIG—When was it pushed back to 1 January 2008?

Mr Marshall—It was pushed back while we were having negotiations about Surveillance Australia's ability to provide a SIM. Those negotiations became protracted. In that period we agreed with Surveillance Australia that we would delay the introduction of the Sentinel aircraft until 1 January 2008. We extended their current contracts until that time.

Senator LUDWIG—At what stage are you at in the process? Have the tenders closed?

Mr Marshall—The tender has closed—

Senator LUDWIG—In other words, when did you determine that it was going to be pushed back? Had the tenders already closed by that time?

Mr Marshall—Yes, they had.

Senator LUDWIG—So, post the closing of the tenders, the new date was pushed back?

Mr Marshall—Yes.

Senator LUDWIG—Had a contractor been selected at that point? The tenders had closed. Was a contractor selected?

Mr Marshall—There were negotiations with a preferred contractor at that stage, but, as I indicated earlier, I am not sure exactly when the date was pushed out to 2008. It is best that I take that question on notice.

Senator LUDWIG—In terms of the contract itself, has there been any change to it—that is, the original one that was then pushed back? So 1 July 2007 was pushed back to 1 January 2008. That was done after the tenders had closed but once a contractor had been selected. Is that right?

Mr Marshall—That is right.

Senator LUDWIG—Was there a variation to the contract?

Mr Marshall—Certainly one variation has been the contract change proposal that introduces the SIM. There may have been some minor changes, but I will take that on notice also.

Senator LUDWIG—In terms of Customs people working on those contracts, is there a unit that looks after it within Customs or is it Coastwatch that manages it?

Mr Marshall—We have the unit within Coastwatch that is looking after the Coastwatch contracts. There are other areas in Customs that are looking after other contracts.

Senator LUDWIG—In terms of the negotiations then, after the contract had been selected, was that contract Surveillance Australia? Was that the contract?

Mr Marshall—That is right.

Senator LUDWIG—Had the CMS service contract A changed after that date in any way?

Mr Marshall—After which date?

Senator LUDWIG—After the contract had been selected, after tenders had closed and, of course, after the date was pushed back to 1 January 2008.

Mr Marshall—The principal difference from what went to tender was the removal of the SIM from the contract.

Senator LUDWIG—How much was that?

Mr Marshall—As we indicated earlier, we will get that answered on notice.

Mr Carmody—We would need to be precise about the different contracts and the different values. We just do not have that with us.

Senator LUDWIG—Is it a contract management group?

Mr Marshall—Yes, we have a current contract management group looking after the current SAPL contract and another group is looking after what we are calling the Sentinel contract.

Senator LUDWIG—How many people are in that group?

Mr Marshall—Rather than say five, six or seven, we had better get that on notice.

Senator LUDWIG—Do you employ consultants in the area?

Mr Marshall—Yes, we do.

Senator LUDWIG—How many are there?

Mr Marshall—There are two what we would call prime consultants and a number of personnel on contract.

Senator LUDWIG—How much are those contracts worth, are you able to say? What types of contracts are the consultancy contracts? They are presumably for consultancy, but what type of consultancy is provided?

Mr Marshall—We recognise the experience that they have in dealing with other military type contracts and contracts that are pretty closely related to the CMS04 contract. They are providing significant input into that.

Senator LUDWIG—How much were the consultancies for?

Rear Adm. Goldrick—We would have to give you that answer on notice.

Senator LUDWIG—Let me understand this. Surveillance Australia got an extension of their existing contract because the date was pushed back to 1 January 2008. Is that right?

Mr Marshall—Yes.

Senator LUDWIG—How much was that extension worth?

Mr Marshall—Once again, it is best that I take that on notice. It was on exactly the same terms as the contract we had had over the previous years. It was just extending for a certain time on the current terms.

Senator LUDWIG—So that was whilst you were pushing back the contract with the contractor who had been selected—that is, Surveillance Australia—for the new contract.

Mr Marshall—That is right.

Senator LUDWIG—So there was a new contract. It got pushed back because you had found the contractor, tenders had closed and you were negotiating part of the SIM because you did not like it. Surveillance Australia, for that period, then got an extension because of that. Have I got that right?

Mr Marshall—The principal reason was the difficulties that we were having with the SIM. Another reason might have been the timing of the signing of the contract and the availability of the new aircraft and the sensors after the contract had been signed. The contractor could not order new aircraft and new surveillance equipment until the contract had been signed. Because that was not signed as early as we would have liked, that gave us a six-month delay. It was a delay that we were not overly concerned about because we would not be paying for that contract until 1 January 2008 and we could retain the current contract at the current rate.

Senator LUDWIG—How much was that for? You are going to take it on notice, but is there a ballpark figure?

Mr Marshall—The current contract is worth about \$70 million a year, so six months of that is \$35 million. It is best that I take that on notice so that I do not have to correct it.

Senator LUDWIG—Thank you. I am happy for you take that on notice. I will put the remainder of the questions for Customs on notice.

Mr Carmody—I did not have the opportunity at the start to say this. In preparing for this hearing I was looking at one of the answers provided to Senator Ludwig on SmartGate. In question No. 87 the senator asked:

Please provide a copy of the business case for SmartGate ...

The answer says 'Copy attached.' I think it would have been a fuller answer if it had been pointed out that the business case was prepared for the purposes of cabinet consideration of broader e-passport and biometric issues. As part of that, there was a business case prepared with financials. The people preparing the answers, appropriately I believe, did not provide that original business case that was prepared for cabinet. So the document based on that does not include the financials but it includes the updated view about testing. I want to clarify that when you look at that it might look suspiciously like it was prepared only as a result of your question, because it is very current, whereas in fact it was based on the cabinet business case and updated in the way I have talked about.

Senator LUDWIG—Thank you, Mr Carmody. You are most welcome to provide me with the rest of the package if you so wish.

Mr Carmody—There will be a full implementation review after Brisbane, so I am sure you will ask me for that. That will not be for cabinet; that will be for us.

Senator LUDWIG—Thank you very much, Mr Carmody. Thank you to Customs.

CHAIR—Mr Carmody, thank you very much to you and your officers. You have taken on notice a significant number of matters.

Mr Carmody—Yes.

CHAIR—The return date for those is 30 March.

[9.21 pm]

Australian Federal Police

CHAIR—Welcome, Commissioner Keelty, Deputy Commissioner Lawler and Mr Van Dam. We will start with questions from Senator Heffernan.

Senator HEFFERNAN—Thank you very much. Can I congratulate the AFP on a lot of the good work that you have done. You are continuing your fantastic results. I have to say it puts a bit of cheer in the heart of ordinary Australians.

Mr Keelty—You could finish on that point!

CHAIR—Thank you, Senator Heffernan. That was very helpful. We will move on now to Senator Ludwig!

Senator HEFFERNAN—On 17 February 2006 I asked a couple of questions, you having received some documents. One question that I asked was:

In my correspondence addressed to the Minister for Justice and Customs dated 30 November 2005, I submitted various documents including some police documents which included a police intelligence report (dated 7 April 2005).

I did not actually give the details of that police intelligence report, but it is reference No. 124250239 intel 820P. My question continued:

This report referred to a flat (54 Ballina Apartments, Darley Street, Darlinghurst) ...

I asked:

.. is this the same flat as it appears to be in the newspaper article (copy included in the documents) that featured in *The Weekend Australian*, 31 July–1 August 2004?

I have to say that I am really grateful to the Australian Federal Police for their cooperation with and attitude to a range of matters that I have been dealing with. In essence, the response to that question was that the AFP was unable to confirm any correlation between the address in the intelligence report and the premises in the media article, as this was neither part of the AFP investigation nor related to the allegation being investigated by the AFP. Fair enough.

I would just like to put on the record that in fact the answer is yes, it is the same address. The article in the *Australian* refers to flat 54, which was owned by a guy called Gordon Vivian Stewart, who has since sold the place and come to an arrangement with the person who lived in it. I also asked a question about a signed statutory declaration from a young male prostitute which involved the same flat. I will not go into the details of the question, but I would just like to put on the record that it is the same flat, flat 54.

I would like to go to something that I visited partially this afternoon with the Attorney-General's Department. The final report of the Wood royal commission identified that the same gentleman who owned that flat represented a person at court twice under the false name of Philip Hill. The royal commission concluded, 'It is also clear that Mr Gordon Stewart'—who had used Mr Donald Stewart as the barrister in the matter, who later became a royal commissioner—'had referred him to counsel under a name he knew was not to be his true name.' I would have thought that that was perverting the course of justice. In fact, I wrote to the New South Wales Police to that effect and they responded by saying, 'I am advised that the prosecution always retains a discretionary power not to proceed with an indictment, notwithstanding that there may be a reasonable prospect of conviction.' They then go into a bit of other detail.

CHAIR—Senator Heffernan, I assume that you are moving to a question for the commissioner.

Senator HEFFERNAN—I am moving to a question. In the documents that you have received in evidence, there is a police running sheet, which is dated 1 April 1999, of an interview conducted at 3.30 pm on 31 March 1999 at 343A Edgecliff Road, Edgecliff. It was a police interview with a solicitor, the same Gordon Stewart, in which Mr Gordon Stewart admitted that he sought advice from a judge because of a complication—which I went through this afternoon, and Mr Cornall knows that, so I will not revisit that. The judge partly wrote the advice, and I went through the comments in the interview this afternoon. The advice was critical in settling this matter, which involved tens of millions of dollars and eventually the judge who part-wrote the advice for the solicitor for the law firm in London sat in judgement on that advice. He sat in judgement on his own advice. Having received that evidence in documents, the question I want to ask the AFP is: can you confirm to me that there is absolutely nothing in that that you can do anything with and that it is not a matter for the Australian Federal Police?

Mr Keelty—That is correct. In all the documents that we have examined at your request, there have been no Commonwealth offences disclosed.

Senator HEFFERNAN—Thank you very much. I just wanted to make the point once again that there is a need in Australia for something to be done to enable that judicial conduct to be properly scrutinised so that ordinary Australians can have confidence that there is proper separation from the political process and so that ordinary Australians can (1) know that the judge who is sitting in judgement of them is of sound mind and (2) know that there is no compromise or deceit in the system. At the present time, there is clear evidence—police documentation—that a judge can sit in judgement on his own advice, and there is not a damn thing that we can do about it.

CHAIR—Thank you, Senator Heffernan. As I indicated this morning in an exchange with the minister, those matters which you raised this morning which pertained to relevant matters at the federal level are ones which we will seek responses to on notice—the ones from this morning's discussion, Minister.

Senator Ellison—I will just confirm that that is the same issue. You are now onto the Commonwealth jurisdiction. We are in the same area that we were in this morning?

CHAIR—Yes.

Senator Ellison—Thank you.

CHAIR—Thank you, Senator Heffernan.

Senator CHRIS EVANS—I want to ask the AFP about these issues surrounding theft of weapons from Defence Force establishments. Could you tell me what current investigations the AFP is conducting? I know that there was an Operation Majorca back in the late 1990s where you established, as I understand it, a special task force. I am not sure of the outcome of that investigation. It is a general question. Maybe someone could take me through the number and breadth of current inquiries—if there are any current inquiries—into thefts of weapons or explosives from Defence Force establishments.

Mr Keelty—There are a number of investigations that are underway. There is one matter where a 28-year-old male from Sydney was arrested on 5 January this year and has a total of 17 charges relating to allegations of receiving and disposing of seven light anti-armour weapons allegedly stolen from the Defence Force. That matter is currently before the court, so I would not want to comment any further on that, other than to say that those investigations in conjunction with the New South Wales Police, ASIO and Defence are continuing.

Senator CHRIS EVANS—Before you go on—obviously I do not want to ask you about the details as it is before the courts—could I ask: was that was handled by you or by the state police, or in conjunction?

Mr Keelty—It is a joint task force comprising the AFP, the New South Wales Police and ASIO, and Defence are assisting us with that investigation.

Senator CHRIS EVANS—I am sure you will come to this, but was that an established joint task force or one established for that particular crime?

Mr Keelty—The task force was established out of our joint counterterrorism team in Sydney. It was tasked with other investigations. A referral came to us from the New South Wales Crime Commission from one of their task forces when the weapons were discovered.

Regarding the other question you asked, on 14 October 1997, the *Bulletin* magazine published an article containing a variety of allegations primarily against the Royal Australian Navy relating to the theft of weapons and other matters. Then, in October 1997, the Australian Defence Force sought assistance from the AFP and we commenced a joint investigation into those allegations that were contained in the *Bulletin* magazine.

A separate operation commenced in May the following year. That was called Operation Majorca. Operation Majorca had four terms of reference. The first term of reference was the alleged theft, loss or unlawful disposal of weapons; the second was the theft of Defence property, fraud and payment of secret commissions; the third was the Defence Force Discipline Act and audit issues; and the fourth was the alleged use and distribution of drugs.

In those terms of reference, there were other allegations such as discrepancies in weapons holding and failures to investigate those discrepancies. There was no evidence of criminality found in that particular allegation. The investigation into the allegation of the unlawful disposal of weapons or parts found that the allegation of unlawful disposal was predominantly unsubstantiated; however, it did reveal incidents of unauthorised exchanges of weapons or weapons parts by the Defence national supply and distribution centre.

Senator CHRIS EVANS—Can I interrupt—I am just not sure I follow the logic of this and I want to be correct. There was a joint investigation arising out of the October 1997 allegations in the *Bulletin* and then there was the Majorca task force of May 1998. I am not sure now whether you are telling me that they melded into one, because you then went on to describe terms of reference and issues. I am getting a little lost. I may not have followed it clearly, but are we talking about something that melded into one or are we still talking about two separate matters?

Mr Keelty—Operation Majorca basically came out of the initial investigations. The initial investigations were into the allegations contained in the *Bulletin* article. They were the ones that were undertaken in October 1997. But the second series of allegations and then the terms of reference for Operation Majorca came the following year, and they are the ones that I was just describing.

Senator CHRIS EVANS—And they are out of fresh allegations?

Mr Keelty—They were fresh allegations.

Senator CHRIS EVANS—Made where and by whom?

Mr Keelty—They were brought to us by Defence and they came out of the first investigation. As we investigated the first allegations that were raised in the *Bulletin* magazine article, these issues then emerged as being matters that needed to be followed up. So for a more substantial investigation, if you like, a task force was put together entitled Operation Majorca and it was a joint Defence-AFP investigation.

Senator CHRIS EVANS—Thank you. I am sorry for interrupting; I just was not following correctly.

Mr Keelty—As I described to you, there were four terms of reference. I am now giving you the details of the first term of reference and I have just finished telling you about allegations of unlawful disposal of weapons and weapons parts. There was also an allegation in there of the unlawful disposal of weapons or parts to civilians and outlaw motorcycle gangs. That investigation found that the allegations relating to the disposal of weapons were unsubstantiated. The allegation relating to the unlawful disposal of weapons to outlaw motorcycle gangs was not supported by the evidence. The problem we had was that the information was of such a tenuous nature it was incapable of more thorough investigation.

Also contained in that first term of reference were allegations of possible abuse by the ADF personnel of the gun buyback scheme that was in existence at the time. The investigation found that there was no substantive evidence to support the allegations of involvement in the gun buyback scheme. There was a general review conducted as part of Operation Majorca of the gun buyback scheme where military style weapons were being surrendered and cash was being returned for them. The investigation did not disclose any offences being committed by any persons in that regard.

In the second term of reference, which was the theft of property, fraud and payment of secret commissions, the investigation found that the allegations of theft and fraud from the Defence national supply and distribution centre were unsubstantiated.

Senator CHRIS EVANS—This is the Moorebank centre?

Mr Keelty—That is right. The allegation of secret commissions was also found to be unsubstantiated, as was the allegation of the issue of unsafe and outdated stock to cover deficiencies in stocktakes, which related to the reference looking at audit issues.

In relation to the last term of reference, which was the alleged use and distribution of illicit drugs, no evidence was found that the ADF had trafficked in illicit drugs or that ADF assets were used in the systematic trafficking of drugs. Having said that, as a result of Operation Majorca, there was insufficient evidence to commence criminal proceedings, but seven specific recommendations were made to the ADF by the AFP.

We were working with the Inspector-General's division of Defence and we asked them to review the weapons arrangements with the national supply centre. We asked them to review the national supply centre's investigation practices and procedures with a view to instituting best practice by investigating personnel. We asked them to implement a system of quality assurance reviews. We asked the Inspector-General's office to receive and review copies of all reports of weapons and controlled weapons parts discrepancies. And we asked them to maintain the intelligence system of weapons parts developed and implemented by the Inspector-General's office to support Operation Majorca. Also, Defence intelligence security and police elements were asked to remain vigilant with respect to the threat posed by outlaw motorcycle gangs to Defence personnel assets. And we asked the Inspector-General's office to maintain close liaison with both the AFP and the then Australian Bureau of Criminal Intelligence, which is now part of the Australian Crime Commission.

To continue answering your question, between 1 July 2001 and 24 January 2007, the AFP received a total of 139 referrals from the ADF, including 19 referrals related to the theft of ADF equipment and eight requests for forensic assistance. The major referrals relate to one

that is current where the ADF, the AFP and the Australian Crime Commission are working on a referral in relation to theft from the Puckapunyal Army base. Another referral came to us on 7 August 2006 regarding the alleged theft of security defence equipment, and that is ongoing as well.

On 17 February 2006, the AFP received a referral from the ADF requesting assistance in relation to the execution of warrants from the ADF in relation to the theft of ADF radios. We have some investigations that have been finalised—I do not know if they are of interest to you—which mainly relate to the alleged theft of Steyr rifles back in 2003 and, back in 2001, the alleged theft of ballistic vests and Kevlar helmets.

Senator CHRIS EVANS—I would not mind knowing the outcomes. I remember the Steyr rifles incident from when I was Defence spokesman. It seems like a long time ago, but it just rang a bell in my head. What was the outcome of that inquiry?

Mr Keelty—We were unable to identify the offenders in relation to the theft and, as a result, we provided advice to the ADF on the security issues identified in the course of the investigation. That matter was finalised in April 2003.

Senator CHRIS EVANS—What was the other one you mentioned?

Mr Keelty—That was the alleged theft of ballistic vests and Kevlar helmets. That came to us on 5 October 2001 from the Victorian Police. The investigation found again that there was insufficient evidence, once we put a brief of evidence to the Commonwealth DPP, to support a prosecution and, therefore, no person was charged.

Senator CHRIS EVANS—So, in terms of current investigations, you have the Sydney case regarding the light armour weapons, which is going to court, so put that to one side. What else is current—the Puckapunyal reference?

Mr Keelty—Yes, the Puckapunyal reference.

Senator CHRIS EVANS—What does that concern?

Mr Keelty—It concerns the theft of munitions and weapons, and that is ongoing.

Senator CHRIS EVANS—When was that referred to you?

Mr Keelty—It was referred to us on 25 January this year. The other ongoing investigation is the alleged theft of security Defence equipment, which was referred to us on 7 August last year, and that is ongoing.

Senator CHRIS EVANS—Where was that allegedly stolen from?

Mr Keelty—The referral is from the director of security and intelligence. I do not have with me where it is alleged that they were stolen from, but I can find that out for you.

Senator CHRIS EVANS—But it is defence security and intelligence?

Mr Keelty—It is defence security and intelligence.

Senator CHRIS EVANS—Is the ADF radio one current or has that been finalised?

Mr Keelty—No, that is still current.

Senator CHRIS EVANS—Where were those thefts allegedly from?

Mr Keelty—Sorry, I thought you just asked me that question.

Senator CHRIS EVANS—No, I was asking about defence security. You had another February 2006 reference on radios.

Mr Keelty—That investigation has been completed.

Senator CHRIS EVANS—Was anyone charged?

Mr Keelty—No, no-one has been charged.

Senator CHRIS EVANS—So the three current inquiries are the one you referred to where a man has been charged, the Puckapunyal one and the Defence security and intelligence thefts. Those three are current AFP investigations?

Mr Keelty—That is correct.

Senator CHRIS EVANS—Is the Majorca task force still in place, or is there another iteration now?

Mr Keelty—No, it is not still in place. It presented its final report and the recommendations that I outlined to you before.

Senator CHRIS EVANS—When did that occur?

Mr Keelty—It concluded in July 1999.

Senator CHRIS EVANS—That long ago? Since then, how have you handled these matters? Obviously that was your response at the time and the task force was not able to find evidence of criminal behaviour and lay charges, but you effectively made recommendations as to systems and prevention. How has this worked subsequent to that? Is it just a straight matter of ADF referring a matter to you that they think they cannot handle or of a certain level of seriousness? What is the protocol?

Mr Keelty—Part of the problem has been the difficulty in being able to trace weapons or trace persons who are accountable for matters. That has led to a number of recommendations. More recently a review has been undertaken of the investigative capacity within the Australian Defence Force. Last year, at the request of the Chief of the Defence Force, we were asked to provide assistance to the ADF's audit of ADF investigative capability. We funded a former AFP Deputy Commissioner, Adrien Whiddett, to jointly conduct the audit with a member of the ADF and we provided information in relation to our investigative methodology, best practice guidelines, policies and procedures.

Since the completion of the ADF's audit and release of the audit report, I have met with the Chief of the Defence Force, just as my deputy has met with other members of the Defence Force, including the newly appointed provost marshal, with a view to assisting Defence in improving their investigative capability on alleged matters arising within Defence.

Senator CHRIS EVANS—Thank you for that. I think the members of this committee appreciate some of the issues. The chair and I, in particular, spent a lot of time on the military justice report. One of the things that struck us most was what we thought were the inadequacies in terms of some of the investigations—that is not to criticise people—and the lack of resources, training and skills available to those investigations. We argued for a different approach, which has been adopted in part—not on the whole, but we will get there.

I appreciate that you have provided assistance to the ADF in those matters. But, in terms of the protocol now, for instance, if they have a theft of munitions and weapons from Puckapunyal, do they investigate and then say to you, 'We don't have the skills,' or 'It's all too hard,' or, 'There might be other offences which we think come into your bailiwick'? I have not been closely involved with this committee or the operations of the AFP; I am just trying to understand when they ring you, under what powers and where you come in and why.

Mr Keelty—It will come in from a number of sources. More often than not, it has come to us as a result of investigations either by state or territory police in relation to other matters or, indeed, even Customs. There have been referrals from Defence themselves. I do not want to speak for the Chief of the Defence Force but I think I should point out to the committee that he has made significant changes to the internal investigation arrangements within Defence. For example, he has discontinued the existence of the three service internal investigation areas and put them under the provost marshal and he has had the provost marshal report directly to him. He also receives a monthly report on issues that arise within Defence. He and I have had discussions about those arrangements and I can sure assure the committee that the Chief of the Defence Force is absolutely committed to improving the situation from what it has been in the past and certainly to implementing the findings of the audit of the Defence Force investigative capability that I mentioned was completed last year.

Senator CHRIS EVANS—I agree with you. I think members of the committee have expressed that publicly and I do not doubt at all the CDF's commitment to the task. We have a slight disagreement and we would push him a bit further, but that is a decision for government. I must say that we are very appreciative of the changes he has made.

Mr Keelty—In answer to your question, I expect more matters will be coming directly to the AFP as a result of the AFP's ongoing assistance that will now be provided to the investigative areas of the ADF.

Senator CHRIS EVANS—But, in terms of the formal relationship, I am trying to understand how the law and the interaction of the agencies work. What matters must they refer to you? Is it a decision for them or is it a decision for the state? I am trying to understand how the various agencies relate when they are called in.

Mr Keelty—We are actually reviewing that at the moment. As I mentioned, our deputy commissioner has met with the provost marshal and with Defence officials on a new arrangement between the two of us. By and large, if the matter is a criminal matter and it is obvious that it is a criminal matter, the matter would be referred to the AFP. But I think your point is that some matters will be internal Defence matters and it is that line between what is an internal Defence matter before it becomes a matter for civil jurisdiction. That is the body of work that is now being done between Defence and us. That will be one of the areas that will be the task of the AFP personnel working with the Defence investigations area—to quickly identify those matters that should come within the civil jurisdiction.

Senator CHRIS EVANS—But do I take it that any weapon theft or alleged weapon theft would automatically come to you?

Mr Keelty—It should automatically come to us because it is a theft of Commonwealth property ostensibly by a Commonwealth employee.

Senator CHRIS EVANS—But somebody might steal some plates out of the dining room and that would fit that same definition. I would hope that the AFP's resources were not being put upon unduly to deal with that. But, if someone is taking 66-millimetre light anti-armour weapons in great numbers out of Puckapunyal or somewhere else, I would hope they would let you know about it. Clearly, the definition is a bit—

Mr Keelty—Obviously, that is one of the reasons why we want our people working with Defence—so that we can identify those more serious issues. There are obligations under the fraud control plan where matters are of a fraudulent type nature. But, of course, the more serious matters are the ones that we would take on.

Senator CHRIS EVANS—The Minister for Defence on 22 December last year put out a press release regarding the concern about protection of Defence weapons, munitions and explosives, referred to the 66-millimetre light anti-armour weapon and made some announcements about that. Are they the ones relating to the Sydney charges?

Mr Keelty—I understand that is correct.

Senator CHRIS EVANS—Then he referred to the Puckapunyal weapons and munitions. He has ordered a comprehensive audit of the security policies and practices that apply to Defence weapons, munitions and explosives. That sounds very much like what you told me you recommended to them in May 1998 arising out of the Majorca task force. Firstly, is that the sort of thing that was recommended in 1998 and, secondly, are you engaged in any way in this latest comprehensive audit?

Mr Keelty—I will answer the second part of the question first. I took a decision not to involve ourselves in that audit process but rather to involve ourselves in any matters that came out as a result of that audit process. We could not be in two places at once, doing the audit and then investigating the discrepancies from the audit. I thought it better that Defence and ASIO look at where the discrepancies might arise and that the AFP put its resources into investigating any discrepancies that are found.

In relation to the first part of your question, the recommendations from Operation Majorca were really central to how investigations were undertaken within Defence and were looking more at the accountability and record keeping within Defence—not necessarily what is being looked at now, which does have ramifications when you have light anti-armour weaponry reported as missing. It really is as a result of the investigation work that has been undertaken in the separate part of the AFP out of the joint counterterrorism teams working with the New South Wales Crime Commission and the New South Wales Police that the alleged missing rocket launchers have been discovered. But also obviously that is the matter that is currently before the court.

Senator CHRIS EVANS—I am not sure whether we are at cross-purposes—and this may be my fault. On closer reading of the minister's press release, he says that an initial focus of the audit is the security arrangements that apply to the 66-millimetre light anti-armour weapon and that that would be completed by the end of January 2007. I think you referred to your decision not to participate in that, and that is on the record. It referred to the second phase which will be completed in the first half of 2007 and will examine all security aspects of the policies and practices that apply to the management of weapons, munitions and

explosives across Defence. Are you part of that second broader audit? It strikes me that this is very much the sort of thing that you say you reported on out of Operation Majorca. With my shorthand, I got the seven recommendations and a couple of notes on each, but I do not pretend to have a comprehensive answer. It seemed to me that you were covering those sorts of issues. Is that fair?

Mr Keelty—I think the first part of the terms of reference announced by the Defence minister is quite specific about the rocket launchers. The second part of it, whilst it is similar to what Defence and the AFP had discussed previously, I think is something we have not involved ourselves in. We have allowed ASIO and Defence to get on with that, while we have looked at working with Defence on the investigation capability within Defence.

Senator CHRIS EVANS—Is it fair to suggest that we are going over the same ground that we went over 10 years ago and that we have not really seen a marked improvement in these security issues?

Mr Keelty—Obviously, there are still issues and that is one of the reasons why the Chief of Defence Force and I have met and discussed this. In fact, we have been cooperating actively not just in the last couple of months after the revelation of these issues; we have been together for a lot longer than that. We provided our former deputy commissioner to work with Defence on these issues going back to the middle of last year, recognising that there were issues still emerging that needed to be addressed.

Senator CHRIS EVANS—How are these issues different to those that emerged in 1998 and were allegedly dealt with following the Majorca report?

Mr Keelty—There is some similarity, but the allegations were a little more specific about the alleged involvement of the outlaw motorcycle gangs and about the gun buyback schemes. So they were similar in some respects in that munitions and weapons could not be accounted for. So, in that sense, there is a similarity. Hopefully, we are on the path to correcting that now.

Senator CHRIS EVANS—Two things strike me about the history—I am not being critical here—and one is that we did not have much luck in terms of successful prosecutions on these matters, which I will come back to in a second; and, secondly, that you made a range of recommendations that, on the face of it, do not seem to have been implemented very successfully.

Mr Keelty—The answer from an AFP commissioner's perspective is that unfortunately we still find that there are deficiencies but it is a big organisation. You have to ask Defence about what they have done about Majorca between when the report was delivered and now. Remember that we were working with the then Inspector-General of Defence on Operation Majorca. It was a joint operation. I guess our expectation was that it would have been taken up by the Inspector-General of Defence back in 1999.

Senator CHRIS EVANS—That been my expectation, too. You can rest assured that I will ask Defence as well, so I am not just picking on you. There are serious public concerns about very dangerous weapons that have been stolen. I accept Defence is a large organisation, weapons are their business and that there will always be theft. You cannot have a 100 per cent foolproof system on anything. But there have been a large number of incidents now that are of

concern. How would you describe the 139 references to you in the last six years? You referred to 19 as references involving weapons. Is that correct?

Mr Keelty—Not all of them were involving weapons. For example, one reference from Defence was in relation to the Sea King disaster.

Senator CHRIS EVANS—Is this in the 139 or in the 19 you referred to? Sorry to jump back. I just want to be clear about what was meant by the classifications.

Mr Keelty—In 139 referrals, 19 referrals related to the theft of ADF equipment and eight referred to requests for forensic assistance, making 27 of the 139, and the balance were a variety of referrals. One example is the Sea King crash, which is still being investigated by the AFP in relation to allegations about some contractual activities there—the carriage of prohibited goods on board the aircraft.

Senator CHRIS EVANS—Obviously, you would have less serious things like—not that it is not serious—but assaults and those sorts of things? I am trying to get a sense of the scope of the referrals.

Mr Keelty—Forgery of RAAF aerospace journals was a matter that was referred to us in March last year. Transmission and access to child pornography allegations were referred to us in June 2005 and again in March last year. There were allegations in relation to activities by members of INTERFET in East Timor—which were found to be unsubstantiated, I hasten to add. There were allegations of sexual harassment in the Royal Australian Navy back in May last year. There has been quite a variety of matters in the 139.

Senator CHRIS EVANS—Are they only federal offences?

Mr Keelty—The ones that we would look at would be the federal offences. If state offences were to have been disclosed, there is provision now for the AFP to investigate those matters if there is a federal aspect to them. But by and large if they are state matters, such as common assault or other issues like that, we would refer it to the state police or to the service police.

Senator CHRIS EVANS—So the 139 referrals would not necessarily include referrals that they made directly to state police on matters that are more in their jurisdiction. Is that fair?

Mr Keelty—That is fair. It also would not include matters investigated by their own service police.

Senator CHRIS EVANS—In general, you would get the referrals that are more likely to involve federal offences.

Mr Keelty—That is correct.

Senator CHRIS EVANS—Would you like to comment on why there seems to be a low success rate in terms of prosecutions? I am obviously putting aside the current things, but as you took me through the cases it seemed like there had not been a great strike rate. I am not making any criticism of you; I am just trying to understand whether there are systemic problem here. I am just trying to understand this, because we found in the military justice report inquiry cultural things impacting on the success of investigations and justice issues. I

am interested in whether you have any comments about whether those issues have been a problem in terms of investigation and successful prosecution.

Mr Keelty—Part of the problem has been the evidence chain—trying to get good record keeping and accounting where theft has occurred. I do not want to speak on behalf of the Chief of the Defence Force, but he and I have had discussions about the culture and having a culture that is committed to investigating matters thoroughly and to the same standard that would apply to a civil investigation. While it is true to say that it has not been a strength in the past, I expect that it will be a strength in the future of the Defence Force and that it will have culture of supporting and corroborating investigations and being professional about investigations. In a way, I understand where some of the difficulties lie and it is the way things evolved within the Defence Force. The Defence Force over a period of time developed relationships with the various state and territory police around the country over a period of time. Being such a big organisation created an opportunity for a disparity in the ways that investigation methodology was adopted and standards were applied. In a sense, it evolved the wrong way, but I can assure the committee that there is a commitment both from me and from the CDF to get it back on track because between the two of us we understand the implications of it not being right this time around.

Senator CHRIS EVANS—I appreciate that. You mentioned that accounting procedures inside Defence had been one of the barriers to successful prosecution, and you talked about professionalism of investigation. The committee identified that previously as being a major issue. Is it the case that when you have been called in that sometimes it is almost too late and the initial mistakes have been made? Is that a fair reflection?

Mr Keelty—For a percentage of them that would be right, and that goes back to the professionalism of the investigation capability, which was part of the review undertaken last year by former Deputy Commissioner Whiddett and his ADF colleague. The treatment of crime scenes and the treatment of issues before the civilian authority has been called in is very important, and are what we are trying to now address with Defence. As I say—and I want to be clear on this—there is a very strong commitment from the executive of Defence to get this right.

Senator CHRIS EVANS—I accept that and have discussed that with CDF Houston. I agree that it is true to say that large organisations are sometimes hard to shift and the leadership often needs help in making things shift. In terms of these investigations, what are the reporting lines? You mentioned a number of investigations. How does one follow those, particularly when you do them jointly with Defence? Who does the ADF or Defence report to? What is made public? How are we able to assess progress on these issues?

Mr Keelty—The investigations are coordinated here in Canberra by our economic and special operations portfolio. There is a national manager in charge of that area and he reports to the deputy commissioner. The investigations are monitored through our case management system in terms of their duration and their seriousness and at what stage they are at at any given time. If a brief of evidence is prepared, it goes to the DPP and then we are in the hands of the court—as with the case that I mentioned to you earlier. In terms of public knowledge of these investigations, outside of these proceedings and outside of any particular reference we might give it in our annual report, it is not made public—and nor are other investigations that

the AFP might do with other Commonwealth departments, outside any disclosure that might be made through the reporting on the fraud control plan. If this is your point, there is not a lot of visibility, unless the questions are asked or the matters do become public.

Senator CHRIS EVANS—That was my sense of it. I will reflect on that. In terms of the Majorca recommendations, were they made public?

Mr Keelty—No, they were not.

Senator CHRIS EVANS—Was there a reason for that, or are they able to be made public now?

Mr Keelty—We did the investigation at the request of the Inspector-General of Defence at the time and we left it with Defence as to what choices they wanted to make about how public that would be.

Senator CHRIS EVANS—I am not talking about the evidence of the individual crimes or allegations; I am talking about the procedural recommendations you made which you outlined to me.

Mr Keelty—That report was made to Defence, and, of course, we are talking about July 1999—I think I just said—so a different command in Defence existed at the time. It has been pointed out to me that the fact that many of the investigations or the allegations were found to be unsubstantiated made it difficult in terms of making the unsubstantiated allegations public. But also the Majorca report does make public or identifies the people who were the complainants and who assisted in the investigation. So we did take some care about that. The final report does disclose the types of weapons used by Defence and how they are transported and stored around the country. So there are a lot of sensitivities around the actual report.

Senator CHRIS EVANS—I am only interested in the bits where you have made recommendations about systems and whether or not they were implemented and, if so, were they proving successful. But I am sure Defence are listening and I will ask them about it tomorrow.

Senator Ellison—Madam Chair, I understand that some agencies have been sent home.

CHAIR—Yes, Minister. Unfortunately, that seems to be the way the evening is heading.

Senator Ellison—So we have now finalised a list of those we need?

CHAIR—I was consulting with Senator Ludwig.

Senator Ellison—Thank you.

CHAIR—Senator Nettle, why don't you start with some questions to the AFP and we will try and deal with the remaining 45 minutes as efficiently as we can. I do not expect, though, that we will have any questions this evening for the Commonwealth DPP or for HREOC. I must say that progress this morning was significantly slower than I expected. I do not usually like the committee to operate on this basis. I apologise to agencies for that and we will address that in planning for future programs.

Senator NETTLE—I want to ask a question about an issue that was mentioned earlier with Attorney-General's about David Hicks. It is specifically about any control order in

relation to David Hicks. I am asking whether the AFP had any consideration as to how or on what basis David Hicks could be placed on a control order if he were returned to Australia.

Mr Keelty—It is an operational matter and we would not disclose publicly whether we were or were not considering a control against any person let alone Mr Hicks.

Senator NETTLE—Can I ask what role the AFP has played recently in informing government policy on David Hicks?

Senator Ellison—Perhaps you could clarify that—government policy on David Hicks.

Senator NETTLE—Perhaps I should say government response—how the government deals with the issue of David Hicks?

Senator Ellison—We do not divulge the advice we receive from agencies in the department. You are asking, in relation to the AFP, have we received any advice?

Senator NETTLE—Yes.

Senator Ellison—I am not aware of the AFP having given advice to the government on the government's policy, if I can put it that way, towards David Hicks. I will check that and make sure that is correct, but that is my understanding.

Senator NETTLE—Would it make any difference if I phrased that as 'government response' to David Hicks rather than 'government policy'?

Senator Ellison—It is still the same.

Senator NETTLE—I want to ask about reports of AFP officers going to Afghanistan for heroin or drug issues and reports about AFP being protected by armed guards employed by a private company. Could you provide us with any more information about that?

Mr Keelty—Yes. Last year the UK Foreign and Commonwealth Office requested us to provide training and mentoring support to the counternarcotics police of Afghanistan. We sent a threat assessment team to Kabul and to Jellalabad in June last year. We concluded that the tasks we were being asked to perform were low-risk tasks, however they were going to be performed in a high-risk environment. During our period of time there, we were also asked to think about sending two personnel strategic advisers to the Afghan national police. So we conducted a further study or assessment in November last year of the security arrangements on the ground.

The actual deployment will not occur until appropriate protections and immunities are negotiated with the government of Afghanistan. We do not think that they will be resolved until later this month or early next month. The name of the company, the private enterprise company, doing the security escapes me for the moment. What was negotiated on-the-ground last year when they did the threat assessments in the middle of the year, and again in November, was who would best be placed to provide security for our staff. The company that has been selected is the same company providing security for the UK officers who are there also in support of the Afghan national police and also the Afghan counternarcotics police.

Senator NETTLE—Could you provide the name of the company that is involved at whatever point that is possible?

Mr Keelty—Yes. I just do not remember it—I am sorry—and I do not have it in my notes.

Senator NETTLE—I might put some other questions on notice about how much contracting the private company for protection will cost and what they will do.

Mr Keelty—Yes. I have the overall cost for the deployment, but that of course includes the cost for the security. If I can take that on notice, I can break that down.

Senator NETTLE—That is fine. And can you provide any more information about what the private company doing security would cover—what sorts of details?

Mr Keelty—I can tell you now that it will be in relation to perimeter security in the workplace where they operate. It will be close personal protection as they move around both Jalalabad and Kabul. Anything in addition to that I will provide on notice, if you like. Generally speaking, they will be under full protection for the entire time that they are there.

Senator NETTLE—I do not know how these kinds of contracts work with a private company, but, because they are employed by the AFP or the contractor, does that make the AFP liable for their actions at all? How does that work?

Mr Keelty—I would have to get legal advice on that but, generally speaking, what we have done here is engaged a company that has been engaged by the other police that are working in Afghanistan helping the Afghan police. In fact, we have become part of the one security envelope to reduce the risk to our own people of bringing in another agency to try to work with the existing agency. In terms of their liability or our liability for their actions, I just need to get some advice on that and get back to you, but I would not imagine that we would be any more liable than in a normal relationship with a security team operating even in our own country.

Senator NETTLE—If you can provide what happens in terms of the liability of their actions—whether it is you or it is a part of that group, as you were describing—it would be appreciated.

Mr Keelty—Yes.

Senator NETTLE—You said before that there are discussions with the Afghan government about protections and immunity for officers. Can you expand any more on that as to what kinds of protections and what kinds of immunity are being negotiated?

Mr Keelty—What we are negotiating for is the use of coalition medivac facilities and the identification of suitable accommodation. The details of that are still being worked through. We want to make sure we can evacuate them in the case of emergency. In relation to the protections and immunities, it is in relation to their activities while they are on the ground in Afghanistan should they become involved in anything that is unforeseen so that they would not then be subject to prosecutions under Afghan law et cetera should they have to defend themselves in situations that are not dissimilar to our other overseas deployments.

Senator NETTLE—Perhaps you could take on notice, when that is resolved, letting us know how that pans out.

Mr Keelty—I might just make the point that these protections and immunities are not dissimilar to what we would have in place with other United Nations deployments, for example, and deployments in places like the Solomon Islands and Papua New Guinea.

Senator NETTLE—I wanted to ask you about the access card. You have been reported as saying that the access card would help with identity crime. I wanted to ask you about that in the context of the debate around whether or not it is an ID card. I wanted to ask you how your comments about the way that the access card could help with identity crime fitted in with that debate.

Mr Keelty—The department is best placed to describe the steps that are being taken to ensure the accuracy of the identity of people who are issued with the proposed card. But the point that I am making is that, since the inception of the AFP, we have been involved in the investigation of social security fraud—all sorts of fraud—committed against the Commonwealth government's revenue by people fraudulently accessing services to which they are not entitled. That is largely to do with the creation of duplicate or false records by persons. Addressing the threshold issue of identity in the issuing of these cards will assist in reducing that fraud.

Another area of growing concern to us is what we call precursor documents and the level of fraud associated with many common precursor documents. A lot of work is being done at the policy level to reduce the opportunities for fraud in those areas. For example, the creation of birth and marriage certificates, and the counterfeiting of credit cards and drivers licences has been a long-term problem for us. A task force that is coordinated by the department is looking at those issues across the jurisdictions and nationally. But going down this path will go a long way to reducing fraud in all its manifestations against the Commonwealth revenue, and that is one of the reasons why the AFP is supporting the introduction of the new card.

Senator NETTLE—Has the AFP done any analysis of the costs and the benefits of the card, or is that being done by the department?

Mr Keelty—No, that is being done by the department, but we certainly have been helping the department or assisting in terms of advice that the AFP might be able to give in relation to fraudulent documents.

Senator NETTLE—I asked some questions about this card of immigration officials on Monday, including what possible interaction they might see their department having with any access card—whether it would be used when people came to use their services or whatever. I want to ask you a similar question: what kind of interaction do you see the AFP having with an access card?

Mr Keelty—Not so much with the card, once the card is issued, but certainly the AFP contributes to a number of working groups. There is a security working group that provides expert advice on all aspects of security related to the access card project, including business and technical requirements. We are part of the legal working group that is working on the legislation in relation to the access card. And we are part of the implementation of the working group which is examining the practical aspects of the rollout of the access card, which obviously will be critical. Only those people who are identified as being entitled to the card receive the card. We were involved in the working groups in the lead-up to the launch of the card, and we will no doubt have an ongoing role, once the card is issued.

Senator NETTLE—Do you know what that ongoing role will be?

Mr Keelty—It would be in relation to the sorts of offences we now investigate, and that is fraudulent use of the card where it affects Commonwealth revenue.

CHAIR—Are there any further questions for the Australian Federal Police?

Mr Keelty—Madam Chair, the answer to the question in relation to the private company—

CHAIR—The name of the contractor?

Mr Keelty—It is a UK company called Armor Group.

CHAIR—Thank you, Commissioner.

Senator LUDWIG—I asked Senator Ellison a question without notice in respect of the profits from the sale of Schapelle Corby's book entitled *My Story* in terms of confiscation of literacy proceeds under the proceeds of crime legislation. I think Senator Ellison's response, effectively, was, 'This matter is being looked at and something is being considered by the DPP and the Australian Federal Police.' I wonder whether the Australian Federal Police could provide an update of where that matter is at.

Mr Keelty—The matter is currently before the court. We have appeared before the Supreme Court, and the Supreme Court has issued a direction to the publishers and the matter is ongoing before the court.

Senator Ellison—The decision, I might add, is not a government decision. It is one taken by the DPP, in consultation with the various agencies which are relevant to that action, such as the AFP in this case. Of course, in other cases it could be another agency; but that is a decision which has been taken by the DPP.

Senator LUDWIG—Yes, Senator Ellison. I think you said that in a supplementary question where you said that this is a matter in which the minister is not involved, and quite rightly so. It is an application that is made by the DPP for the seizure of proceeds of crime; and that is assessed by the AFP, and the DPP for that matter, and it goes on from there. That is a matter that is currently before the courts. For all those reasons, we normally do not follow it until subsequent time has elapsed. So I will not proceed with any questions in that area, other than what you have provided me with.

There is another matter which has been around for a while. It is of a similar type. Obviously we are now quite experienced in this—that you will not volunteer anything that is still an operational matter. It went to a matter that was referred to you in February 2005—or to the Australian Federal Police, as I understand it—regarding the Snowy Mountains Engineering Corporation. It referred to breaches of the Criminal Code and the bribery of foreign officials. Was an investigation into those matters undertaken?

Mr Keelty—The matter relating to the Snowy Mountains Engineering Corporation was referred to us on 17 February 2005. It has now been finalised and no charges have been laid. There was no prima facie case found against the Snowy Mountains Engineering Corporation.

Senator LUDWIG—Another one in a similar vein is that there was a report—and I hasten to add that I do not rely on it—in the *Advertiser* on 9 January 2007 covering the alleged blocking of Saudi Arabian government funding to a mosque in Park Holme in Adelaide. Perhaps I will reverse the question in this instance. Is there anything you can help the

committee with in respect of that, or is that an ongoing matter? It is a question of whether the AFP were involved in an investigation in relation to that matter that was reported.

Mr Keelty—I am advised that that is an ongoing matter, in which case it would not be appropriate to discuss it. If that is not right, I will certainly advise the chair of the committee.

Senator LUDWIG—If it is not, there might be some associated questions, but I will put those on notice if that is the case. I am not having a lot of luck tonight. There was a report about Mr Foster. It appears, at least from what I can gather from the various sources in newspapers, if I can summarise it, that the AFP was allegedly involved in the search of a boat that allegedly assisted Mr Foster's exit from Fiji to Vanuatu. Are you able to confirm whether that was the case or not?

Mr Keelty—Yes, I can confirm that we did assist the Vanuatu police in the search of the vessel and the circumstances surrounding the arrival of the vessel into Vanuatu.

Senator LUDWIG—What are you able to say about it? Can you confirm the name of the vessel?

Mr Keelty—Yes, I can, but I cannot at the moment. We will in a minute. Stay with me, Senator.

Senator LUDWIG—I will.

Mr Keelty—I am sorry. On 14 January 2007, the Vanuatu authorities advised us that they had located the vessel and Mr Foster. The vessel was called *The Retriever I*.

Senator LUDWIG—How many members of the Australian Federal Police were involved in that search?

Mr Keelty—I do not have that in front of me, but we do not have a large number of people in Vanuatu. I imagine it was the liaison officer based in Vanuatu, but I will correct that if that is not right.

Senator LUDWIG—I saw an allegation regarding whether the members of the AFP involved in that search were wearing badges; I presume they were wearing uniforms, badges or identifiable emblems?

Senator Ellison—I think Customs were also involved in that.

Senator LUDWIG—I was going to come to that.

Mr Keelty—The minister is right. The request that we received from the Vanuatu authorities asked for a search of the vessel, and we chose to seek the assistance of the Australian Customs Service, which has experts in the searching of vessels. Given the circumstances under which the vessel arrived in Vanuatu, the captain and members of the crew of the vessel that transported Mr Foster from Fiji to Vanuatu have been charged with both immigration and firearms offences. Two Australians, a man and a woman, were charged with harbouring an illegal immigrant and aiding and abetting an illegal immigrant. Those are the matters that are probably not so public.

Senator LUDWIG—How many times had the AFP searched that particular vessel in the last 12 months?

Mr Keelty—It was the first time for the AFP, but obviously I do not know the full extent of the involvement of other agencies. I know that the Australian Customs Service has had a previous interest in that vessel.

Senator LUDWIG—In respect of those questions, it might be easier to put those on notice to Customs.

Senator Ellison—Yes, I think so. It was previously a Navy minesweeper, based in Fremantle. We will take that on notice.

Senator LUDWIG—In terms of the information that you are able to provide to the committee, it stops at the point where there is evidence of breaches of Vanuatu law. Is there any evidence of a breach of Australian law?

Mr Keelty—No. When I answered that question, it was in relation to the vessel and the arrival of the vessel in Vanuatu.

Senator LUDWIG—And I understood that to be relating to breaches of the Vanuatu—

Mr Keelty—Mr Foster is obviously before the courts in Australia for other offences.

Senator LUDWIG—I was not going to ask about that because that is a matter that is currently before the court, as I understand it. To be clear, we were only talking about the vessel in Vanuatu in respect of the laws that might be applicable to Vanuatu and whether, in respect of that boat and that operation, any Australian laws were breached or charges laid.

Mr Keelty—And the answer is no.

Senator LUDWIG—Regarding the issue of the identification of the members of the AFP, I saw some reports that they were not wearing badges. I am not sure what that actually meant, so I thought I would give you the opportunity of just clarifying that.

Mr Keelty—It would be unusual for them not to properly identify themselves. There is no reason for them not to do that. I do not have anything to discount that. It has just been pointed out to me that there may have been forensic people involved in the search as well, which might have not made the situation clear to some. But certainly there is no reason why our people working with the Vanuatu police would not have properly identified themselves.

Senator LUDWIG—If there is anything there, you can get back to the committee.

Mr Keelty—I will if there is anything there.

Senator LUDWIG—I refer to the question on notice that you answered—Australian Federal Police No. 117—regarding the statement in the AGD question No. 71 from May estimates in relation to voluntary education programs in relation to terrorist legislative provisions:

The Australian Federal Police (AFP) is presently examining available options for offering such programs under these provisions.

The answer you provided was that, in part, the AFP continues to examine how education and counselling may be used within the context of control orders, and it went on to explain that. Some of the programs you have outlined include anger management, low self-esteem, social identity and family separation. Is there any research that proves a link between the crimes that

control orders could be used for, such as terrorism and anger management, low self-esteem or social identity?

Mr Keelty—I am not aware of specific research in that regard. But, if I could take it on notice, there is a body of research that is being done on de-radicalisation and activities that have been in place in some countries and, if that material is publicly available, I am more than happy to share it with the committee. In August last year, we attended the first Asian psychological association conference in Indonesia, which focused on the psychology of terrorism. Reports of the successful moderation of ideological support for terrorist activities and suicide bombings have been recorded, but it is thought that it is too soon to give any accurate measure of its success or failure. We continue to work on developing projects and examining persons imprisoned on terrorism charges with other agencies. In December last year an additional meeting was held with the staff of the University of Indonesia to discuss the development of research projects to determine the possible causes of radicalisation in South-East Asia and the development of a de-radicalisation program. Most of these things are on the public record but, if they are not and provided it is able to be released, I am happy to release information about the progress that has been made in this regard, because it does affect us potentially in how we might structure a request for a control order.

Senator LUDWIG—Is there any statistical research about what percentage of the population of people who could be subject to a control order might be dealing with these symptoms?

Mr Keelty—I am unaware of any, but I will undertake to check that, particularly in like jurisdictions such as the UK, where our legislation is relatively similar. I will take that on notice and provide you with any details.

Senator LUDWIG—The final part of that question is that it strikes me that programs developed overseas—you have indicated countries such as Malaysia, Singapore and Indonesia—are also being examined as part of a broad array of consideration. Aren't there ordinary programs? When I say 'ordinary', I mean programs that are currently available in Australia—anger management, low self-esteem, social identity and family separation. Is there a special class that now applies?

Mr Keelty—I imagine there would be research conducted in relation to the topics you have identified, but it would not necessarily be linked to control orders. If we could take that on notice, we can make available what is available to us. Of course, there is a lot of work being done around de-escalation and trying to diffuse from a crisis management perspective, but not so much—or certainly none to my knowledge—from a control audit perspective. But I am happy to share with you what is available to us.

Senator LUDWIG—I think I might have said, 'the percentage of the population who might be subject to control orders', but I suspect it is more generally, really, in terms of what you might come across. I will leave that with you to have a look at. It seems to me that ordinary programs could be used, but I will await your advice, if it is available. If it is not then I guess I will continue to wonder.

Mr Keelty—If it is not what I understand your question to be then I will let you know. I think I understand your question. My concern is that, whilst there might be a body of work

available or a body of research done on aspects of what you are asking, the linkage to what we are now trying to deal with may not be there because of the lack of data and the lack of cases to research.

CHAIR—If you need to clarify that with the committee, Commissioner, then please just contact the secretariat or have your office contact the secretariat.

Mr Keelty—Thank you.

Senator LUDWIG—In the Solomon Islands, as I understand it, the Fijian component is no longer part of Operation RAMSI. Is that right?

Mr Keelty—I think the Fiji police are still there. If I am wrong, I will correct that immediately. I think it is different in relation to the military.

Senator LUDWIG—I would have to ask the Department of Defence in respect of the military component then?

Mr Keelty—That is correct.

Senator LUDWIG—Is your understanding of the policing component of RAMSI that those numbers are still there fulfilling their obligations and doing their work? How many would there be—that is, the Fiji component of RAMSI?

Mr Keelty—I have figures as of 31 October which may or may not satisfy you, but there were eight police from Fiji and, indeed, on the numbers in front of me, there were one military officer and two civilians as part of RAMSI.

Senator LUDWIG—Is there a short version of where we are up to with the situation in the Solomon Islands in terms of the Australian Federal Police and Operation RAMSI—that is, the current state of play in terms of the operation, its mission, objectives, the Australian component and an overview of the status of the Australian Federal Police cooperation with the Solomon Islands?

Mr Keelty—The situation in relation to the AFP who were deployed to the Solomons—outside of Shane Castles, the former Police Commissioner of the Royal Solomon Islands Police Force—remains the same. They are still carrying out their duties as part of RAMSI. We still have 229 personnel deployed to RAMSI in the Solomon Islands. As I say, outside of the position of former Commissioner Castles, their deployment remains the same as it has been in the past.

Senator LUDWIG—Turning to Fiji and the status of AFP cooperation with—I guess you would say in terms of the current regime—an overthrown government, is there a relationship in existence? What happens in those circumstances? I think there was previously cooperation between the Australian Federal Police—correct me if I am wrong—the local Fijian police and, more broadly, policing support.

Mr Keelty—The AFP liaison officer working with the Fiji police is still in position. Also a transnational crime centre in Suva—the Pacific Transnational Crime Coordination Centre—which is sponsored by the AFP, remains in place.

CHAIR—And the Pacific Regional Policing Initiative?

Mr Keelty—That remains in place as well. The work that we had been doing previously continues. Obviously, the major loss is the loss of the commissioner from the Fiji police.

Senator LUDWIG—At the last estimates, I asked about Julian Moti. Are you able to provide us an update on where that is at?

Mr Keelty—Basically, it has not changed from the last time that we appeared. The situation remains the same in the sense that there is an arrest warrant for Mr Moti. A request has been made of the Solomon Islands through the appropriate channels to see whether we can extradite Mr Moti, which is a matter for the department. There has been no response to the request for extradition.

Senator LUDWIG—That is from the foreign government?

Mr Cornall—No, from the department. The request was sent to the Solomon Islands on 15 December 2006, and it is now a question for them to respond to that request from Australia.

Senator LUDWIG—So we have extraditable arrangements in place between Australia and—

Senator Ellison—We have actually extradited somebody from the Solomons before.

Senator LUDWIG—Yes. So I can leave that and follow it up next time. We are waiting now for word from the Solomon Islands government?

Mr Cornall—Yes.

Senator LUDWIG—There has been no other communication in respect of that request?

Mr Cornall—Not that I am aware, no.

Senator LUDWIG—The department of immigration were talking about a task force looking into war criminals, and it then finalised. Was the Australian Federal Police involved in that task force, or do matters get referred to the AFP to investigate?

Mr Keelty—I am advised that rather than a task force it is an interdepartmental committee involving the department of immigration and us.

Senator LUDWIG—I stand to be corrected; I thought that was the language the immigration department had used.

Mr Keelty—It is an interdepartmental committee, chaired by the department of immigration. It has been established to oversee and resolve issues arising from application processes where allegations of suspicious war crimes are raised. Fourteen matters have currently been referred to the AFP for investigation. These were referred as a result of information provided by applicants during their refugee application process that gave rise to suspicion of war crimes offences.

Senator LUDWIG—That departmental committee is still on foot that?

Mr Keelty—Yes, it is.

Senator LUDWIG—Is there a time line for it to exist? Do you call it an operation or just a departmental committee?

Mr Keelty—It is a continuing departmental committee and, as I said, a number of referrals have been made to the AFP that are ongoing.

Senator LUDWIG—Could you just explain your role on the committee? Is it an agency to which the matters are referred to for investigation, or do you actively assist the department of immigration to look at their databases or search their databases?

Mr Keelty—It is a combination of both. Assessments are being made by the IDC on matters that arise during the application process by refugees. Then those matters that require following up by the AFP are referred from the IDC to the AFP, so it is a combination of both. Basically, it is an assessment process to look at the merits of the issues that have been raised, and we are to seek clarification or corroboration of the issues that arise.

Senator CROSSIN—I want to go to the events at Mutitjulu community and the raid that occurred on some of the homes in that community last year. Can you confirm for us whether your unit was involved in the raid on an individual at Mutitjulu late last year?

Mr Keelty—I certainly do not recall that we were involved in that, but I would have thought I would have recalled it had we been involved. I am aware of the investigation which was carried out by, I think, the Northern Territory Police. I do not think we were involved but, if I am wrong, I will quickly correct the record.

Mr Cornall—Just to add to the answer about Mr Moti, Ms Hawkins has drawn my attention to two other pieces of information. The first is that a press release dated 21 December 2006 was issued by the Government Communications Unit of the Department of Prime Minister and Cabinet in the Solomon Islands saying that the Acting Attorney-General will be travelling to Australia to discuss with her Australian counterpart and the Commonwealth Director of Public Prosecutions Australia's request for extradition to determine whether the request is genuine and not politically motivated. But there was no date for that visit suggested. Subsequently, the Acting Attorney-General met with the Australian Embassy in Honiara on 22 January 2007 and discussed the matter further, but nothing concrete came out of that discussion.

Mr Keelty—Senator Crossin, I do have some clarification on a separate issue—I was thinking about Mutitjulu. This is in relation to the Office of Indigenous Policy Coordination. On 21 July 2006, investigation officers executed Crimes Act 1914 search warrants on the home address of a suspect. On 24 July 2006, a further search warrant was executed on the suspect's workstation at the Office of Indigenous Policy Coordination. On 7 November 2006, two search warrants were executed on the Indigenous community of Mutitjulu in the Northern Territory, with the assistance of the Office of Indigenous Policy Coordination investigations officers and the Northern Territory Police. These search warrants were directed towards the recipient of the unlawful disclosed information. That matter is still being investigated.

Senator CROSSIN—Thank you, Commissioner. I think you are perhaps referring to my next lot of questions, not my first lot of questions. I might clarify that because there were actually two people involved. I was referring to the matter that was later in the year.

CHAIR—We will try to do that by a process of questions on notice.

Senator CROSSIN—Perhaps if I clarify that, and I will put some questions on notice.

CHAIR—Thank you.

Mr Keelty—Can I quickly point out that that brief in respect of those matters has been submitted to the Commonwealth Director of Public Prosecutions on 17 January. I am happy to answer your questions, but I just point out the sensitivity and the fact that it is before the DPP.

CHAIR—Thank you. The committee notes that. It being just after 11 o'clock, the committee will complete its proceedings for this evening. Again, I would like to apologise to those agencies which were expecting to appear this evening and have not been reached. It is, as I said earlier, not the way I prefer to operate the committee processes, and we will take steps to address those matters. Minister, I thank you for your assistance to the committee, also Mr Cornall, you and your officers, our Hansard sound and vision people, my colleagues and the secretariat. I declare this meeting of the Senate Legal and Constitutional Affairs Committee closed.

Committee adjourned at 11.02 pm