



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Consideration of Additional Estimates

MONDAY, 19 FEBRUARY 2001

CANBERRA

BY AUTHORITY OF THE SENATE

SENATE
LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
Monday, 19 February 2001

Members: Senator Payne (*Chair*), Senators Coonan, Cooney, Greig, Mason and McKiernan

Senators in attendance: Senators Carr, Bolkus, Cooney, Herron, Ludwig, McKiernan, Payne and West

Committee met at 9.03 a.m.

ATTORNEY-GENERAL'S PORTFOLIO

Consideration resumed from 22 November 2000.

In Attendance

Senator Ellison, Minister for Justice and Customs

Attorney-General's Department

Mr Robert Cornall, Secretary

Mr Geoff Dabb, Executive Adviser

Mr Bill Campbell, Assistant Secretary, Office of International Law

Mr Ian Govey, General Manager, Civil Justice and Legal Services

Mr Ian Carnell, General Manager, Criminal Justice and Security Justice Services

Mr Geoff Hine, General Manager, Corporate Services

Dr Diane Heriot, Assistant Secretary, Crime Prevention Branch

Mr Peter LeRoy, General Manager, Information and Knowledge Services

Ms Kathy Leigh, First Assistant Secretary, Civil Justice Division

Ms Maggie Jackson, First Assistant Secretary, Criminal Justice Division

Mr Jeremy Wainwright, First Assistant Secretary, Office of Legislative Drafting

Ms Philippa Lynch, Acting Assistant Secretary, Office of Legal Service Coordination

Ms Philippa Horner, First Assistant Secretary, Native Title Division

Ms Joan Sheedy, Acting First Secretary, Information and Security Law Division

Mr Stephen Bourke, Acting Assistant Secretary, Family Law and Legal Assistance Division

Mr Ed Tyrie, Director, Protective Security Coordination Centre

Mr Martin Studdert, Director, Australian Protective Service

Mr John Mobbs, Chief Executive Officer, CrimTrac

Family Court of Australia

Mr Richard Foster, Chief Executive Officer

Ms Jenny Cooke, Manager, Client Services

Mr Andrew Phelan, General Manager, Corporate Services

Mr Bruce Frankland, Chief Finance Officer

Federal Court of Australia

Mr Warwick Soden, Registrar

Mr Alan Dawson, Senior Deputy Registrar

Mr Rod Tout, Manager, Court Resources

Mr Philip Williams, Director, Human Resources and Finance

Australian Government Solicitor

Ms Rayne de Gruchy, Chief Executive Officer

Mr David Riggs, Chief Finance Officer

Australian Security Intelligence Organisation

Mr Dennis Richardson, Director-General

Office of Film and Literature Classification

Mr Des Clark, Director

Mr Simon Webb, Deputy Director

Mr Paul Tenison, Business Manager

Office of the Director of Public Prosecutions

Mr Damian Bugg, Director

Mr John Thornton, Deputy Director, Legal and Practice Management

Mr Grahame Delaney, Principal Adviser Commercial Prosecutions and Policy

Ms Stela Walker, Deputy Director, Corporate Management

Office of the Privacy Commissioner

Mr Malcolm Crompton, Privacy Commissioner

Mr Timothy Pilgrim, Deputy Privacy Commissioner

Ms Robyn Ephgrave, Finance and Services Manager

Australian Federal Police

Mr Mick Palmer, Commissioner

Mr Mick Keelty, General Manager, National Operations

Mr Simon Overland, Chief Operating Officer

Mr Brian Cooney, Chief Finance Officer

Federal Magistrates Service

Mr Peter May, Chief Executive Officer

Australian Customs Service

Mr Lionel Woodward, Chief Executive Officer

Mr John Jeffery, Deputy Chief Executive Officer

Mr Phil Burns, National Director Commercial

Ms Jenny Peachey, National Director Office of Business Systems

Rear Admiral Russ Shalders, Director-General Coastwatch

Mr Alistair Cochrane, Chief Financial Officer

Ms Marion Grant, Acting National Director Border

Ms Sue Pitman, National Manager Trade Measures

Ms Philomena Bisshop, National Manager Planning and International

CHAIR—Good morning, ladies and gentlemen. I declare open this public meeting of the Senate Legal and Constitutional Legislation Committee. On 30 November 1999, the Senate referred to the committee the particulars of proposed expenditure for the year ending 30 June 2001 for the Attorney-General's and Immigration and Multicultural Affairs portfolios. The committee will consider the portfolios in the order in which they appear on the circulated agenda, beginning after any general questions with interstate agencies. The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the Senate dated 23 August 1990. At the conclusion of this hearing, a date will be set for receipt of answers to questions taken on notice and additional information. I have been requested to remind committee members that the Finance and Public

Administration Legislation Committee is continuing to monitor the format and contents of the portfolio budget statements. If you have any comments you wish to make about these documents, please place them on the public record during these estimates hearings or direct them at a later stage to that committee. I also remind everyone present that mobile phones should be turned off while in the hearing.

I welcome, in particular, Senator the Hon. Chris Ellison, Minister for Justice and Customs and Minister representing the Attorney-General, and officers of the Attorney-General's Department and associated agencies. When officers are called upon to answer a question for the first time, I would ask them to state their full name, the capacity in which they appear, and to speak clearly and directly into the microphones which will assist the Hansard reporters who are recording the proceedings. Officers will not be required to answer questions relating to policy or the advice they have given in the formulation of policy.

Minister, I welcome you to this meeting of the Senate Legal and Constitutional Legislation Committee in your new portfolio capacity. We look forward to a very good working relationship with you. Do you or Mr Cornall wish to make an opening statement?

Senator Ellison—Good morning, Madam Chair. It is good to be here, as always. There is no opening statement by either the secretary or me.

[9.05 a.m.]

Attorney-General's Department

CHAIR—We will begin with general questions to members of the departmental executive. Which of the distinguished galaxy of opposition senators that we have here today would like to begin?

Senator McKIERNAN—There are more to come. Senator Cooney's plane is slightly delayed and he will be here a little later. If we have finished the general questions at that time, he may ask at an appropriate moment to be able to go back and explore some comments. Possibly, the general questions will not have finished by the time of his arrival.

I wish to start with questions about the timeliness of answers to questions on notice. That has been bothering me over a period of time and I have certainly particularly addressed with Senator Ellison's predecessor, Senator Vanstone, in these hearings, and over time we have been given assurances that the matter would be corrected. On notice at the last estimates meeting in November I asked for comparative figures as to what has been occurring with responses to questions from these hearings over the period from the financial year 1996-97. Much to my surprise, instead of what I and the committee have generally considered to be an improving situation, we find that the situation is actually going from bad to worse. Let me illustrate that for the audience, who cannot see the responses to the questions that we have got and note the timeliness of the responses. In 1996-97, 313 questions were put on notice; 141 were answered within a 30-day period. In 1997-98, 244 questions were put on notice and 72 were responded to within 30 days. In 1998-99, 155 were put on notice and 43 were responded to within the time frame. In 1999-2000, 292 questions were put on notice and nil—zero—were replied to within the 30-day period. I would appreciate a response, Mr Cornall.

Mr Cornall—We took your comments very seriously at the last Senate estimates committee meeting and we worked very hard over the period following that meeting to provide you with answers as quickly as possible, given that there are a number of stages in the process of clearing answers for Senate committees and that there was the intervention of the Christmas period. My understanding of the questions from the last Senate estimates hearing

was that there were 164 questions asked. Twenty-eight were responded to—to the committee—by 20 December, which was 17 per cent; 32 answers were provided by 3 January, which is 19.5 per cent; and the remainder of the 164 answers were provided by 31 January 2001. I appreciate that is not within the time frame of this committee but, given all of the stages that had to be followed to clear the answers, the scope of some of the questions and the intervention of the Christmas period, I think that was a considerable improvement on previous responses.

Senator McKIERNAN—Do you think it was satisfactory?

Mr Cornall—I would like to answer all questions within the prescribed time frame but, as you appreciate, not every aspect of the process is within the control of the department.

Senator McKIERNAN—It has been my understanding—and I think that most people around the table would agree—that the matter of responding to questions really was improving. Perhaps the figures that you have just given me in regard to the November estimates would be an indication of that improvement. Sometimes I would accept that some questions cannot be responded to immediately and have to be taken on notice, but you do run a large department and you do employ a large number of people. Why is it not possible to respond to the questions within the time frames that are set by the parliament? If you are not able to do that, wouldn't it be an act of decency to provide the committee with a reason why the questions cannot be responded to within the periods of time?

Mr Cornall—We can do that, Senator, if you think that will advance the situation. We have endeavoured on this occasion to provide answers immediately they became available and progressively to the committee as they were cleared for provision to the committee. We could advise that answers had not been cleared or had not been put together because, as you would appreciate, not all of the questions that are asked are immediately able to be answered by the department but may well involve obtaining information from other sources.

Senator McKIERNAN—Is the blockage with the department, with the Attorney's office or with the relevant minister—the Minister for Justice in this case? Where is the blockage?

Mr Cornall—The blockage can occur at any point of the process, Senator.

Senator McKIERNAN—Would it be possible then to provide us—let us just take the most recent set of figures and perhaps also today's—with details of when the responses were sent to the Attorney's office for clearing or, if it was the case, the then Minister for Justice, and when the response was forwarded on to the committee so the committee can have an indication and idea of where the difficulty is? You appreciate that there is a difficulty.

Mr Cornall—I appreciate the difficulty that you are raising. My recollection is that Minister Vanstone made some comments about this at the last hearing when the question was raised that addressed the issue of where the blockage might be. My recollection is that her comments were to the effect that the blockage was not with the department.

Senator McKIERNAN—Could you provide us with a table of when responses were provided to the Attorney or to the Minister for Justice and when they have been provided back to the committee?

Mr Cornall—I will take that matter up with the minister and with the Attorney-General, Senator.

Senator BOLKUS—We have sought that information before and had it provided. So I do not know why you would take that up with the Attorney. It is within your province to provide that.

Mr Cornall—Senator, I will note those comments.

Senator BOLKUS—You might note them but would you respond to them positively?

Mr Cornall—If that is correct, Senator. I am not aware that that is correct. I assume that if you tell me it is correct it is and, if that is the case, then we will provide them.

Senator McKIERNAN—I am happy to leave that with regard to the estimates committee for now. I received a document last night when I arrived in Canberra, the ‘Register of Senate Committee Reports, 2000 Supplement’, listing reports of Senate committees that are provided to the parliament and when the government has responded to those reports. I note that quite a large number of reports were presented to the parliament during the year 2000 and on only one occasion has a response been deemed to be necessary. There is an understanding that committee reports will be responded to within three months. The [Classification \(Publications, Films and Computer Games\) Amendment Bill \(No. 2\) 2000](#) report is the only one that has been responded to by the department, or by the ministers. Why is that?

Mr Cornall—I have not seen the report you are referring to, Senator, but once again it would be a matter of having the whole process followed through of preparing responses and having them cleared by the government for tabling in parliament.

Senator McKIERNAN—Do I take it from that that it is the government that is holding it up? Just to give an indication of the seriousness of what I am talking about, the report on the [Human Rights \(Mandatory Sentencing of Juvenile Offenders\) Bill 1999](#), which was presented to the parliament on 13 March, has not been responded to yet. That is some 11 months now. Is there a particular reason why there has been no response to that?

Mr Cornall—I am unable to answer that question without consulting with other officers, Senator.

Senator McKIERNAN—‘Humanity diminished: the crime of genocide’ an inquiry into the Anti-Genocide Bill 1999, presented on 29 June, has had no response, some eight months later. There have been very recent experiences which have given me cause to say that the department is treating the committees, and this committee in particular, with contempt. I am referring to a submission that we received in a separate bill, the detail of which I do not want to go into here. When you put that together with the responses to estimates committees, to the general committees, to the legislation committees and to the references committees, it really does provide evidence that the department, the government and the ministers are treating the committees with contempt.

Mr Cornall—Senator, I do not think that is the case at all. I am aware of the comments that you made in Melbourne last Tuesday. I have read those very carefully. I was very concerned to read them. I think there are a number of things that could be said about that particular issue to put it in context, but this may not be the appropriate place to do that. But I would like the opportunity to do that with you at some time because I think there are some significant issues which underpin those concerns and create tensions between departments that provide legal advice to government and Senate inquiries that ask about similar issues. As I think you indicated, the responses to questions on notice this time were prepared as quickly as the department was able to prepare them. They were delivered to the secretariat of this

committee as quickly as they were available. I think there was a significant improvement in the department's performance following your comments at the last estimates hearing.

Senator McKIERNAN—I do not want to labour the question about legal advice in the provision of responses to questions we did not ask and whether or not we as a committee were seeking legal advice. This is probably not, as you said, the forum to debate that. It is a matter that probably should be debated at some time in a formal sense with the committee rather than with the me as an individual because it is something that is of concern to the committee—and, indeed, to all committees of the parliament, I suggest.

Mr Cornall—It is also of concern to this department because it creates the situation that existed in Melbourne last week, which I regard as quite unsatisfactory. But I do not know that the department is in a position address all of the issues you raise. There needs to be some consideration of a better approach to the issue of advice for committees that does not put the department in an impossible position and addresses your real concerns.

Senator McKIERNAN—I do not want to put the department in an impossible position, but you are charged under your charter with the management and the accountability. Part of that accountability process comes through the parliamentary committees. You may not like, the department may not like or the ministers may not like parliamentary committees, but they are there and they are charged with certain responsibilities to test the department on accountability. It is in your charter. You are provided with resources in order to do it. If you are not spending the resources in fulfilling your accountability obligations, where are you spending those resources? Your last annual report talks about reports by parliamentary committees and mentions two committees of the parliament. Yet I can go through this particular register and Senate committees do not rate a mention in your annual report at all.

Mr Cornall—Senator, it is not so much an issue of resources; it is an issue of competing obligations that we need to resolve in terms of legal advice or providing advice to committees in matters where the department may have provided advice to government.

Senator McKIERNAN—Does the department as a department not have those obligations, or do they have to be at all times cleared through the relevant minister's office?

Mr Cornall—I am not sure I understand the question. I am saying that the department has competing obligations in the area of the provision of legal advice which have to be balanced in terms of the responses that the department can provide to this committee.

Senator McKIERNAN—I am not sure I understand what you have just said.

Mr Cornall—It seems to me that in responding to detailed questions about legislation and the legal impact of legislation the department has to weigh up a number of factors. Firstly, there is obviously its obligation to this committee. But in looking at its obligation to this committee I have had regard to the *Government guidelines for official witnesses before parliamentary committees and related matters*, published in November 1989, which says in paragraph 2.15, subparagraph (c) that submissions by departments 'should not identify considerations leading to government decisions or possible decisions in areas of any sensitivity'. It seems to me that referring to legal advice or even commenting generally on sensitive legal issues could have the effect of disclosing such considerations.

Secondly, I understand that this situation is consistent with what I have been told is the established practice that governments do not disclose legal advice provided to the government for the purpose of developing government policy or making specific government decisions

unless the government decides in a particular case to do so. There is also the issue of a lawyer's professional obligation not to disclose details of legal advice given to clients.

Next there is the Attorney-General's view of the department's obligations, which was set out in his letter to the President of the Senate on 17 November 2000 in relation to the Australian Government Solicitor where he said that the principal function of the AGS is to provide legal services to the Commonwealth, its ministers and agencies. He is concerned that the AGS would be placed in an untenable position if he were required to provide comments or advice to a parliamentary committee on issues such as the effect or effectiveness of particular Commonwealth legislation. It seems to me that similar concerns apply to the department.

Subject to those reservations, the department is able and willing to advise the committee on any issue that comes before it. But these problems do remain. It seems to me that some form of budgetary allocation for the committee to employ a legally qualified research officer or to obtain legal advice from time to time on specific issues, in the nature of counsel assisting a commission of inquiry, may be one way to resolve the problem.

Senator McKIERNAN—Thank you for the latter comment. I guess Senator Ellison will support a submission from the committee to the President of the Senate for those additional resources. To be fair, I think the general thrust of your comments just now were to the issue that was addressed last week in Melbourne. I am happy enough to debate it here, but it may not be the most appropriate forum in which to do so. I suggest that your remarks just now were addressing that situation rather than the more general situation I was raising with you — that is, there are committees of the parliament and part of the obligations and charter of those committees is to test the accountability of departments such as the Attorney-General's department. We use forums such as this in order to do so. If you have to clear all of your responses with your relevant ministers, that process is going to break down. We cannot call the Attorney-General to sit in front of us and address questions to him. How will we fulfil our functions and our obligations to test the accountability of the department? You are provided with resources in your budgetary allocations to assist the parliament and the parliamentary committees.

Mr Cornall—I think we have done that. The only issue that you have raised this morning in relation to our response to the last Senate estimates questions was the time limits issue. They were all fully responded to.

Senator McKIERNAN—I have now gone beyond that and have raised all of these parliamentary committees. You can have a copy of the document that I received last night. Were we to go through the records, we would probably find a whole number of other reports of parliamentary committees to which the Attorney should be responding as the minister responsible where that has not been done. I cannot say with certainty that that has not been done but I do know, in regard to this document, that there is a response to one report which is at least nine months outstanding. No reason or excuse is provided to the committee as to why there has been no response. This is probably an indication of the contempt with which the Attorney's department and probably the Attorney himself holds committees of the parliament.

Mr Cornall—Senator, I do not accept that. This department does not hold this committee in contempt. I would very strongly reject that suggestion.

Senator McKIERNAN—Possibly actions speak louder than words. We are not getting responses to reports. We are not getting—except for on the last occasion—timely responses to our questions. We are not getting submissions which would aid the committee. When we ask for assistance and interpretation of matters, we are told we cannot ask for legal advice. It has

become increasingly difficult for us—and for me personally to fulfil my role and function in the parliament with the lack of assistance that we are getting from a department such as yours. You are provided with resources to do it. If it is not you doing it, is it happening under instructions from the Attorney?

Mr Cornall—Again, going back to last Tuesday, my understanding was that, at the end of the oral hearing, there was a view that many of the issues that were of concern to the committee had been satisfactorily answered by the department and that some issues had been taken on notice, which had been responded to by Friday.

Senator McKIERNAN—We have agreed that we would not seek to have a spill-over on these rounds of estimates, that we would finish up proceedings by tomorrow night, so with that in mind—

CHAIR—Including DIMA.

Senator McKIERNAN—Including DIMA. With that in mind, Chair, I will leave it at that with just one further question on the estimates. When you respond to the committee's questions and seek to clear them with the office of the Attorney or the relevant minister—if it is the minister for justice—do you wait until you have got all the responses to questions or do you provide them as the responses to the questions come to you and then provide them in groups of two, four, six, whatever, to the Attorney's office.

Mr Cornall—As the process that we followed from the last estimates indicates, we have dealt with them as quickly as we could, and responses to questions were provided to the secretariat as soon as they were available, which explains why they were progressively made available to this committee.

Senator McKIERNAN—I noted, Senator Ellison, that probably your first public interview after being appointed as minister for justice concerned the matter of Mr Skase. Without seeking to prejudice any attempts to get Mr Skase back to Australia, can you provide a general update to the committee of the current state of play with respect to attempts to extradite Mr Skase from Spain?

Senator Ellison—I think it is a matter of public record that Mr Skase appealed a deportation order by Spanish authorities. That appeal failed. That was before a court just before Christmas last year. The matter now remains with the Spanish authorities. It is a question for them as to whether or when Mr Skase would be deported and really it would be inappropriate for Australia to predetermine that or prejudge that in any way. Needless to say, this is a matter that is being monitored closely, via both the department and Foreign Affairs. I can say that every effort is being made to keep a watch on this matter for developments. That is really as far as I can take it. Suffice it to say that the government has still maintained its resolve that Mr Skase should be brought back to Australia to be dealt with according to legal process.

Senator McKIERNAN—Are you aware of any further legal avenues that Mr Skase might have available to him to avoid his deportation from Spain?

Senator Ellison—I understand there is a possible avenue in relation to the Constitutional Court. From the advice I have, that action would not necessarily impede any deportation, but I stress that any question of deportation is for the Spanish authorities.

Senator McKIERNAN—Do you know what stage the process is up to?

Senator Ellison—I will ask Mr Carnell to give you that detail.

Mr Carnell—Mr Skase appealed to the Spanish Constitutional Court on 25 January 2001. It is a not dissimilar process to our High Court, where they will make a decision on whether they accept the appeal for hearing or not. There appears to be no fixed period in which they need make that decision. We are awaiting advice on that decision, on whether the Constitutional Court accepts the appeal or not.

Senator McKIERNAN—Did Australia have an observer at those proceedings—the 25 January proceedings?

Ms Jackson—The DFAT mission in Madrid has very closely monitored all of the developments in the Skase case. I am not sure whether they were actually in court when judgment was handed down. I can confirm that with Foreign Affairs and get back to you.

Senator McKIERNAN—Why would you not know now? It is a very significant hearing. It would have been an action, one would have thought, that you would have known about prior to it happening. I am surprised that you do not have that information at your fingertips—as to whether or not we had an Australian representative in the court at the time.

Ms Jackson—The department was not aware before the decision was handed down that it was being handed down on that day. Whether our mission in Madrid was aware of that I can check for you.

Senator Ellison—We can take that on notice and get back to you shortly.

Senator McKIERNAN—Minister, a few moments ago you said you were doing everything possible to get Mr Skase back here. We hear of a very significant legal proceedings happening in Spain, we have the Attorney-General's Department before us, and you cannot even tell us if there was somebody from Australia monitoring proceedings. On one hand you say we are doing everything, yet we are not even monitoring, it would appear. It is worse than that: we do not even know if we are monitoring.

Senator Ellison—That is not the question. The fact is that there is another department involved, the Department of Foreign Affairs and Trade, and they are looking at this as well. We can make inquiries of them and get back to you shortly as to what happened with the physical presence or otherwise of any observer. Suffice it to say that the knowledge of the court proceedings is something we have—and of what is being done.

Senator McKIERNAN—Are we any closer to seeing Mr Skase return to Australia? If so, how?

Senator Ellison—The fact that his appeal failed last December is a significant factor. I think it would be dangerous to go any further than that, because the question is with the Spanish authorities and is one for them. It would be inappropriate for me to prejudge what the Spanish authorities might or might not do.

Senator McKIERNAN—I do not have the transcript of your interview on television, though certainly we could find that, but it appeared to me at the time—and it is my memory

of that interview—that you were actually giving encouragement that we were getting closer to Mr Skase’s return to Australia.

Senator Ellison—I have just answered that. I have said that his appeal against deportation failed. I would say that that is a significant development in relation to his presence or otherwise in Spain—his continued presence. What I did say in that interview, and I say it today, is that it would be inappropriate for me to pre-empt what Spanish authorities might be doing or might do.

Senator McKIERNAN—What examination has taken place as to what countries Mr Skase might be able to move to in the event that he was forced to depart from Spain, and what arrangements are we entering into with those possible countries?

Ms Jackson—Mr Skase is a citizen on Dominica and therefore his deportation to Dominica would seem to be a logical step, but clearly it is a matter for Spain to negotiate with any recipient country to arrange for Mr Skase’s deportation.

Senator McKIERNAN—Are there many other countries that Mr Skase could voluntarily move to or could be removed to forcibly by Spain.

Ms Jackson—That is a very difficult question for us to answer. It is always a question for the internal authorities of the country to which Mr Skase wishes to go as to whether or not they accept him, either as a deportee or as a voluntary traveller.

Senator McKIERNAN—Does Australia have extradition arrangements with Dominica?

Ms Jackson—Yes, we do.

Senator LUDWIG—I am curious to know where we are with re Wakim. I have been following that issue along for some time now. This is just a general question to the Attorney-General’s Department as to whether or not it is now completed—that is, have you managed to co-opt all the other states into a situation that now can assist in ensuring that matters of Corporations Law are dealt with in a uniform and consistent manner across all states?

Mr Cornall—Mr Govey can answer that question for you.

Mr Govey—The work that is going on at the moment relates to the implications of the decision in re Wakim and also the subsequent High Court decision in Hughes. The most recent development on that was that the Prime Minister met with the premiers of Victoria and New South Wales on 21 December last year together with the attorneys-general of those jurisdictions and also Mr Hockey, the Minister for Financial Services and Regulation. There was an agreement reached at that meeting between the premiers that a referral of the state power would go ahead, and there were some other aspects of that agreement that were designed to protect the position of the states and also to ensure that there was a framework for a proper and effective re-enactment of the Corporations Law as a Commonwealth law. The Prime Minister subsequently wrote to the premiers of the other jurisdictions seeking their agreement to coming on board to the same agreement, and as things stand we are waiting to hear back from the other states.

Senator LUDWIG—Is any preliminary work being done in relation to what the scheme would look like with the referral? Or are you waiting for the states to—

Mr Govey—We have a Commonwealth bill which has been prepared and which is ready to be introduced which would re-enact the Corporations Law. We also have the state referral bill, which has been prepared in consultation with the states, particularly New South Wales.

Senator LUDWIG—Are the outstanding states' attorneys-general familiar with that at this point in time?

Mr Govey—They are.

Senator LUDWIG—You might like to take this on notice then. I am interested in some costing as to how you intend to implement it should the other states come on board. I know that is a little bit advanced. But if they do not come on board then is there any secondary view of what you might then adopt?

Mr Govey—It is certainly the hope of ministers that they will all come on board. Certainly if one or two states did not that would be a very serious matter for the effective uniform operation of the Corporations Law. We also aware that the business community have made their views known to the various states as well as to us that they regard both fixing this problem and doing so on a uniform basis as absolutely critical.

Senator BOLKUS—What is the current attitude of the South Australian government in respect of the Commonwealth proposal?

Mr Govey—We are still waiting for the last word from South Australia, in the same way that we are from the other states.

Senator BOLKUS—But they have expressed pretty deep-seated opposition to the Commonwealth proposal to date.

Mr Govey—They had at an earlier point expressed concerns about it, but subsequently they, along with all the other states, agreed to come on board. There was then some further negotiation where all the states expressed concerns at the state of negotiation. It was following that sort of breakdown in discussions that the meeting on 21 December took place. So in that sense South Australia is in a position no different from the other states from whom we are waiting to hear about their latest attitude.

Senator BOLKUS—What are the outstanding points of negotiation with the states?

Mr Govey—I think the best way to describe that is to say that there were some discussions about the power that was to be conferred on the Commonwealth to amend the Corporations Law, which from the Commonwealth perspective was regarded as essential to ensure flexibility to adjust to ongoing needs. There was a view on the part of some states that they wanted to be able to terminate this power as a way of ensuring that the Commonwealth did not act beyond the intended scope. That was not regarded as appropriate by the Commonwealth. I think that was the most serious point of difference.

Senator BOLKUS—Which states have that view?

Mr Govey—Again it is very hard to tell with the situation right now because that difficulty was overcome in the discussions with New South Wales and Victoria. I think it is a new ball game now in the light of that discussion and the various assurances that have been given, including the preparation of an objects clause to go into the referral bill to seek to assure the states that their powers would not be misused by the Commonwealth. As I say, I think it is now a new situation and we are waiting to hear what the attitude of the states is.

Senator BOLKUS—That is the fundamental issue. You have told us that some states wanted this power to terminate. I am trying to find out from you which states they were and

which states still have not signed up to the Commonwealth proposal on the basis of that objection.

Mr Govey—Only Victoria and New South Wales have expressed agreement. I think it is true to say that at the last meeting we had where all the states were present none of them were prepared to sign up at that point to the Commonwealth proposal. So they were all expressing difficulties with the Commonwealth's position.

Senator BOLKUS—But you are saying that New South Wales and Victoria have since accepted the Commonwealth's position?

Mr Govey—It was effectively the Commonwealth's position, although at that discussion in Sydney there were some additional safeguards provided to the states—in particular, an agreement to this objects clause I was referring to.

Senator BOLKUS—So you have two states on board. When was that meeting in Sydney?

Mr Govey—It was on 21 December.

Senator BOLKUS—When is the next meeting planned?

Mr Govey—The next meeting of the Standing Committee of Attorneys-General is scheduled for around 22 March.

Senator BOLKUS—You are waiting for that meeting to get an outcome?

Mr Govey—No, we are not. We are hoping that the states will respond to the correspondence from the Prime Minister that was sent to the premiers of all states.

Senator BOLKUS—When was that sent? You can take that question on notice if you like.

Mr Govey—I think I will have to take it on notice, but it was around the second half of January.

Senator BOLKUS—So far two states have responded to it?

Mr Govey—No, the response that I am referring to from New South Wales and Victoria was in the form of a joint communique with the Prime Minister immediately after the meeting on 21 December. Obviously we can provide that if it would help.

Senator BOLKUS—Thank you.

Senator McKIERNAN—Perhaps I should revisit that area of responses before I go on to ask some questions about the issue of rephasing in the supplementary estimates. I had last night received a letter from the Attorney dealing with the matter of responses which related to the report of the Senate Legal and Constitutional References Committee inquiry into national principles for the fair handling of personal information, including the Privacy Amendment Bill 1998. The report was presented to the parliament on 25 March 1999. The Attorney replied to me by a letter dated 14 February saying that he was grateful for the contribution of the committee on the issue of private sector privacy. I should also put that on the record. Apart from my critical comments earlier, I do not want to develop that area here today either. On page 28 of the Portfolio Additional Estimates Statements, under 'Rephasings', why is there a rephasing of financial assistance of over \$1 million?

Mr Hine—That rephasing is more to do with the timing of expenditure. In last year's budget we had expected an underspend of \$1.24 million. At the end of the financial year that did not occur. Therefore, we have had to transfer money that would have been spent last year across to this financial year. I will repeat that. We had expected to have an underspend last year of \$1.24 million. That did not occur. Therefore, we have had to rephrase that money from

this year as part of the additional estimates process. In other words, when we did the budget this year, back in May, we thought that at 30 June we would have an underspend of \$1.24 million. That did not occur. Therefore, we have had to increase the additional estimates allocation for this year.

Senator McKIERNAN—I am sorry, Mr Hine, I am never at my best on Monday mornings—particularly at a quarter to seven body time. You talk about increases, yet as I read—

Mr Hine—Most of those are decreases. So money that we had originally thought we would spend last year on financial assistance, Community Legal Services Program and legal aid—

Mr Carnell—Perhaps I could leap in. One of those items there is of interest to me: the Standing Advisory Committee on Commonwealth/State Cooperation for Protection against Violence. I understand that there was expenditure that was originally intended for this financial year but that we found we needed to spend it last financial year. That was on a system for secure communications. That is my non-accountant's explanation.

Mr Hine—That is correct. When we did the budget we increased the expenditure last year and therefore we needed to reduce the allocation this year. At the end of the two-year period, the correct figure was appropriated.

Senator McKIERNAN—I still have problems.

Mr Hine—Money that we originally thought we would spend this year—

Senator McKIERNAN—No. Decreases in expenditure are usually put in in brackets. When additional funds have been allocated they go in without brackets around them. None of the figures—\$1.018 million, \$0.013 million, \$0.644 million and so on down that page—has brackets around them, despite your saying:

The rephasing adjustments (mostly decreases) at Additional Estimates reflect actual activity expenditure outcomes as follows ...

It appears to me that what is being described here are increases, but it tells me that they are in fact decreases. Also, you are telling me, Mr Cornall, that they are decreases because the money has already been spent.

Mr Hine—Those figures relate to the \$1,668 million that is at the top of the page for rephasings adjustments. So the negative figure, if you move to the top of the page, under outcome 1, is \$1,668 million, and that is the sum of these figures down the bottom.

Senator McKIERNAN—You were talking of a figure of \$1.24 million. Where is that, Mr Hine?

Mr Hine—That is just on some working papers we have here. With respect to financial assistance grants or legal aid, we had originally expected an underspend of \$1.24 million last year. In actual fact, we spent \$1.018 million of that. That is why that figure has now been brought forward as part of the additional estimates—or adjusted as part of the additional estimates process.

Senator McKIERNAN—I want to deal with this point by point. Financial assistance, \$1.018 million: that is not a saving, that is money that has already been expended during the course of financial year 1999-2000?

Mr Hine—That is correct.

Senator McKIERNAN—Similarly with the community legal services program of \$644,000. With this program, where was the money spent?

Mr Hine—I do not have the detail of that program; I will need to defer to someone else. But, as you indicated with respect to the figures, it relates just to the timing of it. Mr Bourke will be able to answer the question on the particular projects.

Mr Bourke—On the Community Legal Services Program, I would need to obtain precise details because there would be a number of items where that expenditure would have been made. I would have to take that on notice but would be able to respond to the committee shortly.

Senator McKIERNAN—When you say ‘shortly’, would that be later today?

Mr Bourke—Certainly later today, yes.

Senator McKIERNAN—Because there are other questions relating to the community legal centres that I will be addressing, particularly what is happening in South Australia. Maybe we could put that part to one side for now and come back to it at a later time. It is not an inconsequential amount of money.

Legal aid: a sum of almost half a million dollars in rephasing. Perhaps we could have some detail of what that \$490,000 is about.

Mr Bourke—I will provide that detail at the same time.

Senator McKIERNAN—Okay. With the financial assistance, what detail can be supplied on the \$1 million-plus?

Mr Bourke—It is most likely financial assistance in relation to native title claims. The Commonwealth provides direct financial assistance to respondents to native title claims. They are not channelled through legal aid commissions as with our other grants of aid. That sum of expenditure would most likely relate to that program. I can confirm that later in the day for you.

Senator McKIERNAN—Again I am going to ask questions on the family relationship support organisations at the Melbourne law courts. Maybe it is as well just to leave all of them to one side and deal with all of them in a block when you get the information.

Mr Bourke—Certainly, Senator.

CHAIR—I think that would be the most appropriate thing to do.

Senator McKIERNAN—Why is it called rephasing? It is a technical term.

Mr Hine—I am not sure about the exact origins of the word. It has come out of part of the timing of the budget process. My basic understanding of rephasing would be money we had originally expected to spend in one financial year which, with the change of circumstances, timing of approvals or whatever, might then get spent in another financial year, so it is just being rephased. It is a term that has been applied by the Department of Finance and Administration with respect to changes in timing of expenditure between financial years. There are no changes in the approval, there are no changes in the total government commitment to a particular program. It is just that, when we did the budget back in November, we thought this is what we would spend to 30 June 2000. We actually spent more or less due to grant approvals or whatever it might be—a whole raft of circumstances not necessarily under control. Therefore the money was either brought forward or deferred until the current financial year. Those changes get reflected in the additional estimates process, not

in the budget process, because they will impact during the course of this financial year. In terms of the exact origins of the terminology, I was not party to those discussions.

Senator McKIERNAN—Is it a new terminology?

Mr Hine—I think this is the first time we have used it, in this financial year. It is part of the additional estimates process, which is when it has come forward.

Senator McKIERNAN—My confusion can be excused, then.

Mr Hine—I do not think there is any confusion, Senator, it is just part of the change process.

Senator McKIERNAN—My confusion, I said.

Senator BOLKUS—In the circumstance where you have \$1 million that was to be spent in one year but is spent in the subsequent year, how does that appear in the first year's budget statements and how does it appear in the second?

Mr Hine—It would appear in the first year as if it was going to be spent in that financial year because, when we prepare the budget, that is the best information that we have available. Come 30 June when we do the annual financial statements, if the money has not been spent, it gets picked up through this rephasing. The adjustment, as we indicated, is on page 28. The net result of all those rephasings is \$1,668 million. It then gets picked up in the subsequent financial year. The first opportunity we have to make those changes is the additional estimates process.

Senator BOLKUS—In that first financial year, the actual expenditure is reduced by that million dollars?

Mr Hine—That is correct, or increased, depending on whatever the circumstances might be. It is just a timing issue.

Senator BOLKUS—Whilst the chair is engaged in conversation, there are some questions to be placed on notice on staff levels, vacant office space and appointments. I think it is best to circulate these.

Senator McKIERNAN—Senator Cooney had some general questions.

CHAIR—I will ask him to put them on notice if we can, Senator McKiernan.

Senator McKIERNAN—He is obviously not here yet, but perhaps when we come back to those questions on rephasing we might give the senator an opportunity then, if indeed he has any questions.

Senator BOLKUS—I have just put some questions on notice in respect of office space and staffing levels.

[9.57 a.m.]

Office of the Director of Public Prosecutions

Senator LUDWIG—You may recall that last time Senator McKiernan asked the DPP, in respect of briefings of the Attorney-General's Department, about the decision not to prosecute the then Minister for Employment, Workplace Relations and Small Business over the so-called telecard affair. I particularly want to take you to your response in written form to question 127—a question by Senator McKiernan. To go through at least some of it again, did you or did you not discuss the matter with the Attorney-General's staff or his department prior to advising the AFP of the outcome of your consideration of the matter—not only with the

Attorney-General's staff but perhaps also with any other staff of a ministerial office other than the Attorney-General's Department? I want to broaden it to include others.

Mr Bugg—The answer is no.

Senator LUDWIG—When did you formally decide not to prosecute either Mr Reith or his son? Was it on Thursday, 12 October or before? When I say 'prosecute', you may like to explain how you came to that decision—whether it is a formal decision not to prosecute or a decision not to pursue the matter any further.

Mr Bugg—As far as the investigation into the matter is concerned, that is an issue for the AFP. On the material which had been gathered by the AFP and provided to my office, the decision that there was not any evidence which disclosed an offence committed either by Mr Reith or his son was made on Friday, 6 October when a draft opinion was in the process of being settled. The final of that draft—or advising—was completed on Monday, 9 October and delivered to the AFP on Tuesday, 10 October. No other agency, minister or other person was spoken to about the matter by my office or informed about the matter in any form at all prior to that notification going to the AFP on 10 October.

Senator LUDWIG—Was that draft opinion settled within your office?

Mr Bugg—Yes.

Senator LUDWIG—What time was it on Friday? Was it on Friday afternoon that you made your decision based on the draft opinion?

Mr Bugg—The final decision was made on the Monday. The draft was being prepared on the Friday. I saw it at about six minutes past five. I say that because it was shortly after 5 o'clock; six minutes might be wrong.

Senator LUDWIG—In the response to question 127, you say that on Thursday, 12 October the 'Director and the First Deputy Director spoke to a senior officer of the Attorney-General's Department by telephone'. Was that a conference call or were there two separate calls?

Mr Bugg—Two separate calls.

Senator LUDWIG—Were there only two—one to the first deputy director and one to the director? Do you recall which one was first, or was it a series of calls between them at that time?

Mr Bugg—No. It is testing my memory as to which was first. They were separate calls; they were not conference calls. The first deputy director was in fact on leave from the office on that day. There were very few of us in the office who knew about the matter. He was one and, of course, I was another. I was in Sydney. He actually came back into the office from leave to conduct that conversation. I do not know whether that was before or after mine; I think it was after my conversation. As I say, I was in Sydney, but I was in a fairly complicated conference involving a very technical matter with senior counsel and about five lawyers from my office, including Mr Thornton, who is here with me today. I was called out of that conference to take the call that you are referring to, so my mind was seriously on other matters at the time.

Senator LUDWIG—I do not suppose I could ask you what you were doing with five lawyers in Sydney.

Mr Bugg—We were sitting around a conference table talking about a complicated matter. I would be struggling to repeat the conversation now; it confused me at the time. They were all from my office except the senior counsel we had retained to advise us.

Senator LUDWIG—Who was footing that bill? No, we might go on. Who was the senior officer that you referred to in your response?

Mr Bugg—Perhaps I could take that on advice from the minister. Yes, it was Mr Dabb, who is seated just over from my right.

Senator LUDWIG—Do you recall who initiated the telephone conversation?

Mr Bugg—Yes. Mr Dabb telephoned me. As I say, I think I came from the conference.

Senator LUDWIG—Was it Mr Dabb's decision or yours? Mr Dabb initiated the telephone conversation. What was the import of that? Was he seeking advice from you?

Mr Bugg—No. It is worth noting how the matter had progressed. On the Monday the decision was made on the material which had been provided and the formal advice settled. On Tuesday, the 10th the *Canberra Times* ran the issue on its front page. I am not too sure, because I have said previously I was not in Canberra that week, but either late on the Tuesday afternoon but certainly on the Wednesday it was announced that my office had considered the matter and there would be no prosecution of either Mr Reith or his son.

As a result of that, the matter moved to a consideration at some stage later that week by the Solicitor-General, and I am not privy to the timing of that. But certainly the discussion with Mr Dabb involved a fairly detailed outline by me as to my office's involvement in the matter and the basis on which the decision had been made, and there were some discussion, I know, about access to a copy of my advice. I directed him then to the AFP, because it was my view that my advice was really the property of the AFP under a strict legal professional privilege basis. He was inquiring, obviously, when the brief detail of my decision was announced—and I do not know by whom—as to my involvement in the matter, and I was giving him that detail.

Senator LUDWIG—Did you tell Mr Dabb what was in the draft?

Mr Bugg—I did not tell him what was in the draft. There was a formal document by then which had gone to the AFP. But what I did was give him an outline of the matter and my office's involvement in it and also the basis upon which the decision had been made. So, in a sense, without going into the detail of what was in the opinion, it was more expansive than the opinion, because the advice was to someone who had conducted the investigation. It was making reference to the content of the investigations whereas my discussions with Mr Dabb were to someone who, from my recall, knew very little about it.

Senator LUDWIG—And this was on Monday, the 10th?

Mr Bugg—No, that was on Thursday, the 12th I was speaking to Mr Dabb. Monday was the 9th, I think.

Senator LUDWIG—And, Mr Dabb, did you speak to anyone in respect of the matter? You initiated the call to seek information. Did someone ask you to do that, or were you doing that off your own bat? Where did the information flow back to from there?

Mr Dabb—I want to be careful here that we do not seem to be having to draw answers out like teeth from hens, or something like that; it is all a fairly normal process we went through. From time to time we discuss with the Director of Public Prosecutions various cases that have come up and issues like the public perception of positions that are being taken and whether

reasons might be given and so on. On this occasion I had had a conversation with Nick Grono of the staff of the Attorney-General. That office normally regards the DPP as acting completely independently. On this occasion Mr Grono emphasised that they wanted to be particularly careful that they were not in direct communication with the office of the DPP and that the DPP's independence was seen to be being fully observed. A question was raised with me as to whether there was going to be any sort of public statement about the reasons for the DPP's decision.

Senator LUDWIG—Was that raised by Mr Nick Grono?

Mr Dabb—Yes, by Mr Grono. That crops up from time to time. I said I would speak to the DPP and see what their intentions were about making a statement about the reasons for their decision in this case. When I spoke to Mr Bugg he quickly realised, as he said, that I knew very little about the facts of the matter, so he said words to the effect, 'I will just fill you in by way of background on the case,' which he did. After that, as I recall, I discussed whether there would be a statement of reasons with Mr Bugg, and I think it said he would look into whether it would be appropriate to say anything. I might say that the Director of Public Prosecutions always approaches with extreme care the matter of making a statement of reasons for prosecuting decisions, particularly about a matter that might still be under investigation. I know that they are very careful about doing it. But in this case, as you would recall, there had been quite a bit of publicity. Where I left it was I think Mr Bugg was going to look at whether it would be appropriate to make a statement and what it might state, and I relayed that to Mr Grono.

Senator LUDWIG—So let me get this right: Mr Nick Grono asked you whether or not you would inquire whether or not the Director of Public Prosecutions was going to make a statement of reasons, and you then contacted Mr Damian Bugg to see whether or not Mr Bugg was going to make a statement of reasons. Was that the direction it was going?

Mr Dabb—That is correct.

Senator LUDWIG—Was that then put to you, Mr Bugg—that is, was there or wasn't there going to be a statement of reasons? Do you recall?

Mr Bugg—I have a slightly different recall of the conversation. I am sorry about this. As I said, I had come out of a very difficult conference, but I thought part of what Mr Dabb was inquiring about was the need for the Solicitor-General to consider the matter and give advice about civil liability. The question also involved access to the material which my office had had in its consideration of the matter. That material had gone back to the AFP with the letter of advice, but I think I said to Mr Dabb that I was uncertain about where that material would now be. The advice, as I said earlier, concerns the question of the waiver of legal professional privilege by the AFP. Certainly I gave consideration to making a statement. I just do not recall discussing that with Mr Dabb. If I did, it must have been a very brief comment, if at all, or in response to a question by him to me as to whether I proposed to say anything.

Senator LUDWIG—I guess it might have been a subtle question too.

Mr Bugg—At that stage, my office in Canberra was being besieged by inquiries from the media. One of the exits from the conference in Sydney was to respond to some questions from my secretary in Canberra relating to that as well.

Senator LUDWIG—Does that help you, Mr Dabb?

Mr Dabb—Yes. Up to a point I have a fairly clear recollection of this, but beyond that I get a bit vague because of the time and the number of conversations that were going on. But there

was certainly a conversation with Mr Bugg about the proposed advice from the Solicitor-General and getting access to certain material for the purpose of that. My recollection is that that took place during a subsequent conversation. So there were two conversations.

Senator LUDWIG—You might forgive the phraseology I use, but is it normal for you, Mr Dabb, to contact Mr Bugg about these matters or is it for Mr Nick Grono to contact you and for you to then be the go-between? Or is it perhaps normal—and perhaps you might want to come in on this, Mr Bugg—for Nick Grono to contact you in relation to these matters or other matters that may have arisen during the year? I am not too sure how it works. If you could help me with that, that would be good. Perhaps you could answer first, Mr Dabb.

Mr Dabb—This sort of conversation would only take place in relation to major cases that are in the public domain, particularly where there might be speculation about what is involved in the case and where issues about the role of the Director of Public Prosecutions need to be made clear. Of course we do have the situation with the Commonwealth Director of Public Prosecutions where, under Commonwealth arrangements, the DPP is still subject to directions in operational matters by the Attorney-General and the Attorney-General indeed retains the power to bring prosecutions.

In my experience, normally attorneys-general are quite keen to stand back from that function and leave it to the Director of Public Prosecutions—certainly to take day-to-day decisions on all prosecution matters—but they do have this residual responsibility for the prosecution process. So the department, in supporting the Attorney-General, sits in between and is sometimes a go-between. That is not unusual. It might arise because the Director of Public Prosecutions will ring me or someone in the department and say, ‘Look, there is this case going on that could receive publicity and perhaps the Attorney-General needs to know about it or he might want to know about it.’ So it is not an unusual kind of conversation at all.

Senator LUDWIG—And in relation to you, Mr Bugg? I also have a follow-up question.

Mr Bugg—I think I can give you a good illustration of the sort of exchange that rarely happens but, when it does, is a reasonable indication of the type of situation where it occurs. On the Friday of that week, I stopped off in Melbourne to have a meeting with solicitors and counsel representing the Grollo defendants who had submissions to make to me about the trial process. I reported the next week to the Attorney-General’s office—not department—about those conversations because in late August of last year those solicitors had made a detailed submission to the Attorney-General that the prosecution should not proceed and his office had asked for a response to that submission from my office. So we were actually in direct communication on that particular matter and I, as a matter of courtesy, informed him of the conference I had had and that the trial was going to continue at that stage. So that is a rarity, because it involved a significant trial where the other party had actually contacted the Attorney direct and, therefore, the Attorney was required to seek some information and clarification from us. It is a rare situation where my office would have direct discussions with the Attorney or his office about a current matter, and particularly a matter such as this where it was only an investigation on which we had given advice. No charges had been laid, and it therefore had not come into the office as a file which we were progressing, on an issue which we felt the Attorney’s office should be notified about.

Senator LUDWIG—Did Mr Dabb ask you for the copy advice or what you intended to make in relation to the media statement or the statement of reasons that were subsequently issued?

Mr Bugg—There was discussion about the material which had been used, its whereabouts and the basis of the advice. One of the questions asked was how to access that material so that the Solicitor-General had a factual basis on which to embark upon his task. In that discussion, I recall saying to Mr Dabb, ‘I don’t believe the advice is available because it is the property of the AFP.’ He agreed with that and said that he would address his request, if he could get it, to the AFP for access to that. I think at the time he made contact or I asked my office to have the first deputy director make contact—as I said, he was not at the office; he was home on leave—he then came into the office and I think spoke to Mr Dabb about just where the file was and things like that.

Mr Dabb—Yes.

Mr Bugg—I know that is in general terms one of the aspects of that discussion, but I do not recall Mr Dabb asking me directly for a copy of, or access to, the advice. I just recall making that comment in the general tenor of the discussion I had with him.

Senator LUDWIG—Mr Dabb, was that a question that the Attorney-General’s chief of staff, Nick Grono, asked you to pursue, and then did you pursue it with the AFP?

Mr Dabb—As I recall, there were the two separate subjects of inquiry going on, which were the subject of conversations with the DPP or DPP’s office. One concerned the matter of whether there was going to be a short statement of reasons for the decision. That was one matter I discussed. The second matter related to the obtaining of an opinion from the Solicitor-General, and I certainly did go first to the DPP to seek some material and I was referred to the AFP. That is perfectly correct.

Senator LUDWIG—Did you subsequently speak to the AFP or someone from there about it?

Mr Dabb—Yes, I did.

Senator LUDWIG—Do you recall who that was?

Mr Dabb—To be perfectly honest, I cannot recall who it was.

Senator LUDWIG—Did you obtain it?

Mr Dabb—Yes, I did.

Senator LUDWIG—How was that obtained?

Mr Dabb—The statements that had been obtained by the AFP were sent to me in a folder, with a formal covering letter by the AFP.

Senator LUDWIG—Was that something Mr Nick Grono was seeking?

Mr Dabb—Only in general terms. That was simply to provide enough material to the Solicitor-General to enable the Solicitor-General to give the advice.

Senator LUDWIG—Did you pass that folder on to Mr Nick Grono?

Mr Dabb—No, I did not. I made it available to the Solicitor General. As far as I am aware, Mr Grono would never have had access to it.

Senator LUDWIG—Did you contact Mr Grono and tell him what the contents of the folder were?

Mr Dabb—It was a very large folder. I really cannot recall whether I had a conversation with Mr Grono about that particular material. The main thing was to get it to the Solicitor-General.

Senator LUDWIG—You did or you did not. Do you recall whether you then rang Mr Grono and said, ‘Look, this is what’s in the folder and this is the material’?

Mr Dabb—I probably did, but I can’t recall a specific conversation. I certainly would not have told him any of the detail of the material.

Senator LUDWIG—Mr Bugg, you stated that at a later time, on Thursday, 12 October, you also spoke to a member of the Attorney-General’s staff by telephone from Sydney. Who was that?

Mr Bugg—That was Mr Grono.

Senator LUDWIG—Who initiated that phone call?

Mr Bugg—I did.

Senator LUDWIG—What was the purpose of that?

Mr Bugg—To inform him that I was going to make a statement. I discussed the matter in brief detail with him. I do not recall the full content of the discussion with Mr Dabb earlier in the day about a press statement, but I know one of the reasons—and it was a fairly significant reason—was that there was an intense amount of media interest in the matter and my office was receiving calls about every five minutes, I suspect—some of them were quite aggressive—about some statement of reasons and why I had reached the conclusion that there should be no prosecution. I indicated to the staff member I spoke to from Sydney that I was giving serious consideration to making some statement, merely to give some public information about what had happened, what the reasons were and also, quite frankly, to take some of the pressure off my office in Canberra. Before that went out I felt it was necessary to let the Attorney-General know that I was going to make some statement about it.

Senator LUDWIG—Had you already prepared the statement at that time?

Mr Bugg—I was preparing it. In fact, I can tell you almost precisely what time it was. I think it was about five to one, because Mr Thornton and I, both visiting the Sydney office, were going downstairs to have a sandwich. He came along and I said, ‘I can’t come with you. I’ve got to finish this statement.’ I was handwriting it at that time. It was at about that time that I had the conversation with Mr Grono.

Senator LUDWIG—That was not the question. Had you finalised the handwritten statement at the time you spoke to Nick Grono?

Mr Bugg—I thought I said that I was writing it at the time I spoke to him.

Senator LUDWIG—Did you read out to him the statement?

Mr Bugg—No, I did not. I gave him a brief outline of what I was saying, that it would be a simple expression of the reasons for not going on. I really don’t have any greater recall than that. It was merely a telephone call to inform him—to let him know—so he could tell the Attorney that the DPP was going to make some public statement about the matter.

Senator LUDWIG—Did he make any suggestions or comments as to how the draft should look?

Mr Bugg—Not at all, no.

Senator LUDWIG—In response to question on notice No. 127, you advised that person that you would send the statement to Parliament House for distribution to the media and then later on in your answer you stated that the statement was sent to the DPP head office in

Canberra for typing and release. You wrote it by hand, drafted it and then facsimiled it to your head office for typing and a letterhead for distribution.

Mr Bugg—We are not bristling with resources, but the secretary for the deputy in Sydney was at lunch. I faxed it myself to head office, with the request that it be typed and that the first deputy have a look at it, and we then discussed it. The steps that I have mentioned there followed.

Senator LUDWIG—Why did it go to Parliament House in Canberra for distribution? Was it a request by Mr Nick Grono so that he could assist in the distribution of it? That was not your normal line of communication for distribution of media releases, was it?

Mr Bugg—There are not too many media releases, but in relation to one that I had released about two or three months before there is a boxing system that we were told about as a result of my unfamiliarity with that which said, ‘You have got to prepare so many copies to send it to Parliament House so they can be boxed into the pigeonholes or whatever for the media.’ So that is what was done on this occasion. As I say, I had followed another course previously and offended a few people who did not receive copies.

Senator LUDWIG—Did you change your mind and then let it go through your head office? Was it also put out through head office, or was the only place it was distributed through Parliament House?

Mr Bugg—I am sure a copy would have been available at head office and, if someone rang from the media and said, ‘I didn’t get mine from the parliamentary box,’ we would have faxed a copy to whoever from the media requested a copy. I live in Hobart and the head office of the DPP is in Canberra, and I operate through that head office. I either work from it when I am here or work through it if I am in Sydney, as I was on this day, or in Melbourne on the way home the next day.

Senator LUDWIG—Perhaps we can clarify something I asked you a bit earlier. How many occasions do you recall during the calendar year 2000 had you been in direct contact with Mr Grono?

Mr Bugg—I am trying to be accurate—

Senator LUDWIG—I am happy for you to take it on notice. I would like to be able to follow up on some of them, though.

Mr Bugg—It would not reach double figures.

Senator LUDWIG—Do you recall what they were about? Were they about the telecard affair?

Mr Bugg—Once I spoke to him about the telecard affair, and you have got the details of that. The next week I spoke to him to arrange for a contact with the Attorney-General to briefly let him know that the Grollo trial was proceeding. He was not always the person I would contact; it depends on which officer within his office had spoken to me. In saying it is less than double figures—I ran into him in the airport once—I think about six or seven times in the year I spoke to him about matters that were current that required some communication to the Attorney.

Senator LUDWIG—On the one we have been talking about in relation to the telecard affair—you spoke to him at the time you were writing, I think you said. Were they dot points? How do you then fax it to the head office? Do you fax off the completed media statement you

are intending to make, or the dot points that are prepared and then someone from your office contacts you and cleans it up?

Mr Bugg—Not at all. It was written in longhand. I was halfway through it or something. I am sorry, I am not treating your question lightly, but I really cannot recall. It was not something I had completed, and he had no input to it at all.

Senator LUDWIG—Going back to question No. 127, you concluded the task and forwarded the draft to the DPP head office in Canberra by facsimile for typing, as we have said. After discussing the contents of the statement with the first deputy director, the senior officer in the Attorney-General's Department was advised that the director proposed to make a statement about the matter. What the director would say seems to be the import of what you are saying in the penultimate paragraph in question No. 127. Do I take it from that that you had spoken again to the senior departmental officer after completing the media statement?

Mr Bugg—I did not, no, but, as I said you, Peter Walsh, my first deputy director, was on leave. He came into the office in the morning and I know he came back in the afternoon to look at the draft. We talked about it on the telephone and finalised it and I was not privy to what then occurred, although I do know for the preparation of this response that he did then speak to Mr Dabb. As to the precise content of that conversation, I cannot assist you.

Senator LUDWIG—So Mr Dabb then subsequently contacted Mr Walsh to find out what the—

Mr Dabb—No, no.

Senator LUDWIG—Mr Walsh subsequently contacted Mr Dabb to inform him of what the final media statement would be. Is that right? Mr Dabb, would you like to tell us about that as well—to round off the area, I suspect?

Mr Dabb—This all took place in a fairly short space of time. I think there was some concern to get the statement out reasonably quickly. As I recall, I spoke to Mr Walsh. My recollection is that he sent me a proposed draft statement and then later he sent me a final statement.

Senator LUDWIG—And did they differ?

Mr Dabb—Yes, they did.

Senator LUDWIG—In what respect? Do you recall?

Mr Dabb—This had nothing to do with the Attorney or the Attorney's office. There was a change made. I think the investigators had some concern about whether a particular sentence was included or not.

Senator LUDWIG—Do you recall what that sentence was?

Mr Bugg—I can assist there.

Senator LUDWIG—Perhaps you can include this in your answer. When you then sent off your facsimile with the draft statement, it obviously came back to you in a typed format. Was it different? Did Mr Peter Walsh have input in changing it? And then, after the conversation with Mr Walsh, was that changed from then going to Mr Dabb and then coming back again—after that conversation? You can see where I am going. We can take it time by time.

Mr Bugg—The simple and very brief alteration to the statement—and I discussed this with Mr Walsh—was a concern as to whether or not a final view should be expressed over the entire matter or whether there was likely, as a result of the extent of publicity it received, to be

an opportunity to obtain further information. In fact, it was the case that the police had taken the matter further, I think about a week and a half later. We had discussions—and I do not want to go into the detail of that—about what the police might or might not be able to obtain in addition to that which they had obtained in the investigation, which had taken the best part of four months, I guess. From our experience, that was late May when they first spoke to us about it until late September when they sent us the brief. One of our concerns—and I will not go into any detail about it—was that further evidence or material might be forthcoming and it would be inappropriate to express a final view about the totality of the matter if that material were to be forthcoming and we had to reopen the matter. So there was a slight alteration made to what I had drafted to accommodate that.

Senator LUDWIG—Has any subsequent material been made available?

Mr Bugg—Yes, and a statement was made about that.

Senator LUDWIG—Is that the subsequent media statement that was made?

Mr Bugg—The product of the police's subsequent investigation was made available to the office on 1 December, and on 8 December we replied with further advice to the police. About a week after a media statement was made as to the outcome of that ongoing investigation.

Senator LUDWIG—Mr Dabb, when you received the media statement—the draft one, I suspect it was at that point—did you then contact Mr Nick Grono and read it out to him?

Mr Dabb—I believe I sent him a copy of it.

Senator LUDWIG—Was that by facsimile?

Mr Dabb—I believe so.

Senator LUDWIG—When was that? Do you recall?

Mr Dabb—It would have been not long after I received it. I cannot recall the exact time.

Senator LUDWIG—And that was when?

Mr Dabb—I am afraid I cannot be specific about dates or times.

Senator LUDWIG—And did you suggest any changes to that document?

Mr Dabb—No.

Senator LUDWIG—Did Mr Grono suggest any changes to be made to the document?

Mr Dabb—No.

Senator McKIERNAN—Where were you physically located when you were making those telephone calls?

Mr Dabb—In the Robert Garran offices.

Senator McKIERNAN—And Mr Grono?

Mr Dabb—Mr Grono would have been in Parliament House, I believe.

Senator McKIERNAN—You believe.

Mr Dabb—If I faxed it to him I could certainly verify that. Had I emailed it to him, which I do not think I would have done, I would not have been certain where he was. But my recollection is that he was in Parliament House at the time. I think I faxed it, but I could easily check that. It is simple.

Senator McKIERNAN—Why are you so uncertain about the dates and times, particularly about the date? What causes confusion about the date to you?

Mr Dabb—All this took place in a very short space of time. I did not bring my notes or any records to this particular hearing as to what happened. I could easily check them if anything turns on it. But I am concerned that if I say a date or a time and it turns out to be wrong that would not be helpful to anyone.

Senator McKIERNAN—No, but it seems to me that we are pretty firm because, with the DPP's response to the question, we are talking about Thursday, 12 October. That is the theme of the questions. Have you got some doubt that it occurred on Thursday, 12 October?

Mr Dabb—It all took place over a day or two. There is no question about that.

Senator McKIERNAN—Over a day or two? I thought we were talking more about an afternoon.

Mr Dabb—I cannot be certain that this series of exchanges did not go over more than one day. I just cannot be certain. But if you would like more precision I think I could probably find some records that would enable me to lay it out for you more precisely.

Senator McKIERNAN—The only reason I ask the question is that you had some doubt. I do not think Mr Bugg has any doubts whatsoever that these events were occurring on the afternoon of Thursday, 12 October 2000. So I am just wondering why there is a doubt in your mind. I understand your explanation. If you do, after looking at your notes, see any reason to come back to the committee and say that things were happening on a different day, obviously we will welcome that and we will prepare ourselves to follow through on them at the next round of estimates.

Mr Dabb—My recollection of the conversations about the media release insofar as we took part in them is that I think it did extend over two days.

Senator COONEY—The issue of press releases, I suppose, raises the whole issue of how much publicity you want to give—'publicity' is probably the right word—to trials and what have you. There is the issue of whether you should let cameras into courts and just how far the whole thing ought to go. I do not know whether the minister or the Attorney have any thoughts about this, but I recently heard a discussion between, I think it was, a judge and an ex-judge who had some dispute as to whether or not you ought to have cameras in court during witness statements and when witnesses were giving evidence. Everybody seemed to agree that it was all right when you were hearing appeals, without any witnesses there. This sort of thing is comparable in some way to whether you should give press releases or not. If you do not give them, you are in trouble. If you do give them, you are in trouble. Have you any thoughts, Minister, about what we ought to do? If the DPP gives a statement they will say, 'Why did you give that statement?' If he does not give a statement, they will say, 'Why don't you give a statement?' It becomes a policy issue in the end, I think.

Senator Ellison—There is the independence of the DPP to be borne in mind. As has been stated by the DPP, you look at each case on its own peculiar circumstances. Obviously, if there is a case which has had some publicity, there may be some need to put out a statement and, in other cases, not so much of a demand. But from the government's point of view that sort of decision rests with the DPP. It is hard to formulate a general policy other than that. Court proceedings are quite a different story, I guess.

Senator COONEY—But it is the same sort of thing, though, isn't it, with the administration of justice?

Senator Ellison—I think you might have a problem with determining which case is televised and which isn't. I mean, if it is an O. J. Simpson trial, is it in the public interest that it achieve more notoriety or publicity than, say, any other case?

Senator BOLKUS—The same with parliamentary committees, Minister.

Senator Ellison—Well, we do not regard them as such, as trials—

Senator BOLKUS—Don't you?

Senator LUDWIG—Just ordeals!

Senator COONEY—Does the DPP have a publicity officer?

Mr Bugg—One of the reasons we have taken up the practice of sending the few press releases we make to the parliamentary press system is purely as a matter of convenience. The press officer we have who answers media inquiries is in fact a secretary to three senior officers in my head office here and has a number of duties. So it is a part-time function and she was overwhelmed by what was going on with this matter.

There is a three-stage process in terms of publicity about matters. The first thing is you have a police investigation. If the police charge, the matter goes into the public domain, and there are some very tight constraints about what can and can't be said once a matter is in the court process. My office may become involved during or at the end of the investigative stage—that is, before charging or after charging and when the matter is in the lead-up court process or then in the trial process proper. If my office decides to not prosecute a matter that is before the court, then clearly, if it is a significant matter, some public statement should be made about it, because if we have taken it that far, and it is already in the public forum, some statement should be made about it.

If it is pre-trial and you discontinue but someone has been charged, then there may be very good reasons, again, for making a public statement. If it is at the investigative stage, which is what the situation was here—no-one had been charged—the police have unique powers to question people and those powers involve a fairly significant invasion of people's privacy. They also involve the rather technical proposition that they say to people, 'You don't have to say anything but anything you do say may be recorded and given in evidence.' That is a very limited assurance to someone to say, 'It may be given in evidence and, if we do not go ahead with the prosecution, we will publicise everything you have said.' So there is a really delicate step that you have to consider when making a statement, any form of statement, about not proceeding with the prosecution when a prosecution has not been commenced.

That was really the problem here: it involved a national public figure, it involved a significant public debate through the media, because of the release the details of it on Tuesday morning in the *Canberra Times*, and it had reached a point where I felt something should be said about it to at least indicate that there had been a consideration of it—that there had been a reasoned consideration of it and, briefly, what those reasons were. I think there was a public perception that, because the *Canberra Times* published details of it on Tuesday morning and within 24 hours it was said I had examined the matter and there would be no prosecution, it was a sort of once over lightly issue but, in fact, as you can see from those answers, my office had been involved and was aware of the matter for nearly five months before the announcement was made.

Senator LUDWIG—Was it the *Canberra Times* that prompted you to release the media statement in relation to it or was it Mr Dabb's telephone conversation with you that prompted you?

Mr Bugg—Neither. It was a matter that I was considering. If you recall the timing—the publication of the details of the issue on Tuesday morning, then within 24 hours of publication the fact that I had looked at the matter and decided there would be no prosecution that immediately shifted focus from wherever to my office. So it was a serious level of inundation in the environment that I have just explained to you.

I was giving consideration to making a statement about it on the Thursday morning when I was in Sydney, and that is precisely what I did. As I say, at the moment I do not have any independent recall of discussing it with Mr Dabb, but I bow to his memory on that if that was said. But my main concern at that stage was the fairly significant issue I had to go to Sydney to deal with, and I was conscious of the fact that I was out of a room where we had a number of people.

Senator LUDWIG—I will put it in the reverse. You are suggesting to the committee that you had come to the conclusion that a statement should be made, reasons should be released and a media statement made prior to talking to Mr Dabb and some time on that Thursday morning. In a nutshell, is that what you are telling the committee?

Mr Bugg—No. I was giving serious consideration to making some sort of statement. I had not made a final determination about that. But I came out of the meeting in Sydney three times and on the third occasion I stayed out, and that is when I started to draft the press release. Probably what turned it for me was the middle exit from the meeting when I spoke to the person at my head office who was dealing with some fairly insistent and, I might say, aggressive questions from the media.

Senator COONEY—I suppose the real task you had was to write an accurate press release. That would have been your main concern.

Mr Bugg—The main concern was not to go into any detail of what was in the statements to any extent other than to give a brief summary, and that was something I was later criticised for. But I had this real concern that here was an investigation which had not gone to a charging stage and whether you should start talking about the contents of people's statements. There were privacy issues there and a number of concerns. So it was trying to balance it.

Senator COONEY—You were satisfied at the end of the process that you had got down what ought to have been got down, in your judgment?

Mr Bugg—I was, but I do not think too many other people were, I am afraid. I said as much as I felt comfortable in saying. When I spoke to my first deputy and he said, 'Look, there might be out of this publicity the opportunity to revisit the investigation,' then—I do not know whether you were here when we were talking about it—

Senator COONEY—Nobody is ever satisfied with what other people write, are they?

Mr Bugg—I am hardly ever satisfied with what I write after a little reflection.

Senator LUDWIG—You indicated there was a media statement in December. This goes back to when you were deciding whether to leave the telecard matter open or closed and your getting help from your staff about the last sentence. Where are we now? Is there new material? Is the Director of Public Prosecutions looking at anything or has it all finished?

Mr Bugg—There was certainly quite a lot of new material. The statement which went out under the header from the AFP—they wanted to make some statement about it and contacted me—said that that was an end to the matter. One of the people further down the line, who we would have said probably was party to a fairly significant number of calls, declined to make

any further statement or be interviewed by the police. So some of the material that had been gathered by the police could not be put to that person, and that brought the matter to an end. That was the tenor of the statement. I do not know whether you have a copy of that.

Senator LUDWIG—No, I do not have it in front of me. I can only go on my recollection of it. I was wondering whether there was anything more from that earlier question you answered.

Mr Bugg—No. The flow-on I think was about the end of the next week when we discussed the matter with the AFP—19 October, if I can use the 12th as a base. I think it was about the 19th when we talked to the police and the decision was made for the investigation to keep going. In fact, when I was questioned here last November the investigation was still going then. So I was conscious of that and trying to sidestep some of the indicators that might have been given that the investigation was still going on.

Senator LUDWIG—Did Mr Dabb contact you during that period?

Mr Bugg—About this matter?

Senator LUDWIG—Yes.

Mr Bugg—I think not. I suspect I had spoken to him about other matters but not this matter.

Senator LUDWIG—Is it usual for Mr Dabb to then contact you, particularly about what it is that is currently going on?

Mr Bugg—It varies. You say ‘usual’. I had been in the job then for a bit over 12 months, so I did not see it as unusual for him to make the contact. As I say, my recall of the general content of discussion was that he was looking to move the matter to a stage where information could be provided to the Solicitor-General to give his opinion. So I did not see that as an unusual contact. I suspect he contacted me because the first deputy was not there in Canberra.

Senator LUDWIG—So in deciding to make media statements is it fair to say that Mr Dabb might have prompted you to make one?

Mr Bugg—No. The best assurance I can give you is that I would not have made a statement unless I wanted to, felt it was necessary and felt there was going to be some public benefit in doing it.

Senator LUDWIG—How long was the meeting that you were in with the five lawyers? What time did that start?

Mr Bugg—Let me satisfy your tastebuds on that. There was Mr Thornton, the deputy of my Sydney office, the head of the section that this matter was being investigated in, the case officer who was working on the matter and her junior. So there are the five lawyers—and a QC we had retained to examine the material and advise us.

Senator LUDWIG—Who was the QC?

Mr Bugg—Is this important?

Senator LUDWIG—I guess I am asking the question. What I was interested in is—

Senator Ellison—The QC was obviously someone who was retained by the DPP in relation to a matter which was operational, if we can put it that way. Certainly questions as to when calls were made and discussions that the DPP had with Mr Dabb are all appropriate in relation to the line of questioning. But we are now going into an area which is totally

irrelevant to the issue at hand. The identity of the QC is hardly relevant. He was being consulted on a completely different matter.

CHAIR—Thank you, Minister. Mr Bugg, I think you have indicated that you would prefer not to—

Mr Bugg—I would prefer not to. It may lead to identification of the matter, and I really wonder whether it is relevant. I am happy to talk to you outside this chamber to tell you who it was. I can assure you I was in Sydney, if you are worried about that, if there is some question about the accuracy of what I am saying.

Senator LUDWIG—I have not doubted for an instant that you would be telling the truth.

Mr Bugg—As I said last time, I had to fly up the night before and it was my birthday, which is the same birth date as Senator McKiernan's.

Senator McKIERNAN—No, I am a day older.

Mr Bugg—You are 11 October.

Senator LUDWIG—Don't tell me it was the same year.

Senator BOLKUS—What was that matter that—

Mr Bugg—That we were meeting about?

Senator BOLKUS—Yes.

Mr Bugg—I cannot tell you.

Senator BOLKUS—But it was not the Reith matter.

Mr Bugg—Heavens, no. This was a meeting which had been teed up the week before. The Reith matter overwhelmed it, in a sense, because I think we were due to start at 10 o'clock, and—

Senator LUDWIG—Has that matter been concluded?

Mr Bugg—No, it is before the courts.

Senator LUDWIG—What I am interested in is whether or not I can inquire about that matter. That is why I started with the QC—to work out the general area that it might have been from. If it is not appropriate for me—

Mr Bugg—It has got nothing to do with telephones.

Senator LUDWIG—to go into it, then you can tell me.

Mr Bugg—It is a complicated matter that is now before the courts.

Senator LUDWIG—So you can tell me that it is currently before the courts. I was hoping you would say, 'This is what it is about,' and 'This is what is before the court,' and 'This is what we are doing,' and then I can move on. If you can tell me that, that would be great.

Mr Bugg—I would rather not at this stage.

Senator LUDWIG—Has it been filed in the court?

Mr Bugg—It has been filed in the court, but the matter is far from complete. In fact, I was in Sydney on Friday of last week for another meeting with that counsel on this matter where consideration was being given as to whether other charges should be laid. So, whilst it is before the court, it is still at a sensitive stage. I do not know where your questioning is heading, but I really do not know how relevant it is. Sometimes I have been jammed by

judges for asking irrelevant questions in cross-examination, but I do not know where that one is going.

Senator COONEY—I suppose a relevant question there is: why weren't you at the Melbourne bar rather than the Sydney bar?

CHAIR—That would be a question that only you would ask, Senator Cooney, in this estimates committee.

Senator LUDWIG—In relation to the Australian Federal Police, are there any matters that you can talk about or that are in the courts in relation to the Australian Institute of Police Management?

Mr Bugg—No, there are none that I can talk about.

Senator LUDWIG—Well, can you tell me if any matters have been referred to you by the AFP in relation to the Australian Institute of Police Management.

Mr Bugg—That is like: 'When did you stop beating your wife?' If I say no, or yes—no, I would rather not.

Senator LUDWIG—Is that the matter about which you are currently in conversation with the five lawyers in Sydney?

Mr Bugg—No, it was not, and it is a matter I would rather not talk about because we still have not finalised a position in relation to some aspects of it.

Senator CARR—If I could draw your attention to question on notice No. 129 where I, at a previous estimates round, was seeking advice on referrals from the Department of Education, Training and Youth Affairs concerning the Education Services for Overseas Students Act. In that answer you said to me that there had been only one brief sent to you from DETYA relating to ESOS. Is that the case? Have I understood that correctly?

Mr Bugg—Yes; that was at that time. I think you would have had the answer in late November or December.

Senator CARR—I thought it was later than that. You refer here to a meeting on 18 December, so presumably that answer was prepared prior to that time. Can I ask what is the situation now. How many additional briefs have been forwarded to you?

Mr Thornton—As far as I am aware, we have not had any further matters referred. We had a little bit of trouble isolating exactly the sorts of matters you were talking about, but we tried to narrow it down by the use of ESOS. There was one matter, which we have referred to there, and there was another matter which was being investigated where we were providing some advice to the investigators.

Senator CARR—So, with regard to overseas students, or providers of services to overseas students, you are saying that you have had one brief, and only one brief.

Mr Thornton—As far as we can work out to fit that description, yes.

Senator CARR—And you are saying the brief was received on 23 August in relation to two potential defendants. Is that correct?

Mr Thornton—Yes.

Senator CARR—Have you been able to reach a conclusion about that particular brief?

Mr Thornton—Yes, we have provided final advice in relation to that.

Senator CARR—Is that matter before the courts?

Mr Thornton—It is not before the courts yet.

Senator CARR—Are you able to advise me as to the outcome of the conference held on 18 December, presumably about this particular matter?

Mr Thornton—The advice is that there are matters where charges should proceed.

Senator CARR—That is the advice to DETYA?

Mr Thornton—Yes.

Senator CARR—Are you asking them to lay those charges or are you prosecuting them?

Mr Thornton—The charges will be drafted by our office. They would normally be laid by a DETYA informant.

Senator CARR—You indicate here that there are state matters as well that you are considering in this matter. Under what jurisdiction?

Mr Thornton—State charges.

Senator CARR—Is it New South Wales or Victoria?

Mr Thornton—It is a bit difficult when the charges are not laid as yet.

Senator CARR—But you are saying here that you sought to provide preliminary advice and that offences against state law are ‘now being considered’.

Mr Bugg—I think our preference would be that, if we nominate the state, the potential defendant is probably going to be able to be aware of it. We would rather the ordinary process follow—that these persons be prosecuted in the ordinary course of events and not read about the pending prosecution in the paper. That is the delicacy of it.

Senator CARR—I understand the point you make. You would understand that a number of these cases have been raised with me through constituent inquiry. I have raised them in the chamber. There have been many cases. I am surprised to hear that only one brief has been forwarded from DETYA to you. It is obviously a matter I will have to take up with them, but I just want to be clear that it is only one.

Mr Thornton—Yes. As I said, we did the searches through all our systems based mainly on the ESOS and overseas students, and that is all that we could find. If you had more detailed information or things that you would like us to look at, I am quite happy to do that.

Senator CARR—My concerns go to providers of services for overseas students. Some involve, obviously, issues of fraud. There was a particular case in New South Wales. Again, the common factor is overseas students.

Mr Bugg—Again, if there is a specific matter that you wish to address to us in writing, and we feel we can, within the constraints, respond to your letter to clarify it, with that extra detail we may be able to identify it if it is already in the system.

Senator BOLKUS—I would like to follow up with one or two questions. I think Senator Ludwig has some too. In respect of the Mal Brough investigation, was advice sought from the DPP at any stage?

Mr Bugg—I would have to take that on notice, but I think not.

Senator BOLKUS—In case the answer is yes, could you supply us with information as to when advice was sought, when it was provided and who prepared the advice and to whom it went?

Mr Bugg—Certainly. I am reasonably confident it is a no, but I will take those matters up.

Senator McKIERNAN—I would like to go back to Mr Bugg on the media statement. Do you know what time of the day that was issued?

Mr Bugg—I do not. It was late in the day on the 12th. That is all I can tell you. I was not at the office when it was sent across. I suspect it was about 4 o'clock, something like that. I just do not know. It was on the 12th. I know it was on the Thursday that it went out. Is there some concern you have?

Senator McKIERNAN—Yes.

Mr Bugg—I will try to satisfy it. We aim to please as best we can.

Senator McKIERNAN—Can you recall when you signed off on the final copy, the finished version—when you approved the final draft? I am assuming you approved the final draft of the media statement.

Mr Bugg—It would have been late in the afternoon, about 4 o'clock or something like that. I am just not certain. Fairly late in the day, I think. I may be wrong about that, but that is my best memory.

Senator McKIERNAN—It is not a normal practice of the DPP to be issuing media releases. What method do you normally use when you are issuing media releases—other than on this occasion?

Mr Bugg—Following the rebuke I received from certain quarters of the media about the lack of distribution of the earlier one, this is the practice we would normally follow—that is, over to Parliament House to go into the press boxes.

Senator McKIERNAN—When did you start that process?

Mr Bugg—I think it had been followed by the office previously, but as far as I was concerned, approximately 12 months into the job, there had not been too many releases. I can tell you that one was released by fax from Hobart just before Christmas in 1999. I do not think that was ever reported, so that is how effective that was. I think everyone was off celebrating on Christmas Eve. I could count the press releases on one hand. There was that one; there was another one in relation to the MRI inquiry. The one before Christmas in 1999 related to MRI. There was another one which was jointly issued by the AFP and my office in relation to this matter just before Christmas. I left that to the AFP. You ask what I normally do. This is what I will be doing in future and this is what I did with that one.

Senator McKIERNAN—Do you have any media people or public relations people on staff?

Mr Bugg—Only the person I spoke about before, Kathy Medved, who handles press inquiries and deals with the press for the office.

Senator McKIERNAN—Where physically is your office located?

Mr Bugg—Here in Canberra?

Senator McKIERNAN—Yes.

Mr Bugg—Just across the lake. It is the old Institute of Criminology building, the little round building near Rydges Hotel.

Senator McKIERNAN—In these days of technology, is it not a bit cumbersome to be printing off copies of media statements in your own office and then driving across town to distribute them?

Mr Bugg—It is probably the most effective way of doing it. It was certainly how we were told it should be done on this particular occasion. I said, ‘Look, make sure it gets full distribution and find out what has to be done.’ There were a certain number of copies—40 or 60 copies; I forget—that had to be brought across.

Senator McKIERNAN—Who told you it should be done that way?

Mr Bugg—That was what was reported back to me by Mrs Medved when I spoke to her.

Senator McKIERNAN—Who told her?

Mr Bugg—I do not know. I really did not follow this inquiry that far down. I am sorry. I suspect it was someone over here, but that could be one of many people.

Senator McKIERNAN—Hence my concerns, in response to your question earlier as to whether I had concerns.

Mr Bugg—How is there a better method? Can you tell me?

Senator McKIERNAN—I know of a number of my colleagues who actually use faxstream to distribute. The faxstream of media contacts, I am told, is relatively up to date. I do not do a tremendous amount of media releases myself, but it can be done to multiple—and I say that meaning hundreds—of outlets merely by the press of a button.

Mr Bugg—Thank you for that. I will have my office look into it. It is certainly a lot more convenient for the person concerned. She was under a lot of pressure through that week, particularly—

Senator COONEY—Don’t outsource it, because I have got prejudices against outsourcing.

CHAIR—I do not think Senator McKiernan is charging a fee for this advice.

Senator McKIERNAN—No, no. If I set up a consultancy as Senator Bolkus suggested, I might consider it.

Senator COONEY—You should not outsource. I thought that is what you were getting at—that you ought to outsource it.

Senator McKIERNAN—No, you can actually do it in your office now with the facility that is available to us. You can do it from your office downstairs, Senator Cooney.

CHAIR—Are there any further questions in this area?

Senator COONEY—As I was saying before, we ought to have a press unit there, but the government will not give him a press unit.

Senator LUDWIG—I will try again, without anyone beating anybody, in relation to AIPM. Without going into operational matters—I will ask the questions and you can choose to remain silent or perhaps the minister can respond—are you waiting on material from the AFP in relation to whether you proceed with that?

Mr Bugg—I would rather not comment. You previously asked me whether I had something and I said that I was not prepared to answer that question. You are now asking, ‘Am I waiting on material from the AFP?’ I have tried to be as helpful as possible with the questions that have been asked of me this morning. I do not want to be obstructive, but—

Senator LUDWIG—I will not take it personally.

Mr Bugg—I would rather not embark upon any consideration of that particular issue you have raised.

Senator BOLKUS—From your answers, it is quite obvious that you have something before you.

Senator LUDWIG—That is what is generating the questions, I have to say.

Mr Bugg—Sorry, what is generating them?

Senator LUDWIG—Your answers are generating the questions. My natural curiousness suggests that there is a matter. I have an excerpt from the *West Australian* dated 2 December which talks about an elite police training centre whose director, who helped pick Bob Falconer and Barry Matthews as WA’s top cops, is under investigation. It is a matter that I can ask the AFP about but—while I have you here—if the AFP had actually found anything in relation to that article, which is freely available, they would probably have passed it on to you. So, if you have it, I can ask you about it. If you do not have it or cannot answer me, I will also ask the AFP what they are doing—whether it is tied up—because this is important, and this article seems to suggest the importance of it.

This is regarded as a high-ranking place for the Australian Federal Police to use and to train at, so it is of concern—at least to me, from where I sit—that everything is above board and functioning normally. If there is something, then it should be investigated and investigated fully, and we should be informed about it. There should not be any shadow cast over the Australian Institute of Police Management, because there is also a question about their integrity. If there is a matter, it should not be continued on in the media if it can be put to bed, because the institute do not deserve that either.

Mr Bugg—No, I understand that. I was unaware of the comment in the *West Australian* on 2 December.

Senator LUDWIG—I can make that available to you if you like.

Mr Bugg—Thank you. I think the best general comment I can make is that I agree that, if there are matters of concern about institutions or organisations where that sort of comment is made in the press, it is important to resolve them as expeditiously as possible. But, if it is an investigative matter with the AFP that will be referred to my office or may be referred to my office, I would rather not comment on matters of that nature—obviously through the need to preserve the integrity of whatever process is under way if it is at an investigative stage. For that reason, I would rather not comment if that is the process under way according to that report.

Senator BOLKUS—I can understand the sensitivity if we were to ask you what advice you are providing and what issues are being canvassed, but a question as to whether a matter has been referred to you for advice is one that I think has always been acceptable in this process.

Mr Bugg—I am sorry if that is the case, because I must say I have a little concern about that. It is like saying to a divorce lawyer, ‘Has Mr X been to see you?’ The difficulty you have is that the moment you say yes it generates other questions—why is he going to see a divorce lawyer; have the AFP referred a matter to you on this? What the AFP refer to me should really be regarded confidentially. It is as though I had put up on a notice board, ‘The AFP have referred the following matters to me.’ That is the concern I have.

Senator BOLKUS—We have always been able to ask chief general counsel or solicitors-general whether they have been asked to provide advice on certain matters.

Mr Bugg—When those matters have been in the public arena.

Senator BOLKUS—In fact, by asking questions we put them in the public arena.

Mr Bugg—Yes. I do not wish to be obstructive or evasive, but I am being both, I suppose, from your point of view. I would really rather not discuss this particular matter, but if that has been a practice of this committee and if my predecessors have answered questions on matters involving referrals from the AFP of the product of investigations then I will take it on notice and I will come back to you.

Senator COONEY—I suppose you are worried about two things. One is that people’s reputations may be damaged when they should not be and, secondly, that police investigations might be hampered if the matters they refer to you are in the public arena—people would know.

Mr Bugg—Certainly the latter is a real concern and the former I addressed earlier when I said how difficult it is to make comments about matters that have been under investigation while not charging, because the step of moving from an investigation to a charge is a critical one: reputations are hammered when that happens. If that has been the practice, Senator Bolkus, I will come back to you.

Senator BOLKUS—I must also express a concern that when you have a matter in the court you are obviously involved in but you are not prepared to tell us what the matter is—as happened earlier—I think that is also being obsessively cautious.

CHAIR—Senator Bolkus, I think that when Mr Bugg was explaining that before he put on the caveat that it was a matter under further consideration possibly with further charges. It was not simply a refusal to explain it to you.

Mr Bugg—Yes. I was in Sydney last Friday on this matter as well, the one that we were talking about on 12 October last year.

Senator LUDWIG—You said that it was in the court, as I understood it.

Mr Bugg—Part of it is in court.

Senator Ellison—The other part is still under consideration—that is the difference. It is not just simply a matter of court proceedings pending; it is court proceedings pending with a possible option of further matters being raised. It is perhaps the second half of that which raises the concern.

Senator LUDWIG—So you cannot tell me about the primary matter because by telling me about the primary matter you lead into the secondary matter.

Senator Ellison—It is accepted that where you have an operational matter you really cannot go into it.

Senator BOLKUS—But the irony is that we did not ask you about any secondary matters; we only want to know about the first matter.

Senator Ellison—They were linked.

Senator BOLKUS—We had no idea of any secondary matters when we asked the first question.

Mr Bugg—By using my memory prompts I have opened up a can of worms. I was really answering questions about my involvement in the Reith telecard investigation and response, and merely indicating probably the nature and extent of the matter that was taking my concentration away.

CHAIR—There are no further questions for the DPP. Thank you, Mr Bugg, for assisting the committee this morning.

[11.19 a.m.]

Family Court of Australia

CHAIR—Senator Mason, who has previously put questions on notice in this area, is in the chair at Finance and Public Administration, which makes it very difficult for him to be here simultaneously. Many things we can do but splitting ourselves between two committees is not always possible. If he is not able to attend at this time he will have further questions to place on notice in relation to the Family Court. I will ask Senator McKiernan to begin.

Senator McKIERNAN—Can you give us an update of the court's experience since the establishment of the Federal Magistrates Service on 1 July last year?

Mr Foster—For the period 1 July to 31 December 2000—if I can work through some volumes of applications that have been filed with the court and the split between the Family Court of Australia and the Federal Magistrates Service, if that would be helpful—there were 23,497 divorces, 50.8 per cent of which were for the Federal Magistrates Service. In terms of filed orders, form 7s, there were 11,219 applications, 13.1 per cent of which were for the Federal Magistrates Service. In relation to form 8 interim orders, there were a total of 11,502 such applications, 12.3 per cent of which were for the Federal Magistrates Service. In relation to form 12A consent orders, there were 6,239 in total, zero of which were for the Federal Magistrates Service. There were 3,054 other various applications in total, 13.5 per cent of which were for the Federal Magistrates Service.

In terms of deputy registrar work, divorces listed totalled 14,330, 12.7 per cent of which were for the Federal Magistrates Service. There were a total of 3,573 conciliation conferences, 1.2 per cent of which were for the Federal Magistrates Service. There were a total of 4,090 prehearing conferences, 0.05 per cent of which were for the Federal Magistrates Service. In terms of counselling work, there were a total of 10,644 new interventions opened, 2.7 per cent of which were for the Federal Magistrates Service. The total number of interviews were 20,744, of which 2.2 per cent were for the Federal Magistrates Service.

It has only been some six months that the Federal Magistrates Service has been established. I think it is fair to say that those figures are reasonably accurate but should be seen as indicative of the workload shifts. Obviously, as time goes on, we will have a much more

accurate picture of how much work has actually been transferred between the Family Court of Australia and Federal Magistrates Service. It is a bit difficult to be absolutely precise, but I think we can safely say that those figures are much better than just indicative.

Senator McKIERNAN—Thank you for that. I have very quickly tried to jot down the figures that you gave us. There has been a mixed reception to the introduction of the Magistrates Service. We have 50 per cent in the divorce area through to zero in the consent area. Are there any messages that can be picked from the mixture of figures that we get here?

Mr Foster—I think it far too early to say. The magistrates have been appointed over a period of time from 28 June—that was the date, from memory, that the court was first established. There has been quite a significant transitional period. I think the significant figure is that the Magistrates Service is now dealing with some 50 per cent of all divorces. We would expect that figure to increase as the court establishes itself and becomes more effective, I guess. But I think it is far too early for us to draw any serious conclusions about where the workloads are shifting at this time, bearing in mind that it has only been six months.

Senator McKIERNAN—Do you have any indication of the proportion of matters that are currently filed with the Family Court that could have been filed with the Magistrates Service or within the jurisdiction of the Magistrates Service?

Mr Foster—No, we have not. Obviously any divorce could be filed in the Federal Magistrates Service and not the Family Court of Australia, and there is the question of a cheaper filing fee as well for the divorce matters in the Federal Magistrates Service. But some people are still at this stage filing in the Family Court of Australia.

Senator McKIERNAN—How has the Family Court of Australia been assisting in making practitioners aware of the existence of the federal magistrates' jurisdiction?

Mr Foster—There are a whole range of strategies that deal with that. We deal very closely with the family law branch of the Law Council, and that is on a regular basis. There is the Chief Justice's Consultative Committee, which meets on a quarterly basis with the family law branch of the Law Council and the Federal Magistrates Service. There have been a range of seminars at different levels to promote the various services. So some stuff is done at a local level and some at a more strategic level. I think it is fair to say there is pretty much a general awareness within the community that uses our courts and our facilities that there is such a being as the Federal Magistrates Service, and certainly within the legal profession.

Senator COONEY—Every time you turn up to the registry for the Family Court, you are turning up to the registry for the magistrates court.

Mr Foster—That is right. There is a joint registry, so the Family Court of Australia registry staff provide services for the Federal Magistrates Service.

Senator COONEY—The only difference is the fee.

Mr Foster—Yes.

Senator McKIERNAN—What arrangements are in place for reimbursement of the Family Court where the Federal Magistrates Service utilises Family Court resources, such as the registry staff for the filing of documents or other administrative tasks?

Mr Foster—We are in the process of developing a memorandum of understanding in relation to cost sharing and a range of other matters. I guess it is fair to say that that document is approaching final draft status. All those issues in terms of workload shifts and cost shifts are covered in that particular document, which will now need sign-off by the Chief Justice

and the Chief Federal Magistrate. There has been a transfer back of some funding in recognition of the work the Family Court of Australia is doing in relation to its SES band 2s, where for various reasons it has been necessary for the Family Court to keep those particular officers on our books. The Magistrates Service have recognised that and transferred some funding back into the Family Court of Australia's budget.

Senator McKIERNAN—Do you know how much that was?

Mr Foster—Yes, I can tell you that. So far this financial year, that has been \$0.720 million, nearly $\frac{3}{4}$ million. Mr Phelan can provide a bit more detail in relation to that.

Mr Phelan—We are monitoring resource usage by category of resource—deputy registrars, counsellors, counter staff, et cetera—to derive some sort of useful picture of the shift in resources over the next 12 months.

Senator McKIERNAN—Are those variations you just referred to detailed or explained in the Portfolio Additional Estimates Statements?

Mr Phelan—No, they postdate that.

Mr Frankland—The amounts to be transferred back were agreed too late to make the additional estimates. They are being transferred by a section 32 transfer, by agreement with the Magistrates Service, the Family Court and action by the Department of Finance and Administration.

Senator McKIERNAN—It seems a bit odd that here we are in February talking about changes that have occurred since 1 July when we are dealing with the additional estimates. Why could the details not have been included here?

Mr Frankland—Basically because the amounts kept changing. We had agreed on an earlier amount but then, because of delays in appointing magistrates in some locations, we were retaining SES band 2 registrars and the amounts increased. To cut a long story short, the final amount that was agreed came too late to get into the additional estimates.

Mr Phelan—It was a monthly arrangement where, if a magistrate had not been appointed in a particular location, we kept on an SES band 2 registrar to ensure that no gaps opened up in service. The Federal Magistrates Service and ourselves agreed that there would be a shift, on a monthly basis, of suitable resources. It just mounted up. It finally totalled for this year that \$721,000.

Senator McKIERNAN—I suppose the annual reports on the Family Court and the Federal Magistrates Service will provide additional information and that detail of transferring of funds.

Mr Phelan—Yes, Senator.

Senator McKIERNAN—I think our next round of estimates are the budget estimates in June, which I am sure you are all looking forward to. For the detail of what we have just been talking about, we will have to wait until the annual reports appear some time around the end of the year.

Mr Phelan—It will be an evolving process, Senator. We will have more information about resources obviously by June. The final annual report will not be ready until after that.

Mr Foster—By way of clarification, for this particular year for the establishment of the FMS there was a transfer of funds from the Family Court of Australia to the Federal Magistrates Service of \$3.1 million. That equated to a number of staff in the court—13 SES

band 2 registrars and 13 support staff, as well as some court officers from the Family Court. Because it has been a transitional thing, that was really a best guess about what sorts of resources would need to be transferred. Based on six months experience, there is still a bit of toing-and-froing between the two courts. I guess that is why it is operating on a monthly basis. We are in close consultation with the Magistrates Service. We adjust things to ensure that, as far as possible, people do not fall through the cracks.

Senator McKIERNAN—We will look at that with interest when we get more information on it. When I referred to reimbursement I asked about registry staff, the filing of documents and other administrative staff. What arrangements are in place for the reimbursement of the Family Court where the Federal Magistrates Service utilises Federal Court registrars for the hearing of matters? Do similar arrangements apply?

Mr Foster—I am not sure what arrangements were in place there, Senator. That is something you might need to ask the Federal Court or the Magistrates Service.

Senator McKIERNAN—I was asking about the Family Court rather than the Federal Court.

Mr Foster—I thought you said ‘Federal Court’.

Senator McKIERNAN—I did. I have misread the brief in front of me. I was meaning the Family Court. I was certainly addressing it to you. Let me repeat it for the record. What arrangements are in place for the reimbursement of the Family Court where the Federal Magistrates Service utilises Federal Court—Federal Court?—registrars for the hearing of matters?

Mr Foster—If it is Federal Court registrars, I am not in a position to answer it.

Senator McKIERNAN—That is one we will take over to the next set of witnesses. It seems a bit strange that here we are well into the process—the service has been established well over six months and its gestation period was considerably longer than that—and we find that, even now, six months into its establishment, these reimbursement arrangements are not in place. You talked about the MOU being in the process of final negotiation. What impact is this having on the Family Court’s budget?

Mr Foster—There has already been \$3.1 million in funding removed from the Family Court budget this financial year. As I said, the service was not established on 30 June, for example, fully resourced with a full complement of magistrates. It has taken a period of time for all the various appointments to be made. That was the reason the Family Court of Australia was continuing to do the work that would have been thought that the Federal Magistrates Service would be doing. But for a whole lot of reasons—the court was in a transitional period—that did not happen. So it has been necessary for us to sensibly work through resource shifts between the Federal Magistrates Service and the Family Court of Australia.

Senator McKIERNAN—That comes at a cost and an inconvenience to the Family Court of Australia.

Mr Foster—In general terms, we are talking about dealing with the same broad workload. The workload between the two courts is pretty much the same as it has been in terms of numbers before the Federal Magistrates Service was established. Yes, there have been some difficulties for registry staff because of the fact that they are two separate organisations operating from the one location. They are things that we have been working through—some you could anticipate and foreshadow; some you can only make decisions about based on

experience and knowledge of the process. That is why there has not been a great rush between the Magistrates Service and us to formally sign off on the memorandum of understanding before we both clearly understand what the implications are. I guess they are really starting to firm up now.

Senator McKIERNAN—Have you a date for when the MOU will be finalised?

Mr Foster—We were optimistic that the MOU would be finalised prior to Christmas, but for a number of reasons that did not happen. As I mentioned earlier, I would expect that the MOU would be signed off, certainly by the Chief Justice, within the month—I think I would be brave enough to say.

Senator McKIERNAN—That is pretty brave, because that is next week.

Mr Foster—Within the month—another four weeks.

Senator McKIERNAN—But you were expecting it to be done by Christmas.

Mr Foster—There have been a number of reasons for that. There have been the discussions we have been having with the Federal Magistrates Service in terms of giving us back some resources, there have been some procedural changes that have been brought into play and some other process changes. I think, realistically, for an organisation as large as the Federal Magistrates Service to be established so quickly requires a bit of time to be taken to work out the nuts and bolts of how it might work. We have not been prepared to rush in to do it in a formal memorandum of understanding. Because the level of cooperation has also been high between the Family Court and the Magistrates Service, there has not been a need to rush into it.

Senator McKIERNAN—You talk about the cooperation between the service and the court. Are there any areas where there are major points of difference on the matter of reimbursement?

Mr Foster—Not at the moment. No, there is nothing that I would say was major at all. In fact, the Family Court of Australia is pleased that the Magistrates Service are paying for us to retain a number of band 2 registrars. There will be matters of detail on which we will disagree, but certainly not matters of significance.

Senator McKIERNAN—How would you determine ‘matters of significance’—in dollar value terms?

Mr Foster—It might be dollar value or it might be processes that impact on our registry staff. It could be a range of things. Certainly no significant difference has emerged for us in any of those areas at the moment.

Senator McKIERNAN—Can I take it from what you are saying that, at this point in time, there are no major areas of difference for services already provided by the Family Court of Australia to the Federal Magistrates Service that you have not got agreement on with regard to reimbursement?

Mr Foster—No, we have not. I do not know how we define ‘major’, but there are some areas where we are still in discussion with the Magistrates Service. One of them is that the court is going through a process in trying to identify how many band 2 registrars the court may need to keep to ensure that people do not fall through the cracks. That is a document being worked up at the moment that will go to the CJCC. Based on the current funding arrangement, at the end of next year the court is funded for only two band 2 registrars. There is a view within the court that that is not going to be sufficient, and we are working up some

documentation now to discuss that at the next Chief Justice Consultative Committee, which is in fact on Monday of next week.

Senator McKIERNAN—Do you have a dollar figure for the reimbursements you have received to date? You have told us the global amount, but do you have a dollar figure on the actual moneys that have been transferred across?

Mr Frankland—The amount is \$721,000.

Senator McKIERNAN—I have a question on time delays. Could you provide the committee with current figures from time to time to completion in standard track children's and standard track property matters in each registry? I do not know whether you have any information on that at the moment.

Mr Phelan—We have mentioned at previous estimates that we have moved on to measure by percentiles. My understanding is that the delays are much the same across the board as they have been for the past 18 months.

Senator McKIERNAN—Are you satisfied with that?

Mr Phelan—I have mentioned before that the real issue for us has been to reduce our backlogs. We mentioned in the annual report that, whilst it was taking some time for the longer cases to go through the system, we have produced over the last 12 months a 19 per cent increase in judge availability for defendant hearings, a 31 per cent increase in defendant hearings finalised by judges and a 30 per cent increase in judgments delivered by trial division judges. So in fact our backlog or our work throughput increased quite significantly over the period of time.

Obviously, as some of the older cases work their way through the system, that would impact statistically on the time between the average or median time between filing and finalisation. If the trend continued, we would start to see a more significant reduction in the percentiles—the 25th percentile, the median number of cases, the 75th percentile—as the backlog was removed and we started to catch up with our normal throughput of cases.

I think when we last discussed this a couple of estimates ago we predicated that on the continued availability of the then existing resources. The most significant factor in the increased throughput of our judges in defended matters has been their availability to do defended matters—in other words, the reduction in the time they have to spend dealing with interim matters. That comes down to the availability of our SES band 2 registrars. The issue for us now is how much of the interim or less than final work, if I could put it that way, will be performed by the Magistrates Service and the residue of our registrars that we have with us in the court.

Getting back to your original question, obviously we want to bring down the median times between filing and finalisation as much as possible, and there are positive signs in that regard, but there are still some uncertainties in relation to this interim workload that will be performed by the Magistrates Service and the workload that we will have to perform ourselves, the risk being of course—and this is what Richard was referring to earlier—the number of SES band 2 registrars we might need to retain ourselves from the end of this financial year to continue to maintain the judicial focus on the defended trials.

Senator McKIERNAN—Thank you for that, Mr Phelan. The reason for my asking those questions is related to the budget cuts and the impact of them on the delivery of service to the community, and of course with that the establishment of the Federal Magistrates Service, which was supposed to take up some of the slack. If we are not seeing evidence that the slack

is being taken up, then that is going to be a concern. I will not develop that any further, but perhaps I could put some questions on notice which would tease out some further information with regard to the operations of both the Family Court registry and the Federal Magistrates Service. These questions have been asked previously and it is a matter of asking for updates. I have them in writing and would ask that they be taken on notice. You will be provided with copies.

CHAIR—Thank you, Senator McKiernan. We await Senator Mason's questions on notice, too.

Senator McKIERNAN—Last month the Family Law Council reported on litigants and persons, showing that the number of unrepresented litigants in family law matters is increasing. How is the Family Court addressing the needs of unrepresented litigants?

Mr Foster—The court has established a very broad ranging project to deal with the issue of self-represented litigants, the project goals of which are: to develop a consistent national approach to providing services to litigants that are sensible, effective, understandable and conscious of the requirements of self-represented litigants, to improve current court services and practices and procedures, protocols and pro formas, and to evolve deliveries that are clear, consistent and understandable to litigants of average ability. This project is chaired by Justice Faulks of the Canberra registry. The project was launched by the Chief Justice here in Parliament House on 5 December last year.

The project is in its infancy. It is not seen as a bandaid approach to the issue of self-represented litigants. It is a broad brush strategic approach to it. The project is expected to go for a couple of years at least. On our web site, unrepresented or self-represented litigants can provide feedback about our service at the moment. We are about to commence a review of establishing self-representing litigant support programs Australia-wide. There has been a literature case and project search. I am just trying to give you a brief, broad brush.

The overview of the whole report is on our web site as well—and I can certainly give you a copy of it—which sets out why we are doing it, what we are trying to achieve, who is involved and how much it is all going to cost, with some time lines and a project outline, if that would be helpful for you.

Senator McKIERNAN—That would be helpful, thank you.

Mr Foster—It is a significant project for the court. The cost of the project, I think, over the next couple of years is expected to be—budgeted for at the moment—about \$60,000. It is really information gathering. So it is that level of commitment to attempt to overcome this growing problem.

Mr Phelan—This is not just a project that is going to take some time to produce results. The Internet web site is being redeveloped all the time and currently contains a wealth of information for the assistance of litigants in person. It is now running at about 50,000 hits per month, which gives you some idea of the tremendous traffic and its impact going across that web site—things such as interactive court forms that people can download and fill out, ways of contacting the court, et cetera. We have tried to make that a lot easier over the last 12 months. We are now starting to see those results.

Senator LUDWIG—Is there any system of knowing whether people accessing the web site find it useful or not useful?

Mr Phelan—We have feedback forms, but I will step back a bit, Senator. Every time someone approaches the court they receive information from the court and included in that is

a copy of our court charter. There is an opportunity on that charter for people to feed back to the court the good and bad things about the court, and they do, in significant numbers. The web site itself has a service which allows people to provide comments through to the web master and the web master passes them through to relevant areas of the court to improve the services that are provided by the web site itself. The answer, Senator, is that in hard copy and via the web site itself we have those feedback mechanisms, and we receive them too.

Mr Foster—The AIJA conducted a courts web site competition at the courts and technology conference held in Melbourne last year. The Family Court of Australia web site was judged the best court web site in the Asia-Pacific region. The focus for that award was based on usefulness to customers and customer perspective.

Senator LUDWIG—In relation to those responses, are they summarised and made public—only to the extent that we can then track as to what the problems are, whether they are being addressed, if they can be addressed, or whether they relate to matters that obviously fall outside the ability of the Family Court to be able to deal with them?

Mr Phelan—As part of the revamping of our reporting system—that is, our management information system—and the way in which we are trying to improve the way we outline our performance in our annual report, we will be reporting on an ongoing basis in our annual report on significant issues that are raised, numbers, et cetera, either as complaints, charter feedback or web site feedback. You have that commitment, Senator. We are certainly tracking them internally and are using the feedback such as we get to improve the services that we deliver. A lot of it is being channelled through the self-represented litigant project to which the Chief Executive Officer referred. It is an attempt to mainstream and to make it more focused on the needs of self-represented litigants.

Senator LUDWIG—When you finalise the tracking, or when you get it into a useable state, you might like to make that available to the committee so that we can have a look at it.

Mr Phelan—Certainly, Senator.

Senator LUDWIG—I refer to question No. 100 concerning the Family Court, a question asked by Senator McKiernan. It asked:

Can the Department provide the Committee with a list of the consultancies for which the actual cost exceeded the initial quote by, say, five per cent.

The answer that came back was:

No consultancy exceeded the initial quote by five per cent.

Does it mean by more than five per cent, or was it only focused on five per cent?

Mr Phelan—I do not know that we are aware of that question.

Senator LUDWIG—I thought that was in the Family Court area.

Mr Phelan—I am told that apparently there was some confusion as to whether it was one directed to us or to the Attorney-General's Department.

Mr Foster—It is not one that we answered, apparently.

Senator LUDWIG—I will change the question. Do you have consultancies out of the Family Court?

Mr Phelan—Do we purchase in expertise?

Senator LUDWIG—Yes.

Mr Phelan—Yes, Senator. You asked a question in relation to some of them in our annual report.

Senator LUDWIG—That is right. I might come back to the A-G's in relation to that. I thought that was in your area. I might have been mistaken. I wish to follow up on another matter relating to the *Managing justice* report. Are you preparing a response to that?

Mr Foster—That is on the agenda for the CJCC meeting next week. We have reported to the ALRC about whether we accept or reject certain recommendations. We are now going to get together a report on progress of implementation of those recommendations. Many of the recommendations contained in the ALRC, as you are aware, were also sourced from the future directions committee's deliberations within the Family Court. They are in progress: they are being implemented. It is our intention to provide an update to the ALRC about how we are going with those recommendations that we have actually agreed with.

Senator LUDWIG—If they are available at some stage, could the committee be provided with those—there are two parts: those that you have in train and the matters that you are responding to. Then of course—not to delay your answers back—when you have met on the ones next week with your CJCC, perhaps you could provide an answer to those so we can have a look back at the *Managing justice* report and compare that with how your deliberations are going in that field or in answer to the area.

Senator COONEY—How many circuits are now operating in Victoria, Mr Foster? The court goes to where—to Bendigo?

Mr Foster—We might need to take that question on notice because the circuits have just been reviewed and I am not really sure. I do not have the details with me, but certainly in some areas the circuits have actually increased.

Senator COONEY—I heard a suggestion from people in Dandenong that either it is going to be closed down or the resources available to it are going to be reduced. Do you know anything about that?

Mr Foster—In answer to your first question, we are not closing down the Dandenong registry. There has been some speculation around that—that because the lease had not been re-signed, we were going to step back from Dandenong. That is just not so. The Chief Justice has had a meeting with the legal profession in Dandenong and told them accordingly. So the Dandenong registry is remaining open and it is providing the full range of services that it provides now. However, Justice Wilczek was transferred from the Dandenong region to Melbourne late last year for reasons of efficiency and better ways of handling the lists. To compensate for that, the court is about to put in some video technology at Dandenong. So, if there is an urgent need to get in front of a judge, we can do it by video technology and a video link back to the Melbourne registry.

Senator COONEY—There has been a judge out there full-time, hasn't there?

Mr Foster—There has been, yes.

Senator COONEY—Is that going to be cut back?

Mr Foster—The judge has actually been transferred back to Melbourne.

Senator COONEY—So there is no designated judge for the registry at Dandenong?

Mr Foster—No, but if there are matters that need to be dealt with by a judge that are of an urgent nature, procedures will be put in place to deal with that. But defendant hearings in front of judges—and I think there are fewer than 100—have actually been transferred to

Melbourne because of the fact that it is very difficult to overlist and it is not particularly efficient just having a judge sitting in a location on a permanent basis.

Senator COONEY—When you talk about efficiency I suppose that is efficiency from the registry's point of view rather than the litigant's point of view. That is what you are talking about there when you talk about efficiency.

Mr Foster—I understand the Federal Magistrates Service are providing a permanent presence in Dandenong.

Senator COONEY—But when you use the word 'efficiency' you are talking in terms of the court's perspective not in terms of the litigant's perspective?

Mr Foster—There are very few litigants, as you would be aware, who actually need the services of a judge. They are the most serious matters. Most people can get by with the services of a registrar or, now, the use of the Federal Magistrates Service.

Senator COONEY—So you say there is no real inconvenience, if a person out in Dandenong with very slender resources has a fight on over children, in that person having to go to Melbourne?

Mr Foster—If there were special circumstances, the Chief Justice has given an undertaking that he would make a judge available if that were necessary in a particular case.

Senator COONEY—So, if you had a big dispute over a child, the assessment is that that would be easily enough dealt with. Say somebody had turned up—I have to use the old terms because my mind still works in that way—to get custody and there was a dispute as to whether or not that custody should be given, could that be sufficiently dealt with?

Mr Foster—If there were special circumstances that meant that it was desirable to hear the matter in Dandenong, then the Chief Justice would give an indication that he would make a judge available to do that.

Senator COONEY—Go out in the car along the freeway?

Mr Phelan—In relation to the matters you are referring to—the sort of matters that might need an urgent application—the services will still be available at Dandenong either by the Federal Magistrates Service or by a judicial registrar who tends to be available in that sort of part of the world. All the counselling services, deputy registrar services—the 99 per cent of services that are short of a major defended trial—will continue to be provided at Dandenong. What have been withdrawn are the defended trials—the actual trials—that have gone to Melbourne. Even there, with the introduction of the video link, we can run witnesses and part hearings via that mechanism or send a judge out there as appropriate. We are retaining the court facilities, for example, and they will be available for judges as and when required.

Senator COONEY—Is what is happening at Dandenong happening elsewhere around Australia in any of the circuits, or is Dandenong the only one that has been affected in this way?

Mr Foster—Dandenong is probably the only one affected in this way because of its close proximity to Melbourne. The only other places where there is a single judge would be Hobart and Townsville. Wollongong is a subregistry and does not have a resident judge.

Senator COONEY—And I think Launceston does not have one?

Mr Foster—Hobart has a resident judge.

Senator COONEY—You said Hobart. But I think Launceston is without a judge. And Hobart is without a judge?

Mr Foster—Hobart has a judge.

Senator COONEY—Full time?

Mr Foster—Full time.

Senator COONEY—But not Launceston?

Mr Foster—It is done as required—additional circuits where Melbourne or wherever provide a circuit judge. But there is no judge resident in Launceston.

Senator COONEY—Or any of the other places in Tasmania like Burnie.

Mr Foster—But there is a magistrate now in Launceston.

Senator COONEY—But the magistrate still has limited jurisdiction.

Mr Foster—They have, but by consent they can hear property matters, for example, in excess of, I think, \$300,000. There is quite an extensive jurisdiction.

Senator COONEY—I understand there is quite an extensive jurisdiction, but the impression you are giving me is that the magistrates are doing almost the same work as the judges. I just want to get you on the record as saying that.

Mr Foster—I do not think I am saying that. The Magistrates Service was established to take away some of the workload from the judges.

Senator COONEY—I just want to hear what you are saying. Are you saying that the magistrates are doing almost the same as the Family Law Court is doing except for the big cases? And you would go on to say it is satisfactory to have a magistrate in these cases rather than a judge?

Mr Foster—I am not saying that, but the resources that we have available to us do not allow us to have a judge at Launceston. We only have one judge in Tasmania, and that judge happens to be in Hobart.

Senator COONEY—Isn't that what you are really saying—that because of the lack of resources in this area we have to make do with what we have?

Mr Foster—We have to make do with whatever judicial appointments the government make available to the court, that is right.

Senator COONEY—And there are not sufficient resources to have a judge in places like Launceston and Dandenong.

Mr Foster—There is possibly not a sufficient workload to maintain a judge.

Senator COONEY—So you are saying that there is not sufficient work in these places—that the litigants in those places do not really matter? I am just trying to gather what you are saying.

Mr Foster—The majority of matters do not need the services of a judge. Provided, when those people do need access to a judge, one can be made available to them, it does not make

much sense to have a judge sitting around doing work that could be done by the Federal Magistrates Service. I guess that is what I am saying.

Senator COONEY—From what you are saying, it would be suitable to cut down the number of judges we have in the Family Court in Melbourne and put in magistrates. Are you saying that?

Mr Foster—I am not saying that. There are still delays in judge work. There are not too many organisations that are ever going to say they have enough resources, and I would be the last one to say it for the Family Court of Australia, but, with the resources we have available to us, we have to maximise their use. That is what we are trying to do without disadvantaging people in any significant way.

Mr Phelan—I would like to add that one of the ways we can produce greater efficiency, as you put it, whilst enhancing client services, is to roll out our already pretty good videoconferencing network. We anticipate that by the end of this financial year we will have a very extensive network with links into existing networks in other state systems which will enable us to more efficiently deploy our judges on an as-required basis throughout a lot of the places where it is not efficient in our terms to locate a judge. We currently deal with that by circuiting judges. When the chief executive referred to the review of circuits that had been conducted, the review was based on need, local workloads, et cetera. It is through a combination of video, working closely with the Federal Magistrates Service and working with our own resources, that we are trying to deal with that to improve client services.

Senator COONEY—If I can follow that up, that seems to come down to a lack of resources—that is why you have to do these things. But Mr Foster says there is not a demand there. I am just trying to get from him whether he is saying that the needs that people may have in the country, in Dandenong or in a place like Tasmania, are secondary to the preservation of resources. That is what I have taken Mr Foster to say.

Mr Foster—I am sorry, you misunderstood what I was saying. In relation to Dandenong, it was a question of having a judge permanently placed in Dandenong to deal with a limited number of matters. I do not have the figures with me in terms of which matters go to trial that need to be dealt with by a judge, but many preliminary matters can be dealt with by judicial officers other than a judge. The judge is a high cost resource. The court, in trying to manage resources best—

Senator COONEY—I do not want to pursue this, but what you seem to be saying is that it is good to have judges in Melbourne, Sydney or the big capital cities but, because there is limited demand in the country, we can give up devoting those resources to the country.

Mr Foster—Or we do it on a circuit basis, which is really what is happening now. That is why there has been a significant review of circuits. The judges still circuit to many places in rural and regional Australia. They are not based just in Melbourne, or any other capital city, for that matter. They are required to circuit many country areas. That seems to be the most sensible way to deal with it.

Mr Phelan—We are intending to improve or increase the availability of judges across Australia by this strategy—by using video and circuit.

Senator COONEY—And are you saying the resources are sufficient to do that?

Mr Foster—They are the resources we have.

Senator COONEY—I do not know if you can help me here, but you can take it on notice if necessary. Is there any way you can measure how the length of a trial might be increased or, alternatively, decreased—or it may stay the same—depending on whether the litigants are represented? Do you have any way of getting to that? What I want to get at is whether the fact that there is in the court very little representation compared to its need makes a difference in terms of lengthening or shortening the case. I suppose one way to find that out would be to see how long cases take when people are represented and how long they take when they are not.

Mr Foster—I would rather take that on notice, and not just speak off the top of my head, if that is acceptable.

Senator COONEY—Just to make it clear, the magistrates courts uses the same registrar, the same courtrooms and the same building as the Family Court?

Mr Foster—As the Family Court, yes.

CHAIR—I thank the officers of the Family Court for assisting the committee with its deliberations.

[12.09 p.m.]

Federal Court of Australia

CHAIR—We will begin with questions from Senator Bolkus.

Senator BOLKUS—I would like to ask you a general question about your court's experience with the establishment of the Federal Magistrates Service—what that has meant to you in terms of work and other experiences—work levels.

Mr Soden—We looked at some figures last Thursday and I can tell you that we have now transferred 90 matters to the Federal Magistrates Court. It is clear that the new court is picking up some of the bankruptcy jurisdiction that we formerly exercised. It does not seem, though, that there is an exact shift in bankruptcy from our court to the new court. Although it is only anecdotal, it does appear that some new cases are commencing in the Federal Magistrates Court and the bankruptcy jurisdiction that would not have commenced in our court. That is arising, I think, as a result of the bankruptcy jurisdiction being used for debt collecting like purposes. Mr Dawson can give you the information on the precise figures.

Mr Dawson—As Mr Soden said, 90 matters have been transferred in the period 23 June 2000 to 16 February 2001. That consists of nine matters relating to the Administrative Appeals Tribunal, one ADJR matter, 34 bankruptcy matters, 39 human rights matters and seven Trade Practices Act matters. If you like, Senator, I could give you the breakdown by city.

Senator BOLKUS—That would be great if you could do that.

Mr Dawson—Adelaide, 11; Brisbane, 23; Melbourne, 19; Sydney, 31; and Perth, six.

Senator BOLKUS—What proportion of matters that are currently filed with your court could have been filed with the new service? Do you have any figures on that?

Mr Dawson—That would be the majority of bankruptcy matters. It could be some Trade Practices Act matters and it then depends on the break-up between part V and part IV of the TPA. Part V matters could go to the Federal Magistrates Service or could be filed in the Federal Magistrates Service under a concurrent jurisdiction. Part IV of the TPA could not. I do not know the break-up in the Federal Court between part IV and part V, but we could certainly get that information for you.

Senator BOLKUS—Could you do that?

Mr Dawson—Certainly.

Senator BOLKUS—Would you have any idea as to how many bankruptcy matters, for instance, that are currently filed with you could have been filed in the Magistrates Service?

Mr Soden—I might answer that, and Mr Dawson might correct me if I am wrong. In our last annual report we reported that 3,044 Bankruptcy Act matters were commenced for the period 1999-2000. Theoretically, all of those matters could now be commenced in the magistrates' jurisdiction.

Senator BOLKUS—So we are talking about roughly one per cent of those matters having been transferred to the magistrates' jurisdiction.

Mr Soden—Yes, one per cent have been transferred by the court, but on our figures of what has been commenced in the Federal Magistrates Court—and you would need to check with that service as to the figures they maintain—in the period June 2000 to February 2001 there have been 1,040 Bankruptcy Act matters commenced in that court. To be clear, these have not been 'transferred' from our court to their court; they are those that have commenced in their court.

Senator BOLKUS—They are new matters?

Mr Soden—Yes.

Senator BOLKUS—Do you have any idea how many human rights matters could have been transferred?

Mr Soden—Theoretically, all of them.

Senator BOLKUS—How many is that?

Mr Soden—We might have to take that on notice. No, we might have it here.

Mr Dawson—In the last financial year—1 July 1999 to 30 June 2000—there were 102 matters filed in the Federal Court.

Mr Soden—Keeping in mind, Senator, that that was at that time a fairly new jurisdiction and it is probably not the best guide to the extent of human rights cases that could be commenced in the future.

Senator BOLKUS—Is it your assessment, for instance, that there has been a slow non-family law jurisdiction uptake in the new jurisdiction? Looking at some of those figures, I think that is the conclusion that I would draw.

Mr Soden—That is our impression, but there are probably reasons for that. Yes, I would agree that the take-up has been slow, but I think that there are probably some justifiable reasons for that.

Senator BOLKUS—What do you think they are?

Mr Soden—All of the magistrates were not there at the one time. Although there have been—particularly on a joint basis—information and seminars conducted for the benefit of the profession about the new jurisdiction, it is also fair to say that the profession is not quick to change and it is too early to tell what the take-up will actually be. It does seem to me, though, that the more they try it, the more they understand it and the more they use it.

Senator BOLKUS—Are you trying to assist people—practitioners, for instance—by making them aware of the new jurisdiction and how to access it?

Mr Soden—We are. It has been in our interest to do so. We needed the help of the new jurisdiction. On the last occasion, I mentioned that we had had joint seminars where the Chief Justice and the Chief Magistrate, with the assistance of the Law Council, invited the profession to seminars to explain how the jurisdiction works and how matters are transferred, et cetera.

Senator LUDWIG—In relation to that point, when a person files—I suspect it is the solicitors who file—are there matters that would direct them to the existence of the Federal Magistrates Service? Do they choose the jurisdiction and you take the jurisdiction in which they filed or do you have an intervening process where the Federal Court could respond to the solicitor and say, ‘Look, you’re filing the matter in this jurisdiction but, of course, there is an alternative jurisdiction that is open to you, should you wish to file in it’? That is the point at which you are going to get the most impact. Are you doing it in that area—advising your clients, the people who file these matters?

Mr Soden—There are two procedures used. The first is at the counter—and there is no general rule about this—where the staff will inform people commencing that there is a choice of jurisdiction. The most effective mechanism is—keeping in mind our system of individual dockets—that every case goes to a judge. The judges look immediately to see whether the matter ought to be transferred to the Federal Magistrates Court. We take that dual approach.

Senator LUDWIG—So the judges have the ability to remit the matter to the Federal Magistrates Service?

Mr Soden—Yes.

Senator LUDWIG—I am not sure whether I heard correctly—what is the rate of that?

Mr Soden—We mentioned earlier that there have been 90 cases transferred by our court—that is the process that is used—as a result of a judge ordering that the matter should be in the Federal Magistrate Court’s jurisdiction.

Senator LUDWIG—Is there a rate? Ninety out of how many continue on? I suppose all of them could continue. That is what I am trying to get an understanding of. I think that Senator Bolkus was heading down that same path.

Mr Soden—I am not sure how we would calculate that because, as I said at the start, it does not automatically follow that there is a clear separation between cases that can be commenced in our court and cases that can be commenced in the Federal Magistrates Court. As well, that figure for bankruptcy actions commenced that I mentioned earlier—3,044 in our court or 1,040 commenced in the Federal Magistrates Court—if they are commenced in the Federal Magistrates Court, almost 100 per cent of them are dealt with by staff of the Federal Court on behalf of the Federal Magistrates Court. Registrars deal with the great bulk of bankruptcy matters. Let us say that a bankruptcy matter is commenced in the Federal Magistrates Court. If it needs to be referred to a magistrate, that would be undertaken by one of our staff. If an action is commenced in our court and it needs to be referred to a judge,

often a judge will identify that that is a matter that should have been commenced in the Federal Magistrates Court. There is no clear separation that we can make at this stage.

Senator LUDWIG—Is there any resistance among the solicitors or legal firms that file in the Federal Court where they are remitted back to the Magistrates Service? Do you have any feedback or complaints that they did not want to go there or were unhappy going there and that is why they continued to file in the Federal Court, in the hope that the judge misses it or that they can argue that it should stay there?

Mr Soden—We have received no complaints.

Senator LUDWIG—Have you asked any of the firms of solicitors? Because there is added expense—if you file in the Federal Court then you would have prepared court documents. You would have prepared them all according to the court that you filed in. You would then have a hearing day or at least a day where you might have had to go along to the proceedings. If the Federal Court tells you that it has been remitted back to a magistrates service then you have to track that back, so there is additional cost involved in that, I suspect. Whether they do that on the record or whether they have a hearing or whether it is automatic, it is still a matter that the solicitor's firm has to explain to their clients—that they went to one place and now they have to go to another. Someone has to pay the bill.

Mr Soden—We do not have any formal process for asking the firms in matters that have been remitted whether they have any difficulty with that action. We have a regular liaison in each state with the profession and nationally through the Law Council. We have usually relied on any concerns arising in any area to come through those regular liaison processes, and there have not been any at this stage. I am confident that if there were a concern, we would know about it through those processes that I mentioned.

Senator LUDWIG—What about costs involved? Before we get to that, what I am not sure of is when the judge makes the decision to remit or transfer the matter—I forget your phrase—to the Magistrates Service. Is that done on the record or when it comes in or does the judge make a decision in chambers or from the bench? Can that be challenged?

Mr Soden—Yes. It would ordinarily be done at what we call a directions hearing.

Senator LUDWIG—That is what I was getting to. Let us say you are a firm of solicitors and you have filed one of those 90 cases that you said were remitted. You have had a date set for the directions hearing, you go along to that hearing and are told, 'I am remitting this to another court.' At the end of the day that is an added expense to someone, if they had not filed with the Magistrates Service to begin with.

Mr Soden—There is a risk of that but it may not be. The directions given by our court may well have been the directions that would have been necessary by the magistrate in order to get the matter up and running. I am convinced that our judges would be very conscious of avoiding unnecessary costs. There would be a risk but there would also have been an opportunity for no additional costs.

Senator LUDWIG—When we look at costs, what arrangements are in place for the reimbursement of the Federal Court where the Federal Magistrates Service utilises your services or the Federal Court resources—registry staff come to mind, or the filing of the documents that we have been talking about and other administrative staff.

Mr Soden—All of those matters and related matters are included in a memorandum of understanding between the two courts. I think the best way of describing it is settled. It is not signed. It will be signed very shortly but the discussions have basically concluded. We are

operating and have been operating for some time as if the agreement were in place. There will be a calculation of the costs, having regard to the matters in that memorandum of understanding at sometime in the future. I do not think it is an issue for us or the Magistrates Service at the moment.

Senator LUDWIG—Is that MOU available for the committee to have a look at?

Mr Soden—I would not have a difficulty with that. I suggest it be made available when it is signed.

Senator LUDWIG—That would be fine. In relation to hearings, does the MOU also cover the cost of the hearing, the booking of the court—

Mr Soden—Accommodation. All of those things.

Senator LUDWIG—As well as the judge's time because of course there are those remittal matters? Is that included in the MOU?

Mr Soden—No, it is not.

Senator LUDWIG—I do not feel deeply about it but I thought I would ask about it.

Mr Soden—They might have a difficulty about us passing on the costs. They would probably legitimately argue that they were costs that we incurred, not on their behalf.

Senator LUDWIG—That comes back to how you are dealing with them at the counter to be able to convince them to go to the Magistrates Service. The earlier questions were directed at that, hopefully to prevent them filing in the—

Mr Soden—Yes.

Senator LUDWIG—That is why I was asking you about what efforts you were making to try to stop—perhaps 'stop' is not the right word but to at least apprise solicitors or law firms that if they file in the wrong jurisdiction there are those additional costs that attach to you. They might be able to pass them on to a client—either suspecting or unsuspecting—but it is a question that, from your perspective, I would be trying to address to convince them that 90 is starting to become too many. If they were not complicated proceedings, they were being remitted to the Federal Magistrates Service and they were not being challenged in the remittal process, I would be interested in what you were doing about that. You answered that earlier, so I guess that is an aside but if there is a question in that you may answer it.

CHAIR—There is a forensic attention to detail, Senator Ludwig.

Mr Soden—Maybe I could say that there is probably more that we could do, and I will come back to this committee about that on the next occasion.

Mr Dawson—Senator, there had always been provision under the Trade Practices Act, under section 86A, that, if a matter were filed in the Federal Court of Australia which should have properly been within, say, the District Court of New South Wales or the County Court of Victoria, the court could transfer it. That would be on the basis of the damages claim maybe being under \$100,000. If any of those matters could be transferred—and at filing there was a pro forma which was brought to the attention of people that if their damages were under \$100,000 and that if the relief that they sought could be provided by a district or a county court, it would be transferred—that was done because these were proper matters to be heard in a lower level court.

Senator LUDWIG—Is that on any of your documents?

Mr Soden—It was documents that were handed out by the—

Senator LUDWIG—That is a useful thing to put on documents.

Mr Soden—It is in documents handed out at the counter.

Senator LUDWIG—Is the MOU to operate from a certain date?

Mr Tout—Yes, it operates from 1 July 2000, and we have built in some review dates into the future. But we were trying to look at an MOU that went for perhaps three years and then was subject to a major review but with some minor points just to iron out any wrinkles that might occur along the way.

Senator LUDWIG—It has not been signed yet so it has not been implemented.

Mr Tout—It has in fact been implemented. I think Mr Soden's comment was right. While we have not signed the piece of paper, the conditions are largely settled. We have been operating in accordance with an MOU for quite some months. It was just really that some of the more detailed points needed to be settled before it was signed. For example, the Federal Court provided access to our case management system, put in place some computer infrastructure for the magistrates and the magistrates have paid for that.

Senator LUDWIG—So the accounts are moving and the Federal Court is not carrying any additional budgetary costs while the MOU is waiting to be signed because the costs are being passed on or appropriated as necessary.

Mr Soden—We have not been disadvantaged by not having a signed and entered MOU. If you were to ask the Federal Magistrates Service, they would confirm that they have not been disadvantaged. The advantage has been that we have been able to be a little bit cautious, although 'cautious' is too strong a word. We have had the benefit of some experience to be sure that what needs to go in the MOU gets in there while operating under many aspects of it already.

Senator LUDWIG—How are those moneys then allocated when they are reclaimed from the Federal Magistrates Service? Within your budget how are they dealt with?

Mr Tout—It will depend on what the item is. For example, it may be an expense we have incurred so we are simply recouping that expense. It would simply come into the account to offset our expense. In other cases, particularly where we provide registry services or the services of registrar—

Senator LUDWIG—That is like what I was trying to think of, something which was a little bit hard to quantify.

Mr Tout—Essentially, we calculate the costs, transfer those moneys to the federal magistrates and they will pay the Federal Court for that service delivery. I know that sounds a little bit circular but it will not be a complex process. It is really making sure that the costs fall where the costs should really fall in an organisational sense. That is the most effective way we can look at transferring those funds.

Senator LUDWIG—How will they be reflected in your budget?

Mr Tout—They would be reflected as a revenue.

Senator LUDWIG—Where will that revenue be applied? Will that be applied on current programs?

Mr Tout—It would, Senator. It would be applied against our current costs. In effect, somebody in the Federal Court has today performed a service for and on behalf of the Federal

Magistrates Service, and we need to recover that revenue to pay that person for having done that service.

Senator LUDWIG—Is it possible at this time to discuss how much money we are talking about—whether it is a significant or insignificant amount?

Mr Tout—We have not done a formal calculation. We have worked out a workload formula, and the impact on our work is to be reviewed in about the third quarter of this year when we can put a number on it. At this stage, our registrars predominantly carry out all of the work associated with bankruptcy. I do not think the costs are significant as a percentage of our overall budget, but we are talking about a significant sum of money—I would think we are certainly talking of perhaps \$1 million or \$2 million worth of expense. It is of that order of magnitude, but we do not have a final figure. We would certainly have it by the budget session; we would have it calculated by then.

Senator LUDWIG—If it is a revenue that is shown, none of that will be offset in your current or future budget outline, when you go to the pot or tin and then say, ‘Well, you’ve got an extra million or so out of that pot, so we will not give you another million.’

Mr Tout—It should be money going around in a circle. Essentially, one other way of doing this would be to appropriate the money to the Federal Magistrates Service in the first place, not appropriate it to the Federal Court, but then we would still be incurring the costs and would be seeking the funds to be paid to the Federal Court. We may well go to that; that may be the methodology that we adopt sometime into the future. It is still early days, but at this stage we have the appropriation—in a sense, we are paying ourselves, recognising the costs we are incurring on behalf of the Federal Magistrates Service.

Senator LUDWIG—I asked a general question earlier on today about re Wakim. The question underlying that goes to the fact that, in terms of the Corporations Law jurisdiction, you are currently limited as to what you can deal with at the moment. Is there an expectation of when that might return?

Mr Soden—I would have to rely on what I heard Mr Govey say. If you asked him, he would tell you that I frequently ask him a similar question as to when the jurisdiction of the court might return.

Senator LUDWIG—And your answer is as earlier given, I take it?

Mr Govey—I can also say that we are hoping—but this depends on legislation being enacted by the states—that the new scheme will be up and running by 1 July.

Senator COONEY—How is the Federal Court scheme going with respect to getting appropriate litigant representation? Do you know the scheme? I am interested to see how that is operating.

Mr Soden—Yes. We use order 80 of the court, the pro bono scheme, infrequently and very carefully. You cannot apply for it; it is used only where a judge of the court thinks that there is such a special case that there ought to be an order for pro bono assistance. I do not have the precise figures available in my mind, but I can tell you that when I last looked at it—and that was only a week or so ago—there were only 19 referrals under order 80 in New South Wales since the establishment of the order, and that would be a period of 12 to 18 months. So it is not overused. It relies on the willingness of the profession to help, and it is used where it is necessary.

Senator COONEY—I am just trying to get some idea of where legal aid—not in the technical sense of that term but in the general sense of that term—is going. Do you know whether you get any cases there sent down by the Public Interest Law Clearing House, PILCH?

Mr Soden—I would be very surprised if we did not, but I cannot say categorically that we have.

Senator COONEY—I suppose representation would not be such a problem in the Federal Court as it is in the Family Court in any event. The sorts of cases you have there are cases where people are able to get their own representation.

Mr Soden—I think that is true, but we have a large number, in proportional terms, of people without representation, and that is a challenge for the court.

Senator COONEY—With the Magistrates Court, the interesting category is going to be human rights law. That is all going to the Magistrates Court, is it?

Mr Soden—No. It is a new jurisdiction, and you might recall that we did a lot of work to alleviate some concerns about how that might work in our court. I do not think we have had any complaints or concerns—none that I am aware of, in any event—on what we have done there. I think the same situation will occur with the new Federal Magistrates Service. People will use it and see how it goes. We are sending some human rights matters to that court, but not all.

Senator COONEY—Talking about human rights, you might not be able to answer this or indeed feel it is appropriate to answer it, but a while back now there was a lot of media coverage of the industrial jurisdiction. There were some aspersions, I suppose is the proper word, cast on particular judges who sat in the industrial jurisdiction. Do you remember that?

Mr Soden—I remember some media commentary, yes.

Senator COONEY—Was the court able to do anything about that?

Mr Soden—I think the best way to answer that is that it has been business as usual.

Senator COONEY—Right.

CHAIR—As there are no further questions on the Federal Court, Mr Soden, I thank you and your officers very much for your assistance in the committee's deliberations.

[12.37 p.m.]

Federal Magistrates Service

Senator McKIERNAN—Mr May, can you tell us what proportion of matters that are currently filed with the Family Court could have been filed with the Federal Magistrates Service?

Mr May—Mr Foster earlier provided a list of figures about matters filed in the Federal Magistrates Service and the Family Court, which is consistent with the figures that I have. They are both coming out of exactly the same system, which we share.

Senator McKIERNAN—I think the figures Mr Foster provided were those that were actually filed in the court and in the service. What I am asking is whether you know of any that were filed in the Family Court that could have been filed with the Magistrates Service.

Mr May—Subject to the caveat that the law in relation to residence changed in December—so there was theoretically a restriction at that point—in theory just about

everything except an application for a decree of nullity or validity could have been filed in the Federal Magistrates Service. The question really is whether or not it would have been appropriate, and that is a question for judgment in every case. The theory is that simple matters will get filed in the Federal Magistrates Service and more complex matters will proceed in the Family Court, and that is a judgment that individual litigants and their advisers will make on a case-by-case basis.

If I can go, though, to the figures that Mr Foster gave you, on the applications for divorce, he indicated that just over 50 per cent of the filings in the first six months were in the Federal Magistrates Service. In theory every divorce could have been filed in the Federal Magistrates Service, just as in theory every divorce could have been filed in the Family Court. What has in fact happened, with a few variations but very much around the edges, is that those applications on which a fee was payable were filed in the Federal Magistrates Service and those applications on which no fee was payable, because the applicant was entitled to a waiver of the fee or was not required to pay a fee because they were a pension card holder or some similar benefit holder, were filed in the Family Court. That was something that was agreed between the courts in order to ensure that there was a flow of divorce work to the registrars and deputy registrars of the Family Court during the first six months.

The two courts are currently reviewing that policy to determine whether it really makes sense for the parties to be making an election about which court they file in, and it may be that the policy that has directed non-fee paying divorces into the Family Court will change in the next six months. To give you an indication of the impact of that, in Parramatta, where that policy has not been applied and basically there has been a free choice, for the first six months the ratio of filings was 75 to 25, and if you look at individual months you can see that it rises to about 85 per cent of the filings being in the FMS in some of those months. What I would anticipate happening over time, especially if we took away the distinction, is that just about all of the filings in divorce would be in the FMS.

If we go to form 7s—that is, the applications in regard to property or applications in relation to residence or contact—that is where people really do have to make a choice about the seriousness of their matter, whether they want a superior court to determine the matter, with all of the processes that go with running the matter in that court. It does not really make any difference if what you want to do is go along and see the counsellors and get some assistance to resolve your matter out of court, because in a sense both processes run in exactly the same way. The choice of going to the Family Court will increasingly be a choice of saying, ‘I have a complex matter that I want resolved by going through a process that draws out all of the issues in that complex matter and I want a judge of the Family Court to determine the matter.’

Other people will say, ‘I have got a fairly simple matter that can be resolved fairly quickly in the Federal Magistrates Service,’ and they will go there. At present just on 13 per cent of the applications come in to the Federal Magistrates Service, and that is probably more a mirror of the resources that are available and the take-up of the work in that particular time, bearing in mind that we started at the beginning of the six-month period and there has been some delay inevitably in people getting used to the existence of the new court and making that judgment about where the line between complex and simple really lies.

There has been a bit of talk about the number of transfers that have been made both to the Family Court and the Federal Court. My view is that the rate of transfer is very much higher in that six-month period than it is going to be over time, partly because some of the transfers were necessary in order to give us some work in the initial period. When we started work on 2

July last year there were some applications that had been filed in the previous week, but very few. In the normal course of events those applications took nearly two months because the application has got to be served on the parties and the other side has got to respond. It took nearly two months to come before a federal magistrate. So a number of the transfers were made simply to keep the federal magistrates occupied in that first couple of months.

Richard mentioned the form 8 interim order figures. I do not really have anything to say on those. He also mentioned that consent orders are filed in the Family Court but that none had been filed in the Federal Magistrates Service. The reason for that is that in the Family Court there is a procedure called the order 12A procedure where you can file a consent order without having lodged an application in the court. In effect, the filing of the consent order becomes the application. Our legislation does not provide in the same way that the Family Court's legislation does for the making of that order. We will not be making an order on the basis that, if somebody wants to use that procedure for which there is no fee, the procedure exists in the Family Court and they might as well make the application there. So that explains that particular difference.

If I can move on to the next set of figures that Richard provided which related to registrar work—and perhaps I can deal with some of the other issues that have arisen in the questioning of both the Family Court and the Federal Court—the registrars of both the Family Court and the Federal Court do considerable amounts of work for the Federal Magistrates Service. The financing arrangements are such that we have not had appropriated to us the money for employing those registrars. The money for that has remained in the appropriation of the Federal Court or the Family Court, as the case may be. So there is no question of the Federal Magistrates Service reimbursing any amount to either of those courts for the work that is done by their registrars either acting in a delegated judicial fashion or in running the registry services or in providing listing services or any of the range of support services that are provided to the Federal Magistrates Service. We have not been given the money; they have been given the money to provide a service to us.

We need to develop—and it is planned that this be over a two-year period—a better understanding of the value of the services that they provide to us so that, at some point, a change in the appropriation arrangements can be made. And that money will be appropriated to the Federal Magistrates Service and will not be appropriated to the Federal Court or the Family Court. At that point, we will have to make some decision and negotiate with those courts about how much we pay them for providing the services. But, at the moment, they have the money and they provide the services, and that is what we are building into the memoranda of understanding. What we are trying to put into those documents, as we learn how the three courts operate, is a description of the operating arrangements that will then let us put a value on the services that we have decided we need to get from those courts and that they have decided they are prepared to provide to us. As I say, that is a process that will evolve over about two years, and that is why the Family Court and the Federal Court and we have not really been overly concerned about having the memorandum of understanding resolved instantly after the Federal Magistrates Services comes into existence. It is actually, as Mr Soden said, to all of our advantage to have that document specifying what we really want, not what we thought we might want.

Senator COONEY—I take from that context that you are not combatants coming to the end of a war but that people get on fairly well together.

Mr May—It is an amazingly good relationship and certainly not combative in any way. I should have mentioned that the other service provided is from the counsellors in the Family Court, and we have full access to that service as well. I hope that helps.

Senator McKIERNAN—That was a very comprehensive answer, Mr May. It is most helpful and will save our repeating a number of the questions that we have addressed previously to the two courts. Thank you for that. We are appreciative of it. Your comments on the memorandum of understanding were interesting. We were told earlier that there is a hope that the MOU will be signed within the month. Would that be your expectation as well, bearing in mind what you have just said about the MOU?

Mr May—In regard to the Federal Court memorandum, I think the words that we used before were ‘settled but not signed’, and that is certainly the case. I have certainly sent the text to the Chief Federal Magistrate. It is a text that I agree with. Whether there are any further changes remains to be seen. It is substantially settled but not signed. The Family Court memorandum is very much in the same situation. The final settlement of the text has not been achieved, partly because some things are changing. Our staffing arrangements with the Family Court are far more extensive and far more complex, involving counsellors and registrars and a range of other people. The work that we do with the Family Court is a far greater proportion of the work of the Federal Magistrates Service. So, while we came very close to agreeing on the text in December, there are now some matters that we need to tidy up and make sure that they are in the final text before it goes to jurisdiction heads. Within the month for that is realistic, but I would be more confident about two months than one month.

Senator McKIERNAN—Senator Ludwig asked the Federal Court for a copy of the MOU and I think the response was that we would get that after it was signed. I do not think we asked the Family Court for a similar copy when we had them in front of us.

Mr May—I cannot recall from the legislation whether they are documents to be tabled or not, but from my perspective I think they will be public documents, and there is no difficulty about providing those documents. Certainly the section 90 arrangements that give rise to some of the things that are in the memoranda are tabled or have been public documents and can be accessed by somebody simply by asking for them at the registry.

Senator McKIERNAN—Thanks very much. If such a document between the service and the Family Court becomes available and it can be provided to the committee we would be appreciative of that, too. I have a few brief questions. As I said, you gave a comprehensive answer. I think a number of the questions are covered in what you have provided to us, so I want to move to a slightly different tack. Does the service have a view as to whether it should take on additional jurisdiction from what you were originally set up to do and, if so, what?

Mr May—It is obviously a matter for the government what jurisdiction we get given. I think there is scope for the service to take on additional jurisdiction. I am reluctant to identify what those areas might be.

Senator McKIERNAN—I cannot encourage you to do that, can I?

Mr May—Obviously, there are a range of areas of federal law that it might be considered can be dealt with by a court that is set up to deal with the less complex end or part of the spectrum of federal law matters.

Senator McKIERNAN—Early in the financial year—it might have been this year—the Attorney sent out a press release, the focus of which was to commend the service for its role in dealing with more than 10,000 applications for divorce and the service’s performance in

granting more than 6,000 of these applications. In your view, does this give a fair picture of the performance of the service?

Mr May—It gives a very clear view of the performance of the service in dealing with the divorce workload. The divorce workload forms part of the work of the court. The form 7, that is, the resident's property and contact type issues, constitute the part of the workload that is really the most time consuming. In the general federal law areas that work will become the more time consuming because that is where the hearings are. So the divorce statistics are an indication of the take-up by the public of the work of the court, but they amount to a relatively small part of the time of the federal magistrate.

Senator McKIERNAN—When is an announcement of the appointment of the fourth Melbourne magistrate to be made?

Mr May—I am unable to say that.

Mr Cornall—That matter is under consideration by the Attorney-General.

Senator McKIERNAN—Just under consideration?

Mr Cornall—Yes. I am unable to be more precise about any time when it may be resolved.

Senator McKIERNAN—Last month the Family Law Council reported on litigants and persons, showing that the number of unrepresented litigants in family law matters is increasing. The report concluded that this is causing a strain on the court system, legal service providers, opposing parties and the unrepresented litigants themselves, mainly to ensure that people get a fair hearing. How is the Federal Magistrates Service addressing the needs of unrepresented litigants?

Mr May—In a range of ways, Senator, and very much similar to the Family Court's approach. We participate with the Family Court in its self-represented litigants study, which Justice Faulks is heading, and we will make our contribution through that committee rather than trying to duplicate the work of that group. Our web site draws on the experience of the Family Court, which really has an outstanding web site in terms of its support for self-represented litigants. Again, we have not tried to duplicate what they have done; we have worked with what the Family Court has done. Recently, we have looked at the forms for divorce, for example, and, with the Family Court, have modified those to allow for the fact that there are now two courts exercising that divorce jurisdiction. Similarly, we have worked to update the kits to make sure that they make sense for somebody who is looking after their own interests in a matter. So, basically, we are working with the Family Court as appropriate and taking very much the approach that the Family Court has taken in relation to its self-represented litigants.

Senator McKIERNAN—Changing tack again, what is the annual budget allocation for the primary dispute resolution service in this year and the out years? Can you give us an indication of how that money has been spent to date and what plans there are for further expenditures?

Mr May—The amount allocated in the additional estimates figure that you have seen is \$600,000 per annum. That funding has not been spent as yet, but we expect to issue later this month or at the beginning of next month the tender for the supply of dispute resolution services. We anticipate spending at least some of that funding during the balance of this financial year and may rephase some of it into the next financial year. We are also establishing a project in Melbourne which will see order 24 conferences—they are the property conciliation conferences currently conducted by registrars—being conducted by people from

the private legal profession. The court will pay a fee, which is yet to be determined, for the conduct of those conferences. They are the two major initiatives that I can mention at this stage.

Senator McKIERNAN—Has the expenditure of the \$600,000 been put out for tender?

Mr May—That is going out for tender.

Senator McKIERNAN—At what stage in the tendering process are we?

Mr May—The tender advertisement has not been issued yet. The documents are being drafted.

Senator McKIERNAN—But you still hope, notwithstanding what you have just told us, to be able—

Mr May—We will spend some of that money in this financial year, but I doubt that we will spend all of it.

Senator McKIERNAN—Have you an expectation of when that might start? I would imagine that part of the tendering process will be a commencement date for the delivery of the service.

Mr May—That is going to depend on who the tenderers are and their readiness, but I am hopeful that we will have some of the arrangements in place by the beginning of May.

Senator McKIERNAN—Is there any reason why this process has been delayed?

Mr May—The main reason has been that we have been setting up the rest of the services of the Federal Magistrates Service. Part of the reason has been that it took a while to engage a person in the court with the expertise to manage the tender process, and it is just one of the priorities in our establishment.

Senator McKIERNAN—Thank you.

Senator COONEY—The Federal Magistrates Court, the Family Court and the Federal Court all share the same buildings. Is it the one registry that you go to for the Federal Court, the Magistrates Court and the Family Court?

Mr May—In Melbourne we share the same building but we use two registries. In most capital cities we use the Federal Court registry for what we call our general federal law work and we use the Family Court registry for our family law and child support work.

Senator COONEY—So there is not a separate registry for the Federal Magistrates Service?

Mr May—There is not a separate registry for the Federal Magistrates Service, no.

Senator COONEY—Where are the magistrates' chambers? Are they in with the judges or there is a separate part where they—

Mr May—That varies from city to city, Senator.

Senator COONEY—The picture is that you have two separate courts in the jurisdiction that the Federal Court used to have on its own. You have a separate one for the Family Court and the magistrates are identical with their particular court in both cases, are they not, except for what they are paid?

Mr May—No. The federal magistrates exercise jurisdiction across the whole range of the court's work, whether it be general federal law work or family law work

Senator COONEY—I follow that, but they are doing the same work as the court that they are located in, are they not?

Mr May—No. To take the example of Melbourne, the federal magistrates have their own accommodation there. They do not sit with the Federal Court judges or with the Family Court judges.

Senator COONEY—Where are they?

Mr May—They are on level 12 and the Family Court judges are on levels 13 and 14.

Senator COONEY—What about in other jurisdictions?

Mr May—In Sydney the two federal magistrates happen to have accommodation in the principal registry area, but I think it is allocated as judges' chambers on the 18th floor. In Parramatta the two federal magistrates do sit in the same general area as the Family Court judges. In Brisbane the two federal magistrates sit in chambers that have been made available by the Administrative Appeals Tribunal.

Senator COONEY—The picture I have—correct me if I am wrong—is that physically there is a very close contact between the judges and the magistrates, using the same buildings and the same courts. In many cases, they are using the same registry

Mr May—They certainly use the same buildings, the same courtrooms and the same registries.

Senator COONEY—I am wondering what effect that has. I suppose it is too early to work it out. One interpretation you could make is that, through the process of bringing in the Federal Magistrates Service, all you have done is to bring in some extra judges at a cheaper cost. I am not asking you to say that that is correct, but that is consistent with what has happened. It might not in fact be what has happened but it is consistent with what has happened. You might not want to comment on that.

Mr May—It is quite clear the one of the objectives of the court was to establish a cheaper, simpler and more effective—I forget the mantra—

Senator COONEY—But cheaper, simpler and more effective—

Mr May—and it was going to come at lower cost. There is no question about that. You can see that in the arrangements that have been made for the federal magistrates, the way their remuneration has been fixed and their superannuation. There are clear cost issues.

Senator COONEY—You were asked before whether you could take on further jurisdictions and you said you could—

Mr May—I think it might be appropriate for the court to have more jurisdiction. We would need more resources if we were going to take that on.

Senator COONEY—But if you are in the same building and you have that close physical contact—it might only be a floor—you are there with the same registrars and I suppose you could have a situation where more and more jurisdiction is given to the magistrates courts and less and less left to the other courts. There would be no problem about that if the government wanted to give you more jurisdiction.

Mr May—I suppose that would be possible, but it is not the policy, as I understand it.

Senator COONEY—You do not want to comment on policy. All I am saying is that, when you look at the actual physical set-up, where the court has gone and what has happened, if you had a government which wanted to be imaginative or adventuresome, or whatever, it

would just be a matter of the stroke of a pen, if you like, to put more and more jurisdiction into a court where they have to pay less to the people who are making the decisions.

Mr May—It could do that.

CHAIR—That concludes questions in relation to the Federal Magistrates Service. Mr May, thank you very much for your attendance here today.

Proceedings suspended from 1.06 p.m. to 2.08 p.m.

Office of the Privacy Commissioner

CHAIR—I welcome Mr Crompton and Mr Pilgrim to the table. I believe this is in fact the Privacy Commission's first appearance in its capacity as an independent body, so welcome in that capacity.

Senator McKIERNAN—What progress have you made since the enactment of the Privacy Amendment (Private Sector) Act 2000?

Mr Crompton—We have basically begun to put in place more of the detail that was first outlined in the strategic plan that we might have mentioned to you in previous hearings. In particular, we have a very detailed program of consultation that we have to go through during this year to make sure that guidelines that give flesh to the basic principles under the act are actually drawn up and promulgated. We have put material on our web site and written to a very large number of people about that program. We also have to make sure that our own complaints handling processes and investigation processes are up to the mark with regard to the new jurisdiction that we have, and we have work on that under way and some other housekeeping work as well. The plan for the whole of this year is now unfolding for us.

Senator McKIERNAN—The Senate passed a number of amendments to the bill during its passage through the parliament. How do you address the amendments in preparing the guidelines for the national privacy principles?

Mr Crompton—As I recall it, the majority of the amendments to the bill did not amend the national principles so much as the structures surrounding the principles, but the principles themselves were amended in a couple of places. But, given that what we are about to do is to put out for consultation some draft guidelines, we will consult and then we will actually finalise the guidelines later on in the year. In a sense, we have built a system that now commences based on the act as passed, as opposed to the bill that might have been before the parliament previously.

Senator McKIERNAN—Are you preparing those guidelines now?

Mr Crompton—Yes.

Senator McKIERNAN—When do you plan to circulate them? I assume you have within your plan a proposal to circulate them to interested parties.

Mr Crompton—Correct. We could actually table for senators, if you wish, a letter that we wrote to at last count about 1,600 individuals and organisations where we laid out the consultation process that we wanted to go through for the year. We have also posted it on our web site. In short, we will be consulting on guidelines on the national principles. We will be consulting in particular on health and privacy in the national principles. And the third stream of consultation relates to how an organisation can establish its own privacy code to replace the national principles. We hope to be putting out draft guidelines by about the end of March. Then we will be consulting and then we hope to put out the final guidelines by about October.

With regard to the code guidelines, we intend to run a process that finishes more quickly, so hopefully the guidelines will be finalised by about July, because it is only at that point that organisations can develop their codes and put them forward for approval so that we can actually be in a position to start approving the codes as soon as the legislation comes into effect on 21 December this year. So there are three streams of consultation. We have promulgated major milestones through that consultation process. On top of everything that I have just mentioned, we have also set up some reference groups to be looking at the drafting process as we go through. I believe that consultation is the key to getting a set of guidelines that actually work both for the organisations that collect information and for the individual Australians who will be affected by them.

Senator McKIERNAN—It would be useful if you did table that letter.

Mr Crompton—What I am tabling is the kind of letter that was sent out to that group of 1,600 people and the attached paper that went with that letter. And, as I said, it is also posted on our web site.

Senator McKIERNAN—The amendments that were passed in the Senate last year gave you an enhanced role in determining appeals from decisions of industry adjudicators. Has the Privacy Commissioner made any estimate of the additional workload that this will place on your office? If so, what is the estimate?

Mr Crompton—I may defer to the deputy, in case he has been doing some thinking that I have not been doing, but I myself have not addressed that question. I believe it could be difficult to estimate. Depending on how the codes behave, it could range anywhere from being almost no work to do to considerable work to do.

Mr Pilgrim—Just to add to that, we have not done any major rework of our initial calculation on possible workloads coming in from the new jurisdiction. So at this stage I have not got any figure to add to that with the changes to the legislation.

Senator McKIERNAN—Has there been any action in that area to date that would be an indicator of possible additional workload or additional drain on the resources?

Mr Crompton—There really is nothing that can give us any hints whatsoever. At this stage it is not even clear to us the number of codes that are likely to be put forward to us for approval. Then, within that, only some of those codes may come forward with a code adjudicator to go with the code. Then really it is down to the behaviour of the code adjudicator in large part as to how many of the code adjudicator's decisions would come through to us, essentially on appeal.

Senator McKIERNAN—Can you inform the committee of what progress has been made towards the developing of special protection for children? Is the Privacy Commissioner involved in the process?

Mr Crompton—I believe that question is probably best answered by the Attorney-General's Department, given the announcements made by the Attorney at the time the legislation was going through.

Mr Cornall—I am not able to answer that question. It may well be that when other officers come back later this afternoon when the department is heard we can deal with that question then.

Mr Crompton—If I may state the facts of the matter as I understand them to date, the Attorney announced that there would be a process to look at the question of children's

privacy. But what has been done by the Attorney and his department in light of that agreement is obviously not something that I know about and therefore would be something that officers might be able to fill in a bit further later on this afternoon.

Senator McKIERNAN—Mr Cornall, could you suggest when the appropriate time would be to ask this question? I am happy to move to that area at the appropriate time in the examination of the department. I just want to bookmark it now.

Mr Cornall—We can deal with it as soon as the departmental staff get here at the commencement of the department's evidence.

CHAIR—As there are no further questions in relation to matters concerning the Office of the Privacy Commission, I thank you, Mr Crompton and Mr Pilgrim, for assisting us. It was just a brief appearance, but we are grateful.

[2.20 p.m.]

Office of Film and Literature Classification

Senator Ellison—Will we be going back to the Office of Film and Literature Classification after Customs?

CHAIR—The OFLC were initially requested by Senator Harradine, who withdrew his request for them to be present, as I understand it.

Senator Ellison—So they are not required?

CHAIR—They are not required.

Senator BOLKUS—I have a question on OFLC.

CHAIR—You will have to put it on notice, because, as Senator Harradine was the person who requested them and they were no longer required, they are not attending. Can we place the question on notice?

Senator BOLKUS—Yes.

Senator Ellison—And after the Customs Service we will continue with A-G's, et cetera?

CHAIR—Yes.

Senator Ellison—Thank you.

[2.20 p.m.]

Australian Customs Service

CHAIR—I thank you for assisting the committee this afternoon and invite Senator Lundy to begin with questions.

Senator LUNDY—My questions relate primarily to similar matters to those I have discussed in previous estimates and the IT outsourcing of the Australian Customs Service to EDS and other related issues around that. At the last estimates there was some discussion about the progress of the contract with EDS, particularly in relation to Tradegate and various services provided to the Australian Customs Service. Could you give me an overview as to what was happening with the management of information technology resources in the context of both the EDS contract and other service provision by organisations like Tradegate and their respective contractors?

Mr Woodward—Can I just ask a preliminary question. Do the questions relate to a submission which Tradegate has put to the committee? If they do, I might be able to shorten this part of the process. If they do, we have—and I am quite happy to table it—a submission of about 10 or 11 pages to you on each of the 14 issues raised in the Tradegate submission. But there may be other issues.

Senator LUNDY—There are. Thank you for that. Just for a point of clarification, the Tradegate submission was to a different Senate committee, the Finance and Public Administration References Committee, conducting the inquiry into IT outsourcing. The Tradegate submission went to that committee. Chair, I think, however, that it would make a lot of sense if Mr Woodward were to table the response here. Obviously, that would be conveyed to the Finance and Public Administration References Committee, given that the matters are related and, yes, I did want to ask questions about those issues here today.

Mr Woodward—I would like to do that, but I did think it was to this committee that Tradegate had referred its submission, because it dealt with the evidence that I gave on the last occasion to this committee rather than to the other committee. That is why I am raising it now.

Senator LUNDY—You may be correct. Chair, can you provide clarification?

CHAIR—I cannot, but I will make an inquiry of my secretariat.

Senator LUNDY—Either way, I think the issue is much the same given that I asked those questions at the last hearing of this committee in reference to the IT outsourcing generally. So there is a lot of crossover. It would be useful to be able to see your response, although I will not be able to address it directly in my questioning today. I apologise if I traverse any areas that you have in fact responded to. Perhaps we could just see how we go.

Mr Woodward—I am not sure what the process is. I would like to tender that document now.

CHAIR—That would be useful. I do not recall having seen the document in the process of responses and information coming into the committee since our last discussion on this issue, so I cannot confirm whether it came to us. We are just checking that now.

Mr Woodward—In the meantime, we can tender it.

CHAIR—Yes, if you can tender it in the meantime, that would be helpful, and I will have copies made.

Senator Ellison—If there is some aspect that Senator Lundy especially wishes to touch on, Mr Woodward can provide it and Senator Lundy is then free to take it away and have a look at it later. It would be helpful to tender it at the outset, I would suggest.

CHAIR—Thank you. Mr Woodward, do you have a copy of the document?

Mr Woodward—Yes, we have plenty of copies. Would it be appropriate for me to make one other preliminary comment for Senator Lundy's purpose.

Senator LUNDY—Certainly.

Mr Woodward—On the last occasion—I have had a look at the evidence that I gave and I stress that I am not a technical expert—the issue was fairly complex and the discussion was

fairly complex also. You will find that in the attachment to the material we have just handed up to you—and I have additional copies that are coloured and will make it a little clearer for you—I attempted to explain that there is a hub which Tradegate is referring to in its material which is external to the Customs gateway. The copy I am showing you is coloured and I think if you look at that the whole issue will become a lot clearer. I stress that this document was not drawn by Customs; it was drawn by connect.com, which is the service provider to Tradegate, and this version was given to me by Mr Robertson, who was the author of the document. So I think there is a fair assumption that it is accurate. The only thing we have done is put some colour in. The point I wanted to bring out concerns the arrow that is coloured red. You will see that there is at one point the dark blue, which is the Tradegate hub. That is the particular area that all of the bureaus and various service providers report into at the moment. At the other end is Customs, and there is a gateway into the Customs systems that applies now. In the material which Mr Robertson has forwarded to the committee it may not have been altogether clear that there are two hubs or gateways. One is a Tradegate hub; the second is a connection into the Customs systems which formerly was provided by Customs using two interface mechanisms. It is that connection that we will be having EDS provide. We thought that might be helpful. There are also two further attachments. We have colour versions of those if that would help.

Senator LUNDY—I much prefer colour over black and white any day.

Mr Woodward—The coloured versions will make it clear what we are talking about now with the Customs connect facility. These two coloured versions will show you what the new arrangements will look like. I think that point of clarification is important to get an understanding that there are differences of perception on the part of the author of that document and us. But, as I said, we have covered comprehensively responses to each of the points that he made to the committee.

Senator LUNDY—Thank you very much for that. It is obviously going to make some great reading for me, and I will follow it up with interest. To make today useful for the committee, I might track over some of the bigger issues. Feel free to respond, and if you can in fact draw a reference to your written response that will help me track it through with a little more detail later.

Following up the questions from last time, one of the concerns was, in a nutshell, the extension of the EDS contract to impinge upon the role and operation of Tradegate, in particular given its relationship with the industry and the compilation of the Tradegate board in providing a representative organisation to the needs of the clients of the Australian Customs Service. I know you have answered that in your explanations, but could you respond to that concern and whether or not your explanations remove or nullify that concern?

Mr Woodward—The point I started out making, and which is why I sent up to you a copy of the coloured version, is to emphasise that there is a Tradegate hub, which is the dark blue that you have there, and there is a separate point of entry into the Customs systems which have been managed by Customs in the past. They are managed now by EDS, and it is a part of it which is in the green ACS part that we are talking about. There has never been any intention, and we do not have the ability, to contract out the Tradegate hub, which is theirs.

Senator LUNDY—So is there anything in your proposals that would require Tradegate to conduct itself differently in its relationships with its clients, businesses that export and indeed yourself, as they are contracted to you?

Mr Woodward—It will not require any different way of working, but it is quite probable that there will be a different way of working. As you will see, the red component has one single point into the Customs systems through a gateway. That is the only way that you can get into the Customs systems. The point I was making the last time we met was that we said there needed to be choice, so there had to be more ways in which you could get into the Customs systems than through the Tradegate hub. So, if Tradegate does not produce a set of arrangements, including costings, which are attractive to all those who want to connect to the Customs systems, yes, there will be an impact, but it is a conscious impact. We have said that it is up to those in the importing and exporting communities to decide themselves how they should connect with Customs, not to be forced down a particular line.

Senator LUNDY—Looking at this graph with the red arrow demonstrating the link between Tradegate and the Australian Customs Service, what you are trying to introduce is some potential competition to Tradegate, because EDS will be able to offer a point of entry for other service providers that could compete directly with Tradegate.

Mr Woodward—In the broad, that is true. There has to be a gateway. We are aware of no other major organisation such as Customs with very complex computing systems where individual organisations, companies or whatever can directly access those systems. There has to be a way in which you can get in, where messages are queued and security, et cetera is applied.

Senator LUNDY—Sure.

Mr Woodward—So we are saying that there ought to be a choice such that individual companies can choose to go down a path of a high cost option—which might be instantaneous reaction—go down a batching process one or use the Internet using a service provider. Let them decide how they want to connect to Customs rather than have the compulsory arrangement that we have now.

Senator LUNDY—I want to explore that for a minute because I think this really gets to the heart of the matter. Correct me if I am wrong: the Tradegate board brings together representatives from all over industry and in fact the constitution of Tradegate requires industry representation.

Mr Woodward—Yes, it does. Customs is one of the parties that are interested. There are individual companies that are represented, such as BHP and Coles Myer, through to intermediaries such as customs brokers, and Customs is represented also.

Senator LUNDY—And also end users in the different sectors of importing and exporting.

Mr Woodward—The submission that Mr Robertson provided to you gives a comprehensive listing of all of them.

Senator LUNDY—Does Customs have representation on that board?

Mr Woodward—Yes, as we mentioned.

Senator LUNDY—I am just trying to get a feel for it because it seems to me that the role Tradegate has is one of an industry representative body that seeks to provide a service in the best interests of the industry without being essentially a profit driven or private interest driven entity. Isn't that the case?

Mr Woodward—That is true. I should mention—and this is also in the material that we have given to you—that a very substantial portion of the budget as we understand it—we are not privy to the budget material but our understanding is a very significant proportion—in fact

emanates from the charges which are informal on the importing community, the \$3.65 charges that are referred to in there. So it is in our interests, and we have been a leading proponent of Tradegate as an organisation. It was entirely appropriate that that form of arrangement was set in place in 1989 or whenever it got going. But we are saying that times have changed. It is now much cheaper to use other ways of getting into our systems far more efficiently.

Senator LUNDY—I want to explore that. Referencing the information provided to me by Tradegate, it seems that that organisation, by virtue of the fact they do represent the whole industry, acknowledge very clearly that they do subsidise—that may not be the appropriate word—or do try to even out costs so even small importers and exporters who may not use the service on a regular basis are paying a minimal fee that is comparative with those which use the service in a bulk capacity. This is to try to make sure that there is no pricing disadvantage to smaller importers and exporters, as opposed to the bigger importers and exporters that could potentially leverage that bulk and pursue cheaper prices. Do you care to comment on that?

Mr Woodward—Tradegate will continue to exist. I cannot see Tradegate going out of business. It has a set of arrangements with a firm called connect.com. I do not know whether those arrangements will change, because they are between those two but, assuming they do, the people that you are concerned about will still have the option to use Tradegate. In fact, connect.com have said that they are putting in a new facility of connections.

Senator LUNDY—I accept that, Mr Woodward, but Tradegate are expressing concern that, if by virtue of this EDS are able to provide these services to other hubs or other points of access to the Customs database, they will actually lose the economies of scale that they are able to offer across the industry, to the disadvantage of their current pricing model or their current business model. This would force them to raise their prices for the smaller end of town, and the bigger importers and exporters, as you say, will go to those who can offer them a rate that is perhaps not assisting in some way to subsidise smaller importers and exporters.

That is the guts of Tradegate's concern: that your plans to provide EDS with an alternative opportunity for clients to access the computer database will blow the Tradegate business model out of the water, ultimately disadvantaging smaller importers and exporters to the specific advantage of the bigger exporters, who will seek another service provider, hence disconnecting the whole principle of having an industry representative board managing that gateway, because you will undermine their business model. I am just stating what you and I know is the obvious and what is contained in the documentation from Tradegate. I am casting my interpretation having perused that material. I do not know if you would like to comment, but I have some specific questions about government policy in that regard.

Mr Woodward—Can I comment on what you have just said, and can I stress that EDS is not a competitor to Tradegate. EDS is—

Senator LUNDY—But they could potentially be, could they not?

Mr Woodward—No, EDS is quite specifically excluded from competing for the sort of business that Tradegate is engaged in.

Senator LUNDY—But they will offer that service to another potential service provider, will they not?

Mr Woodward—No, I do not believe that that is so. We have an understanding with them whereby EDS will not be competing for that business; they will be providing the Customs gateway. The second point is that it is true that there is the potential for Tradegate to lose

business—of course, that is why the managing director has written to you, because they are concerned that they are going to lose some business and that connect.com, their major provider, may lose business. On the other hand, you have a whole array of industry representatives who believe that there will be advantage to them—

Senator LUNDY—They will be able to get economies of scale on a pricing structure outside of Tradegate's model, so it is pretty obvious what their interests are.

Mr Woodward—No, it is not just economies of scale. There will be a whole array of ways in which importers can connect with Customs. In fact, only in the last day or so the Conference of Asia Pacific Express Carriers have written to the minister indicating that they see cost advantages—and I stress that they handle very small business as well as large business—and a significant advantage to them. With regard to the second issue, I will read an extract from a report from Pricewaterhouse Coopers in the United States:

Traditional EDI systems require a network connection between two organisations exchanging documents.

That is what we have now. It continues:

Typically, this set-up requires a dedicated line running between the two companies or a connection to a VAN. However, the advent of the Internet has created a common communications platform upon which business can be conducted. The universal connectivity provided by the Internet allows multitudes of additional parties, particularly small and mid-size businesses and consumers, to utilise EDI technology at a lower cost. In addition, Internet based EDI reduces transaction cycle times by using direct transfer instead of mailboxes. EDI over the Web—

which is what we are talking about—

costs about one tenth as much as it does over a VAN.

We are saying that, if you look at what is happening worldwide, you should consider the merits of having choice as against compulsion in the way in which importers are able to connect with us. The advantage lies in the direction in which we are going, in my judgment.

Senator LUNDY—So you are saying that the alternative messaging and interactive service will be web based rather than based on fixed lines or dedicated lines?

Mr Woodward—Yes. A practical example is New Zealand Customs, which moved network providers to the electronic commerce network and from the X400 to the Internet. Overall, the industry EDI charges were reduced from \$NZ2 million annually to about \$NZ200,000 annually—that is the cost to importers.

Senator LUNDY—On the issue of dedicated line versus Internet protocol systems, my understanding is that when Tradegate were first involved in consultation over your cargo management re-engineering project they provided to you several submissions that in fact canvassed a series of initiatives moving in that direction. Is that the case?

Mr Woodward—Tradegate would certainly have canvassed that. Connect.com, which in turn is its provider, has been working on it. We have been actively involved with both in providing a web based front-end in terms of connection, which exists now.

Senator LUNDY—So Tradegate was moving in the direction of Internet protocol in terms of its communication anyway.

Mr Woodward—It has been working with Customs in that direction, but I am not sure what the significance is here.

Senator LUNDY—The reason I am asking that question is that you responded before that the implication was a completely new opportunity to find quite profound new efficiencies by moving to a web based service rather than to a dedicated line service. The counterpoint I am making and asking you about is: was it not the case that Tradegate had specifically made representations to Customs about their own plans to move in that direction?

Mr Woodward—My response to that is that it would still retain the one single line for connection into the Customs systems, which is through the Tradegate hub. What we are saying is that it is totally inappropriate in this new century to say, ‘You have to enter major systems such as Customs through one route.’

Senator LUNDY—Could you not have negotiated a more open access system?

Mr Woodward—We have been talking to Tradegate for considerable periods. There has been a whole exchange of correspondence and, as I mentioned to you on the last occasion, much of what Tradegate is now including in its submission to this committee was very publicly reported in exchanges which took place in the *Daily Commercial News*. I have copies of that as well, if there is any doubt. In other words, there is nothing new; it has been debated for some time. The difference is that at least the chief executive officer of Tradegate—because, frankly, I do not know whether he is speaking for the board—is concerned about loss of business. That is what it is about.

Senator LUNDY—Going back to your decision to try to set up a system where Tradegate is no longer the single service provider, you mentioned that EDS would not be competing in any way, shape or form for alternative service provision. What would be the contractual relationship with other service providers, given that EDS is contracted to manage and control your information technology systems, including, I presume, your underlying databases and information architecture?

Mr Woodward—The EDS responsibility is to provide the gateway by which all of those various forms of communicators will communicate with Customs. There is a clear understanding with EDS that it will not be competing in that market. As for the contractual provisions, I cannot answer that.

Senator LUNDY—Let me get this very clear: by EDS moving into that role you are creating another contractual layer between the service providers in the Tradegate space, if you like, and Customs, because it will be done through EDS?

Mr Woodward—No. That is not so.

Senator LUNDY—That is what you just said.

Mr Woodward—That decision in relation to EDS was basically taken when we decided to outsource to—

Senator LUNDY—No, it was not because you had a whole range of options, as I understand it, as to how far you went with your cargo management re-engineering. Part of your decision making in this area related to some options you had in how you deployed EDS into these new areas and new initiatives, because it did require a variation to their contract, did it not?

Mr Woodward—I am really not sure what you are saying. Let me repeat the facts. At the moment, the point of connection into the Customs system is through a Sun Unix server which hosts EDI software, which is used for import declarations, air cargo automation, sea cargo automation, et cetera. There is a separate Unisys front-end processor which hosts the

interactive compile link. When Customs provided those services in-house they were owned, controlled and run by Customs. When we outsourced to EDS, those capabilities were taken over by EDS. There has to be a way in which you can get into the computer system. So that capability has existed since 28 March, almost three years ago.

Senator LUNDY—You will have to help me here, I am sorry. I am trying to get an understanding of how you are initiating this change to create an alternative entry point. Is it just a question then of saying to other potential service providers, ‘Tender for this work and we will ask Tradegate to tender for it and then we will weigh up the different competing bids and choose a multitude or however many competitors to get access to it’?

Mr Woodward—We always envisaged that there would need to be a mechanism to update the way in which messages come into the Customs systems, the UNIX server and the front-end processor. Cargo management re-engineering will change many—but not all—of the Customs systems. In order to deal with the new environment in which we will be operating—that is, an IBM main platform, and we discussed this on the last occasion, instead of Unisys—there will be a need for a major change to what is described as the front-end. What IBM is doing is providing its AIX front-end which, again, is what we talked about when last we met. That is the genesis of the change.

Senator LUNDY—You still have not explained to me what the actual mechanism is for increasing the number of service providers. You have said you are changing the front-end, which I guess creates architecture that allows that to be possible, but there is still the policy decision that has obviously been made to go beyond what Tradegate have got to offer.

Mr Woodward—It has been known for years that we were going to go down a different route, and Tradegate have known that for years.

Senator LUNDY—The representations made to me—and I confess I have done a lot of interpreting of this myself—were that a lot of change was taking place and that Tradegate had participated actively in consulting and working with the department about the nature of that change and had, in good faith, made a whole series of submissions about their ideas, particularly, as you mentioned, PricewaterhouseCoopers moving to a web environment as opposed to a dedicated line environment and extracting all the cost efficiencies out of that exercise. That does not really answer my question as to at what point in the discussion about change and upgrading networks and your Customs front-end there was a move away from Tradegate being the industry hub and the only gateway into Customs. At what point did you make that decision?

Mr Woodward—I cannot give you a month—

Senator LUNDY—I was hoping for a day or something in writing.

Mr Woodward—It has been known for some considerable time, 12 months or so and probably more, that there would be different ways in which importers’ intermediaries would be able to connect with Customs. There have been numerous discussions—

Senator LUNDY—I am looking for some specifics about when that decision was made.

Mr Woodward—We can provide those dates—or months as I am not sure of precise dates—and I can assure you that they date back some time. Some of the questions you are asking are in fact in the answers we have given.

Senator LUNDY—I appreciate that. I have not had a chance to read it, so you will just have to excuse me.

Mr Woodward—We were not given much notice that they were writing to the committee either, so this has been done pretty swiftly. There is an implication in Mr Robertson's submission to you that we have not been keeping Tradegate up to date with what has been happening. I ask you to look at page 5—I am not asking you to do it now—where there have been numerous meetings, including service quality review meetings, held between Customs and Tradegate on a quarterly basis. At no time since the outsourcing arrangements were established with EDS has the Tradegate representative raised any concerns as outlined in Mr Robertson's submission. In other words, there is a mechanism. There have been separate exchanges by letter and email between Mr Robertson and me and others in Customs. As I said to you before, there have been exchanges in the press about it—very public exchanges of view—including I think a very comprehensive, readable letter that Ms Peachey put out on the issue. The real difference is that the point is getting very close—we are still talking about another 18 months—where there is the potential for Tradegate to lose business. That is what this is all about. That is why they have written.

Senator LUNDY—I think that is certainly an issue. I guess my questions lend themselves to the Tradegate model and its place in the history of providing services from Customs in their capacity as an industry representative board to manage their cost structures in a certain way. Perhaps this goes more to an issue of policy. Minister, does the government have a view on whether a service model that distributes costs evenly across industry for accessing the Australian Customs Service is preferable over deploying a system of utilising competition policy to provide for lower costs at the high usage end of that particular Customs clientele at the expense of the lower use at the other end of the scale who would then be required, no doubt by virtue of the need for the hubs, to actually recover costs, to pay a much higher price for that access? Does the government have a policy on either of those approaches?

Mr Woodward—May I make a preliminary comment.

Senator LUNDY—Yes. I did direct that question to the minister. I do not know whether he is paying attention, but I would appreciate an answer. Please go ahead, Mr Woodward.

Mr Woodward—Perhaps if I start the minister can continue to answer. We have talked about choice. You have raised the point about the sameness of costs. In other words, there is almost an assumption, implicit in your question, that the arrangements with a community based organisation—Tradegate is a community based organisation and Customs is a director and has a financial stake in it and still has a commitment to ensure that it survives—should continue even though not only has the technology changed—

Senator LUNDY—We have already worked through that. That is not an issue because we know that Tradegate are moving in that direction too.

Mr Woodward—You have stretched—

CHAIR—Senator Lundy, I think it would be helpful if you would allow Mr Woodward to complete the responses that he is making to your questions, enable the minister to add to that response and then perhaps come back with further questions.

Mr Woodward—That is one aspect. The second is one of price, in circumstances where I have made it clear that we believe that the price to a significant number of importers will decrease—not all but to a significant number—with choice. The third is that, with choice, there is also the possibility of tailoring mechanisms of communication to the needs of individual importers so that you may, in fact, have some small and medium size businesses that are far more attracted to options, to accessing the Customs systems, than using the Tradegate systems. If there was a requirement to continue the existing arrangements, that

possibility would be adversely affected. I have to say that I have not seen any government policy issue in what we have been talking about. It has been on the table for some time and at no stage has anyone raised the possibility of government policy being involved.

Senator Ellison—I think, Senator Lundy, that what Mr Woodward said before—that it is much cheaper to use the new structure—is relevant because in all IT outsourcing one of the things the government has stressed is the savings, both savings to government and savings to the user. What Mr Woodward has outlined here is a situation which is an improvement in that regard. Certainly anything of that sort would be attractive to the government. The choice that Mr Woodward has mentioned is a desirable course of action. I do not think anyone would argue with that.

Senator LUNDY—Obviously Tradegate are.

Senator Ellison—They come from a vested interest point of view, not from a public policy point of view.

Senator LUNDY—I think it is fair to say that, because they have an industry representative board, Minister, their vested interest is Australian business and those seeking to export and to use the services of the Australian Customs Service and those businesses engaged in the business of importing. So if they have a vested interest it is a very public one and one that is representative of the industry at large.

Mr Woodward—Can I comment on that part. I stress that connect.com, which provides the services on behalf of Tradegate, is absolutely confident that it will retain a very significant proportion of the business. The second point I would make is that what has been put to you is a view put by the chief executive of Tradegate. I am not aware—and we slip between what we mean by Tradegate—that the Tradegate board has endorsed those comments. So what we have is a person putting those views to you. I do not know whether they are the views of the board.

Senator LUNDY—As I said, Mr Woodward, I make no apology for drawing my own conclusions from this, other than that I understand the structure of the Tradegate board, the role that they have played in providing the Tradegate hub for business and customs and that that particular business model, in being representative and essentially not operating in private interests—that is, for profit private interests or monopoly in the marketplace—is a sound model. It is looked upon globally as an entirely appropriate model for an effective and useful trade hub for industry accessing customs style services around the world. I guess I am singing Tradegate's praises less for the advocacy of the CEO and more for the actual model, which I commend. I commend the Customs Service's involvement with it over the years and their support of it.

My questions now go to the interests of the clients of Customs, where I see the changes—however many concerns have been expressed by the CEO or connect.com or anyone else—you are proposing as ultimately disadvantaging those who use the Customs Service but who do not have the power to leverage bulk transactions, that is, do not have a high service requirement and cannot extract economies of scale through using the Customs Service. You are quite rightly saying that is what we want to try to do—provide a whole series of options so people can leverage cost efficiencies. I do not know if we can go much further on it, other than that I will read the papers you have provided with interest. Again, I make the point that I think this is an area where government policy should have a role, whether or not they realise it at this point in time. I can see a lot of exporters and importers out there, arms going up in

disgust if their cost goes up by virtue of the deployment of a new structure with the Customs Service down the track.

Mr Woodward—I think we ended in the same vein last time, Senator—disagreeing. I do not accept that anyone is going to be disadvantaged. It is the extent of the winners and, in my view, it is the importing and exporting community that will be the winners from this.

Senator LUNDY—The other questions I have relate to IT outsourcing more generally. I will ask a few general questions and then, Chair, I might place some questions on notice as well.

CHAIR—Thank you, Senator Lundy, that would be helpful.

Senator LUNDY—My questions particularly relate to recent events in the IT outsourcing area and the independent Humphry review into IT outsourcing. I am very interested to know how the changes to the centralised IT outsourcing arrangements of the federal government have impacted on Customs and in what way?

Mr Woodward—I think this was also a subject that we canvassed on the last occasion and I mentioned to you that we were not part of the government outsourcing arrangements. We went to the market before the government took the route that it did go down. In some senses, what we now have is what I see as emerging from the Humphry report. In other words, I took a decision based on what I thought was the most appropriate way of handling IT in Customs. I went further than others have done, but it was my choice. That is the essence of what I think Humphry, and Mr Fahey's decision on it, implies.

Senator LUNDY—So, by virtue of that, you have not been involved in any subsequent changes in how you have been conducting your outsourcing as a result of the OASITO program going under?

Mr Woodward—No, we were not subject to the Auditor-General's audit. Mr Humphry did not talk to me, although—and this came out of Mr Robertson's submission—Mr Humphry did in fact chair an industry consultative group on cargo re-engineering. So he does know something about Customs. But, as part of his exercise, he did not talk to me and we were not involved. We know generally what is happening in the Public Service, but our arrangements are now almost three years down the track. We have passed the halfway mark and we are not deeply involved at all.

Senator LUNDY—You mentioned the consultation that Mr Humphry chaired. Can you provide me with a little more detail about that, please?

Mr Woodward—As part of our cargo re-engineering exercise, we decided that we ought to get the involvement of as many members of the community as we could. We had consultation arrangements in, I think, every capital city. We invited anyone with an interest—be they importers, exporters, intermediaries like brokers—to come along and talk to us. We also used a consultative forum I chair, which is a quarterly forum, but thought, over and above that, that there needed to be a more structured approach whereby we could get something like 20 or 25 leading organisations with an interest in both importing and exporting around the table, and we needed to get someone who had some credibility to chair it. We approached Mr Humphry, and he was prepared to do it. So it is a mechanism for consultation with a broad part of industry on the re-engineering of the Customs cargo systems, which obviously impact on Quarantine, the Bureau of Statistics and many other agencies.

Senator LUNDY—Just out of interest, could you provide me with the terms of reference to that inquiry and any of these subsequent submissions and documentation?

Mr Woodward—It was not an inquiry; it was a mechanism for consultation to help me and, in turn, the minister.

Senator LUNDY—So you contracted Mr Humphry to provide that facilitating process?

Mr Woodward—He agreed to do it. My recollection is that he did not get a cent out of it. So we did not contract him; he volunteered his services. I will check that, but I am pretty sure that that is the case.

Senator LUNDY—If you could provide me with the detail of that relationship and the time frame it in which occurred—

Mr Woodward—Of course.

Senator LUNDY—and any documentation arising out of that process—

Mr Woodward—Yes.

Senator LUNDY—that would be great. We have touched a little on it and there may be information in your paper but I have a few questions that go to what I guess could only be described as the legacy systems within the Australian Customs Service and what strategies you have in place to look at those underlying databases within Customs, particularly with a view to creating a web based front end of your system. I do not know if you have any reports that you could provide me to save time today but I am interested in what Customs strategy is dealing with that.

Mr Woodward—There are slabs of Customs activity, and I am sure that I will miss some, but the biggest slab, which comprises many applications, is cargo related systems. We have many cargo related systems. It is those legacy systems which we are seeking to re-engineer. We have material, we have booklets, numerous publications, we have put out on what that is all about, and we are certainly happy to make those available to you. With our passenger processing system, which has also been the subject of discussion with this committee on a number of occasions, we had a legacy system. It has been replaced by a decentralised system. There are other systems, such as our intelligence system—which as a layman I would regard as a legacy system—which have been replaced. So there are many systems and, depending on which one you are talking about—

Senator LUNDY—Perhaps we would just talk about the cargo related system, given that that is the challenge which you are tackling in your cargo re-engineering project.

Mr Woodward—Yes, that is the biggest challenge. There is a business plan, which is I think an excellent document. I have not got one with me now, but we can certainly make that available to you. We can make available to you the results of numerous consultations which have taken place on those systems, and we have information on the technical aspects. Which part are you interested in?

Senator LUNDY—I am particularly interested in the technical aspects and how they relate to the legacy system and the new systems you are proposing in that transfer and, very specifically, the role of the outsourcer as part of that transition. We have spoken previously about technology choices that you have made and how that has influenced the bottom line savings that you were anticipating from IT outsourcing and so forth. So I am interested in the relationship between the cargo re-engineering project and your plans, its impact on your technology and legacy systems, and how that relates to bottom line savings and cost structures with your IT outsourcer.

Mr Woodward—We have in fact provided the committee with material. There was some provided, I think, after the last Senate estimates in relation to the Tradegate hub, where EDS features. Secondly, in the material we have just left with you there is quite a lot of information. I just wonder whether it would be easier if after you have read what has already been before this committee, including the 11 pages—or 14 pages, I think, with the attachments—we have just given to you, it would be possible to identify what it is that is missing. We would certainly be happy to provide it. But I stress that a lot of the IT development work, because we have only just completed user requirements, still has to be done, and that is where there was a massive amount of effort needed by EDS to undertake that work.

Senator LUNDY—Just to put a finer point on that, last time we spoke my understanding was that that had resulted in significant variation and increase in expenditure on EDS, effectively to handle that workload.

Mr Woodward—I am not quite sure that I would have said that. What we have is a massive re-engineering exercise which we think could cost between \$30 million and \$35 million. It may well cost more than that.

Senator LUNDY—But from recollection we discussed that on the basis of when you originally did your cost analysis for outsourcing and savings—that you had options at that point as an agency to opt for re-engineering or not re-engineering and that choosing the re-engineering path obviously resulted in additional expenditure being required.

Mr Woodward—What I think we are talking about is that at one of our chats at Senate estimates I said that we had narrowed down the number of contenders for our contract to three. One of the major points which emerged in the final discussions with those three contractors was that each of them had said, ‘You have two options: you can simply turn your old systems and put them on one of our facilities—be it IBM or whatever—or you can re-engineer your systems because basically in a few years time they will have had it.’ All three of them said the same: ‘Our view is you should re-engineer your systems’. So the three final contenders helped us to make that decision. I cannot recall whether we had anything in relation to the costs. Basically we concluded that we had no option.

Senator LUNDY—I know I am travelling over a bit of old territory now, but my understanding of the point at which you decided to go with the re-engineering option, which obviously makes sense—at least to me—is that it changed the bottom line savings that were originally touted in terms of the IT outsourcing arrangement and the minister’s published claims of \$44 million bottom line savings through the exercise.

Mr Woodward—I think I now know what you are saying. We did give you some material and in that material there were bids. I think we provided that to you on the last occasion. There was an indication of price with and without re-engineering. Those figures are in the answer that we left with the committee—I am pretty sure it was after the last meeting. I have not got those figures in my head, but I am pretty sure they are in the material that you have. If not, we can give them to you.

Senator LUNDY—From memory the government forecast a \$44 million saving as a result of the outsourcing with Customs, but that did not take into account additional expenditure as a result of your decision to re-engineer your information technology. In addition to the \$35 million, there were some other expenses that in fact took your costs up to the \$59 million mark.

Mr Woodward—No, the figures that were in the end quoted by Mr Truss and Mr Fahey did, as I recall, include re-engineering, because we had concluded that we had to go down the re-engineering route. At our last discussion, we produced a set of figures that took us to, I think, \$43 million and that, working through competitive neutrality figures of around \$22 million or \$23 million, came up with a net advantage to Customs of about \$6.4 million. What we have basically said is that there was a saving. There have been a lot of changes made over the last three years, but a net advantage to Customs of about \$6 million is still basically accurate. I stress that we did not embark on all this to save money—that was not driving us at all.

Senator LUNDY—In terms of the disaggregation provided for the analysis of the original savings claimed by the minister of some \$44 million—which he still uses in some of his public utterances about the IT outsourcing program, I might add—have you been able to advise the minister of your revised estimates as to the bottom line saving?

Mr Woodward—There is no inaccuracy in—

Senator LUNDY—I am not saying there is in your calculations.

Mr Woodward—I do not think there is any inaccuracy in what the two ministers have said either, because it was always implicit in it that competitive neutrality figures would be included in those. You can argue whether they should or should not, but in the part of the material that was made public there was no concealing of the fact that a very significant slab of that was competitive neutrality.

Senator LUNDY—I have some points to make, but I suspect I am probably better off making them with the minister for finance rather than you. Thank you.

In terms of the savings to clients of the Australian Customs Service that you are hoping to provide by providing alternative access to Customs, have you identified any benchmark savings, either on a per transaction basis or an overall basis, or given any public commitment, perhaps through the minister, to reducing costs of accessing Customs services?

Mr Woodward—There are two aspects to that. The first is: what will it save Customs, and the second is: what will it save industry? Mr Robertson in his submission referred to a comment made by one of our officers about possible reduction in charges as a result of proceeding down the cargo re-engineering route. My recollection was that he had a figure of something like \$5 million or \$7 million in mind; certainly a reduction in any case, but it was of that order. The second and probably more important point is what the savings will be to industry. In the two quotes that I mentioned to you earlier, one from the Pricewaterhouse American report where they talked about one-tenth of the costs and the second in the New Zealand experience, we are confident that the communications costs to individual importers will be significantly less under these changed arrangements than they are now.

Senator LUNDY—Do those sorts of statements of confidence apply equally to exporters using the services?

Mr Woodward—They would be using the new electronic systems. Our focus in terms of looking at costs has been more on the importing side rather than exporting. Of course, there are no export charges; we do not charge the exporting community. But I have got no reason to believe that there will not be the same sort of communications cost impact on exporters.

Senator LUNDY—Can you point to any savings that you have identified as an agency as a result of this exercise?

Mr Woodward—That was the first point that I made, that in relation to charges there is a relationship between what we charge and what money we actually get to spend in an array of import related responsibilities, though excluding what we describe as community protection and one or two other areas. So there is a direct relationship between the two.

Senator LUNDY—This question too may be better directed to the minister, because it touches on an issue of policy. Are you in a position to say to the smaller users of your service that they will not be placed at a cost disadvantage as a result of providing an array of options to bulk users of your service?

Mr Woodward—Perhaps I can start and the minister can add comments. Again, it is in the material we have sent to you and I am pretty sure it was referred to in Mr Robertson's submission. Yes, he referred to a cross-benefit study analysis of cargo management re-engineering conducted by PricewaterhouseCoopers—that is obviously the Australian arm—on behalf of the industry reference group. That analysis was concluded in October 1999. The report stated that, overall, most industry sectors expect cost savings and non-quantifiable benefits upon implementation of the cargo management re-engineering model. It said, 'Overall, our discussions with industry clients indicate that the impact of CMR on their business operations will be favourable. Most companies visited agreed with the principles of CMR and identified where improvements could be made. This is, however, subject to a number of refinements being made to the business model. Service providers indicate that the greatest benefit will be gained by those companies which become accredited clients. The impact on small to medium enterprises is likely to be marginal.' There is nothing in there to say that their costs are going to increase. It is saying that the overall reaction of industry was supportive. I mentioned to you a letter that has recently come in from the conference of Asian air express carriers supportive of what we are doing and in fact challenging a number of points made by Tradegate in its submission.

Senator LUNDY—Minister, have you anything to add?

Senator Ellison—I have just seen the letter to which Mr Woodward referred, which is supportive. I think it is desirable. The government believes that, of course, you want to decrease the cost to users. Your question was more of a factual question—are we providing those cost savings to the smaller users rather than to the bulk users?—and I think that Mr Woodward has outlined that that is the position. As far as the policy goes, it is more a question of: does the government think that is a good thing? It does. Anything to reduce the cost would be.

Senator LUNDY—Mr Woodward, would you provide that Pricewaterhouse document to the committee? It did have a qualifier on the positive response from industry. You mentioned it was subject to some refinements to the business plan. What was the nature of those refinements? Was it specifically to do with the marginal impact on SMEs or was it to do with other issues?

Mr Woodward—The analysis was concluded in October 1999 and it had been going on for some months before then, and we were in the process of consultation with industry. It was clear that a number of changes could be made which would actually make the whole process smoother. Secondly, at that stage there was some debate—that is probably not too high an expression—going on with industry as to just how the business plan would actually operate. Since then there have been a number of changes made to it and they are incorporated in the final business plan. Possibly the easiest way to get across to you what has occurred is to show you the latest version of the business plan and the earlier papers that were the subject of those

industry group discussions—because it was an industry group chaired by Mr Humphry that commissioned that report—so you could see the differences yourself.

Senator LUNDY—You mentioned a marginal impact on SMEs. Is that a marginal positive impact or a marginal negative impact?

Mr Woodward—You would need to ask Pricewaterhouse but my—

Senator LUNDY—I reckon that would be an issue on which you would be seeking clarification in the first instance.

Mr Woodward—It says the greatest benefit will be gained by those companies which become ‘accredited clients’ and the impact on small to medium enterprises ‘is likely to be marginal’. My reading of that was that there might be some small benefit to small and medium businesses; it would not be significant.

Senator LUNDY—Can you get clarification on what that meant, even if you have to go back to PricewaterhouseCoopers? Maybe it is just me, but I would have interpreted it the other way, that the impact was marginally negative.

Mr Woodward—There are quantifiable communication cost savings, which I have mentioned to you before. To quote this:

Whilst the impact on an individual company is marginal, industry wide this could be substantial.

That supports the interpretation I have, but we will look at your suggestion. I do not know whether the person who did it is still there. It was a couple of years ago.

Senator LUNDY—Any effort you make will be appreciated. Going back to EDS in providing the doorway—as opposed to the hub—to the Australian Customs Service for service providers in the Tradegate space, what stage are you at in seeking expressions of interest, RFIs and preparing RFTs for other service providers?

Mr Woodward—None. EDS will be providing it. EDS is our outsourcer. As I explained to you at the beginning, there are two ways in which communications can enter Customs. We took a decision three years ago to contract that to EDS. EDS has to provide that service.

Senator LUNDY—So they will be drafting the request for information and tender?

Mr Woodward—No, they will not be drafting any request for information. They will be doing the work with IBM. There are negotiations under way between IBM, whose equipment is being used, and EDS, but we will not be going to the marketplace. This is what this debate has been all about. EDS is providing the service with IBM.

Senator LUNDY—I asked at the outset: would EDS be competing with Tradegate in providing access to the Australian Customs Service?

Mr Woodward—In the response I gave you, I thought I was clarifying it by saying that there are two things. One is the hub and all of those that connect into the hub and EDS will not be competing with the myriad circles you see around there, but EDS will be providing the gateway into Customs.

Senator LUNDY—Will Tradegate’s contract be with Customs or EDS?

Mr Woodward—Tradegate’s contract in relation to the services it provides now is with Customs and will continue to be with Customs. Tradegate then has negotiated a contract with connect.com, which provides the services and is a profit making company.

Senator LUNDY—I appreciate that. Referring to the graph where all of these other service providers currently access the Customs Service through Tradegate—possibly they will now be able to bypass and go directly to EDS?

Mr Woodward—To the Customs gateway run by EDS.

Senator LUNDY—To my way of describing that, that is EDS competing with Tradegate.

Mr Woodward—Again we differ. I do not agree with you.

Senator LUNDY—I can appreciate that. The whole point is that those different service providers will establish a contractual relationship with either EDS or Tradegate, won't they?

Mr Woodward—I cannot understand that point. What they will be doing is constructing a mechanism which will enable it to get into the Customs systems.

Senator LUNDY—That is right, but they will establish that relationship with either Tradegate or EDS.

Mr Woodward—No. If they bypass Tradegate, Tradegate is irrelevant. It is only relevant to Tradegate if they are going to use a Tradegate or a connect.com system. If they are going to access directly into Customs systems, we have to be satisfied. Obviously, there will be limits as to how many and it will be possible to enter into different sorts of arrangements through the gateway.

Senator LUNDY—Will you determine that?

Mr Woodward—EDS is our technical adviser. Customs is the buyer of the service. Between the two of us those sorts of decisions will be taken, with EDS being our technical adviser. We do not have a great amount of technical advice now left.

Senator LUNDY—No, it has all been outsourced. I am just trying to think of the best way, the clearest way, to couch my questions. What will be the nature of the relationship between the retail access point, like for example Telstra on this graph, and EDS if they choose to bypass Tradegate? What will be the nature of that relationship? Will it be a contract? If it is, with whom will that contract be—Customs or EDS?

Mr Woodward—Are we confusing you with diagrams?

Senator LUNDY—No, I have only looked at one.

Mr Woodward—If you move on to the one which has 'Customs Connect Facility—the Concept', with the green things down the side, you have a whole array of various ways in which importers exporters or intermediaries can get into our system. They go through those two firewalls that you see there, more towards the centre, and then the decision point is Customs, with EDS being our technical adviser.

Senator LUNDY—So they will be competing not just with EDS—

Mr Woodward—They will not be competing with EDS. There was no competition between them and EDS. EDS is working, in effect, as our agent. If EDS was not there it would be Customs.

Senator COONEY—EDS is a gateway.

Mr Woodward—EDS will be providing the gateway service into the Customs systems.

Senator LUNDY—So in effect, Tradegate will be competing with anyone else who wants access to that gateway.

Mr Woodward—Yes.

Senator LUNDY—What will the relationship between anyone else and that gateway provider be? What is the nature of that relationship?

Mr Woodward—The relationship is that EDS is the provider of a gateway service to Customs.

Senator LUNDY—How do they charge?

Mr Woodward—It is a Customs decision.

Senator LUNDY—Okay. How do Customs charge?

Mr Woodward—It will be the cost to all of these intermediaries—all these various value added networks, direct connections, et cetera—to get into the system. We will not be charging.

Senator LUNDY—But it is a cost to them to get into the system. What is the cost structure for them to get into the system?

Mr Woodward—This is what we have been talking about. Various charging structures will flow—

Senator LUNDY—But you will have to make a decision as an agency as to what those cost structures are.

Mr Woodward—No.

Senator LUNDY—You won't?

Mr Woodward—No; it is the cost to them.

Senator LUNDY—Will you benchmark your expenses and then distribute them amongst those wanting to access your system? I must be missing something here.

Mr Woodward—I suspect so. Customs has a whole series of applications which it runs to enable goods to get into and out of the country. It has to have a way in which importers or whatever can get into those systems. At the moment we have a system where we contract to one organisation, to Tradegate, to get that final point of entry into our gateway. They get \$3.65. Under these different arrangements it will be up to the individual providers to work out the way in which they can get into the gateway. If they can do it cheaply, that is fine, but we are not involved in negotiating prices to enable them to get into the gateway. We are not involved in that at all.

Senator LUNDY—But you are at the moment with Tradegate.

Mr Woodward—Tradegate receives an amount of \$3.65, but that deal was drawn up 10, 11, 12 years ago when there was a different set of arrangements. We are now injecting choice. Tradegate may choose to reduce the amount that it gets for purposes of competition.

Senator LUNDY—When you say that is how much they get, that is how much they charge per transaction. They do not get it from you. That is what they charge, because that is what they have assessed as their costs.

Mr Woodward—No. We collect it from those who are involved in importing. We are a collection agency.

Senator LUNDY—In terms of that \$3.65 charge, what will happen to that cost structure under your new model?

Mr Woodward—I have no idea. Tradegate may say that if their costs go up they may raise it. There is a real possibility—and you yourself alluded to Internet based arrangements—that

under those Internet based arrangements their cost structure will actually reduce. But I do not know the answer to that.

Senator LUNDY—To what degree does the technology provided by EDS influence the opportunities for changing cost structures?

Mr Woodward—I am not sure that it would at all. What EDS is doing—

Senator LUNDY—In conjunction with IBM or someone, aren't they building a new platform?

Mr Woodward—They are building this gateway that we have mentioned on a number of occasions. They are finding a way in which they can get in. That will have no charging implications. It is a mechanism, just as we have a mechanism now. It is a different sort of mechanism to get in.

Senator LUNDY—How much have you consulted with the smaller or less frequent users of Customs on these changes?

Mr Woodward—I mentioned to you earlier that we have run consultation sessions in, I think, every capital city—in some cases more than once. We have invited importers, exporters, intermediaries, to come along. I think there have probably been some small businesses included in the importers who have come along and they have participated in the discussion. As you well know, it is extremely difficult to make direct contact with small business. They are very hard to get hold of. We have done the best that I think we reasonably can. There are no secrets in what we are doing.

Senator LUNDY—In terms of all of these changes, what has the introduction of the GST meant to the management of your information technology and how you track imports and exports, et cetera?

Mr Woodward—I might need to ask you to be more specific. We have a major role in relation to the collection of GST, luxury car tax and wine equalisation tax for all imported products. Some of it would be direct collections and very significant sums. We assess the liability for that. We are immersed in GST so far as imported goods are concerned.

Senator LUNDY—What is the relationship between your cargo re-engineering project and the introduction of the GST? Are they all integrated or are they separate initiatives?

Mr Woodward—We had to proceed with systems in relation to tax reform in advance. Obviously we could not wait for cargo re-engineering. We have, at earlier meetings of this committee, given an account of the phases we went through in relation to getting our GST systems up and running. There have been a few further refinements that we have had to do. It was a very difficult exercise done in a very short time. It had to proceed in advance of cargo re-engineering. It could not wait.

Senator LUNDY—And EDS were a big part of that in terms of managing the technology?

Mr Woodward—Yes.

Senator LUNDY—I know we have traversed this previously, though perhaps not in specific detail. Are you able to isolate and identify the costs associated with the upgrade of your information technology because of the introduction of the GST, that is, any specific contract variations with EDS or their subcontractors which could pinpoint those costs?

Mr Woodward—You are looking for the costs of our IT systems changes that relate to GST, or the new tax system?

Senator LUNDY—Yes.

Mr Woodward—I have got a feeling we might have given that before.

Senator LUNDY—You may well have.

Mr Jeffery—Over the life of the GST project, EDS will be paid about \$12 million.

Senator LUNDY—I think you have given me that figure previously. When you first contracted out your IT to EDS, did you complete evaluation reports on that tender?

Mr Woodward—Obviously we did extremely comprehensive evaluations, and we have discussed previously the way in which we went about it. You asked some questions, as I recall, about treatment of assets. So, yes, we did an evaluation, and you at that stage asked if we used the OGO, as it was then, methodology to assess savings, et cetera and we said we had used Deloitte.

Senator LUNDY—I was going to take this opportunity to formally make a request to you to provide those evaluation reports to this committee.

Mr Woodward—I will note your request. It raises other issues that I need to raise with the minister.

Senator LUNDY—I appreciate that, but I did want to formally request that. Also, I do not know whether you may have received a request for the provision of the request for tender or documentation associated with the evaluation of that tender, but I would like to place it formally on notice that you provide the request for tender and the evaluation documentation for that EDS contract.

Mr Woodward—We have already provided this committee with the request for tender, which includes very large slabs of what later became part of the contract. You already have that, so you will not need that again.

Senator LUNDY—That is right.

Mr Woodward—The one I will take on notice is the request for the evaluation reports.

Senator LUNDY—Thanks for that. Chair, I also take the opportunity to place some questions on notice.

CHAIR—Thank you, Senator Lundy. Mr Woodward, to clarify your earlier reference to the document from Tradegate, the letter to which you refer was sent individually to some senators, not to the committee in a formal sense. So we appreciate your response document in that regard and we will take that on board in considering the initial approach from Mr Robertson and to Tradegate.

Senator COONEY—On that contract, you have not provided the actual contract, have you?

Mr Woodward—No, what we have provided was the RFT, which included a model contract. Many slabs of it were then incorporated into the final contract. There were some variations, and obviously the material you have did not include some of the figures.

Senator COONEY—If you were asked for the actual contract, you would have to say no, wouldn't you?

Mr Woodward—Yes.

Senator COONEY—This is really a question for the minister, I suppose. Does the government have an objection to producing the contract—not only this contract but contracts

in general—or is it the person who actually signs the contract with the government that has the objection? I will tell you why I ask this question. I have spoken to people who tender and say they miss out, and they say that they do not know whether they have just missed out or missed out by a lot. They make two points, that if they have just missed out they would like to know how they have just missed out so that in future they could adjust their contracts, and that if they knew what the contract was that followed on from a successful tender they would be the best guardians that that contract was working out well, because they would make sure that was all done. It was in that context that I was asking whether the government itself would have objections to producing contracts or whether it was just the person that the government contracts with that has the problem, specifically on this contract?

Senator Ellison—I think—

Senator COONEY—Or would you prefer not to answer?

Senator Ellison—At the last government procurement ministers' council in South Australia there was development of a national framework of tendering across Australia for government work at state, territory and Commonwealth levels. Part of that was also having a record of who was awarded a contract and the price of that as well. That is what I think all governments in Australia, including the federal government, have been cooperating on. So your tenderer who put in a bid could look up who got the contract and what the total price was. That is the way that government procurement is heading in Australia. That deals with that aspect where someone can check up on that.

But the more detailed aspect of looking into a contract and assembling the contract and the price is another question and one which the government has been reluctant to divulge. It does so for a number of reasons, and I suppose the commercial-in-confidence aspect is raised there, but the total price is what really is of concern.

Can I say that the other aspect of tendering is also best value and not necessarily the cheapest price. Best value is now a modern approach to government procurement across the country. In fact, in the United Kingdom they are really pushing this, and it is something which is being picked up here. So it is not just a question of who put up the cheapest price. But I think that in this instance Mr Woodward said he would go away and have a look at the request and see if he can comply with it or not.

Senator COONEY—Can I just follow up on this. I think the United States is doing it too. I know that we should not be taking up the time of the committee, but it is an interesting policy question which I hope we as a government might soon face. If you accept what has been said around the place, we are sort of dragging our feet here a bit. I ought to give you the example in more detail—and I am doing exactly what I am accusing you of doing in not identifying this group. I have had them say to me, 'This is very difficult for us. It is different from overseas. It just is a bad way of running government,' and I think there is a lot of truth in that.

Senator LUNDY—Can I just request that you provide on notice a copy of the contract you have with EDS and all of its variations as well.

Mr Woodward—I note your request. There are two issues raised by Senator Cooney. One is we always in these exercises have evaluation methodologies, and in all of the big ones that I have been involved in the evaluation methodology has been known in advance to those who are tendering. The second part of it was alluded to by the minister, that it is not just a question of price but the overall result that we are interested in.

Senator COONEY—Can I just say something. You raised a very vital point in this whole discussion when you said that to a certain extent we in government will start losing our ability to assess just how good the system is because the people who know about providing these IT services more and more become outsourced and therefore the ability to judge becomes a difficulty and you have actually got to go to the person that you have contracted your gateway to to assess whether or not the agreements that are going to be made are good agreements in terms of both price and quality.

Mr Woodward—There has to be a core of residual technical capability, which is not in the gateway. We will not get back onto the gateway, but there has to be a core of strong technical capability to assess what it is that contractors are putting to you. If you do not have that or you do not have access to it—it does not have to be in-house; it can be somewhere else—you are in big trouble.

Senator COONEY—I just thought at one stage there—and I agreed with what you said—you were saying that we would have to rely on the expertise that the EDS possessed to decide whether or not this was a good technical move. I thought there was some worry about that.

Mr Woodward—That is so, but in addition to that you have to have a technical capability and a good sense of smell to know whether the advice you are getting is good or not so good.

Senator COONEY—What you get in the end, though—you have not got it within the service itself—is a whole series of outsourcers. It is a bit like in the convict days. If the person applying the lash did not apply it properly, he would get lashed, and you would get a whole trail of lashes down the line. It is almost like that now. You have to have a whole process where people in the private sector check on other people in the private sector, whereas if you had it within the service, of a sufficient quality, it would obviate a lot of those problems.

Senator LUNDY—I asked the minister a question earlier which he did not respond to—probably because I asked him another question. It concerned whether the minister is able to guarantee small to medium enterprises that the charges for using the Customs service through whatever provider will not rise as a result of this new system being proposed. Can you give that guarantee?

Mr Woodward—I honestly do not think that is a question the minister can answer, because the choice will be theirs.

Senator LUNDY—It is a question of policy, because they can make a political decision not to create greater imposition on SMEs, particularly in this context. That policy decision could in fact influence the business models you deploy as part of your cargo re-engineering project. That is why I am asking the minister the question, and I would like an answer.

Senator Ellison—I think the word ‘guarantee’ has legal implications—

Senator LUNDY—It has very big policy implications too.

Senator Ellison—To say to someone you can guarantee that the sun will rise tomorrow is perhaps a lot more certain than guaranteeing anything else in this world.

Senator LUNDY—There is no need to be smart.

Senator Ellison—I think the question you ask is not necessarily one of policy. What you are asking for is a commitment, one which is tantamount to a legal guarantee, that there will be no cost increases whatsoever. We know that in this world today a lot of other factors can impinge on cost factors. To say that the price will not go up on anything in this world today is risky indeed, because there are so many things that play a role in any marketplace. So to say,

'I will guarantee all those users that there will be no cost increase,' is a difficult guarantee to give. They could turn around and say, 'The government gave this guarantee on such and such a date and should be held to it.' It is a stop from denying it. The policy is that we would want to see less cost to those SMEs that you mention—that is of course a desirable thing—but to go one step further and put it in black letters and say, 'We guarantee this will not happen,' is a different story.

Senator LUNDY—I guess that is why I am asking the question. It has been asserted that to move in the direction that Customs is moving, by effectively creating an environment where Tradegate may not be able to deploy their existing business model of ensuring some equity of costs across the big end of town and the small end of town, you will be creating an additional cost burden. I am asking you to ensure that with all of these changes there will be no extra costs, given that we have just heard from Pricewaterhouse Coopers that you could be facing one-tenth of the cost down the track. You have got a lot of leeway there to make such a guarantee, if you were prepared to do so from a policy viewpoint.

Senator Ellison—Mr Woodward has said quite clearly that this will not be an added cost burden and that, in his view, it will result in reduced costs. That is a view put by Customs—I think you cannot go any further than that.

Senator LUNDY—But you are not prepared to guarantee that to small to medium enterprises?

Senator Ellison—I think the statement by Mr Woodward is a pretty strong one.

Senator LUNDY—I am asking for a political statement, a policy statement.

Senator Ellison—I can say that, for the same reasons, the government believes that those costs will be reduced. But to say that you will guarantee that there will be no increase in costs whatsoever is a different story and one which in any realm is risky indeed.

Senator LUDWIG—I have just one question. While we were talking about a 'cargo culture' in relation to electronic commerce, I was curious about cargo handling, the physical or manual handling. Is that contracted out to major stevedoring companies to perform? How is it organised? Or do you not do any? What do you do if you require any cargo moved, shifted or unpacked?

Mr Woodward—I am not sure whether you are alluding to the fact that we have just about gone—if we have not done so already—to the market under the government's commercial tendering and contracting arrangements. We are market testing; we have not gone to the next stage of actually making a decision. We are testing the market to see whether we should have commercial firms involved in the movement to some of our secure sites—that is, the physical labouring, if I can describe it as such—

Senator LUDWIG—'Manual handling' is a fine term.

Mr Woodward—the side of packing and unpacking. But the actual oversight, the decision, the secure aspects of it, would be handled by Customs staff.

Senator LUDWIG—Has a decision been made as to whether you intend to outsource that work, or is it in the throes of market testing?

Mr Woodward—We have literally only just gone into it, but we do already do it in Sydney and Melbourne. In one case, it is unpacking only and in another case it is unpacking and repacking, so it is not a huge step forward and many other countries do it as well. But we are

testing on a national basis, and in the light of the responses we will make a decision. But it has literally only just gone out.

Senator LUDWIG—How would that impact upon your current staffing in that area? Are there people dedicated to the manual handling and, as a consequence, have they been taken through the process that might occur should you outsource?

Mr Woodward—Yes, we have put a lot of effort into talking to staff. I stress that the two biggest centres use contractors—one, as I recall, already has them for unpacking and the other has them for unpacking and repacking. It has been known for some time in each of our centres that we were going to look at options. The basis for it is that we think that there are probably better ways of using some pretty skilled Customs resources than having them lugging very heavy objects around.

Senator LUDWIG—As a consequence of the tender being successful, would that mean that there would be consequential downsizing or redundancies in that area, or would the technical people that you referred to be shifted to other operational areas?

Mr Woodward—We would not know the answer to that yet, but I stress that in the two biggest centres, where a very high proportion of the sea containers arrive and depart, in large part it is already done. So there will not be huge numbers of staff affected by it, but there has to be the potential not for redundancies but for people to be redeployed into other parts of Customs activity.

Senator LUDWIG—Perhaps you could take it on notice, but at some point in time when you have finished your market testing and if it happens before we see you again—because I will follow it up next time—could you let the committee know what the decision finally is?

Mr Woodward—Of course.

CHAIR—As there are no further questions in this area, Mr Woodward and officers, I thank you very much for assisting the committee with our hearing this afternoon.

[4.06 p.m.]

Australian Government Solicitor

Senator COONEY—Thank you very much for coming along. I was wondering how the practice was running and whether you were still getting plenty of work. I was going to ask you about the people from whom you might get work, but I will not ask you about the work that you have got to do. Generally, how are things going? Are you getting as many clients as ever or are they going off to the private sector?

Ms De Gruchy—The condition of the AGS practice is still very healthy and vibrant, with very dedicated and active lawyers working very hard every day. You may have seen our annual report for last year, which evidenced a very healthy year for us. I would have to say that the Commonwealth legal services market is a very active market, and that means that there is competition there. Many of our competitors are actively seeking work in the market, but that is not to say that AGS is not competing very well in that market. We are still providing a very broad range of services to a very broad range of Commonwealth clients.

Senator COONEY—In that context, have you taken any solicitors on since last we saw you?

Ms De Gruchy—Yes, we certainly have. There is always a significant amount of change in any organisation's personnel. We can certainly let you know some numbers. We lose people and we take on people all the time, as do most law firms.

Senator COONEY—It is a difficult question, but are the big firms—not only in Canberra but around Australia—attracting people from your office?

Ms De Gruchy—Extremely few senior lawyers leave us to join private sector firms. We have a greater turnover in the younger lawyer category.

Senator COONEY—That is not such a concern, I would not have thought. Do you give any advice to the Department of Foreign Affairs and Trade on the World Trade Organisation or have you been asked to? I just want to leave it as broad as that. I do not want to go into your actual servicing of clients, but I would be interested to know whether you have ever been asked to help prepare a case for the World Trade Organisation.

Ms De Gruchy—It would probably be better if you addressed that question to the department as to where they are sourcing their legal advice.

Senator COONEY—I just wanted to know—not from the point of view of where they are sourcing their legal advice—whether they are seeking legal advice at all. You would feel uncomfortable about answering that question, would you?

Ms De Gruchy—I would, Senator, simply because I may be completely unaware of where the department is seeking advice on any particular matter.

Senator COONEY—Would you be embarrassed if I simply asked: are you aware of any?

Ms de Gruchy—Again, in certain circumstances, even to give a positive acknowledgment as to whether we have been asked would not be something I would feel comfortable in answering.

Senator COONEY—So you would not feel comfortable about answering a question about who has approached you and on what matters?

Ms de Gruchy—That is correct, Senator.

Senator COONEY—Under those circumstances, I will not—

Senator Ellison—Senator Cooney, it is more to the client, if you like, to divulge the information and I do not know that Mr Govey or Mr Cornall can help us on that score.

Senator COONEY—I will just tell you how I am putting it.

Senator Ellison—We want to help, if we can.

Senator COONEY—I understand what Ms de Gruchy is saying. It is a difficult position. If it had been one of the big private firms that had come along and said, ‘Why should we tell you?’ that would be fair enough but here we have this very well-run, successful organisation—as Ms de Gruchy has said—which is under the umbrella of the Commonwealth and, in fact, can only do Commonwealth work and we, as a committee, have to test that in some way. The only work the Government Solicitor can do is Commonwealth work and that is what we should be asking about and the money, I suppose, goes to the Commonwealth. So we have to test it at that level. The sorts of reasons given for not answering the question are legitimate reasons in terms of a private firm. What we have here is a situation where the Government Solicitor takes up the position of being a private firm at one level but a government body at another. That is the point I want to make, and I think it has been made now and on other occasions.

Ms de Gruchy—Senator, with respect to the matter you raised about the Australian Government Solicitor only working for Commonwealth clients, under the amendments to the Judiciary Act the range of entities that the Australian Government Solicitor can advise has

been broadened to the extent that the range of clients could include state entities or entities that have some relationship to the Commonwealth but may not be exactly the Commonwealth. There is a much broader range of clients than just the Commonwealth.

Senator COONEY—Put yourself into the shoes of the committee for a while. We are supposed to test how the Commonwealth resources are being husbanded—I will withdraw that word, with the way things are these days, and put nurtured—and we have to go through this exercise. However, we cannot because, as you say, legitimately, if you gave any indication at all about the work you are doing, that would be intruding upon the solicitor-client relationship or some other relationship similar to that so we cannot test you at all. You are a Commonwealth body, even though you do do work for other government entities—nevertheless, a Commonwealth body that does it on that basis—and we cannot test you because you say that you have these problems. It then becomes a contest as to what is the higher good, if you like—that is, your position as a provider of services or parliament’s position in trying to test a particular body about whether or not it is doing the right thing by the country.

Ms de Gruchy—Senator, one of the issues here is that AGS has been created as a corporate entity and in the corporate status it does have obligations that arise in the solicitor-client context. It is not as if information is not available to the committee; it is just a question of where that information comes from. What has been put forward here is that AGS may not be the appropriate place for that information to come from.

Senator COONEY—That is not a reasonable parallel because a private firm would say, ‘If you want to ask my clients, either they will tell you or they will not.’ Can you follow that? By giving that example, you are putting yourself in exactly the same position as that of a private firm, and yet you are not a private firm in the sense that that is generally understood.

Mr Govey—It seems to me that the difference here, though, is that you can have access to information through the particular Commonwealth government agencies which come before parliamentary committees.

Senator COONEY—I do not want to name the firms around town—you know them as well as I do—that provide good services. I could ask the particular government agencies the same questions I am now asking Ms De Gruchy, and whether I got an answer to those questions would be entirely independent of whether the advice was got from Ms De Gruchy or a private firm. The point I am making is that there is no difference. Ms De Gruchy, at one level, takes that basis and says, ‘I am the same as all these private firms,’ but at another level when one asks, ‘Why don’t you do other work?’ she says, ‘I am a Commonwealth body.’ People changing their entity depending upon what questions are asked of them is the sort of thing we have to struggle with again and again in these committees. I do not want to labour the point about that.

Mr Govey—You are absolutely right in pointing out the dilemma. I guess from the point of view of the government and of the department in establishing this framework the one thing that is pretty clear to us is that, if AGS were not able to rely on the same rules as private law firms, it is very likely they would suffer commercially from that and that the work they were doing as a government lawyer would tend to flow to the private sector. We are keen to ensure that they do not suffer that sort of disadvantage.

Senator COONEY—I can follow that. I suppose the danger in the end is that people might just say, ‘The AGS is a private firm; let’s sell it.’ I do not say that that has necessarily been confined to this government, but it is just another thing that might be sold off.

Mr Govey—The fact that they are established as a statutory authority provides some protection on that score.

Senator COONEY—But they can be corporatised. We all know that. I would hate to see Ms De Gruchy sold off. I think she is tremendously good where she is.

CHAIR—I do not think anyone has any intention of selling off Ms De Gruchy, no matter what permutation you put on government policy.

Senator COONEY—If it went to the private sector, the only reason they would fight it would be to keep the services of Ms De Gruchy because she is so good.

CHAIR—That is high praise indeed, Senator Cooney. Do you have any further questions in this area?

Senator COONEY—No.

CHAIR—As there are no further questions for the Australian Government Solicitor, I thank Ms De Gruchy and Mr Riggs for their assistance this afternoon.

[4.19 p.m.]

Australian Federal Police

CHAIR—Good afternoon, Commissioner and officers of the Australian Federal Police. Commissioner Palmer, you are very lucky because I suspect that this might be your last appearance before an estimates committee in this capacity.

Mr Palmer—I think it will be.

CHAIR—We will be disappointed not to be working with you in the future, but I can understand there may be other diversions in life that take one away from estimates committees.

Senator BOLKUS—I would like to start by referring to the investigation into a suspected leak from the ABC. I would like to ask initially when the AFP was called in on this.

Mr Keelty—The AFP were called in on 9 February 2001. The matter was referred to us for investigation. We considered the matter and accepted it as a referral on 13 February 2001.

Senator BOLKUS—Can you tell us who referred the matter to you?

Mr Keelty—I do not have a copy of the referral letter with me.

Senator BOLKUS—Does anyone else with you know? Can you find out for us? Can you make a phone call? I will lend you a mobile if you like.

CHAIR—That is very generous of you.

Senator BOLKUS—It is the sort of information that these officers should have expected to be asked about today, and I am not all that happy that they are not fully equipped and prepared for it. I gather someone is going to find out, are they?

Mr Keelty—They are.

Senator BOLKUS—It took you four days to accept the referral. Can you tell us why it was so difficult—why it took so long to accept the referral?

Mr Keelty—It is not the only referral we would have received in the period of time. Like any referrals, they are subjected to our case categorisation and priority model, which looks at

the seriousness of the alleged offence, the priority of the alleged offence in connection with other matters that are referred to us, and the likelihood of an investigation outcome and prosecution. There is a process that it should go through, like every referral.

Senator BOLKUS—Can you tell us what the alleged offence that is being investigated is?

Mr Keelty—Alleged unlawful disclosure under the Crimes Act 1914.

Senator BOLKUS—Of a document, of information, or both?

Mr Keelty—It could be either.

Senator BOLKUS—Was the allegation that a document had been leaked, for instance?

Mr Keelty—It is a document, but obviously a document contains information so the investigation will be about the unlawful disclosure of information.

Senator BOLKUS—But including within that definition of information a document—or are we talking about documents?

Mr Keelty—I am talking about a document.

Senator BOLKUS—You made an assessment in terms of AFP's priority. How does this sort of offence rate in terms of AFP's priorities? You obviously have a lot of other jobs to do.

Mr Keelty—That is right. We do have other jobs to do. There is the impact of the allegation on public interest, the relative priority of the investigation against other matters at hand, where it should be investigated—whether it is appropriate for it to be investigated in the Sydney office, which is where the referral was received. A number of issues are taken into consideration.

Senator BOLKUS—So you made a judgment that it was in the public interest to investigate a leak of information within the ABC and the leak intended to make information available for broader public information. So it was in the public interest to keep the public in the dark, was it?

Mr Keelty—The public interest that I talk about is public interest in relation to any unauthorised disclosure of information, whether that be from the ABC or any other Commonwealth government department. Leak inquiries do form a major part of our corruption investigations.

Senator BOLKUS—So a document that basically canvasses, as we understand it, some aspects of financing and staffing levels in the ABC is a priority for you in terms of keeping it away from the public interest, is it?

Mr Keelty—Those are your words, Senator, not mine. I am not about to describe the investigation. I do not think it is appropriate for me, as we have discussed before in this committee, to describe ongoing investigations or the detail of them.

Senator BOLKUS—But we are not talking about treason or such offences against the state: we are just talking about the leak of a document, aren't we?

Mr Keelty—We are talking about an alleged criminal offence. If there is to be any person questioned or cautioned about an alleged criminal offence I think that is serious. It is an operational matter and it is one that I do not think is appropriate to be canvassed in this forum.

Senator BOLKUS—Who made the decision that it was, for instance, in the public interest to investigate this matter?

Mr Keelty—You have focused on the public interest. I said that the public interest is only one aspect of consideration for the investigation. For any investigation there is a monitoring centre that assesses the work that is referred to the AFP. It was the monitoring centre in Sydney that assessed this job.

Senator BOLKUS—What level of officer runs that monitoring centre? Who is in charge of it, for instance?

Mr Keelty—A group of federal agents form the monitoring centre. They would have looked at the investigation. It would also have been looked at at the SES level. I know, from having been in Sydney on Friday, that it was, in fact, looked at at SES level and also given some consideration at that level before the matter was adopted as an investigation.

Senator BOLKUS—You said that it took you four days to get to it. It was referred to you on the 9th. You made a decision to accept the referral on the 13th. It took four days because, as you said, there are quite a number of other matters that go to the attention of the Federal Police, and did go to its attention over that four-day period. How was it that this particular matter was weighed for priority investigation as against that four-day backlog?

Mr Keelty—Whilst it took four days before the matter was accepted for investigation, during that four days there may be inquiries made of the complainant, there may be inquiries made of the DPP in terms of what legislation was appropriate here. A number of aspects would be looked at, including measuring the relativity of that referral to other referrals on hand.

Senator BOLKUS—Was advice sought from the DPP in that period or since then to define what sorts of offences might be involved?

Mr Keelty—I am not sure whether the DPP was referred to in this matter, but I am talking generally about why there is a delay in matters.

Senator BOLKUS—But I am asking about this matter.

Mr Keelty—I gave you my answer in respect of that.

Senator BOLKUS—People are going out trying to find out who referred the matter to the AFP. Has anyone come back yet?

Mr Keelty—Not yet, Senator, no.

Senator BOLKUS—So public interest—you weigh it against other matters. The likelihood of an outcome is another factor.

Mr Keelty—That is correct.

Senator BOLKUS—What other factors are there—where to investigate it? A decision has been taken as to who would investigate it—whether it be Canberra, Sydney, Melbourne or wherever?

Mr Keelty—It will be investigated out of the Sydney office.

Mr Palmer—There may be occasions when head office may consider it appropriate, for wider reasons of interstate ramifications or implications, that the matter be taken over by another office or by head office in Canberra, but ordinarily those investigations will be handled by the office to which they are referred.

Senator BOLKUS—Can you tell us how many staff have been or are involved in the investigation?

Mr Keelty—No, I cannot.

Senator BOLKUS—Why not?

Mr Keelty—It may not be the only investigation that is handled by a team of investigators. It may be that the investigation team is handling this job and a number of other jobs at the same time. So relative capacity—

Senator BOLKUS—That was not the question, though, Mr Keelty. The question was how many people are actually involved in this investigation, not full-time but—

Mr Keelty—I thought your question was can I tell you.

Senator BOLKUS—Yes, can you tell me.

Mr Keelty—And the answer was no.

Senator BOLKUS—Can you find out for me?

Mr Keelty—Yes, I can. But it will also create an inquiry outside this room.

Senator BOLKUS—Sure.

Mr Palmer—Just as an additional point on that, can I say that although we might have a core of investigators that may be working full-time on an investigation we have the capacity of course to shrink and reduce the investigation according to the peaks and troughs.

Senator BOLKUS—But do you keep a tab on, for instance, how many days or hours have been spent on the matter?

Mr Palmer—Yes, we keep a business case analysis of all of our major investigations.

Senator BOLKUS—So would you be able to provide us, for instance, information as to how many days and hours have been spent on the matter so far?

Mr Keelty—What we will be able to give you is the number of hours that have been put into it.

Senator BOLKUS—In making the assessment as to whether to embark upon an investigation—assessments of public interest and the other factors you mentioned—you said it was decisions made by a monitoring team. Was that the right terminology?

Mr Palmer—Yes, that is right. We have those committees in each of our offices around the country and they assess the work that is referred to them against our competing priorities and make a decision as to whether a matter should or should not be investigated and then who should investigate it and what component of people we would put—

Senator BOLKUS—Mr Palmer, in this instance did that team consult, for instance, you or any of your deputies?

Mr Palmer—No, they did not. I knew nothing about this until after the event. And that is quite normal. I would very rarely be involved in an assessment of whether something ought to be investigated.

Senator BOLKUS—Do we know who they might have consulted outside the team? Can we get an assurance that they consulted nobody outside the team when they made that assessment? Or did they in fact seek further information and have discussions with anyone—for instance, from the ABC or from government or anywhere else?

Mr Palmer—Very rarely. From time to time they would talk to the deputy commissioner, who is in overall charge of operations across the organisation, particularly if they had doubts about whether they had the capacity to investigate a matter or whether a matter ought to be investigated. Mr Keelty can advise as to whether that occurred on this occasion. I do not think it did.

Senator BOLKUS—We will just give him a moment to get the information together.

Mr Keelty—Senator, in relation to your earlier question, the matter was referred to us by David Hodgkinson, the head of ABC group audit.

Senator BOLKUS—Was that by correspondence?

Mr Keelty—That is correct—although I have just been made aware that there was an earlier discussion on 6 February 2001 with a Mr Michael Brookes, the ABC national security manager. Whilst I have not been briefed by the people who had that meeting with Mr Brookes, what is normal in referrals is that a preliminary inquiry is made, a meeting occurs and then the matter is formalised by a referral in writing.

Senator BOLKUS—While you were getting that information I was asking about what degree of outside consultation, discussion or contact the decision making body, the monitoring team, would have had in coming to a decision to investigate. The question was: whom did they consult outside their own group? Did they consult you? Do you know if they consulted anyone else? Did they consult anyone, for instance, in the ABC or in governmental or other arms of the A-G's department?

Mr Keelty—They certainly did not consult anybody in government. They certainly did not consult anyone in the Attorney-General's Department. The deliberation on the referral would have been made in-house. You asked before a line of questioning about the DPP. Whilst I cannot be sure that they have not gone to the DPP, I did specifically ask a question on Friday about the law and at that stage they had not spoken to the DPP but they had spoken to our head office here. As far as I am aware they had not referred the matter to the DPP.

Senator BOLKUS—Are we talking here about one offence only, one section of the Crimes Act, or are we talking about others as well?

Mr Keelty—That would depend upon the course of the investigation.

Mr Palmer—It is hard to predict the investigation.

Senator BOLKUS—Can you tell us how many agents attended at the ABC last Friday?

Mr Keelty—No, I cannot. I can get these answers for you—

Senator BOLKUS—Does anyone else here know?

Mr Keelty—If in fact anyone did attend the ABC last Friday.

Senator BOLKUS—There were reports that there were some 11 agents attending the ABC last Friday.

Mr Keelty—That is a media report you are talking about? Certainly I have not got any sort of report to me. I was in Sydney, as I say, last Friday.

Senator BOLKUS—You obviously were not there, but does anyone with you today know how many agents were there, or can they find out as quickly as they found out the last answer?

Mr Keelty—We will get that answer for you, Senator. I am having a log of the investigation faxed over to me.

Senator BOLKUS—I expect you will be at the table for a while, so we will probably come back to it at some stage. There are also reports that the ABC staff may be subject to lie detector tests as part of the police investigation.

Mr Keelty—That is media speculation. We do not use lie detectors in the AFP.

Senator BOLKUS—I did not think you did. You have got no idea as to where this may have come from, the suggestion that you are using lie detectors?

Mr Keelty—Can I suggest that it probably came from the same source as a lot of other stuff in the media: pure speculation.

Senator BOLKUS—You are not going to start an investigation as to that one, are you?

Mr Keelty—There is no offence, unless you can point me to one, Senator.

Senator BOLKUS—We will think of one. There is also a suggestion that Mr Donald McDonald may have approached the AFP in recent days with the request for the investigation not to continue. Is that something that you are aware of?

Mr Keelty—Certainly not. He has not made any approach to me or the commissioner, and that is something that I would be briefed on or the commissioner would be briefed on in the normal course. Again, I think that is speculation.

Senator BOLKUS—So you are getting the log faxed to us, and then we will be able to find out how many people were at the ABC last week and how many days and hours have been spent on the matter. I will come back to it later on.

[4.37 p.m.]

Attorney-General's Department

Senator Ellison—Madam Chair, if that completes for now the matter of the ABC, although we are coming back to it, there is a quick matter that we can go back to on the Skase matter which we took on notice. There is further information. I think it is in the interests of all concerned that this be clarified, because I think the official who answered Senator McKiernan's question was answering on the basis that there had been this hearing; Senator McKiernan had put to her that a hearing had taken place. Mr Cornall now has some further information which we can clarify right now.

CHAIR—Let me check with Senator Bolkus that we had completed that particular issue.

Senator BOLKUS—Yes, I have for the moment. As the minister said, we will have to come back to it.

Mr Cornall—We were taken by surprise by the suggestion that there was a hearing in Spain on 25 January. We have been checking our file and our records since that suggestion was made. It is our understanding that there was no hearing in Spain on 25 January but that on that date Mr Skase lodged his documents which commenced his appeal to the Spanish Constitutional Court. The tribunal will now take what we understand to be a relatively short period of time to determine whether it will entertain the appeal.

Senator Ellison—I might add that we are having that monitored closely in relation to any decision that is handed down on that filing of the appeal. But I would reiterate that, from our understanding, there was no hearing, and I think that when it was put to the official who answered it took her by surprise. We have now clarified that situation.

CHAIR—Thank you for assisting us in that regard, Minister. We will return to questions on the Australian Federal Police.

[4.39 p.m.]

Australian Federal Police

Senator BOLKUS—I have one further question on the ABC. Mr Keelty, with regard to the sort of information that we have been led to believe was leaked, we are talking here about information that would have been a matter of public record in due course. Is that factor something that is taken into consideration, for instance, by the Federal Police in making an assessment as to whether to investigate, the fact that either through parliamentary process or elsewhere the public would be apprised of the amount of money that the ABC is spending on different levels of staffing?

Mr Keelty—To take it out of the context of this specific matter, I suppose it could be said that there are a lot of matters investigated which, subsequent to the investigation or subsequent to the act that is committed, may not be deemed as serious as they were at the time. My response is that an alleged criminal act has occurred and we will investigate that criminal act.

Senator BOLKUS—That is a pretty simplistic response given the fact that we know the AFP does prioritise. You have to make judgments as to how you allocate and where you allocate your resources. In making those judgments doesn't a fact like the one I have just mentioned come into account—the fact that in a matter of weeks, if not days, the information that goes to levels of funding and staffing and so on is information that is made public?

Mr Keelty—For example, if information leaked from any government department later becomes policy, that is still is an offence at the time it is disclosed unlawfully. The allegation is that this information was disclosed unlawfully. It would be hypothetical in one sense to predict what would happen to that document in the future—whether the document remains the same document and is not altered by somebody before it actually becomes public.

Senator BOLKUS—But you and I both know that we are not talking about information that, for instance, is policy advice to government. We are talking about essentially accounting information here which, if one were to look at the law governing the ABC, one would know the public is entitled, and will have a right and an opportunity, to access. There is a major difference between what I am talking about and your example. I am saying that, in the weighing of what is investigated, isn't something like that take into account?

Mr Palmer—It is probably a difficult operational call for the operational people. In hindsight, when you have all the facts in front of you, it may well be a consideration obviously that would exercise your mind. But I would suspect very likely that would not be something which would exercise the OMC. The people involved in the monitoring committee process would have exercised their minds in making a decision. The focus in our assessment of matters referred to us is obviously to try to ensure, if we can, that we investigate as many matters as can reasonably be investigated. I guess there is an environment at the moment across Australia that has leakage matters being seen operationally as of reasonable importance. I would simply say that it is unlikely that they exercised their mind at that point. I do not think it is an irrelevant point. I can say categorically that this was an operational decision made in the Sydney office on the basis of facts referred to them. Whether in hindsight they took account of everything they could that in a perfect world would have been taken account of, I cannot guarantee.

Senator BOLKUS—So in those circumstances where, as you say, in hindsight maybe other factors should have been taken into account, how do you take them into account? Is it up to you, for instance, to look at a particular investigation and say, ‘In terms of our priorities this is a waste of resources’—or ‘not a good use of resources’ as opposed to ‘a waste of resources’? The implication of what you were saying was that other factors could very well have been taken into account here. Would you take them into account?

Mr Palmer—Very rarely—Mr Keelty may have more precision in the answer than I have here—would we interfere with an investigation in the short term that has been taken on and suggest that it be discontinued. You would need to be fairly comfortable that that was a correct decision for a range of important resource reasons before you aborted an investigation that had been accepted. It may determine of course how many rabbits you chase down how many burrows in terms of the overall comprehensiveness of the investigation or the extent to which you go. Obviously it is relevant to the end result of the investigation and certainly any penalty that might flow from any finding of prima facie criminality. It is a discretionary call—that is, I guess, what I am saying.

Senator BOLKUS—In this case we could probably say that we are chasing a few bananas in pyjamas down burrows in terms of the information we are talking about and priorities. Would you acknowledge, for instance, that the monitoring team did not take into account other factors that could very well have been taken into account here?

Mr Palmer—No, I do not know what they took into account in precise detail. I am just simply hypothesising that it is likely that the particular issue that you raised was not taken into account. That is a matter for their judgment. I am not privy to the detail and I think that we should not pre-empt what in fact will result from the investigative process itself—what was obtained from statements taken and so forth.

Senator BOLKUS—You talk about this culture of concern against leaking. As Commissioner of Police, how have you come to make the judgment that there is a culture of concern against leaking all over Australia?

Mr Palmer—It is a matter of weighing, as part of our overall prioritisation process, those matters that are of concern to the client agencies that refer the matters and that are matters of public concern. So the two issues that we are aware of is the amount of concern that referring agencies have about leaks of confidential information which, I believe, we have an obligation to take seriously. So we should be pretty satisfied that there are good reasons for not investigating in those circumstances.

Senator BOLKUS—You may want to take it on notice, but can you come back to us with information as to how many referrals you have had from persons concerned about leaks from government departments, authorities and the like? Do you have those now, Mr Keelty?

Mr Keelty—Yes, I do. Would it assist you if I answered your previous question first?

Senator BOLKUS—Yes, sure.

Mr Keelty—I can now confirm that the DPP has not been involved to date in the ABC referral. There are three investigators in the team. Unfortunately, there is no time attribution data available as yet. Time attribution data is where we aggregate the hours that are put into each case. One federal agent went to the ABC last Friday.

Senator BOLKUS—He obviously made an impression!

Mr Keelty—That federal agent transported a number of persons back to the AFP for interview. Five people were transported back on Friday, three today, one is planned for tomorrow and two or three on Wednesday. Senator, were you asking me in general about leak inquiries?

Senator McKIERNAN—Was that one person?

Mr Palmer—It may not have been the same person on every occasion, Senator.

Senator McKIERNAN—So there may be more than one agent?

Mr Palmer—I think, from Mr Keelty's outline, one agent brought the five back on Friday, but as to whether the same agent will convoy everybody else we are not certain.

Senator BOLKUS—There were three agents there, apparently.

Senator McKIERNAN—Would that be an arrest situation or would it be that the individual was asked to come back?

Mr Keelty—I am sure they went voluntarily, otherwise we do have a problem.

Senator McKIERNAN—Do you know if it was an arrest situation or not?

Mr Keelty—I am sure that it was not an arrest situation. They would have been transported back for information and interview.

Senator McKIERNAN—In circumstances like that, would the individual's rights be read to him?

Mr Keelty—Yes, they would if they did not want to come. It depends if they are a witness or a suspect. My information is that these people were witnesses. In the normal course of events, witnesses may cooperate or not cooperate. There is no compulsion on witnesses generally, so that would have occurred with full cooperation. If they were suspected of having committed a crime, then they would have certainly been advised of their rights.

Senator McKIERNAN—Thank you.

Mr Keelty—Senator Bolkus, regarding leak investigations in the period 1999 to 2000, four matters were investigated. In the period 1 July 2000 to 7 February 2001, two matters have been rejected for investigation, two matters are currently being investigated and one matter is currently being assessed. This is out of our special references area at our head office, which is generally the area that looks at leak investigations. I can tell you that, as a result of those two financial years, we currently have eight leak investigation matters on hand. Six are active, two of those six have been carried over from the previous financial year and two further leak inquiries are under assessment—a similar assessment process that I have mentioned to you before.

Senator BOLKUS—I do not know if those figures add up, but can you tell us which departments were involved in respect of the continued investigations.

Mr Keelty—I think I can. It may be better if I get someone to go through this information and elicit the data for you.

Senator BOLKUS—Can we get an indication of the departments from which leaks have taken place and are under investigation. I think you said two had been rejected for investigation. It might be an idea if we find out which departments were involved there. And could we have the one that is being assessed as well? You now say there are two being assessed?

Mr Palmer—Two, yes.

Senator BOLKUS—One must be a carryover.

Mr Keelty—Two are carryovers.

Senator BOLKUS—Two continuing investigations are carryovers, but how many assessments are carryovers?

Mr Keelty—I will just summarise it again. Take out the financial years, because I do not think the figures are matching up, as you suggested. There are eight matters on hand. Six of those matters are active, two of those having been carried over from last year, and two are under assessment.

Senator BOLKUS—So can we get an idea of which departments they relate to and I suppose when the matters were first referred to the AFP?

Mr Keelty—For the sake of completeness, we are talking here about leak investigations. Sometimes matters are referred to us and are categorised differently: for example, as corruption or, sometimes, fraud. In terms of leak investigations, these are the ones that I have identified for you and for the committee.

Senator BOLKUS—So, in respect of the ABC referrals, on 6 February Mr Michael Brookes referred the matter to the AFP. There was some discussion and then you had a written referral on 13 February?

Mr Keelty—No, on 9 February, and then on 13 February we accepted the matter for investigation.

Senator BOLKUS—And there was no contact between 6 February and 9 February between the AFP and the ABC?

Mr Keelty—I do not have any record of that.

Senator BOLKUS—I would now like to move to the AFP investigations relating to alleged leaks of classified Defence and Foreign Affairs documents concerning East Timor and Indonesia. I think these matters were canvassed in estimates hearings on 22 November. At that stage the AFP advised that, as of 10 November, the total cost of that investigation—and it was the investigation concerning Dr Dorling, the adviser to the shadow minister for foreign affairs—was \$223,181.44. Can you confirm that this was the total cost at that time? And the next question is: what costs have been incurred since that time and what is the level of costing now?

Mr Keelty—I think you asked me—and, I am sorry, I was momentarily distracted—what the cost of the investigation was that I gave advice to this committee on in November last year.

Senator BOLKUS—Yes. On 22 November you told us that, as of 10 November, the total cost was \$223,181.44.

Mr Keelty—That is correct.

Senator BOLKUS—I am asking you if that is still an accurate level for that time—10 November—and what the current level of cost is.

Mr Keelty—The answer to the first question is yes. The answer to the second question is that I do not have a current costing because the matter has been receiving some consideration. We got into this difficulty last time I was before the committee. This is an ongoing investigation. I will find out the current cost for you.

Senator BOLKUS—Thank you. Can you tell us how many search warrants relating to the allegations of alleged leaks of classified information were executed by AFP officers on 16 September last year?

Mr Keelty—I want to make sure I give the right answer here, Senator. Are you asking me how many warrants were executed in respect of the leaked matters or in respect of Dr Dorling?

Senator BOLKUS—I will ask you two questions and that will probably put you fully in the picture. How many search warrants relating to the investigation of alleged leaks of classified information were executed by AFP officers on 16 September? How many of these searches related to the alleged disclosure of classified information concerning East Timor and Indonesia? Thirdly, since you have raised it, how many of these are related directly to Dr Dorling?

Mr Keelty—There were six search warrants executed. All six were in one way or another linked to East Timor. From my recall, and from my notes here, and I have not set out the difference between Dr Dorling's alleged involvement in leaks, I think four out of the six may have in one way or another been linked back to Dr Dorling, but I stand corrected on that.

Senator BOLKUS—You can come back to us if that is wrong or to verify it. Have any further search warrants in respect of these matters been executed since 16 September?

Mr Keelty—None to my knowledge.

Senator BOLKUS—But to be checked, I suppose.

Mr Keelty—I would expect to have been briefed on it had there been, so I am almost certain there are none.

Senator BOLKUS—Okay. Can you tell us how many federal agents were employed in the execution of the warrants on 16 September?

Mr Keelty—If we are talking again about two separate operations, the operation specifically relating to Dr Dorling had two full-time investigators, two analysts full time from the Department of Defence and one part-time analyst from the Department of Defence. There were some additional persons deployed during the actual search warrants for purposes of property officers and corroboration.

Senator BOLKUS—Let me pad out the question a bit more. The question essentially is: how many federal agents were employed in the execution of the warrants on 16 September? How many other persons were involved in the execution of search warrants on 16 September? How many of these persons were sworn in as special constables for the purpose of executing warrants on that day? They are the three questions, and within those I think you have managed to identify some that were executed on Dr Dorling. To the extent that the answers to these three questions do not relate to Dr Dorling, can you tell us which personnel do and which personnel do not?

Mr Keelty—Yes, Senator.

Senator BOLKUS—When the search warrants were executed at Dr Dorling’s home, did the attending federal agents or the special constables search for any electronic records which may have fallen within the terms of the warrant?

Mr Keelty—On my advice, yes, they did.

Senator BOLKUS—Do you know whether they searched Dr Dorling’s home computer and personal organiser, one or both?

Mr Keelty—Both, as I understand.

Senator BOLKUS—Do you know how they examined the computer? Did they examine the documents and emails stored on the hard drive of the computer, for instance?

Mr Keelty—No, I do not know. As I understand it, the search team took a technical person with them who had a brief in terms of the requirements of the warrant. The documents that were specifically sought, which were contained within the warrant, then became part of the search of the documents on the computer. Also, the other thing I recall being searched for was evidence of communication between parties, which is why the organiser was looked at.

Senator BOLKUS—Where was this technical person from? What was their classification in the whole system?

Mr Keelty—My recollection is that there was a person from the Department of Defence with that expertise, as well as a person from the AFP.

Senator BOLKUS—So we are talking about two people with technical expertise?

Mr Keelty—That is correct.

Senator BOLKUS—Would it be correct to say—you can come back to us on this if you cannot answer it now—that the officers examined all the documents stored on Dr Dorling’s computer to see whether they were of possible interest?

Mr Keelty—I cannot answer how they did the search of the computer, only to say that the search of the computer was for specific documents that were identified in the warrant.

Senator BOLKUS—Does anyone else here have the answer to the question: didn’t they search all the documents on the computer?

Mr Keelty—I am sure no-one here would have knowledge of that, Senator.

Senator BOLKUS—So you will check it for us?

Mr Keelty—Yes, I will.

Senator BOLKUS—How would you imagine they would have identified any of the material which possibly fell within the scope of the warrant?

Mr Keelty—The warrant, as I recall, was quite specific, on the briefings that I received. It listed the documents that had allegedly been leaked. Therefore, I imagine—I stand corrected on this because, as I explained, I have not spoken to the technical person who did the search—they would have put in some search parameters based upon the documents which we knew were from the Defence Intelligence Organisation and/or the defence security branch.

Senator BOLKUS—But to then work out communication channels in respect of any such document it would be fair to expect that the officers would have examined more than the data for those particular documents; they would have searched much wider, would they not?

Mr Keelty—As with any search, whether it be a drug search or a search for pornographic material, whatever the subject, invariably you search through whatever material you have

until the material is located. Once the material is located, the validity of the search warrant is met and there is no further reason to search. There is sufficient precedent law on that, and that is in fact the law.

Senator BOLKUS—My information is that they ran a search program on the computer for a good hour and a half. Can you, in those circumstances, come back to us as to those earlier questions of mine? Did they examine all the documents? Also, on 22 November you said to the committee:

On my instructions no documents of parliamentary privilege were even sighted.

How did you convey those instructions to the agents involved?

Mr Keelty—What instructions are those, Senator?

Senator BOLKUS—You said to the committee:

On my instructions no documents of parliamentary privilege were even sighted.

These are documents on the computer.

Mr Keelty—Those words, ‘On my instructions’, were meant to mean the instructions that were being given to me. In other words, in the briefing that I received I was informed by the investigators of a number of factors. One was that Dr Dorling made no claim for privilege on anything that was located at the premises. Dr Dorling’s legal advisers, who were present during most of the search, made no claim for privilege on anything that was looked at in the house. On advice that I received from the investigators, nothing that would normally attract parliamentary privilege, as broad as that is, was located. In other words, they said that they did not appear to find anything that was of a sensitive nature. As I said before in submissions made to the committee, at no stage was any objection raised by anybody at the house—whether it be a legal practitioner or Dr Dorling himself—about what was being looked at.

Senator BOLKUS—But we all know that the fact that a claim is not made does not deny the validity of the privilege protection in respect of a document. Is that right or wrong?

Senator Ellison—I think that is asking for a legal opinion.

Mr Keelty—That is right.

Senator BOLKUS—Mr Keelty is trying to give us a legal assessment of those documents, and it is self-evident that the fact that someone does not say, ‘Hey, privilege,’ does not mean that privilege does not apply.

Senator Ellison—I still think that the question could be framed differently. The way it is at the moment, it is asking the deputy commissioner to give a legal opinion as to whether a claim not being made has an effect on the document being privileged. The question is: was one made at the time or not? That is a factual question, and that is it. But this question is more in the line of: isn’t it privileged regardless of whether a claim was made? That is more of a hypothetical question seeking advice.

Senator BOLKUS—Mr Keelty, why do you refer us to your assertion that no-one claimed privilege at the time? What is the relevance of that?

Mr Keelty—The issue of privilege is something that you were raising with me, as I understand it, and that was raised with me before the committee the last time I was here.

Senator BOLKUS—We can go back through the transcript; you are the one who has referred to the *Hansard*. You have made the assertion that no-one claimed privilege in respect of those documents. Why do you make that assertion?

Mr Keelty—In response to the questions that I have been asked.

Senator BOLKUS—Sure, but what is the relevance of it? I did not ask you about whether or not anyone claimed privilege in respect of those documents.

Mr Keelty—It is a fact that nobody did.

Senator BOLKUS—But you do not draw any legal inference from that fact?

Mr Keelty—No, but I also point out that an injunction was taken out on the search warrant and that the application was withdrawn the following Monday when it first appeared before the court.

Senator BOLKUS—Statements have been made as to why that was withdrawn, and they are on the public record.

Mr Palmer—I also thought it might be relevant too. I thought the point trying to be made by Mr Keelty was that his advice from the investigators was that they did not find any sensitive material. In a sense, it is corroborated by the fact that nobody raised any objection at the time. They did not believe they found any sensitive material, as we understand their advice.

Senator BOLKUS—Did you ask them as to whether they found any material that might have been covered by parliamentary privilege?

Mr Keelty—Yes, I did.

Senator BOLKUS—And they said no?

Mr Keelty—That is right.

Senator BOLKUS—I suppose the obvious question is: how would they have known?

Mr Keelty—It gets back to the point earlier. There were a number of quite public assertions made about whether privileged documents were located at the premises, which led me to ask the investigators, ‘Were any such documents found?’ I was then given a description of the type of documents that were looked at as part of the search. Whilst someone else can make a judgment as to whether they are privileged or not, the general description was that they were rather innocuous.

Senator BOLKUS—A lot of people say that about parliamentary documents—and we have to go through them from time to time—but it does not mean they are not privileged. You said that the words ‘On my instructions’ do not refer to any specific instructions you gave in respect of this search, but are there any instructions of a general or specific nature that would have been transmitted to the investigating officers before they searched Dr Dorling’s home?

Mr Keelty—By whom, Senator?

Senator BOLKUS—I am asking whether there was anything within the system that would have had them on alert, for instance, to not open parliamentary privileged documents or to keep the privilege protected—whether there was a specific instruction to the officers that were involved in this raid or whether there is a general standing instruction.

Mr Keelty—First and foremost, I gave no instructions to the search teams before they went out. That is done at the team leader level. The history of this investigation is that an application was made for consent to release certain material to ascertain whether the documents had been leaked. That application was denied. And this is in answer to your question. The denial of that application came from the Leader of the Opposition, as well as the shadow minister. There was a great degree of sensitivity in the investigation team about

the exercise that they were to embark upon. There was, in my discussions with the team leader, an awareness of the sensitivity of what might or might not be located. Certainly, the object of the search warrant, as I said before, was to find specific documents that were listed in the search warrant and about which Dr Dorling was made aware at the time the warrant was executed, which is in the normal course.

Senator BOLKUS—But I would imagine none of them were specifically told, for instance, not to examine any records of confidential or in camera proceedings of parliamentary committees.

Mr Keelty—I cannot answer that question, Senator—

Senator BOLKUS—You did not tell anyone.

Mr Keelty—because I did not tell anybody.

Senator BOLKUS—Can you take it on notice?

Mr Keelty—Yes, I can, Senator.

Senator BOLKUS—I suppose you will not know the answer to the next question, but I would like you to take that on notice as well. Did the officers executing the warrants examine any transcripts of in camera parliamentary committee proceedings or other confidential parliamentary records?

Mr Keelty—On my instructions, no.

Senator BOLKUS—You actually asked them?

Mr Keelty—I did not ask them that question, Senator, but I did get a briefing on the material that they did search and the material that they did locate. As I said to you before—I am being as honest as I possibly can, not having been at the search myself—the documents that they found were innocuous.

Senator BOLKUS—I would like you to take that question on notice and get a specific answer to it. Prior to the execution of the search warrant, were the agents aware that Dr Dorling's wife is in fact a parliamentary officer employed by the Department of the House of Representatives? If not, did they become aware of her employment during the search that morning—or that afternoon as well?

Mr Keelty—I do not know the answer to that question, Senator. I would have to ask the investigators.

Senator BOLKUS—I suppose this goes back to a question I asked earlier to some extent, but what specific consideration did the AFP give to possible questions of parliamentary privilege arising from her employment as a parliamentary officer and in fact the likelihood that as such she would have had confidential parliamentary records in her possession at home?

Mr Keelty—I would have to take that question on notice, given my answer to the previous question.

Senator BOLKUS—Are you aware that Dr Dorling's computer contained a number of electronic documents, which included drafts of parliamentary questions for House of Reps question time, briefing notes and questions and draft questions for a senator involved in hearings of a Senate committee into Australia's policy in respect of East Timor?

Mr Keelty—Are you telling me that that was the material that was on this computer?

Senator BOLKUS—Yes.

Mr Keelty—Certainly, if that was so, I have never been instructed that those documents were located.

Senator BOLKUS—You may not have been instructed, but I would like you to find out from the officers, and also to find out whether in fact they examined those documents, opened those documents.

Mr Keelty—Again, I had a thorough briefing from the people who conducted that search. There was no reference made to any such documents. So, on the basis of the briefing I have received, I am totally satisfied that those documents were not there in terms of what they saw. But I will take the question on notice to double-check.

Senator BOLKUS—You have not really asked them specifically as to, for instance, whether they saw such documents of hers or of Dr Dorling's?

Mr Keelty—I have not asked them that specific question, nor have I asked them many other questions about other material that may or may not have existed at the premises.

Senator BOLKUS—When you said earlier that they told you there was nothing of a sensitive nature, was that the terminology used or was the terminology more directly related to parliamentary privilege?

Mr Keelty—I asked for a thorough briefing on what material was searched and what material was located. As part of that discussion, anything that would have related to East Timor or documents concerning East Timor I would have thought may or may not have had to be examined further to ensure that they came within the terms of the warrant. I am satisfied, on the briefing that I received, that neither material subject to parliamentary privilege, as best as they could judge it at the time, nor material relating to East Timor was located. However, I will ask the specific question, now that you have asked it of me.

Senator BOLKUS—Would it be your view, therefore, that documents prepared for a member of parliament for use in parliamentary proceedings are not protected by parliamentary privilege?

Mr Keelty—Again, I am being asked to make a judgment on that. I would say that in the normal course those sorts of documents would attract or could attract parliamentary privilege. That is why, when briefed on the material that was located, I am quite certain that either those documents were not there and that the briefing you have received is wrong or those documents were there and they did not locate those documents. In any event, I will ask the specific question of the investigators.

Senator BOLKUS—You say that in the normal course they would be protected by parliamentary privilege.

Senator Ellison—I think we are now straying away from the specifics and into general observations which could involve some aspect of legal advice. I appreciate that this is an important issue, Madam Chair, and the Deputy Commissioner has been at pains to help the committee, but I think he is really being drawn into areas where he cannot comment any further.

CHAIR—Minister, I have been listening very carefully to Senator Bolkus's questions and Deputy Commissioner Keelty's answers, and I think when they are concerning the specifics of the matter at hand Deputy Commissioner Keelty is trying to assist the senator as much as he can. But I tend to agree with your view that when we move into the more hypothetical it is

difficult for the Deputy Commissioner to answer those questions. Senator Bolkus, if we can focus on those specifics, I think that would be helpful both for the committee and for the AFP.

Senator BOLKUS—Madam Chair, I probably have only a couple of questions left. The reason I am asking this question is that I want to take it back to the sorts of instructions the Federal Police would give agents in an investigation like this. It is not a theoretical question; this is very much an issue pertinent here, and I did ask earlier on about the sorts of instructions that would be given. If you want me to paraphrase it or rephrase it, I will ask: would you instruct your agents involved in investigations to accept that documents prepared for a member of parliament for parliamentary proceedings are not protected by parliamentary privilege or would you instruct them that they are? I think in your answer you said ‘in the normal course of events’. In answering the latter question, what do you mean by ‘in the normal course of events’? What is a not-normal course of events?

Mr Keelty—In the normal course, documents that may or may not attract parliamentary privilege would be documents that they should be aware of to establish the claim one way or the other. The investigators in this investigation and those out of that special reference area that I mentioned to you before do receive training in parliamentary process. They have been involved in these sorts of investigations before and are highly experienced in this type of investigation, so there would be a level of knowledge within the team that documents may or may not fall within parliamentary privilege and, therefore, there would be a need to check or at least make an issue of it.

Senator BOLKUS—In this particular circumstance, you did not tell them to steer clear of documents that were part of parliamentary proceedings, but you are prepared to go back, for instance, to check the record to see if anyone else did?

Mr Keelty—That is correct.

Senator BOLKUS—But it is your view that documents prepared for members of parliament for use in proceedings are protected by privilege?

Mr Keelty—They could be protected by parliamentary privilege.

Senator BOLKUS—So when would you tell your officers that they were not protected by parliamentary privilege?

Mr Keelty—It is not a matter for the AFP to determine what is protected by parliamentary privilege, but if a document had the potential for such protection then it is identified as such.

Senator BOLKUS—Are you aware, for instance, that unrestricted access to material prepared for a senator for the specific purpose of a parliamentary committee hearing could involve a serious breach of privilege?

Senator Ellison—Madam Chair, we are getting—

Senator BOLKUS—No, this goes very much to the answer I was just given.

Senator Ellison—Where is your authority for saying that? Is it the O’Chee case?

Senator BOLKUS—It is the Clerk of this House of Parliament—the Clerk of the Senate, for instance.

Senator Ellison—I was thinking more of the O’Chee case, which went to the High Court on this matter. I think that when you put a premise of that sort you really are drawing the deputy commissioner into the realm of a debate on what is privileged.

Senator BOLKUS—I am not trying to.

Senator Ellison—He can say what direction he gives and he can say what was done in a certain instance but, as the deputy commissioner has correctly said, it is not for the AFP to determine what is a privileged document or not; it is for the courts. In fact, there are other places, such as the Senate, which can determine that.

Senator BOLKUS—But there is also an obligation on the AFP to behave in accordance with the law. One of the laws of the land is to respect parliamentary privilege. In this particular instance, what I am seeking to establish is this: in investigations involving members of parliament or staff, to what extent do the AFP have an awareness of parliamentary privilege? Is it respected? I think that what we have established here is that at best you could say they have been negligent and at worst probably reckless about instructing people in this case.

Senator Ellison—I think that is a totally unfair comment because, for a start, if—

Senator BOLKUS—If you have been listening to what I have been listening to, Senator Ellison—

Senator Ellison—I think the deputy commissioner has displayed quite a remarkable awareness of what might be privilege and what might not be—and the fact that it is something in the purview of the AFP when they do carry out investigations. He has correctly said that it is not for the AFP to determine that question. Often, documents are taken that may be later inadmissible in evidence. That happens frequently in investigations. That admissibility is later determined by a court.

Senator BOLKUS—I think the deputy commissioner has been helpful, and to the extent that he has been helpful we actually encompassed an acceptance by the AFP that they need to act in accordance with the law and that parliamentary privilege is a factor to take into account. What I am trying to establish—and I think that runs counter to your argument, Minister—is whether there is a full enough appreciation of the need to protect documents in the hands of a member of parliament or staff related to parliamentary proceedings. I do not think it is a theoretical question; it is one that very much goes to the operation of the AFP, is related to this matter and will be related perhaps to you in a few months time, Senator Ellison. It is something we need to establish now.

Senator Ellison—There are other avenues that a person can take in relation to privileged documents. I think there have been other cases where this has been highlighted. In fact, the O'Chee case is the precedent that we have in mind. I think that we have taken this as far as we can in relation to this matter, Madam Chair.

Senator BOLKUS—That might be your assessment, Senator Ellison, but—

CHAIR—Senator Bolkus, I think you said you were finalising your questions in this area yourself.

Senator BOLKUS—If I had got a full answer to the last one, we probably would have finished by now, but Senator Ellison chose to interrupt. We will not take all that long now; there will be another committee anyway in a few minutes. I just want to get a final summing up appreciation by you in respect of the concept of parliamentary privilege and documents that may be in the hands of staff or members of parliament relating to proceedings. I think your response implied that not in all circumstances would such documents be covered by

parliamentary privilege. I am trying to work out in what circumstances you would deem them not to be.

Mr Keelty—Perhaps I should answer the question by letting you know that, as part of their induction into the special reference area, which is part of our head office investigations, they are taken through parliamentary privilege by persons in this House. Someone will correct me if I am wrong, but I think it is by Harry Evans. The issue of parliamentary privilege arises in a number of the special reference investigations that we get. It is not foreign to the persons conducting these sorts of investigations. They do have an awareness of it. They are aware when it is claimed; they are aware of the processes that follow from that. There is a general awareness of parliamentary privilege within that team. It goes back to the heart of the issue, and that is that a search warrant was authorised and the search was quite legal. I disagree with you vehemently about being reckless or even having any indifference about parliamentary privilege before they embarked upon their search. As I remind you, the AFP sought consent to have access to these records, which were the heart of its investigation. That access was denied by both the Leader of the Opposition and the shadow minister for reasons of their own. The investigation needed to proceed, and it proceeded quite lawfully with the execution of the search warrant, which was done with due consideration to Dr Dorling, with his legal advisers—

Senator BOLKUS—At 7 o'clock in the morning?

Mr Keelty—With his legal advisers present. Access to legal advice was made available; access to the telephone was made available. The search did not even proceed for some hours whilst Dr Dorling received and made phone calls. Any notion that there was any act that was unlawful, any act that was reckless, is totally wrong.

Senator BOLKUS—You mentioned that, as part of a training course, advice is given as to parliamentary privilege. Could you provide for us any documents that might be made available to officers doing the course or any notes that may be pertinent to this question.

Mr Keelty—I can.

Senator BOLKUS—Do we have information as to what the whole investigation has cost so far? Has anyone come back to you on that?

Mr Keelty—Can I take that question on notice? The figure is not available.

Senator BOLKUS—Sure.

Mr Keelty—I do have figures for you, though, on an earlier question about referral of leaks. There is one active investigation from Foreign Affairs and Trade, one active investigation from the Civil Aviation Safety Authority, two active investigations from the Department of Defence, one active investigation from the Attorney-General's Department and, of course, one active investigation from the ABC. There are two under evaluation. One of those is from the Department of Foreign Affairs and Trade and the other one is from Prime Minister and Cabinet.

In relation to the question you asked me about the search of Dr Dorling's computer, an electronic program was operated to identify documents which contained reference to the criteria in the warrant. You might recall I told you that the warrant was quite specific in terms

of the documents. I can reassure you that my answer was correct that no other warrants had been executed since 16 September 2000.

Senator BOLKUS—Thank you, and I look forward to the further information.

Senator McKIERNAN—I seek clarification on one of the responses that you gave, Mr Keelty. You described the information contained in the computer and other records that were held in the home as being ‘innocuous’. Could you define what you mean by ‘innocuous’? My reason for asking this is that information could be used in a party political way, and I am not so sure that is what you intended when you used the phrase. So perhaps you might briefly explain what you mean by the term ‘innocuous’.

Mr Keelty—Certainly. And I was not being flippant.

Senator McKIERNAN—I am not accusing you of it.

Mr Keelty—I asked the investigators to tell me, when there was quite a strong suggestion in the media that we had found material that was subject to parliamentary privilege, what it was. Of course I reacted very strongly to that in examining what the investigators did in fact locate. I have been briefed on what they located, and none of the material that appeared to be at the house appeared to have anything to do with parliament or Dr Dorling’s role with the shadow minister. I do not want to describe what was found, because I do not think that is relevant.

Senator McKIERNAN—You must have got into some details in the search to be able to arrive at that conclusion that you have just told the committee. The investigators must have gone into very detailed examination in order to arrive at that conclusion.

Mr Keelty—That is why I mentioned before that the warrant was quite specific in terms of the documents that we were looking for, the documents that had been leaked. To find a document does require a thorough search because, as you can imagine, in premises, whether the premises have a study or a library or whatever, documents can be anywhere.

Senator McKIERNAN—I am asking the question for clarification, on the basis that I have got a machine here sitting in front of me which contains what I would describe as some innocuous information. Part of what is contained on the machine is games. I would say that is innocuous information. There are emails which I am receiving from my electoral office which I would say may or may not be. I am not arguing the point on a legal opinion on parliamentary privilege; I am trying to put that to you so that you will break it down and give us a description of what you mean by ‘innocuous’. If the documents were not associated with the crime that you were investigating, then they become innocuous?

Mr Keelty—They did not fall within the terms of the warrant, but nor did they fall within the terms of what then became quite a public allegation of what was at the premises.

Senator McKIERNAN—That actually takes us to a further level in the series of questions that we have been directing to you now in two estimates committees, does it not? Again, I do not want to reopen the argument about parliamentary privilege and whether or not legal opinions are given on parliamentary privilege. If you are examining emails between the minister and his adviser that might have something to do with, for example, the United States of America or, indeed, Ireland, that could be deemed to be covered by privilege, which has absolutely nothing to do with the investigation of an alleged crime.

Mr Keelty—I agree with you, and it is probably my interpretation of the questions and what is acting on your mind when you are asking them. When I was talking about documents,

I was talking about a physical document. If I go back to the search of the system, the way I understand how the parameters of the search happen would mean that those things that you are talking about would not have been located and, therefore, not seen by the investigators. In other words, if we did a search of the machine that is sitting in front of you now and put certain parameters in it which excluded the games and other things or emails and only focused upon the contents of the warrant—which is what I am sure occurred on this occasion—then all other material, one would think, would be excluded. But, as I said to Senator Bolkus, I will check on how that process occurred. The advice I have just been given is that they put the parameters in the system and just searched for those parameters. Everything else was excluded and I would say, in the absence of contrary advice, not picked up by the investigators.

Senator McKIERNAN—Thank you.

Senator LUDWIG—Turning to the Portfolio Additional Estimates Statements—it might be helpful if you have that document in front of you—on page 137 at the second dot point, the last sentence says:

The variations include the out-year effects, not included in the budget estimates, related to earlier decisions on the National Illicit Drugs Strategy (NIDS 2) funding. These amounts are now consistent with the original Government decision.

The question that comes to mind is: what was the earlier decision on the NIDS 2 funding that is referred to in that statement?

Mr Overland—It has to do with the way the funding was provided to the AFP in a series of distinct decisions. In one case there was an assumption made that the funding was not going to continue into the out years. That understanding was in fact incorrect. The correct understanding is that funding does continue into the out years—so it is continuing funding, along with all other components of the National Illicit Drug Strategy. It runs, to my recollection, to the tune of about \$6 million per year. That funding is continuing. And, in effect, that note is saying that the accounting treatment now takes that into account.

Senator LUDWIG—We will analyse that answer as well. Where did the assumption come from that the funding was not going to be continuous? Was that part of the Ayers review, or was it something else?

Mr Overland—No, it was subsequent to the Ayers review. It really related to a decision that had been made by cabinet that, for a variety of reasons, had not been correctly interpreted. Upon being correctly interpreted, it resulted in that money being treated as ongoing as opposed to lapsing.

Senator LUDWIG—So, if I understand you correctly, you are saying that there was simply a mistake in whether or not you were going to get continuous funding or whether it was going to be finite?

Mr Overland—Yes.

Senator LUDWIG—You assumed originally it was going to be finite; you have discovered it is continuous.

Mr Overland—Much to our relief, we have discovered it is continuing.

Senator LUDWIG—You have found an additional \$6 million per annum which you did not otherwise know you had.

Mr Overland—In the out years, yes.

Senator LUDWIG—Was it only the \$6 million that you have referred to there or was there other additional money?

Mr Overland—No, it is just that one lot of \$6 million?

Senator LUDWIG—Over how many years?

Mr Palmer—It is \$6.090 million for the year 2002-03 and \$6.218 million for 2003-04.

Senator LUDWIG—What was that money to be used for?

Mr Overland—There were three elements. It related to mobile strike teams for Perth, Brisbane and Melbourne, it allowed for further development of the Law Enforcement Cooperation Program in the Asia Pacific and it allowed for funding new posts in China and Vietnam and enhancement of the post in Hong Kong.

Senator LUDWIG—I will come back to some of those. The reason it was left out of the out years or the effects for the early decision on the NIDS funding being left out of the budget estimates go back to that same—

Mr Overland—It is a misinterpretation, Senator, of a cabinet decision.

Senator LUDWIG—Mr Keelty, you gave us some information at the last estimates about the expenditure for the 2000-01 year for the mobile strike teams to a total of about \$13 million per annum for nine teams. I am not asking you to say yes or no to that. That is as I remember it, without going to the transcript. In relation to the forward estimates, what is the government's commitment to funding for mobile strike teams? Is it going to continue each year at the range of about \$14 million per annum until 2003-04? Is there any change envisaged? Is that \$6 million going to be applied on top of the \$13 million so that it will be \$19 million or on top of the \$14 for the out years, which would bring it up to \$20 million, or is it going to remain at around \$13 to \$14 million? I know I have put a lot in that question, but you might be able to get the gist of where I am going.

Mr Keelty—The total funding for strike teams for 2000-01 is \$13.646 million, for 2001-02 it is \$13.643 million, for 2002-03 it is \$13.745 million and for 2003-04 it is \$13.943 million, giving a total of \$54.977 million.

Senator LUDWIG—So, of that \$6 million, only a portion will be used towards the strike teams. Do you know what proportion?

Mr Palmer—Those figures are the strike team figures, which are part of the overall NIDS funding.

Senator LUDWIG—But has the \$6 million that we have referred to already been put into that or will part of the \$6 million then be apportioned to the strike teams?

Mr Overland—Part of the \$6 million will be apportioned to the strike teams in Perth, Brisbane and Melbourne. The figure for 2001-02 is \$2.943 million, for 2002-03 it is \$3.005 million, and for 2003-04 it is \$3.068 million.

Senator LUDWIG—So that will go on top of the figures you told me before?

Mr Overland—No, we have adjusted those figures now to include what we have just talked about.

Senator LUDWIG—How will those strike teams then operate with that additional money in Perth, Brisbane or Melbourne? Can you tell me how they are structured and what they then do? For example, how many AFP members are on the strike teams? Are they permanent or are they pulled together for a specific purpose? I think I went to some of this last time and I

am just trying to get a handle on exactly how they are going to attack the national strategy. I am happy for you to take it on notice.

Mr Keelty—I can give you the answer now. How the strike team activity is dictated is that there is a board of management for the strike teams. That board of management looks at work coming in, which is intelligence driven work, and allocates the work to each of the strike teams. In doing that, it also can move the strike teams around the country according to the work, hence the mobility of the strike teams. So, whilst they are positioned in Perth, Brisbane, Sydney and Melbourne, their activities can take them in some cases to another location in Australia. In one case that I may have mentioned at the last estimates hearing, we took one strike team overseas.

Senator LUDWIG—Do they operate jointly with state police?

Mr Keelty—They do when there is a joint interest in an operation. One of the strike teams in Sydney is in fact located with the joint Asian crime group, comprising New South Wales Police, New South Wales Crime Commission and National Crime Authority staff. That is a semipermanent arrangement. The other strike teams work in concert with the state police and any other agency as the investigation dictates.

Senator LUDWIG—How is that \$14 million, if I round it upwards rather than downwards, apportioned to Sydney, Brisbane, Perth and Melbourne? Do you budget by location of the strike team or by strike team? You may recall we had this discussion at some stage in the past about how we could then discover the outputs. I was trying to get a picture, when you do get this money, notwithstanding part of the extra \$6 million that has been put into the process, of how you then break it down. Do you allocate it as a pool to the particular area you want to put it in or do you have a specific allocation for each of those locations and they manage the budget from there?

Mr Keelty—The budget is allocated to the work. As I have mentioned, the work is intelligence driven. It comes before a board. A proposal is put to the board. The proposal is costed and the board allocates funds out of that bucket, if you like, to the operation. I guess that, first, they need to demonstrate the need for the funding and what it is going to be spent on and then the money is allocated. Then they are reviewed on a monthly basis on their performance against a budget as well as any outputs that are delivered.

Senator LUDWIG—So it would not include salaries; it would just be for operational purposes.

Mr Keelty—It does include salaries.

Senator LUDWIG—Let me get a picture of this. Do they sit around in Perth—forgive me for saying this—and wait for a board to be convened to have a duty allocated or is it a rolling allocation, that they have always got something on their plate, so to speak?

Mr Keelty— We would never let anyone sit and do nothing.

Senator LUDWIG—No, and that is why I did not want to suggest that either.

Mr Keelty—They do not have to wait for the board to sit. I do not want to make that sound bureaucratic. The board can sit virtual, if you like, because a higher priority might come in over the top of existing work. So there is more than enough work for them to do, but the budgets are allocated to the work. It does include salaries. The size of the team can change. We have been careful not to be specific about what constitutes a team, so a team may be as large as 20 people at one stage of an investigation or as small as five. What we have tried to

do is manage it so that the investigation dictates both the size of the team and the budget that is being allocated to it.

Senator LUDWIG—How do you then ensure that you are getting the best bang for your buck? Do you have a target as to wages, salaries, on-costs, expenses and outputs for a particular crime investigation or operation so as to then be able to say it was a successful operation—notwithstanding there may not have been a conviction—because you came within the relevant proportion of expenses as against wages, time allocated and those sorts of things that one can measure?

Mr Keelty—There is a template for the known costs. Obviously, in an investigation sometimes the costs can alter because the actual investigation is dictated by the adversary cost, if I can put it that way. But what happens is that, when an operation is put before the board, the operation is costed at that point in time. There is a significant amount of planning that goes into an operation before it commences. Operations are then reviewed against those plans that they put forward. One investigation cannot be compared to another because they all have different elements. In terms of the outputs, the major output is to disrupt a criminal enterprise. Often the outputs will also include a number of arrests or a seizure of narcotics. There are a number of areas that are looked at in terms of the output, but I emphasise that before the budget is allocated there is significant planning that needs to be done. The exception to that rule is where we get information about an operation at short notice. That point in time is when a decision is made about the priority. Say there are 20 kilos of heroin at the airport. The decision is made as to whether it needs to be handled by a strike team or whether it can be handled with existing resources. Those sorts of decisions are made by the board.

Mr Palmer—I would like to add one further thing in regard to that. Often, of course, these jobs are based around intelligence that indicates an offence yet to be committed. There is the planning of an importation, for example: the importation has not commenced but the quality of the intelligence might be such that clearly it is important to commence an investigation and have some surveillance or other work with or without other assistance. That may peak and trough according to the activities of the people. The quality of the intelligence may continue to be very good but there may be no activity for some weeks—sometimes for some months. That will cause the reduction of the team that Mr Keelty mentioned to only a small watching brief component. It is not a simple exercise. That is why it is very important for us to be able to shrink and grow the investigation teams but not give up too easily in terms of quality intelligence because the suspects, if you like, go quiet for a little while. We give ourselves the capacity to keep investigations alive with a minimum of resources on the basis that, the moment there are signs of activity, we grow the investigation to meet that intelligence.

Senator LUDWIG—I think at the last additional estimates hearing, in answer to a question I have been following for some time now on the strike teams for NIDS, you talked about money not spent—something in the order of \$9 million, if I recall—which was quarantined. Does that mean that the money is not spent in the 2000-01 year on strike teams and that it is spent elsewhere or does it remain to be spent, kept in the budget for the strike teams, or has it been spent on other NIDS programs? You may want to take that on notice. I cannot give you the transcript reference for it.

Mr Keelty—I apologise. If I could recall my answer more accurately, I would try to give you an answer now. I am not sure about the \$9 million. I suspect the \$9 million might have been a carry forward from the previous financial year. I think it was more to do with the Law Enforcement Cooperation Program, but I stand to be corrected.

Senator LUDWIG—It is only my memory too. I might be wrong as well. We both might be.

Mr Overland—There was a carry forward from the previous financial year, but it was not in the order of \$9 million. My recollection is that it was \$3 million or \$4 million, but again we will check that for you. In relation to the second part of your question, all of the funding for NIDS—the National Illicit Drugs Strategy—is in a sense quarantined. It must be spent for the purposes for which it has been appropriated, which is to investigate narcotics activity. We do that. There is some flexibility to move money between the programs, but the bulk of the effort goes towards the mobile strike teams.

Senator LUDWIG—Yes, so within NIDS there are a range of programs, including the strike teams. I am trying to recollect whether that accords with the question asked last time that where the money is not spent it is still quarantined within that area. Is that right?

Mr Overland—Yes, in that broad area.

Senator LUDWIG—But it may be apportioned elsewhere, if the money is not spent in the strike team, because of a whole range of issues?

Mr Overland—Yes. It is all spent within the broad program but we may finetune between various line items within the program.

Senator LUDWIG—Let us go to page 139 of the Portfolio Additional Estimates Statements. If we go down to the National Illicit Drugs Strategy, it shows something in the order of \$6090 million in 2002-03 and then an increase to \$6218 million in 2003-04. In answer to a question I asked, question 142—

Mr Keelty—I have question 142 as tax treatment of East Timor.

Senator LUDWIG—Sorry, it is question 143 but I want to come back to 142. Is that additional money included in the table there on question 143?

Mr Overland—Yes, the \$6 million is included in the table you are looking at.

Senator LUDWIG—So that does not have to be updated?

Mr Overland—No.

Senator LUDWIG—Are any other specific budgetary measures, similar to the NIDS program, tied—I would not want to guess so perhaps you could tell me if there is or is not—or quarantined in the same manner as the NIDS program?

Mr Overland—Yes. The funding for people smuggling activities is tied funding and the peacekeeping funding is also tied funding.

Senator LUDWIG—Have I asked for those amounts before or can you point to them or take it on notice?

Mr Overland—It depends on what detail you want those amounts in. If you want them across the board—

Senator LUDWIG—Could you provide the detail as to what those amounts are, in a similar fashion to the NIDS program, where you have this year and the out years, if the annual report does not show that breakdown?

Mr Palmer—Essentially, peace monitoring is in the order of \$26 million per annum and the people smuggling investigation is about \$4 million per annum.

Senator LUDWIG—Has that money been spent? Because it is tied, are you running to budget, if that money has not been expended?

Mr Overland—I have the exact figures here, if you are interested in having them read into the transcript, or we can have them made available later.

Senator LUDWIG—You can read them into the transcript.

Mr Overland—In relation to the people smuggling, the unauthorised arrivals, this year it is \$3.9 million and next year it is \$4 million. In 2002-03 it is \$4.1 million and in 2003-04 it is \$4.1 million. Over the four years that is a total of \$16.1 million. In relation to peacekeeping, this year it is \$25.4 million, and next year it is \$25.9 million. In 2002-03 it is \$26.3 million and in 2003-04 it is \$26.7 million, making a total of \$104.3 million over the four years.

Senator LUDWIG—If any of that money is not spent, what happens to it?

Mr Overland—It would be carried forward into the next financial year and it could be spent against that program.

Senator LUDWIG—When will you know if that happens?

Mr Overland—We will know that at the end of the financial year.

Senator LUDWIG—So we can ask you at the next additional estimates in November this year.

Mr Overland—You can.

Senator LUDWIG—I want to turn to some questions in relation to the Ayers review, particularly that the Ayers report recommended a phase 2. Is that going ahead? Has there been money allocated for the phase 2 or is it still on the drawing board?

Mr Overland—It is part of the budget process for this year.

Senator LUDWIG—Can you tell me what that means? Does that mean that you are asking for it and have not been given it yet?

Mr Overland—It is part of normal budgetary considerations, so in effect we have asked for certain funding, and it is part of the broader government consideration of the budget for next financial year.

Senator LUDWIG—Can you tell me how much you have asked for?

Mr Overland—I do not think I can.

Senator LUDWIG—What about the ongoing Ayers recommendations? Can you tell me what you have asked for to allow for them? This is not for phase 2.

Mr Overland—Again it is within the context of the budget, so I think I am constrained in what I can say.

Senator LUDWIG—The forward estimates fell by the order of \$20 million in 2000-01. Is it correct to assume that one of the reasons for this decrease in the AFP budget is the cessation

of the money allocated to funding the reform program which was instigated after the Ayers review?

Mr Overland—Yes, that is exactly right. The funding actually lapses at the end of this financial year in accordance with the normal accounting rules in relation to that sort of issue. It is not reflected in the out years because in effect there is no authority to continue the money on. It is part of the consideration of this budget to determine whether the funding will continue and at what level.

Senator LUDWIG—So there is no mistake of cabinet there. There is no allowance in each of the forward estimate years as a result of the cessation of the Ayers money. It was a one-off amount and you only allowed for it in that one year. Is that correct?

Mr Overland—It was funded for three years. The three years are up at 30 June this year.

Senator LUDWIG—There was about \$117 million over the three years—is that correct?

Mr Overland—Yes.

Mr Palmer—Yes.

Senator LUDWIG—Was this money expended?

Mr Overland—It is being expended. It has not been fully expended because we still have some four or five months to go. But it is expended pro rata, so we are on track.

Senator LUDWIG—This is the bigger question, and you might want to take this on notice. Is it possible to give us a breakdown over those three years of what the money was allocated to in meeting the programs that were highlighted or suggested by the Ayers report, if that is what you used as the benchmark or as the way you were going to allocate the money or, alternatively, how you allocated the \$117 million over the three years? If you have the information here, that is fine, or you can take it on notice.

Mr Overland—I have some details here that I can give you, if you like, but I suspect it might be easier if we take that question on notice and prepare a specific schedule that details it line by line and get back to you.

Senator LUDWIG—Thank you. Were the reforms under the Ayers review, under the \$117 million, implemented by way of one-off expenditure? Were the moneys designed to be expended during that period and then the program was ‘successful and completed’ or were some programs left unfinished? If there are any programs that remain unfunded or will cease to be funded from 30 June, can you give me a breakdown of which ones they are?

Mr Overland—Again, I might just out of an abundance of caution take that question on notice, because I do not want to transgress into issues of what is happening in the renewal of the funding.

Senator LUDWIG—I can see where we are going to go—I did not want to cut you off; I will let you come back in a second—but what I was trying to elicit from you is that it is three years from the Ayres report, and when you read the Ayers report a lot of the recommendations that need addressing tend to be ongoing and some of them are finite. I wanted to discover those ones that you have addressed, how much money you have expended and how you intend to deal on an ongoing basis with those ones that are ongoing. Because that was my earlier question, I went to, ‘How much money are you going to put in to continue some of the Ayers report recommendations, because some of them are ongoing?’

Mr Overland—It is the second part of your question that I think I just need to tread warily on. I am happy to get that information, but I suspect it is best for all if we do it with a degree of caution and outside of this room and get that information back to you as quickly as possible.

Senator LUDWIG—Thank you. I understand the need for that. That is why I thought I would round that out a little bit, just to make sure we cover what I actually wanted. Of course, if any of the money was spent on recruiting more AFP members—that comes to mind as an example—then that is ongoing. If I recall correctly, you had an additional uptake late last year which then contributed to wages and salaries, and we assume they are going to continue and that you are not going to run them out. But then we run straight into budgetary considerations, don't we?

Mr Overland—That is almost a hypothetical question.

Senator LUDWIG—Yes, I might answer that myself.

CHAIR—Senator Ludwig, you were asking questions in relation to Ayers report matters. If you are going to move onto another area, I might suggest that we take the break which we were scheduled to take at 6 p.m.

Senator LUDWIG—I just want to wrap up in respect of the ongoing costs. Are they accounted for in the forward estimates, or are we back to the same problem again?

Mr Overland—No, they are not. As I attempted to explain—

Senator LUDWIG—Yes, I wanted to come back. I had cut you off.

Mr Palmer—Don't presume.

Mr Overland—We cannot presume that the funding will be continuing, so they are not reflected in the forward estimates. It is only if either the funding is continuing or we have a specific authority that the funding will be provided that they would be reflected in the forward estimates. Because it is part of the budget process, we will not have that for some time.

Senator LUDWIG—The Ayers report recommended an increase in staff. How do you deal with that? Do you see the problem I have got?

Mr Overland—I see the problem that you have got. We deal with it through our planning. As always, we have to cater for a number of possible contingencies, and that is what we do.

Mr Palmer—Throughout the three or four years of the program we have been recruiting in accordance with the recommendations of Ayers, but we cannot presume the continuation of that funding beyond this time.

Senator LUDWIG—How do you then make allowance for it in your budget when the Ayers funding dries up?

Mr Overland—This is where we start to get into difficulty again, because it is relevant—

Mr Palmer—Dealing with a hypothetical.

Mr Overland—It is hypothetical and it is actually relevant to the budget process.

Senator LUDWIG—I understand that.

Proceedings suspended from 6.08 p.m. to 7.12 p.m.

CHAIR—We will continue where we left off, with the Australian Federal Police.

Senator LUDWIG—Shades of *deja vu*. If we go back to pages 138 and 139 of the Portfolio Additional Estimates Statements 2000-01, I notice that the figures on total price of outputs are up \$4.680 million, yet the departmental output appropriation has gone up by \$0.489 million. Are they different charts, or am I, as usual, missing something?

Mr Overland—The point about the table on page 138 is that it includes revenue from outside of government, so the increase of \$4.68 million includes not only appropriations but revenue that the AFP earns, hence the increase. So you are not actually comparing like with like.

Senator LUDWIG—Is there a table which shows the breakdown of that \$4.68 million between revenue and the table on page 139, which is departmental appropriations?

Mr Overland—If you look at the bottom of the column for 2000-01, the increase in appropriations is \$489,000, and the remainder, a little under \$4.2 million, is increase in revenue.

Senator LUDWIG—Where is this revenue from?

Mr Overland—It is from sales of services, but primarily it would relate to information that the AFP has in its possession and we sell it for the purpose of character or criminal history checks—that sort of activity.

Senator LUDWIG—Who do you sell it to?

Mr Overland—There are a lot of people who are interested in having character checks done on people they may wish to employ or for security clearance reasons. There is a range of reasons.

Senator LUDWIG—Is that a tradeable commodity and you trade in that commodity?

Mr Overland—Yes, we do.

Senator LUDWIG—Goodness me. I do not really want to go any further on that. Regarding the appropriation on output 2, which is for the policing activity for the ACT, the departmental output appropriation is nil. I have probably asked this before but it always seems to crop up in my mind and I cannot recall the exact answer. How do you deal with the appropriation for the ACT policing? Is it an advance payment for the community policing service side of your operation or is it part of your overall budget?

Mr Overland—This year is the first year of a new policing arrangement that is in place in relation to the ACT. Under that, in effect, the ACT government contracts the AFP to provide police services in the ACT. There is a contract price negotiated each year and that is the money that you see reflected there. So, in effect, the money is from the ACT government for the contract of AFP services.

Senator LUDWIG—Is that paid in advance or in arrears? Do you send them a bill?

Mr Overland—No, it is paid in advance.

Senator LUDWIG—Is it an annual expense to the ACT—an annual revenue for you?

Mr Overland—It is an annual revenue for us.

Senator LUDWIG—Where do I find that—even if you just tell me the page in the annual report or somewhere like that?

Mr Palmer—They are on page 142 and 143, according to my notes, Senator.

Senator LUDWIG—I see. Are they the total amounts?

Mr Overland—Yes.

Senator LUDWIG—That is much appreciated. Let's turn to perhaps some memory joggers. Mr Keelty, you may recall that at the last additional estimates hearings we were discussing the weighted index of how much resource was to be deployed in each incident type. I hope that gives you a better recall than perhaps I have. Is that able to be broken up in dollar amounts? You may want to take that on notice. I want to get a clearer picture of how and what the AFP is investigating and the amount of money allocated to different types of investigations. Last time, I think we were talking about a weighted index to come up with that formula. The questions that arise under that are in terms of each incident type that you identified at the last estimates hearings. Can you update me in respect of, for argument's sake, how many resources in dollar terms have been deployed, up to the most recent figures; how many resources in staffing terms have been deployed, up to the most recent figures; and how does the actual resource compare with the weighting? I am trying to get an understanding of the weighting against the dollars against those matters. I am happy for you to take those questions on notice and for you to come back to me. If you have them there, that is fine.

Mr Keelty—I can give you the answer now, Senator.

Senator LUDWIG—That would be terrific.

Mr Keelty—Just building on my response previously, the resource which is targeted and monitored in the process is the number of investigator hours available to be deployed in each operational business unit. The percentage targets have been set for each crime or incident type for each of the operational business units, taking into account specific local demands and information concerning targets as used by operational business units as part of the decision making process when determining whether matters ought to be investigated and the extent of the resources to be made available for those matters.

If you recall my answer previously, they were the targets that were part of the business planning process that we set up in June-July last year. Those target figures were something that we set. In relation to data that are presently available as of the end of January 2001, we are meeting or slightly exceeding our targets in respect of fraud investigations, we are on target with respect to general crime, people-smuggling, agency liaison and outposting, and we are significantly exceeding our target in relation to the importation of drugs. We are concerned that we are not meeting targets in respect of Corporations Law, bankruptcy, intellectual property crimes, computer and telecommunications crime, and money laundering. Some of those shortfalls may be attributable to our commitments to the Olympics.

Having answered in that way, I would say that those target figures were set by us so, in a sense, in the first year of the business planning process, there needs to be some correction. We are monitoring it on a regular basis to ensure that we bring the other target figures back in line.

In answer to your question about dollars, we are better off allocating a capacity in terms of hours and then working backwards from that for the dollar figures. The dollar figures are sometimes more difficult or more problematic, because of some of the hidden costs. Those dollar figures are really more difficult to get, but they are not impossible to get and we will be able to pick up on the dollar figures as the year progresses.

Senator LUDWIG—Perhaps you could take it on notice and, as the year progresses, come back to the committee in respect of that. Or you could express them in the weighting term as

against the hours and then translate it into dollars with a caveat about the difficulty in being able to do that—as against the targets. Can you express it that way? If it is going to cause you too much work, you might want to come back to us about that. If it is easily obtainable over the course of the next couple of periods, that would be fine.

Turning to environmental crime, you identified a weighting of 0.125 for environmental crime at page 18 of your annual report. You then mentioned two instances where you have investigated an environmental crime. Rather than going to the specifics of those instances, can you give me some background on what type of legislation sets out the environmental crime that the AFP is responsible for? You have identified two instances. I am trying to identify what legislation underpins the area that you will investigate in for environmental crime.

Mr Keelty—There are a number of pieces of legislation. There is the cultural heritage legislation. There is one of the ones I think I referred to you before—and I am not sure if I did this as part of this committee or another committee.

Senator LUDWIG—I have not heard it.

Mr Keelty—I think there was the Australian Maritime Safety Authority referrals that were provided to us and the legislation under which they operate.

Senator LUDWIG—Where do referrals generally come from? That organisation and others? We have the cultural heritage act—

Mr Keelty—The referrals come from AMSA in some cases—

Senator LUDWIG—You will have to tell me what AMSA is.

Mr Keelty—Australian Maritime Safety Authority. They may come from places like the Great Barrier Reef Marine Park Authority. They can come from a variety of places. Depending on the nature of the investigation, that is how they get grouped into the environmental crime incident type.

Senator LUDWIG—So it is the legislation that underpins those organisations, including the cultural heritage legislation, that would then enliven your authority to investigate environmental crimes in this area? Is that a fair summary?

Mr Keelty—That is a fair summary. That happens through the operations monitoring committee that I was referring to earlier in answer to questions from Senator Bolkus.

Senator LUDWIG—And, turning to another area in that area, without going back to those again, in relation to investigations such as illicit drugs and money laundering there are a number of preventative measures which, as I understand it, are undertaken in strategic partnerships with government agencies and non-government agencies. Is there a strategic way that you would then go about doing that? Is there an operational and intelligence approach that you would use to then deal in both a proactive and an interactive way with, say, for argument's sake, illicit drugs or money laundering—with those other operational police forces?

Mr Keelty—If I understand the question, the nature of the referral might well be, for example, a state police agency coming to us and talking about a crime group involved in distribution of narcotics.

Senator LUDWIG—I may have misled you. That is what you do in relation to narcotics, as I understand it. When you were talking about the mobile strike teams, you then talked about joint operations. I was using that as an example to lead into where I was going. In the environmental area, do you do the same work and who would you do it with? I have already asked about strike teams, illicit drugs and money laundering.

Mr Keelty—The nature of the crime dictates who we go into partnership with. For example, there was one operation that we did in recent times where a vessel in the shipping lanes off the east coast of Australia and within the jurisdiction of New South Wales ran over a smaller fishing vessel and a fisherman drowned as a result. The bigger vessel was to go to Victoria. So in that specific incident, driven by the operational need, we worked in concert with the New South Wales police because the New South Wales coroner had an interest in the matter, we worked with AMSA because under the navigation regulations AMSA had an interest in the matter as to whether there were sufficient lookouts on the bigger vessel, and we worked with the Victoria Police. A lot of it is driven by operational need. Strategic intelligence and proactive work would be driven by agencies coming to us providing information about incidents that might be occurring involving their portfolio responsibility. So from a strategic intelligence perspective, the need that drives us together would be the intelligence we receive either through our own operations or through operations involving another department.

Senator LUDWIG—Do AFP officers have any training in environmental matters or issues?

Mr Keelty—They do as part of their core training, but often in these matters—for example, an oil spill at Wilsons Promontory, which was an investigation we did last year—there are specific records and logs that need to be obtained from the vessel. That is where we rely heavily on the advice and expertise of AMSA and other government departments. Going on from the earlier question, we have a number of major crime management strategies that drive our intelligence collection and environmental crime is one of those crime strategies.

Senator LUDWIG—But there have been only two instances reported in the annual report of matters being investigated. Are there a lot under investigation?

Mr Keelty—I might have the number.

Senator LUDWIG—Only if you can provide it.

Mr Overland—It is also not just a matter of numbers, it is the impact of the referrals. I mean, an oil spill in the Great Barrier Reef obviously would have enormous implications for Australia so that would be a matter of real concern.

Senator LUDWIG—Were you going to get any figures for me?

Mr Keelty—The target figure we had was 3,275 hours and we have worked 689 hours on environmental crime so far this financial year. I will just go back to how this was set up in the business plan process. It was driven by, first, a need to service the clients in this area and, second, some of the strategic strategies we had in place. If we do not meet those target figures, and of course we are reviewing that and that is why we have the figures here to give you, we are asking the questions in the right area as to why we are not picking up that sort of crime.

Mr Palmer—Some of those crimes are more likely to be based on referrals than intelligence, and at the moment environmental crime probably falls into that category. We can

generate targets more accurately on the basis of intelligence than we can on the basis of referrals.

Senator LUDWIG—You have said the target is an internal target. Would you classify that as an operational budget for environmental crime or is it simply a target that you have set? I will qualify that—because you, I suspect, will do so again—that is an internal target that you have set and it has only been set in the last year and it is under review. Is there an ongoing budget that you would allocate or does the target take that place? I still think in budgets.

Mr Keelty—There is an indicative budget that you could allocate to those hours so we do do that. Obviously, in determining the hours, we are within budget parameters. The budget is not irrelevant to determining the target figures but, because we can measure very accurately the number of hours put into these operations now, we will become better at linking that with our finance data. We are just in that period of transition at the moment.

Senator LUDWIG—What do you intend to do with ones such as this where you identify that they are significantly—and these are my words—below target at this point and certainly would not be on track to meet target by the end of the year. I assume the targets are set for the financial year. What do you do with those then? Is it indicative of a lack of work in that area or is it that there is no crime in that area or is there a lack of attention in that area?

Mr Keelty—It is indicative of a number of things, as I have mentioned to you. We are examining the impact of the Olympics on not being able to take on some of these tasks but we are also, as I said to you, over target figure on drug investigations. So what we do about it is discuss whether we are missing environmental work with the relevant agencies and whether we have referrals that we have been rejecting in favour of drug operations and this obviously leads to one of our performance measures about client satisfaction. So we are reviewing it constantly but it may well be that we significantly alter that figure for next financial year, given the information that we have got for ourselves out of this financial year. There are a number of ways of dealing with it but we actively try to pick up those areas that I mentioned to you where we recognise we are falling down in terms of the targets we set for ourselves.

Senator LUDWIG—It only suggests that you may not be doing additional work in that area. I'm happy for you to qualify the record on that.

Mr Palmer—We would be particularly concerned if we found that we were rejecting environmental crime, for example. I do not think that is the case. But if in fact the underperformance is caused by our inability to do work referred to us that would obviously be of real concern to us.

Senator LUDWIG—Will you be able to find that out and let us know whenever the period ends? The committee would appreciate that

Mr Keelty—I will.

Senator LUDWIG—In relation to fraud, you have a weighting of 17.625, as I understand it. What does it encompass when you then start with that small word? Do you define it in terms of how you would reject or accept cases or do you simply use it as nomenclature to describe a whole raft of things?

Mr Keelty—It is not a catch-all phrase. There are other definitions of fraud within the incident types that I have read out previously when I appeared before this committee. In terms of fraud itself, normally it is a financial investigation where the Commonwealth has been defrauded of a sum of money. That is the simplest way of describing it. In relation to fraud, as I just mentioned earlier, we are slightly above target.

Senator LUDWIG—Is that part of or are you involved in the Commonwealth fraud control policy?

Mr Keelty—Sorry, Senator?

Senator LUDWIG—How is the AFP involved the Commonwealth fraud control policy?

Mr Keelty—To start with, we have contributed to the policy development but we, through our client liaison network, liaise with agencies to ensure that we are properly servicing their needs in terms of the level of fraud that is being reported to those agencies. That liaison occurs on a continual basis. The investigations that we undertake, the referrals from the other government agencies, are part of the fraud control policy itself.

Senator LUDWIG—You may need to take this on notice. I was trying to track for each year since 1995 how many fraud investigations have been referred to the AFP and those that you have accepted—perhaps just the two figures: those that you have been referred and those that you have catalogued as a referral and then accepted. I assume the figures would be different but you could best tell me that; in short, those ones that went on to be investigated by the AFP. If you have them there, that is fine. But if not I am happy for you to take them on notice.

Mr Keelty—I do not have the figure for 1995 but I can tell you that for the year to 31 December 1999 it was 688 matters and for the year to December 2000 it was 715 matters, so there has been a marginal increase in matters referred. I will get the figures for the previous ones because there is 1995 to 1999.

Senator LUDWIG—Were those ones that were referred all investigated? As we heard earlier, some you do not accept for investigation.

Mr Keelty—These are new cases.

Senator LUDWIG—What I am trying to gather is this: is the number referred the same as the number investigated?

Mr Keelty—No, it is not.

Senator LUDWIG—Can you provide the two different figures?

Mr Keelty—Yes, we can. As far as I am aware, we can. The only word of caution is that we went from a totally different information management system about two years ago and it is whether that data is available in the same format as the data today. But I will give you an answer.

Senator LUDWIG—I am happy to take the caveat. If it is going to take you significant resources to do, then you may choose not to do it.

Mr Keelty—Thank you.

Mr Palmer—It is not totally apples and apples in that sense either. There will be some differences because we are much cleverer and much more accurate in our case categorisation in terms of prioritising those frauds we ought to spend more time on, those that have the biggest impact. So we are doing more important fraud work now than we would certainly have been likely to have been doing in 1995, for example, when there might have been more of a focus simply on numbers rather than on quality of investigation.

Mr Keelty—In fact, Senator, I have just been advised that the number of referrals and the number of matters accepted since 1995 are in fact published in our annual report for those financial years.

Senator LUDWIG—What page number is that?

Mr Keelty—They are in each of the annual reports.

CHAIR—Did you want that for the last annual report or for all of the annual reports? That might be more ambitious, I suspect.

Senator LUDWIG—I am still going to have to find it, so the easier way the better. If you can give me the page number of those and any other ones, I will be happy.

Mr Overland—We might save you the effort and extract that data and forward it to you.

Senator LUDWIG—Thank you. I only have the last three annual reports; I do not have them back earlier than that.

I have got a number of questions around AFP staffing, including how many staff you have at present. You can tell where I am going. I am trying to work out the number of sworn officers; in other words, a table. I think I have seen a table in another inquiry but I have not seen it here. I might be able to put those on notice.

CHAIR—Mr Overland appears to be reaching for a colourful document that may assist.

Mr Overland—I am happy to hand that up if it assists to answer your questions.

Senator LUDWIG—I think it probably contains most of the questions that I can recall I might want to see here. They go to things like sworn and unsworn members; full-time, part-time and casual; the number allocated to ACT policing; the number of staff allocated to protective services; and the number of sworn and unsworn staff in your various functional streams. It might be a little more than what I recall I have seen before.

CHAIR—We can start there, and you can take the rest on notice, Mr Overland.

Mr Overland—Yes, I am happy to do that. I can answer a number of those questions now, but it is at your convenience. I am happy to work my way through them or just take them all on notice.

Senator LUDWIG—I can run through them relatively quickly and then you can take them on notice. What I am after is a snapshot of where you are going. I am also looking at the administrative and operational investigative staff, with location where it is possible, and their experience or grade levels. As I have said, I am looking for the number allocated to ACT policing and the number of staff allocated to protective services, and the number of sworn and unsworn staff in each functional stream. On the number of staff allocated to strike teams, I understand, given your earlier evidence, that it might change depending on circumstances. An indicative number would be helpful.

I also would like to get the resignations, retirements, redundancies or terminations so that we can break that up. I am after the percentage turnover of your staff, part-time, casual and full-time. What areas has the attrition mostly come from, whether it be administrative or from operational areas. These are all questions I would have asked, but we do not have the time, I suspect, to go through those.

In relation to the recruitment program that has been operating, how many recruits have come in in the last two years? I think I have seen those figures, but perhaps you can make them available to this committee. How many in the recruitment were new recruits or from ACT policing? How many came in through an advertisement? If that is not available, I am happy for you to tell me that as well. That is what I was after. I am happy to take that document that you are going to table.

CHAIR—It has been tabled. We will not all get the same colour benefits. It looks like Customs and AFP are sharing colour printers today.

Senator LUDWIG—In relation to Weston Creek, I understand that you have been refurbishing that area and that there has been significant expenditure in refurbishing the Weston Creek area, including the forensic centre. I understand there has been an upgrading of the Barton Police College as well, I think for laboratories and IT, over the last couple of years. Do you have figures that break down expenditure that has been earmarked or put up for both the Weston Creek facility and the Barton Police College in relation to refurbishments or upgrading of laboratories or IT? Can you tell the committee whether or not the upgrading to the Weston Creek facility has been completed and how much money has been earmarked or spent in relation to that refurbishment? If it has finished, what are your plans for that facility?

Mr Overland—Certainly. I can answer some of your questions. The overall refurbishment of the Weston facility is continuing. You are probably interested in the refurbishment of the forensic facilities that you may have seen at some stage. The cost of that was \$4.891 million. That refurbishment is complete. I can get the other costs for you in relation to the ongoing refurbishment of other areas of the Weston complex. I do not have those with me. In relation to the refurbishment of the Barton college—again I do not have those figures with me and I will have to get them for you—that expense was incurred some time ago. That refurbishment was done, from recollection, in 1996.

Mr Palmer—That is right.

Mr Overland—I will get the detail of the costs of that and make that available to you as well.

Senator LUDWIG—Given the refurbishment of the forensic area and the Weston Creek facility, and it appears to be ongoing, is there any decision—I guess you could also have a committee—or view about whether you intend to sell off that facility or whether you intend to keep it?

Mr Overland—We do not own either facility. We currently have leases in respect of Weston and Barton. There is a proposal—

Senator LUDWIG—I thought you owned it. That makes it different, doesn't it?

Mr Overland—No, we do not own it.

Mr Palmer—No, we do not.

Senator LUDWIG—Everything is leased in this place.

Mr Overland—We do not own it; we lease it.

Mr Palmer—Changing landlords.

Mr Overland—We lease it currently at commercial rates. As I am sure you are aware from recent publicity, there is a proposal to sell both of those facilities. But if they are sold they will be sold complete with security for us in terms of ongoing leases.

Senator LUDWIG—I see. So you are currently leasing those facilities and then you have also spent money upgrading the facilities themselves, but they are leased and the lessor is intending to sell or may sell, in which case your leases might come up. I will ask the question, and you can decide how much you can tell me: when are your leases due for renewal, and is there an option that if they are sold they can be terminated? How secure are your premises?

Mr Overland—It would be part of the contract of sale that we would have ongoing secured leases with options to extend those leases. As you would understand, it is starting to get a little bit close to possible commercial-in-confidence issues, but we are satisfied absolutely that our interests will be properly protected in the sale of those properties.

Senator LUDWIG—I was under the mistaken view that you owned the facility, but then I should have realised that nobody owns anything in the ACT; it is all on leases. In relation to question No. 142—we got this one right this time; the one, if you recall, I mistakenly identified earlier—you have undertaken to advise me ‘as soon as a decision is made and it is publicly announced.’ Do I take it that none has been made at this point in time?

Mr Palmer—Is this with regard to the taxation issue?

Senator LUDWIG—Yes.

Mr Palmer—No, the matter is still with government.

Senator LUDWIG—When do you expect to get a reply? It has been some time now.

Mr Palmer—Perhaps that is a question that is more properly directed to the minister.

Senator Ellison—All I can say it is that it is under consideration. I have taken it up with the government. I am pursuing it, and hopefully the matter can be resolved soon.

Senator LUDWIG—Is it correct that the tax-free status has not been extended to officers who are in the first contingent? I understand they have changed.

Mr Palmer—That is so. As a result of a taxation ruling, different taxation arrangements apply to the fourth and fifth contingents, which are now tax exempt, than to the first three contingents.

Senator LUDWIG—You cannot help them by telling me it might happen sooner rather than later? We might have to ask you this question again in budget estimates.

Senator Ellison—It was one of the first issues I faced in this job. It is an important one, and one that I am pursuing.

Senator LUDWIG—In relation to the Australian Institute of Police Management, I asked an earlier question in relation to that institution. The *West Australian* of Saturday, 2 December 2000 speaks of an inquiry focused on travel allowances within that organisation. What can you tell me about that and where is it up to? If you recall, I asked that question of you, Mr Keely, last time—a question about the Australian Institute of Police Management, though not particularly about that issue. What can you tell me about where those investigations are up to at this point in time?

Senator Ellison—Mr Overland might be the best person to answer that. I think he might have answered that question on the last occasion.

Mr Overland—As I mentioned last time, there has been what we call an internal investigation in relation to events at the Australian Institute of Police Management because the people working at the institute are AFP employees so they fall within the province of our internal governance. There has been an internal investigation in relation to allegations of travel rorts. A brief of evidence has been forwarded to the DPP. They have had it for some time. We have had recent correspondence on that in which the DPP asked us our views on a number of issues. We have replied and we understand that the DPP are continuing to consider

their decision as to whether it is appropriate to prefer criminal charges against anyone. Some time has elapsed, I know, since the last meeting, but it is not a straightforward matter and there are a number of issues that require careful consideration.

Senator LUDWIG—Last time I found the reference, I think you said, without quoting verbatim, that it is an operational matter and that you could not really go any further. Are we still at that point?

Mr Overland—It has progressed, but we are still really at that point.

Senator COONEY—I was going to ask some questions about this later on, but I will ask some now. I understand you take time to investigate, but it can impinge fairly badly on somebody being investigated, particularly if it goes on and on. I am not talking about any specific matter here, and neither are you. How do you overcome that problem? Some matters can be disposed of fairly readily; others seem to take a long time. I am just wondering whether there is some process that you can think of that would dispose of it. A person ought to be brought to trial or told he is not going to be brought to trial.

Mr Overland—That is right, but I think also it is important that these matters are given full and proper consideration. One of the potential outcomes is that the matter will go no further. If that is the case, that considerably shortens the sorts of stresses that I think you are talking about. If a hasty decision is made to prosecute, that prolongs the agony.

Senator COONEY—If somebody deserves to be prosecuted they ought to be prosecuted, but it would be bad to reach the conclusion that a person should not be prosecuted and then keep it going because you thought there might be some external pressure—publicity or something.

Mr Overland—It is not about that sort of thing—I could not agree more—but there are some difficulties with this particular case in determining whether, in all the circumstances, it is appropriate that a prosecution actually eventuate.

CHAIR—Are there further questions in relation to the Australian Federal Police?

Senator McKIERNAN—I have a series of questions regarding the certified agreement. What mechanisms exist at the moment for the advancement of members through the new salary spine grades as implemented on the reform process and following the new certified agreements? I am talking now about advancement covering promotions, increases in salaries and those related to length of service.

Mr Overland—There are two means of advancement, possibly three. One is still formal promotion where, if a position becomes vacant or is created, it is advertised, people apply, someone is successful and they move through to that position. There is a second key way that someone can advance and that is called an in situ progression. It is not a promotion, but in effect someone will move through to a higher salary point on the basis that they have demonstrated superior competencies in a particular role they are performing and the organisation decides that it has an ongoing need for the individual to perform at a higher level in that particular role. In situ is specific to the skills and abilities of the individual. To give an example which may flesh that out, in the specialised areas such as forensic sciences and with some of our electronic crime experts where we have expertise and we want people to stay in those areas of the organisation, this is a mechanism to allow us to progress those people through the salary spine without them having to go off and seek promotion in some unrelated

area where they are not going to be using the expertise that we want to use. Another way we can achieve this is through higher duties. We tend to use those in particular areas where someone is seconded, for instance, into a specialised area where we acknowledge we are using their skill and expertise but only for a finite period which could extend up to two or three years. We move them through to a higher increment for that period of time on the clear understanding that at the end of that time they go back to their substantive grade. Of course, that assists them in mounting a later claim either for an in situ or to be successful in advancement through promotion.

Senator McKIERNAN—Are there any provisions made in the additional estimates statements which we are examining in this Senate estimates process or in the forward estimates in this specific area for the advancement of members?

Mr Overland—Specific funding for that?

Senator McKIERNAN—Yes.

Mr Overland—Some of these matters were touched on in the reform program. I am trying to recall the details of that. I do not believe they are dealt with as specific line items that you would expect to see in the portfolio budget statement or the additional estimates. They are part of ongoing employment costs in a sense. So they are embedded in that.

Senator McKIERNAN—There would be no separate lines to show that—

Mr Overland—No.

Senator McKIERNAN—There is provision in the collective agreement for a review of this salary spine process. Has that review started? Is it being looked at? Is there any progress being made?

Mr Overland—Yes, the review has started. It is in its early days. One of the things we want to do is provide a little more flexibility in the way the salary spine works. As you would appreciate, the certified agreement is now some 12 months old but it is radically different from the industrial arrangement we had previously. There has been a range of issues which we have needed to work through with the association. This is one of them.

Senator McKIERNAN—Is it possible, in the limited time that the agreement has been in place, to show some figures to indicate how effective the system has been to date? I would not expect that off the top of your head.

Mr Overland—When you say ‘effective’, you mean in terms of the people who have progressed?

Senator McKIERNAN—Yes.

Mr Overland—I am sure we can get those figures for you, Senator.

Senator COONEY—My question arises out of what has been asked before—the issue of investigating leaks and generally. I can imagine that a lot of problems would arise if you set off on your investigations on the basis of simply information received, unless that information had some quality to it. What quality control do you have on the investigation if, say, somebody made a complaint to you? People come into my office and say all sorts of things and they have different levels of credibility. What do you do about that? Do you simply go chasing off no matter what is said or do you look at the information that is given to you before you go off and say, ‘Carry out an investigation’ or ‘Get a warrant’?

Mr Keelty—It depends on the nature of the allegation. It varies from complaint to complaint. Obviously testing the veracity of a complaint becomes part of the investigation process in a sense. What we have been trying to do as part of that case categorisation-prioritisation model is to make, when matters are referred to us, some preliminary inquiries based on that model to ensure that we do not embark upon investigations that are (a) frivolous, (b) not within the parameters of the ministerial direction and (c) not going to be prosecutable at the end of the day. Each referral is not just accepted on face value. There is some testing of the referral most of the time before we embark upon a full investigation.

Senator COONEY—You have been asked about operations overseas. I was wondering how that is going and whether you have put enough money into that. I was thinking specifically of people smugglers. I know that the Australian Federal Police have had some outstanding successes with drugs. I was particularly interested in the issue of people-smuggling. It seems to me that the victims are the ones who are denigrated—that is, the actual asylum seekers. I was wondering whether we are now getting our hands on the perpetrators of the action.

Mr Keelty—I can give you some details on that. The people-smuggling team is focused on the organised crime elements of people-smuggling as opposed to, as you rightly point out, the victims of the crime, if you like. The people-smuggling team is a joint AFP-Department of Immigration and Multicultural Affairs team consisting of 15 people, 10 of whom are AFP and five of whom are DIMA. It conducts its investigations both within Australia and offshore.

As of 30 January this year, the people-smuggling team has engaged in 13 operations into organised crime groups. These groups are believed to be responsible for the arrival of persons from the Middle East, the Netherlands and the People's Republic of China. We have taken out four arrest warrants for individuals involved in facilitating the arrival into Australia of in excess of 1,400 unlawful non-citizens via Indonesia. Interpol notices have been issued in relation to these people, and attempts to extradite two of these people from Indonesia and Malaysia have to date been unsuccessful, but we continue our liaison with the Attorney-General's department on the matter of extradition.

Further, two arrest warrants have been issued for individuals involved in the June 2000 arrival of 23 people from the PRC. They arrived in Cairns. A request for extradition of one of the persons behind that has been forwarded to the Hong Kong authorities. We continue to liaise with overseas law enforcement bodies, particularly Papua New Guinea, Malaysia, Pakistan and Indonesia. For example, cooperative efforts between us and the Indonesian national police have resulted in the prevention of 500 persons from leaving the shores of Indonesia. We have also, under the program, conducted two conferences. One was an international conference held here in Canberra last month. It was an enormous success in the sense of the countries that we attracted, including some of the Middle Eastern countries.

By and large, we have used the money for that program very successfully in looking at the organised crime aspects rather than the victims of the crime.

CHAIR—That concludes questions to the Australian Federal Police. I thank Commissioner Palmer, Deputy Commissioner Keelty and Mr Overland for your assistance with the committee's work today. Commissioner Palmer, I thank you for your assistance to the committee on every occasion.

Mr Palmer—I would like to say a very sincere thankyou to the committee for the way in which you have dealt with me on every occasion when I have appeared before you. We really do see this as a very important part of our ongoing public audit of our operations. We treat it very seriously and I thank you very much for the way in which you have treated not only me but the AFP through this process.

[8.06 p.m.]

Australian Security Intelligence Organisation

CHAIR—Thank you for your patience. We will begin with questions from Senator Bolkus.

Senator BOLKUS—I just have a few questions. I would like to start by congratulating Mr Richardson on the publicity that ASIO seems to be generating these days. You seem to be generating a citizen friendly organisation image pretty well.

Mr Richardson—Thanks, Senator.

Senator BOLKUS—I was intrigued by a reference in one paper today where the definition of a modern spy was documented. It said that today's secret agent is more likely to drink mineral water, own a Toyota and sit at a computer terminal than to scoff martinis—shaken or stirred—drive an Aston Martin sports car or roam the planet killing bad guys and seducing glamour girls in defence of the realm. Is that how you like to define yourself?

Mr Richardson—It sounds pretty good to me.

Senator McKIERNAN—Why are you drinking still water now?

Mr Richardson—There's no mineral water here!

Senator BOLKUS—Getting a bit more serious, ASIO, in the lead-up to the Olympics, recruited extra staff and had extra staff entitlements. Is that level going to stay now? Are your staffing levels going to change at all since the high level of activity has reduced somewhat?

Mr Richardson—The staffing levels will move around a bit. Coming off the back of the Olympics we have temporary staff who are separating from the organisation, but, at the same time, this year we have the Commonwealth Heads of Government Meeting being held in Brisbane in October and we also need extra staff to deal with that issue. So we have losses in some areas, gains in others. There will be a small reduction this year, I think, in overall terms, representing the fact that CHOGM does not represent a challenge on the same scale as the Olympics.

Senator BOLKUS—I suppose the last CHOGM exacted a lot from ASIO in terms of not just basic monitoring but also some of the incidents at the time. A newspaper article today says that ASIO will not look at anyone without a four-year tertiary qualification, preferably with an honours degree. Are you seeing some sort of change in the profile of your staffing levels in terms of their qualifications?

Mr Richardson—Yes. Justice Woodward really brought in the big changes in recruitment in ASIO between 1976 and 1981. He was the first Director-General of Security to introduce a graduate recruitment program, in the late 1970s. It has really continued since then, and we have publicly advertised since then. A few years back, we increased the tertiary entrance qualifications to a four-year degree, preferably with honours. That was really, I suppose, to

match the increased number of people coming through the tertiary education system and in an effort to keep our standard of intake up near the top. We still have a gender imbalance in the organisation. However, the number of women in the organisation has slowly increased over the last six or seven years.

Senator BOLKUS—So in terms of an overall staff profile, can you give us some figures on the proportion of staff who may have tertiary qualifications and how that has changed over the last, say, five or so years?

Mr Richardson—I would have to take that on notice and come back to you separately.

Senator BOLKUS—Are we supposed to feel more comfortable and relaxed at the fact that we have smarter spies?

Mr Richardson—Absolutely.

Senator BOLKUS—Can you tell us whether ASIO maintains records of disclosures to it of information from telecommunications companies under the provisions of section 283 of the Telecommunications Act?

Mr Richardson—Yes, we do.

Senator BOLKUS—Do you maintain internal audit procedures to ensure that the information obtained under the act is used and/or passed to third parties in accordance with the provisions of the act?

Mr Richardson—Yes. For a start, only certain officers approved by me can make a request to a telecommunications company for subscriber details. The list of officers with that authority is reviewed once a year. Secondly, requests of the telecommunications companies can only be made as part of an investigation, which must be under a formal authority to investigate—approved by a senior officer. And the authorities to investigate are regularly audited by the Inspector-General of Intelligence and Security.

Senator BOLKUS—How many persons have such authority?

Mr Richardson—From memory, it is about 30.

Senator BOLKUS—That is quite a number.

Mr Richardson—That reflects the fact, first, that we have a head office in Canberra and we have offices in each of the mainland state capitals. If we were all based in the one centre, we would have fewer people.

Senator BOLKUS—For each of the financial years 1997-98 to 1999-2000, can you tell us how many disclosures of information were actually made to ASIO under that section of the act?

Mr Richardson—We do not put that on the public record, but we could provide a separate briefing on it.

Senator BOLKUS—I appreciate that. Thanks. Has your organisation in the last couple of years sought or obtained any legal advice or opinion concerning questions of parliamentary privilege, including possible breaches of privilege arising from ASIO's performance and functions?

Mr Richardson—I am not aware of any.

Senator BOLKUS—Would you like to take that on notice?

Mr Richardson—No. I would say no. Certainly not over the last two or three years.

Senator BOLKUS—Is it the case that the *Commonwealth Protective Security Manual* stipulates that all major national security incidents that affect Commonwealth government agencies are to be reported to ASIO?

Mr Richardson—That is right.

Senator BOLKUS—Can we get a copy of that manual—or the relevant section of the manual?

Mr Richardson—I am sure you can. I will have to check with the relevant area of Attorney-General's Department, but I do not think there would be a problem there.

Senator BOLKUS—Will you please come back to us on that?

Mr Cornall—There is no problem with providing you with a copy of that manual.

Senator BOLKUS—In Mr Blunn's report on his investigation of the alleged security breaches by Mr Merv Jenkins, he said:

The government directive requiring major security breaches to be reported to ASIO should be reviewed to provide guidance on what constitutes a major security breach, at what stage ASIO should be notified and some indication of the consequences of making such a report, for example, what action, if any, is to be taken by the agency after the report has been made and before advice is received from ASIO.

Can you tell us whether the directive concerning referral of major security breaches to ASIO has been reviewed?

Mr Richardson—It is in the process of being reviewed. There is work going on on that at the moment, but that has not yet been finalised.

Senator BOLKUS—Do you have any time line for that being finalised?

Mr Richardson—I believe that will be finalised within the next six months.

Senator BOLKUS—Is there any problem with that recommendation?

Mr Richardson—No. As a recommendation, as a statement of principle, certainly no. In terms of working through the practical form of words and the formulas, et cetera, there is quite a bit of thought going into it.

Senator BOLKUS—Do cases of alleged unauthorised disclosure of classified national security documents to the press fall within the scope of the sorts of incidents that must be reported to ASIO?

Mr Richardson—No.

Senator BOLKUS—In those circumstances, what is ASIO's role in such cases? Would you be involved in initial investigations conducted by departmental security officers?

Mr Richardson—No, normally not. Normally, where a leak is being investigated, that is referred to the AFP. Unless there is a particular angle or issue that might cut back into our responsibilities, we are not involved.

Senator BOLKUS—So there are a number of defined areas within the broad category of leaking of classified national security documents to the press with which you may be involved, but you are not involved with all of them?

Mr Richardson—Certainly in the overwhelming majority of cases we are not involved.

Senator BOLKUS—Is it possible to categorise and tell us which categories of cases you might be involved with?

Mr Richardson—The leaking of classified material to the press per se is not an issue for ASIO. It is possible that in certain circumstances there may be other unresolved questions which relate to our area of responsibility. That happens very rarely. For instance, if there was an issue suggestive of espionage, we would have a legitimate interest until it was resolved one way or the other.

Senator BOLKUS—So, in the recent case of unauthorised disclosure of classified national security documents to the media concerning East Timor and Indonesia, was that considered to be a major security breach, and was it formally reported to ASIO?

Mr Richardson—No, not the leaking. If I get this wrong, I will come back to you, but I would be fairly confident in stating that that was not reported to us, because it does not fit within the definition.

Senator BOLKUS—So ASIO did not assist in the investigation of these alleged leaks?

Mr Richardson—No. There was one aspect in relation to one investigation in which we did have an interest because it related to another investigation we were doing. But that did not involve East Timor or Indonesia.

Senator BOLKUS—Thanks very much and thanks for waiting so long.

Senator COONEY—It just occurs to me that over the years ASIO may have done nothing. How can we check on what ASIO has done? I am sure that you have done the honourable thing over the years. We used to curse and swear at ASIO. Perhaps they have never done a thing.

Mr Richardson—You could open our annual report. You will find on page 7 that, in the context of the Olympics, as of 2 October 2000 we had provided more than 157,000 Olympic specific security clearances. We had issued 423 threat assessments specifically related to the Olympics. We had made overt contact with 98 separate ethnic communities as part of a community interview program. We had interviewed 57 people of specific security interest to assist in the prevention—

Senator COONEY—What I am getting at is—

Mr Richardson—But if you ask what we do, there is a lot.

Senator COONEY—I know. There is no way we can check on that. I could go back and say that I have just had an interview with Mr Richardson, and I have. But what is the quality of that interview?

Mr Richardson—We are subject to a fairly tight accountability arrangement, some of which is similar to other parts of government. We report to government through the Secretaries Committee on National Security up to the National Security Committee of cabinet. We are also subject to the provisions of the Inspector-General of Intelligence and Security. Our security assessments are subject to appeal to the AAT. Our decisions in relation

to archival material are subject to appeal to the AAT. There are a variety of areas in which our work is subject to similar sorts of accountability tests that other areas of government are.

Senator COONEY—I would not have thought there was the test. We have just had the Federal Police and they are clearly tested at various levels. If they bring a case, they are tested in court. It is all in the open. It is in that context. I do not mean in any way to be insulting. I am looking at it from the point of view of a committee like this. There is no real check we have on ASIO in the way we have on, say, the Federal Police or any other government body. Therefore, to say that there is the same sort of check on ASIO as there is on any other government body is probably not quite correct.

Mr Richardson—There is a joint parliamentary committee on ASIO also.

Senator COONEY—But they do not go into detail—I hope they do not.

Mr Richardson—I would agree with the general point you are making. Quite clearly, as a secret organisation, in terms of the public accountability and the material that is available on the public record, there is a difference between what is available in respect of ourselves as opposed to others. I would agree with you.

Senator COONEY—On the other hand, the Olympic Games went through without an incident. You could say, ‘Well, there you are. What else do you want?’ You cannot do any better than the best, I suppose.

Mr Richardson—The only comment I would make is that in respect of something like the Olympics I suppose those organisations that would have been held accountable in the event of something going wrong would take the compliment that you have just paid them.

CHAIR—Thank you very much, Senator Cooney. If there are no further questions, Mr Richardson, thank you very much. Thank you for your patience in waiting till this evening.

[8.25 p.m.]

Attorney-General’s Department

Mr Cornall—There were a number of matters that were touched on earlier today that I think we can clear up now before we start.

CHAIR—Certainly. Thank you.

Mr Cornall—One issue was about whether there were consultancies that cost more than five per cent, and that was a question on notice directed to the department. The answer is that there were no consultancies that cost more than five per cent than the quoted price. That is what the answer means.

Senator LUDWIG—Yes. It said five per cent, so it crossed my mind there it should have read ‘by more than five per cent’.

Mr Cornall—That is what it meant.

Senator LUDWIG—I thought that was what it was, but I thought I should clarify that.

Mr Cornall—Yes. Mr Govey has details of the Corporations Law letter, the date and a copy of the communique.

Mr Govey—I was asked about the date of a letter from the Prime Minister. The date of that letter was 18 January. I have a copy of the Prime Minister’s communique, which was a joint statement by the Prime Minister and the premiers of New South Wales and Victoria.

Senator LUDWIG—Thank you. Will you table that?

Mr Govey—I can table that.

Mr Cornall—Mr Carnell has a response to the issue of privacy and children.

CHAIR—Before we proceed, Senator Bolkus would like to ask some questions.

Senator BOLKUS—I have a small problem in that I have to be at another committee in about three minutes. Can I just put two or three questions on notice for you for this particular section?

CHAIR—Yes.

Senator BOLKUS—I will try to come back later on. I just wanted an update on the Adelaide law courts building, whether we are still going ahead with that and what stage we are up to.

Mr Cornall—That project is being managed by the Department of Finance and Administration.

Senator BOLKUS—So you do not know if a building is going to be built or what the time line is?

Mr Cornall—We will be able to find out some information for you, but we are not managing that project.

Senator BOLKUS—Right. I would imagine you are the department that has actually asked Finance to—

Mr Cornall—No, the Department of Finance and Administration has taken responsibility for that project.

Senator BOLKUS—Right. Could you come back to us with information on that, if you could. You can take it on notice—the current state of play, when contracts will be let and when building might commence.

Mr Cornall—Yes. I think all we can do is refer them to the department, but we will see what we can do.

Senator BOLKUS—The other thing is: can you find out from the Office of Film and Literature Classification whether Robert Mapplethorpe's book *Pictures* has been referred to the OFLC for classification?

Mr Cornall—We may be able to deal with that now, if you will just bear with me. Ms Lynch has the details at her fingertips.

Ms Lynch—I understand the South Australian police referred the book to the classification board. I do not have the date when that was referred, and I understand that the board classified *Pictures* as 'unrestricted' on 17 January 2001. I understand, however, that the South Australian police have also sought a review of the classification board's decision.

Senator BOLKUS—I was just going to lead to that. You have no idea as to what the status of that review is?

Ms Lynch—No, I do not. I am sorry.

Senator BOLKUS—Would you like to take it on notice?

Ms Lynch—I could find out for you.

Senator BOLKUS—Obviously, since this is a fast-moving issue, the sooner we get an answer the better. Thank you.

Mr Carnell—There was question from Senator McKiernan about children's privacy and where things were up to on that. The Attorney put out a press release on 22 December, where he announced that there will be the convening of a consultative group and the release of a public discussion paper. I have a copy of the press release there if that would help. Obviously, since then, the department has been drafting terms of reference, compiling a list of possible people for inclusion in the consultative group, doing background research for the preparation of that discussion paper and briefing the states and territories on the issue. We will, obviously, fairly soon be submitting those things to the Attorney, hopefully for his approval, and then progress as per his press release.

CHAIR—Thank you.

Mr Bourke—Senator McKiernan asked this morning for some further details on the rephasing costings, which are on page 28 of the portfolio additional estimates statement. The additional information is that, firstly, the \$1.018 million for financial assistance was in respect of native title cases, as I anticipated this morning. Secondly, the amount of \$13,000 under the Family Relationship Support Program was to assist with a Rural Women's Network conference in Albury. The amount of \$644,000 under the Community Legal Services Program was in respect of five items: \$310,000 for a new data system; \$174,000 for the existing data system, known as the national information system; \$66,000 for the Victorian court network; \$74,000 for the Communications Law Centre; and \$20,000 for the Northam Community Legal Centre, giving a total of \$644,000. The \$490,000 for legal aid is for expensive cases to three legal aid commissions: \$320,000 to the South Australian commission; \$150,000 to the Northern Territory commission; and \$20,000 to Legal Aid Queensland.

Senator McKIERNAN—Thank you for that information, Mr Bourke. How does that information fit with what Mr Hine told us about rephasing?

Mr Bourke—Mr Hine may be able to assist with that answer, but the rephasings are estimates of expenditure that would be rephased in the next financial year. These amounts are items that we expected we would not spend but in fact did spend in the last three months of the 1999-2000 financial year. They were funds that we expected not to spend but did spend.

CHAIR—Mr Hine, did you wish to add to that?

Mr Hine—I will take you through the process. I will refer back to the portfolio budget statement so that we can find the numbers as we go through. I will use the funding for financial assistance as an example in this case. In the 1999-2000 budget—I refer the committee to page 49 of the PBS for 1999-2000—an amount of \$9,569,000 was appropriated for financial assistance. During the 1999-2000 additional estimates process, that figure was reduced by \$1.171 million—I refer the committee to the portfolio additional estimates submission on page 27. That then gave us a net appropriation for 1999-2000 of \$8.398 million.

When we began preparation of the 2000-01 budget at the end of March 2000, we anticipated spending of \$7.158 million of that \$8.398 million. Therefore, there was an underspend at that point in time of \$1.24 million—that is, of the money originally appropriated in March, we anticipated that \$1.24 million would not be required in the 1999-2000 financial year. That was then rephased or rolled over into the 2000-01 budget and it appears as part of the figure of \$9,519,000 on page 31 for this year—namely, the 2000-01 portfolio budget statement.

In actual fact, at 30 June 2000 we had spent \$8.176 million. Originally in March 2000, we thought our expenditure would be \$7.158 million. We underestimated that—and, as Mr

Bourke indicated, a substantial amount of the funding was due to expenditure on native title matters—by some \$1.018 million. Therefore, instead of rephasing or rolling over \$1.24 million, we should have rolled over only \$222,000. The difference between the \$1.24 million, which was rolled over, and the \$222,000 is \$1.018 million. That is a fairly detailed matter. It is the most complicated example because it relates to a number of financial years, and therefore picks up my point from earlier this morning: it is a matter of timing over a number of financial years.

For simplicity, I refer you to the Melbourne courts project. An amount of \$401,000 was appropriated in 1999-2000. When we prepared the 2000-01 budget, we anticipated that we would spend the full \$401,000. However, at 30 June, we had spent only \$374,000. We had some claims on hand so we rolled over or rephased \$27,000. That is why that is an increase and that is why the financial assistance is a decrease of the \$1.018 million. As I said this morning, it covers a number of financial years and it is about the timing of expenditure. It also links in with the fact that the budget comes down in May, and we obviously do not have figures for actual expenditure as at 30 June when we prepare the budget for the forthcoming financial year.

Senator McKIERNAN—I am not so sure that it is clearer on Monday night than it was on Monday morning.

Mr Hine—I am happy to provide other information if the committee would like it. It is a matter of timing, as I indicated this morning. With respect to the financial assistance, it goes across a number of financial years. I used that example so the committee could see the numbers in the budget process.

Senator McKIERNAN—You probably will not appreciate the difficulties to which I refer. We have half a page of explanation in the portfolio additional estimates statements 2000-01 that has taken you a considerable time to explain verbally at tonight's estimates hearing. I think that indicates—maybe there are brighter people around the parliament than me—that the method of describing the alterations, the changes and the amendments to the budgetary figures in the PBS is not adequate.

I arrived here thinking that there were reductions in the programs: that money had been removed from them. When you examine it a little further, you realise that it has not been removed; it is an increase. Your explanation provides me with a completely different solution to the dilemma I had in examining and trying to understand the explanation that covered half a page—I am not going to count the lines, but there were not too many—in the PBS. That is certainly my point of view. There are probably others around the place with university qualifications who might understand the situation a great deal better.

My recollection from this morning is that this is the first occasion when the term 'rephasing' has been used. I cannot recall—I have not looked through all the papers today—whether there is any explanation in the PBS as to what 'rephasing' is and why we have this new method of explaining the changes and alterations in the budgetary process.

Mr Hine—As I understand it, Senator—I will need to clarify this point further in discussions with the department of finance—rephasing refers to expenditure that is of an administered nature. Therefore, the appropriation for it technically lapses at the end of the financial year and, because the funding is moved between financial years, it is rephased between those relevant financial years. With respect to departmental expenses when funding does not lapse, any unspent moneys in one year are carried over to the next financial year. My understanding of where the terminology comes from is the different treatment of the funding

and the appropriation arrangements with respect to administered items versus departmental items.

Senator McKIERNAN—The practice of having a bit of fluidity in the expenditure of budgetary allocations is not new; it is the terminology that is new. There is no explanation in the papers as to why we have this new term. We are a suspicious lot on this side of the table, as you would appreciate.

CHAIR—I think Senator McKiernan is speaking for himself, Mr Hine.

Mr Hine—We will take that on board, Senator.

Senator McKIERNAN—I do not believe we have received an explanation—and it probably involves the same explanation that you and Mr Bourke have given for other areas—for the adjustment under SACPAV. Would there be the same explanation for each of the other—

Mr Carnell—It is the same basis for the change. Money that was originally appropriated to SACPAV for 1999-2000 was spent. They then brought some expenditure forward from this financial year. That was managed on a cash basis. We are going to get into a very detailed explanation now, and I am happy to go forward with that. The principles are exactly the same. It was money that was expended on SACPAV. They increased their expenditure in the 1999-2000 financial year; funds were then withdrawn from this year to compensate for that increased expenditure in 1999-2000. The funds came from other areas within outcome 2, because under the appropriation system money is funded at the outcome level, not at an individual line by line level. But the same principles apply with respect to that as applied to financial assistance and Melbourne courts.

Senator McKIERNAN—Where did the term ‘rephasing’ come from? Is it a buzzword from Finance? Is it something that is unique to the Attorney-General’s Department?

Mr Hine—No, Senator; I would trust that all other committees are asking the same question. It is a common change in the terminology for changes in the timing for administrative expenditure. It is not a word that only we have used.

Senator McKIERNAN—What word was used before?

Mr Hine—I presume the word used before would have been ‘carryovers’. The analogy would have been carryovers, but not all carryovers would have been in that category. I am sorry, Senator, I do not mean to be evasive, but as we are going through 1999-2000, the first year of the accrual budget, we have movements between capital and recurrent expenditure. We are still bedding the whole process down, but I take your point. Whilst we understand the numbers, we have got to appreciate that others who are reading the numbers may not understand their basis.

Senator McKIERNAN—Thank you very much for your assistance. I trust that, on reading what you have just had to say and the explanation provided by you and Mr Bourke, it will make things so much clearer.

CHAIR—It will be as clear as crystal in the *Hansard*.

Mr Hine—I hope so, Senator. I am more than happy to provide additional information if it is required.

CHAIR—Perhaps you could draw us maps—me, at least.

Senator McKIERNAN—I have some questions that I would like to put on notice. I am not sure whether I have done so this morning—the matter of staff levels, vacant office space and appointments and vacancies. It is a series of about 10 questions that I can put on notice.

CHAIR—Thank you, Senator McKiernan.

Senator McKIERNAN—Could I go back to the opening dialogue between Mr Cornall and me and follow up some remarks made by the chair as well. At that time I had not had the opportunity to read the submission from Ms Leigh, dated 16 February 2001, in response to the hearing in Melbourne last week of the Legal and Constitutional Legislation Committee. It is probably just as well that I had not seen that. At that hearing in Melbourne, I had asked—and I am referring to the letter—if the secretary, which would be you, Mr Cornall, could provide a response to the committee as to the attitude the department is currently taking to committees of the parliament, in particular to this committee. Ms Leigh's response was as follows:

The Secretary of this Department has seen the letter to the committee dated 2 February 2001 and this letter—

the one dated 16 February—

... He agrees with the views expressed in both and believes that they are consistent with the views expressed by the Attorney-General in his letter to the President of the Senate dated 17 November 2000.

To me, those two paragraphs prove a point as to what the department thinks of a Senate committee. The method of response could have been better. The other thing that concerns me in the letter is this paragraph:

The primary role of this Department is to provide legal and policy advice to the Attorney-General and the Government more broadly regarding matters falling within the portfolio responsibilities of the Attorney-General. It would place the Department in a position of conflict of interest if the Department were obliged also to provide advice on such issues to parliamentary committees.

I had indicated this morning there would be another time and place where we would further develop these things. It is a pity that we do not have the time to do it tonight in perhaps a more open session. I am not so sure that I am satisfied with the content of that letter addressing a different inquiry from the one here. But it does raise the matter of the great concern that I have expressed publicly in Melbourne and again here today in Canberra of the relationship between the department and the committees of the parliament and, indeed, the parliament itself. We will need as a committee to address this matter in private and take the matter up with the department and possibly the Attorney at a later time. It is a very serious situation and I think we will need to take advice from a number of areas on this. I will be suggesting that to the committee. What the committee chooses to do will be a matter for the committee.

CHAIR—I add for the record that this is a matter of concern not just to opposition members but also to government members of the committee who find themselves—and I will speak for myself in this regard—in quite invidious circumstances trying to determine how best to seek advice on legislation whose sole genesis is the department when the department is unable to assist us in that process and in some cases goes to a point where it makes it almost impossible for the committee to do its work. We are finding this extremely difficult. I will certainly be taking up Senator McKiernan's suggestion that the committee discuss the matter privately and decide what further action to take.

Senator COONEY—One way for us would be to pay for advice from the excellent Australian Government Solicitor and take whatever we pay the Australian Government Solicitor out of Attorney-General's budget.

CHAIR—Senator Cooney, perhaps we can add that to our deliberations. Thank you.

Senator McKIERNAN—I want to move on in output 1.1 and ask about the main activities of the Human Rights Branch of the department. How many positions are there within the branch? Are there positions that are currently filled by permanent appointments? How many positions are filled by acting appointments?

Ms Leigh—I cannot answer that off the top of my head. I could perhaps, on reflection, answer it before we close tonight. I need to take some time to do that.

Senator McKIERNAN—If you are taking things on notice and can do it tonight, it probably would be helpful. Did the department experience any difficulty in attracting and retaining people to work in the Human Rights Branch? Would it be possible to describe what the morale is like within the branch?

Ms Leigh—I do not think there is any difference in staffing issues for that branch compared with the rest of the division. There is considerable movement in the division as a whole, but I do not think there is anything specific that relates to that branch.

Senator LUDWIG—Have you been tracking sick leave and the amount of annual leave or absences in the branch?

Ms Leigh—The department tracks those matters. I do not believe it is out of kilter in that branch.

Senator LUDWIG—Perhaps you could have a look at that and let us know if it is average for where it sits.

Ms Leigh—Certainly, Senator.

CHAIR—We are continuing in output 1.1 and Senator McKiernan has some questions in relation to freedom of information.

Senator McKIERNAN—When will the government respond to the report on the recommendations made by the Australian Law Reform Commission in early 1996 in respect of freedom of information legislation?

Ms Sheedy—I was trying to find the papers as I was coming up. You were asking about the Law Reform Commission's report on FOI?

Senator McKIERNAN—And the recommendations contained in that report in respect of legislation on freedom of information.

Ms Sheedy—As I understand it, many of the report's recommendations have already been addressed. Some concerning the application of the FOI Act to government contractors were considered in developing the recent Privacy Amendment (Private Sector) Act and in the development of a draft FOI bill which is still under consideration. Some of the recommendations concerning review mechanisms are being implemented as part of the consequential legislation related to the Administrative Review Tribunal Bill. Some of the recommendations on technical amendments to the FOI Act are being acted upon in the context of the government's statute repair process.

Senator LUDWIG—If you have all of that information, why haven't you put it in a response to the recommendations of the ALRC? I think back to the report *A sanctuary under review* which this committee presented. The government responded to the recommendations in point form, by way of a consolidated document. Why should you wait for a committee such as this one to ask you the question? Rather than pulling out a folder and telling me what the

government has been doing, why hasn't it been put into a report or recommendation form, in answer to the ALRC, if you have that information there?

Mr Carnell—Ultimately, a response is a matter for the government.

Senator LUDWIG—Minister?

Senator Ellison—I have not been involved in this matter, Senator. I will take it on notice and take it up with the Attorney.

Senator McKIERNAN—When you take it on notice, can you find out how many other reports of a similar type have been presented and are awaiting a response?

Senator Ellison—Yes, I will take that on notice.

Senator McKIERNAN—Could you also find out whether responses have been prepared and presented to the Attorney but not yet tabled in the parliament or otherwise publicly released? With respect to the ALRC, there may not be a requirement for it to be tabled in the parliament, but it may be responded to in a different manner.

Mr Carnell—It would be worth noting that the Senate Legal and Constitutional Legislation Committee is currently undertaking an inquiry into the Freedom of Information Amendment (Open Government) Bill 2000. In the department's recent submission to it, it canvassed in greater detail a number of the things that Ms Sheedy touched on. With respect to most—not all—of the recommendations, that submission effectively gives a government view on them.

Senator McKIERNAN—We have got a hearing on 5 March, so I will ask my questions then. On the same matter, I noticed in the annual report of the department that one of the things that you are charged with is as follows:

Performance measure: Government responses to reports of Royal Commissions, parliamentary committees and non-parliamentary committees and other organisations significantly impacting on the portfolio

preliminary ministerial briefing is to be provided within one day of the tabling of the report, or earlier if possible;

a substantive analysis of parliamentary committee reports is to be provided to Ministers within two weeks of publication.

I wonder if you would provide the committee with details of the number of parliamentary committees that have not yet been responded to publicly in parliament, and, in providing that material, could you also inform us of the number of responses that have been prepared by the department, presented to the Attorney or the relevant minister and not then presented to the parliament, so we can get a handle on how the work of the parliamentary committees is measured, both by the Attorney and by the department? That is why we need both sets of information, if it is able to be supplied.

Senator Ellison—I have said I will take that on notice.

Senator McKIERNAN—Thank you, Minister.

CHAIR—Are we still in output 1.1, Senator McKiernan?

Senator McKIERNAN—Just before I leave freedom of information, is there any reason for the delay? I have resisted a temptation to get into the debate on the FOI bill that is currently before the parliamentary committee and, indeed, before the parliament. That bill is a private member's bill, so it is not in itself a response to the ALRC report. Is there any reason

for there be a delay by government in responding to that report, other than the actions that have been so described earlier? Why has it not been formally responded to at this time?

Mr Carnell—I have not been involved with it in its earlier period, so I really cannot offer you any satisfaction on that question.

Senator McKIERNAN—Could you take it on notice and see if you can find out some more information for us?

Mr Carnell—Certainly, Senator.

Senator McKIERNAN—Thank you, Mr Carnell. With regard to electronic transactions, what steps has the government taken with respect to ensuring that electronic transaction legislation will be enacted by each of the states, and can you provide us with information on the states that have enacted equivalent state legislation and which states are yet to do so?

Mr Carnell—In March 2000, the Standing Committee of Attorneys General endorsed the uniform Electronic Transactions Bill, which mirrors the substantive provisions of the Commonwealth act. New South Wales, Victoria, South Australia and Tasmania have all enacted the uniform bill without alteration, and the uniform bill has been introduced into the legislatures of the Northern Territory, Western Australia and Queensland. Obviously in Queensland it has now lapsed with the calling of the election.

Senator McKIERNAN—The bill has lapsed?

Mr Carnell—Yes.

Senator McKIERNAN—It would be a similar situation in Western Australia then—or has legislation already been carried in that state?

Mr Carnell—No, as this reads it would have lapsed as well there, so it was not enacted.

Senator McKIERNAN—Thank you. I am not sure you mentioned the ACT during the list of states and territories that you mentioned, Mr Carnell.

Ms Sheedy—We do not actually have anything here on the ACT, but we can certainly take that on notice.

Senator McKIERNAN—Thank you, if you would. With regard to film and literature classification, what is the progress of the review of the film and computer game classifications?

Ms Lynch—Senator, is this the review of the guidelines for films and computer games and the convergence issues? Is that the review you are talking about?

Senator McKIERNAN—The convergence of films and games in the new form, including the convergence of films and games in new forms for digital recording against the guidelines and classifications of films and the guidelines for the classification of computer games.

Ms Lynch—I understand there is a draft discussion paper prepared but it has not been released yet.

Senator McKIERNAN—What is the delay on this? There was some degree of urgency on it in the middle of last year, although ‘urgency’ may not be quite the word. There was the meeting in November, and now we are in February and it has not yet been released.

Ms Lynch—I think the draft would need to go back to the censorship ministers because of the cooperative nature of the scheme. I think the censorship ministers from the states and

territories will see it before it is finally released to interested parties or for public comment. The draft will go back to state and territory ministers first.

Senator McKIERNAN—Would the recent rounds of elections have had anything to do with the reasons for delay?

Ms Lynch—No. The next censorship ministers meeting I think is due in March, on 22 or 23 March, as I understand it.

Senator McKIERNAN—The draft would go to that meeting?

Ms Lynch—Or it may even go before then, but I think it will need to go back to ministers because it is a joint scheme.

Senator McKIERNAN—Are you aware of any time lines that will be included in the review?

Ms Lynch—No, I am not. I will have to go back to the OFLC.

Senator McKIERNAN—Determined, is it?

Ms Lynch—Look, it may well have been. I am not aware of it. I cannot answer off the top of my head, but I can go back to the OFLC for you and take it on notice.

Senator McKIERNAN—We deliberately did not seek to ask this question of OFLC because we thought it was more in the department's area. For example, the opposition did not seek the OFLC to be present here tonight. By way of your last response, are you saying it would have been more properly directed to OFLC?

Mr Carnell—Our briefing notes state that the review will be conducted by the OFLC, and that the matter was approved to go forward to a review by the censorship ministers on 16 November. We are not directly involved in the preparation of the review material but we can find out the answers to those detailed questions for you.

Senator McKIERNAN—So you will seek to get that information for us?

Mr Carnell—Yes, we will.

Senator McKIERNAN—Thank you for that. We thought it more appropriate to go to you rather than to the OFLC itself, and I apologise if I am causing any distractions in asking it here rather than calling the OFLC to tonight's hearing.

I want to move on to intellectual property and directors' copyright. On 20 September 2000, the Attorney invited submissions as to whether, and if so how, the Copyright Act 1968 should be amended to include directors as owners of copyright in film. Submissions closed on 27 October 2000. Can the committee be informed of how many submissions were received and at what stage is the consideration of directors' copyright now up to?

Ms Sheedy—I cannot give you the number of submissions, I am sorry; I will have to take that on notice. I know that there were a number received. Although the cut-off date has passed, the government has agreed to delay further action on the issue of directors' copyright pending receipt of the views of the Australian Screen Directors Association and the Screen Producers Association of Australia who are, as we understand it, engaged in a process of negotiation aimed at reaching common ground on the issue, which obviously will assist the process. So the government has agreed to delay further consideration until those two bodies come forward with their views.

Senator McKIERNAN—Was the initiative for the delay requested by the screen directors and screen producers associations?

Ms Sheedy—Yes. As I understand it, it was.

Senator McKIERNAN—Were other interested parties to that review advised of what is happening, that there has been a delay and that there are efforts to get a united position—using my words to describe it—from those organisations?

Ms Sheedy—I will take that on notice. I would say that as far as I understand, although there has been no direct communication with other organisations that this has in fact occurred, when there have been inquiries made to the department about where things are at, that information has been imparted. But I will take that on notice to make sure there have not been any direct communications made.

Senator McKIERNAN—Were there any deadlines set in the early stages of the review process for the introduction and passage of legislation in this area? Have those deadlines or target dates been amended because of the delays? If so, what have they been amended to?

Ms Sheedy—I would have to take that on notice too.

Senator McKIERNAN—I guess there is nothing more I can ask with regard to that. In the matter of performers' rights, which is a related thing, at what stage is the consideration of performers' rights now up to?

Ms Sheedy—The issue of performers' rights has been awaiting some amendments to our treaty obligations. There has been an ongoing WIPO—World Intellectual Property Organisation—process in Geneva. There was a diplomatic conference in December last year in Geneva which was looking at considering the adoption of international standards for performers in audiovisual recordings but it failed to agree on one article, as I understand, of the draft treaty. At the moment the government is now re-examining its approach to the issue in light of the lack of international agreement.

Senator McKIERNAN—I am still on 1.1 but I want to do primary dispute resolution with you. Could the committee now be provided with a copy of the report prepared by the Law Foundation of New South Wales entitled *Phase one of a national evaluation of primary dispute resolution programs in legal aid commissions*? We were advised at our last meeting that this report would be completed by December 2000.

Mr Bourke—That is in response to, I think, question on notice No. 25?

Senator McKIERNAN—That is right.

Mr Bourke—The response to that question advises that the report is not yet completed and once completed will be submitted to the Attorney for consideration. My advice is that at this point it is with the Attorney, but I will need to confirm that. I will take it on notice as to whether we can provide it to you, Senator.

Senator McKIERNAN—Thank you. Concerning the Administrative Review Tribunal, I have a series of questions regarding where that process is up to. I ask these questions in the understanding that you would be aware of the report of the Senate Legal and Constitutional Legislation Committee inquiring into the Administrative Review Tribunal bills that was presented in the parliament a couple of weeks ago. Included in it was a minority report from Labor and Democrat senators which recommended that the bills be withdrawn and redrafted to address concerns about a number of matters contained in the bill. I raise that as a background to this question I am about to ask. What has been the total cost of work to date towards the establishment of the Administrative Review Tribunal—that is, including costs

paid to consultants working on the project and the costs for departmental resources committed to it?

Mr Cornall—Senator, can I just make the point that, as I understand it, this report was tabled in parliament last Wednesday, not a couple of weeks ago.

Senator McKIERNAN—Yes, that is right. I am not asking for a response on it now.

Mr Cornall—I just want to make the point that it has only been available to us for 2½ working days. The answer to the question that you have asked about the details of the costs will obviously have to be taken on notice.

Senator McKIERNAN—Are there any contingency measures in place to provide for the funding for the existing tribunals to be restored or for new funding to be allocated in the forthcoming budget? What will be the process from here?

Mr Cornall—Mr Hine might be able to give you a fuller answer, but I would imagine that on the basis that there is funding approved for the ART there would be the opportunity to rearrange that funding if the ART was not operational on 1 July 2001.

Mr Hine—That would be correct. In the event that the ART was not established, then probably during the additional estimates process funds would be transferred to the AAT and possibly to the other jurisdictions. I do not have the full details here of where the money is coming from to fund the ART, but the funds would be reinstated to those areas that had the previous tribunals.

Senator McKIERNAN—Thank you. Is it possible to give the committee any information on the number of positions that are not filled, particularly within the Administrative Appeals Tribunal?

Ms Leigh—Are you talking about members of the tribunal?

Senator McKIERNAN—Members but also staff.

Ms Leigh—In relation to members, there is no set number of members for the AAT so, as such, there are no vacancies. That is the way that we have always explained it to this committee when we have been asked about AAT appointments.

Senator McKIERNAN—You will have to take this on notice. Do you have any comparative figures over, say, six-month intervals going back over the last two years? That will probably give us an indication of what is happening with the positions.

Mr Cornall—Yes, we can do that.

Senator McKIERNAN—What about staff within the AAT in particular?

Ms Leigh—I am sorry, that would need to be directed to the AAT.

Senator McKIERNAN—Okay, I will leave that for now. In the interest of time, we did not invite the AAT to be part of tonight's process. Because of that, it is probably unfair to ask the department if you have information on the rate of first-instance appeals within the tribunal. Would you be in a position to provide information on that?

Ms Leigh—I think it would be better directed to the AAT.

Senator McKIERNAN—It's our fault for trying to speed the process up.

CHAIR—We are forever grateful.

Senator McKIERNAN—Our next hearings are scheduled for June, which is not too long to wait. I move now to the telecommunications initiative.

Senator COONEY—Are you finished with the ART questions? I want to ask some questions about that, if I may.

Senator McKIERNAN—Sorry, Senator.

Senator COONEY—I want to ask about calling for interest in positions on the Administrative Review Tribunal. Has that been done?

Ms Leigh—Yes, I can give you the details of that. I will just run through all the positions. The position of president was advertised on 29 and 30 September 2000. The position of chief executive officer was also advertised on those dates. The six positions of executive member were advertised on 17 and 18 November 2000. All the positions of senior member and member across all the six divisions were advertised on 15 and 16 December 2000.

Senator COONEY—Have any appointments been made?

Ms Leigh—No.

Senator COONEY—Of course, you have no legislation. Has any interest been shown?

Ms Leigh—Yes.

Senator COONEY—Have you got copies of the advertisements for the chief executive officer position? Could you make those available.

Ms Leigh—Yes.

Senator COONEY—Do you also have a copy of the advertisement for the senior members and members?

Ms Leigh—Yes.

Senator COONEY—As I understand it, this was placed on 15 December. Would that be right?

Ms Leigh—Could I hand them to you, as you have asked for them.

Senator COONEY—Yes. Thank you very much for that.

Ms Leigh—I will just provide one example of each, because they were in more than one newspaper. The only problem now is that I am giving you my copy so, if you ask me a question, I will need to look at it.

Senator COONEY—That is okay—I will give them back then. I see that the applications closed on 12 January 2001 for senior members and members. The advertisements were placed in the *Financial Review* on 15 December 2000.

Ms Leigh—Would you like me to repeat the dates?

Senator COONEY—No. I am talking about the advertisement for senior members and members of the Administrative Review Tribunal.

Ms Leigh—That was on 15 and 16 December 2000.

Senator COONEY—And did the applications close on 12 January 2001?

Ms Leigh—That is correct.

Senator COONEY—Reading this, it shows that there was a week, from 25 December 2000 to 1 January 2001, when the department would be unable to issue selection documents.

Ms Leigh—The time frame for putting in applications took that into account. Was that your question?

Senator COONEY—Did Christmas take place between 15 December and 12 January?

Ms Leigh—I believe it did.

Senator COONEY—That is a very interesting time to be advertising for senior members and members. Some people would have been on holidays and might not have been reading the *Financial Review* at that time of the year.

Ms Leigh—I understand that we accepted late applications.

Senator COONEY—Where does it say that you were accepting late applications?

Ms Leigh—I do not know, but I understand that we did.

Senator COONEY—I understand that you did, but where does it say that you would be?

Ms Leigh—I expect that people were informed about that when they telephoned, but I would also point out that we did have a significant number of applications in fact.

Senator COONEY—Of course you did, but what about somebody who wanted to apply and had all the ability in the world and who thought he might be able to apply during some civilised period of the year?

Mr Cornall—It was still a four-week period.

Senator COONEY—Yes, but did you go away on holidays? I hope you did, Mr Cornall.

Mr Cornall—Yes, I did, but there would have been a lot of people who would have been aware of the likelihood of this advertisement appearing.

Senator COONEY—But how would they be aware? Say you were somebody at the bar, for example: any decent person would be away on holidays at that time, wouldn't they?

Mr Cornall—Not on 15 December.

Senator COONEY—You are a hard taskmaster, Mr Cornall. Why didn't you advertise later? There was no great rush, was there?

Ms Leigh—We did provide additional time. If you compare, for example, the time provided for executive members, that was approximately two weeks as opposed to four weeks on that occasion, so we did take that into account.

Senator COONEY—Did you have people already in mind when you were putting this advertisement in?

Ms Leigh—No. These were open advertisements.

Senator COONEY—Is the Administrative Review Tribunal intended to be a serious organisation?

Ms Leigh—Certainly.

Senator COONEY—Do you want people of high quality on the tribunal?

Ms Leigh—Certainly.

Senator COONEY—Do you think that this ad would be attractive where it says to telephone the Attorney-General's Department on a 24-hour answering service which says, 'Please provide your postal address and contact telephone number'? If I look down here, none of the departments had anybody that you had to contact. You had to ring up and leave the information on an answering machine.

Ms Leigh—That is quite a usual process.

Senator COONEY—Is it? Is that how you would select a High Court judge or a Federal Court judge? Would you say, ‘Look, if you want to be a Federal Court judge, ring up and leave your name and address on the answering machine’? Is that how we do it?

Ms Leigh—There have also been occasions when the government has advertised for judges and I cannot—

Senator COONEY—In this way? So I am taking your answer now. You say that the way the government has obtained judges has been by telling them to leave their name and address on an answering machine.

Ms Leigh—I do not believe I said precisely that. I said that the government has also on occasion advertised in relation to judicial positions.

Senator COONEY—How serious do you think this tribunal is going to be? You do not tell them in the ad what they are going to get. That will be fixed up by the Remuneration Tribunal appointment to these offices. No self-respecting person with some ability is going to apply for a job on this basis, is he?

Ms Leigh—As I indicated, we have a substantial number of applications.

Senator COONEY—Yes, but what is the quality of them? That is the issue, isn’t it?

Ms Leigh—We have only just commenced looking at them but I believe we are confident about the quality.

Senator COONEY—I thought the idea of the ART was to have one body to replace all the other bodies. Is that right?

Ms Leigh—Yes, it is amalgamating a number of tribunals.

Senator COONEY—I thought the idea was to have a union of these bodies, whereas this is very much a federation, isn’t it?

Ms Leigh—I believe that the ART tries to take the best of both in the sense of taking advantage of the benefits that can be gained from amalgamation without throwing out some of the benefits of different approaches.

Senator COONEY—But according to this advertisement, if you want a job in more than one division you have to apply to different ministers. Is that right?

Ms Leigh—Under the legislation, as I believe you are aware, appointments are made by the relevant minister in relation to each division.

Senator COONEY—If you talk about a court like the Federal Court, one judge might hear an industrial matter and then he might hear a corporations matter and an immigration matter. It might be that the government is planning this, but at the moment a judge does not have to apply for permission to serve in various sections does he or she?

Ms Leigh—Senator, I do not think the analogy quite flows through.

Senator COONEY—That is why I am asking. If all you want is somebody to tick off on government decisions and it does not really matter who is there as long as they say, ‘Yes, the government is right’ and they—as I have used the word—launder the decision through so that a pretty ordinary decision becomes a respectable one because it goes through what is called a tribunal, then you have got no problem. But if you want it as a serious body, you would have to have some worries, wouldn’t you?

Mr Cornall—With the operation of different divisions, there will be quite different requirements for members of, for example, what is currently the Social Security Appeals Tribunal or what is currently the Administrative Appeals Tribunal. They deal with quite different acts of parliament, have quite different roles and responsibilities, and require quite different skills. That mix of skills will still be the same on the new tribunal, and to see people appointed across divisions would seem to me not to be the best way to appoint members to the tribunal.

Senator COONEY—That is what I am saying. One of the ways the government has been selling this is to say, ‘We are going to gather all these tribunals in together and have one tribunal as a sort of extended AAT. The AAT can now hear not only matters under the tax act and FOI but all sorts of matters.’ That is not what this is. This is like three or four solicitors firms having a common secretariat. That is all it is. All that is common in this is the secretariat, and the rest of it is just a series of instruments that look at decisions that are made in various departments. It is very interesting, that is all I would say.

I am told these are the selection criteria. You want people who are ‘self-aware’ and ‘committed to personal development’. I can just imagine appearing before a judge who is going to use your case to commit himself to personal development. I would have hoped that at that time he was already developed personally, so that he could give proper consideration to my case. But the sort of person you are looking at here is somebody who is going to develop while they are sitting listening to your case. That is not a very nice thing to put people through, is it?

Ms Leigh—I think that precise criterion relates to ongoing development. There is certainly no suggestion that one is undeveloped at the commencement of one’s—

Senator COONEY—It does not say that. It says ‘demonstrates a commitment to personal development’, with nothing about ‘ongoing’, as far as I can see.

Senator Ellison—It is lifelong learning, Senator Cooney. Senator Carr can tell you about lifelong learning.

CHAIR—At length.

Senator Ellison— It is something close to his heart.

Senator COONEY—Another one is a ‘capacity to address challenging and complex issues with vigour and resolve’. Just imagine that you turn up to court, in comes the lady and she gets right into it.

CHAIR—Is that a personal horror of yours, Senator Cooney?

Senator COONEY—I was just looking at some of this. There is no requirement for learning in the law. There is no requirement for grace, for wisdom, for judgment, for patience, for a person who can sit and listen to your case—just for somebody with vigour and resolve, somebody self-aware, with a commitment to personal development and with ‘oral communications skills, including the capacity to question parties and witnesses before the tribunal in order to gain a complete understanding of the evidence’. I do not think anybody has ever had a complete understanding of the evidence, in all the time you have had courts. And then you say ‘shape strategic thinking’. Why do you want a person who is going to hear

your case to be competent in shaping strategic thinking? I wonder why you would want a decision maker, a judge, to do that.

Other criteria are a ‘capacity to contribute to strategic goals and objectives of an organisation’ and an ‘ability to understand the practical needs of tribunal users’. The practical needs of a tribunal user would be, firstly, to have a lawyer, which the legislation says he or she is not to have; and, secondly, to have the finances to do that—but you are not going to give them legal aid. The next thing they would want, I would have thought, is to get a decision given without fear or favour, yet you have a set-up here that is going to make the decision maker full of fear and favour. I am just wondering what all this is about.

Ms Leigh—Senator, could I just comment on two points that you have just made? I may have misunderstood your comment about the legislation, but it certainly does not preclude people from being a lawyer; it simply does not require it. I thought perhaps you were suggesting that the legislation did not allow it.

Senator COONEY—No. What I am suggesting about the use of the word ‘lawyer’ is this: you have said, ‘The person who is going to do this is somebody with an ability to understand the practical needs of tribunal users.’ What I was putting to you is that you will have a person who is able to understand that but the legislation will stop him or her from satisfying the needs of the tribunal users. So you have got a set-up in which you are going to have a person who is able to understand the practical needs of the tribunal users but is not able to do anything about it. That is extraordinary.

Ms Leigh—I am sure the government does not accept your comment that the legislation precludes them being able to deliver that. I understood you to say that the legislation precludes the members from satisfying the needs of the tribunal users.

Senator COONEY—It does. First of all, there is no right to have a lawyer. Isn’t that right?

Ms Leigh—No right to legal representation—

Senator COONEY—Yes.

Ms Leigh—as of right.

Senator COONEY—There is no legal aid going to be made available so a person can get his or her case properly heard.

Ms Leigh—In relation to legal aid, I would like somebody else to answer that specifically.

Senator COONEY—And I would have thought that a practical need of tribunal users was to have a decision made without fear or favour. The very way you have set it up, with somebody on temporary procurement and temporary appointment, means he or she is not going to be able to go ahead without fear or favour. Have you ever stood for preselection for parliament?

Ms Leigh—No.

Senator COONEY—When you do, I can tell you there is a lot of fear and favour around. If you are looking for your job there is going to be a lot of fear and favour here, I can tell you. You have not had the experience.

Ms Leigh—No I have not. May I also comment that you used the word ‘temporary’ but it is a fixed term appointment not a temporary appointment. There is a difference.

Senator COONEY—It is fixed term in the sense that you appoint a judge. I am sorry about that. Is that what you are saying?

Mr Govey—Can I clarify that as well? It is important to note that, as with most of the current members of all the various tribunals, there will not be tenure. Most of the existing members of tribunals are appointed for a set number of years. The legislation provides that members of the new Administrative Review Tribunal will also be appointed for a term up to seven years.

Senator COONEY—That is right—up to seven years, with the chance of being reappointed.

Mr Govey—That is right. In that respect it is the same.

Senator COONEY—This includes everybody. In the present situation, the person leading the court and the senior people on that court are all appointed on tenure.

Mr Govey—In relation to the AAT, a number are.

Senator COONEY—Yes, but here no-one is. Here you have a system where everybody is watching each other because they are all about to be temporary in the sense that, at the end of seven years at the longest, they are looking for reappointment.

Ms Leigh—Mr Govey just made the point that on the other tribunals that are to be amalgamated all of the members have fixed term appointments. Even in relation to the AAT, the vast majority of members have fixed term appointments.

Senator COONEY—That is right, but not the senior members, whom I am talking about. Here, the whole show is signed up.

Ms Leigh—Yes, the senior members.

Senator COONEY—And there are no performance agreements, are there, in the present situation?

Ms Leigh—In relation to the MRT and the RRT there are performance agreements.

Senator COONEY—But in the serious tribunals there are not. That is what I am getting at—the AAT.

Ms Leigh—I am sure those tribunals are serious tribunals.

Senator COONEY—Well, are they? You say they are.

Ms Leigh—They are two of the four tribunals that are to be amalgamated to make the ART.

Senator COONEY—And that is some of the problem. The sort of culture that is in those tribunals is going to come over to the AAT—exactly: you have made my point for me.

Ms Leigh—Can I also add that the Social Security Appeals Tribunal has performance appraisal as well.

Senator COONEY—Yes, but the AAT has not. Who was the person who worked out the selection criteria?

Ms Leigh—They were developed within the department and approved by the Attorney's office.

Senator COONEY—It looks as if you are advertising for a chief executive or a football coach or car salesman rather than a judge.

Mr Govey—Can I clarify one other query that you raised earlier about the strategic thinking? It is worth noting that that is a broad heading and that one of the sub-points in relation to that heading is the requirement that the successful applicant possess judgment, intelligence and commonsense. That goes to one of the points you asked about earlier.

Senator COONEY—What is this ‘capacity to contribute to strategic goals’? What strategic goals would a person who is reviewing a decision have, or ought to have, for that matter? I would have thought what he or she should be doing is deciding whether it was a good decision that was made, not whether it is going to contribute to some strategic goal in the future in some overall mass. The whole point of this is to look at the particular decision, not at the overall strategic goals and objectives of an organisation. That is not what you are on about, is it? Or you might be. It says, ‘The capacity to contribute to the organisation’s visions, goals and strategies and to translate them into practical terms’—whatever that may mean. The picture and the culture this establishes for this body is of some fairly minor institution that is going to rubber stamp decisions made in the various departments that are going to pay them. That is how the advertisements and the selection criteria read. So I am just wondering who got them together.

Ms Leigh—That is not how we see it. We see the selection criteria and the other provisions that you referred to as establishing an appropriate tribunal to review government decisions.

Mr Cornall—Another point you made was about strategic goals. The Attorney has set out strategic goals for the ART and it seems to me that those goals are something that the Attorney and the government would be looking to the appointees to achieve. I do not think there is anything in that statement inconsistent with a lot of the other statements that have been made about the need for improvements in access to justice in all sorts of areas in Australia.

Senator COONEY—I understand what you say. The real problem about all this is that you are not going to get access to justice. You are just going to get another tier of people who are going to tick off on decisions for the government, although I am not saying for one minute it is intended.

Mr Cornall—I think that would underestimate the calibre of the people that we hope to appoint.

Senator COONEY—I will be interested to see what calibre you get.

CHAIR—That completes questions in relation to the tribunal matters. Perhaps we can return to the question that Senator McKiernan has foreshadowed in relation to the Law by Telecommunications initiative.

Mr Cornall—Senator Cooney, can I make one last point. I was going to make this earlier, but I did not get the chance. I understand we have had a total of 1,330 applications across all divisions of the proposed ART.

Senator COONEY—It would be interesting to know who they are.

Mr Cornall—It is a bit late to read them out.

Senator Ellison—It would have to be a good sample, Senator Cooney.

Senator McKIERNAN—You will be pleased to know I am not even going to try. Under the Law by Telecommunications initiative, when will the law and justice Internet site be established?

Mr Bourke—We aim to have both the call centre and the Internet portal available on 1 June 2001.

Senator McKIERNAN—Is it planned that the service will contain new information, or is it proposed just to point to the existence of services such as the Child Support Agency or Centrelink?

Mr Bourke—It will be both. The information that will be provided will enable the call centre operator or the person who accesses the Internet to obtain preliminary information in relation to their question and then also to refer to another agency that will be able to provide a more substantive service.

Senator McKIERNAN—Is the project being developed within the department, or is it being outsourced?

Mr Bourke—The department has contracted with Centrelink under a memorandum of understanding to establish the national call centre. We provided information in response to that in question on notice No. 62.

Senator McKIERNAN—Can you provide details of what payments have been made and what the total contract price is?

Mr Bourke—In question on notice No. 62, we advised that the total contract price for Centrelink was \$4,011,809. I have not got a record of any payments to Centrelink at this stage but it will not be too hard to confirm that for you.

Senator McKIERNAN—When will the database on information on family law and dispute resolution for separating families be ready, which is stage 2 of the initiative?

Mr Bourke—That is under the Law by Telecommunications initiative. That is part of the database that will be ready on 1 June 2001.

Senator McKIERNAN—Who is developing this one? Is this Centrelink as well?

Mr Bourke—The technology is developed by Centrelink and we have recently issued a selective tender for the content of that initiative.

Senator McKIERNAN—Can you provide details of what the contract price is?

Mr Bourke—The contract price for the content development is in the region of \$60,000.

Senator McKIERNAN—When will stage 3—the national 1800 telephone number—be established?

Mr Bourke—That is also 1 June 2001.

Senator McKIERNAN—Who is developing it?

Mr Bourke—That is the call centre that would be developed by Centrelink.

Senator McKIERNAN—Centrelink, about which you responded to me in regard to my questions on stage 1. Has any consideration been given to the location of the call centre?

Mr Bourke—That is still a matter for discussion with Centrelink; a final decision has not been made about that.

Senator McKIERNAN—The Attorney, in his press statement, talks about expenditure of \$6.1 million on the initiative. The figures you have given me so far do not go anywhere near that. Was the first figure you gave me \$4 million or \$400,000?

Mr Bourke—That was \$4 million. That is the bulk of the \$6 million expenditure.

Senator McKIERNAN—Yes. And that is to be spent over a period of two years—2000 to 2002.

Mr Bourke—That is right.

Senator McKIERNAN—All of the three initiatives—the Internet site, family law and dispute resolution and the 1800 number—will be operational by 1 June. Why is there an ongoing allocation?

Mr Bourke—The ongoing allocation is to support the IT system which would be used to manage the requests for information, so it is for ongoing maintenance costs.

Senator McKIERNAN—Is it possible to break down that \$4 million to Centrelink by year by year expenditures, and further break down what it would cost to establish and maintain it, which you have just explained to me?

Mr Bourke—Yes. I will have to take that on notice.

Senator McKIERNAN—Also, in response to question No. 62, you provided the committee with a figure of \$85,000 for project management services. What were these for and what was the precise figure?

Mr Bourke—I have not got the precise figure so I will confirm that for you, but the project management is undertaken through a consultancy that we have employed in the department.

Senator McKIERNAN—Are you at liberty to inform the committee of the name of the consultant?

Mr Bourke—Mr Chris Thornborough.

Senator McKIERNAN—There is also a payment of \$130,000 for Internet portal development. What is this for and what is the precise payment?

Mr Bourke—The Internet portal development is the site through which the public will be able to access information on the law, and it is largely a cost for software development. Again, I will have to provide you with the precise figure on notice.

Senator McKIERNAN—I suppose I am showing my ignorance by asking this next question: why could not that figure or that work be included in the total Centrelink contract? What is so special about Internet portal development that could not have been included in the work that Centrelink are doing?

Mr Bourke—Centrelink will not be doing the Internet portal.

Senator McKIERNAN—How does the Internet portal development fit together with the other services for which Centrelink have entered into contract with the department?

Mr Bourke—Once the initiative is entirely in place, members of the public will be able to access information over the web, going through the Internet portal, or by calling the 1800 number through the call centre to be able to access that information through the telephone system. So the two initiatives are complementary. The call centre is the more expensive of those, and that is the \$4 million with Centrelink, but the Internet portal requires development of software to enable that access to be made through the department's web manager.

Senator McKIERNAN—Have you got any indication of what the ongoing costs of each of those initiatives are for the out years from 2002?

Mr Bourke—That is a matter I will have to take on notice, Senator.

Senator McKIERNAN—Okay, thank you. Could you please update your answers to question on notice No. 57, which was addressed in the last estimates on 22 November, in relation to grants from the expensive criminal cases fund.

Mr Bourke—There have been no further grants since we provided that answer. You will find that those figures are the ones which I referred to earlier, in the rephrasing.

Senator McKIERNAN—Has the Family Law Pathways Advisory Group met for the last time?

Mr Bourke—The Family Law Pathways Advisory Group met on 12 and 13 February. Some of the matters which were to be resolved at that meeting remain outstanding, and the group is considering one further meeting.

Senator McKIERNAN—You said they met over two days—were they full-day meetings?

Mr Bourke—It was a two-day meeting—two consecutive days on 12 and 13 February—and it occupied the two full days.

Senator McKIERNAN—Were members of the group paid a per diem amount or reimbursed for expenses? If so, what was the amount of the per diem?

Mr Bourke—I would need to take all the figures on notice, Senator, but the general principle is that there is a per diem to those members who are privately employed. Those in government employment usually do not attract a per diem.

Senator McKIERNAN—In taking that on notice, you would probably need to take it on notice to provide the total travel expenses for members of the group and also information on where each member of the group is based.

Mr Bourke—Yes, I will be able to provide that information for you.

Senator McKIERNAN—Thank you. Is it the decision of the advisory group itself when it will meet again, or is that a decision for the department or the Attorney-General or some other body?

Mr Bourke—They would seek the permission of the Attorney to extend the time in which to report.

Senator McKIERNAN—Have they made a formal request for a further meeting?

Mr Bourke—Not at this stage.

Senator McKIERNAN—Are they provided with a secretariat from within the department who would service them as a committee?

Mr Bourke—There is a secretariat to service the committee and there are contributions from the Attorney-General's Department, the Child Support Agency, Centrelink and the Department of Family and Community Services. Each of those agencies provides an officer for the secretariat.

Senator McKIERNAN—What would be the total cost associated with the establishment of the meetings and the deliberation of the group? Is it possible to get that information or is the funding provided, including the secretariat funding, through the separate departments that you have just so advised?

Mr Bourke—The salaries for the secretariat are provided by the agencies. We have a record of the expenditure of the pathways group, which would include the travel costs and the per diem payments for the meeting.

Senator McKIERNAN—Could you take that question on notice and provide the committee with the total costs associated with the establishment and running of the pathways group?

Mr Bourke—I could do that, but I need to clarify: do you want the payments for travel and per diem as well as the costs of the salaries of those on the secretariat?

Senator McKIERNAN—No, I will leave the secretariat out of it at this point.

Mr Bourke—Certainly.

Senator McKIERNAN—They are coming from separate departments, and that might further delay the provision of answers. I want to move on to the review of community legal centres, if there is nothing else from other colleagues. The Attorney announced on 9 February the names of four new community legal centres in South Australia which were to replace the existing community legal centres which lost out under the review. Where are the new regional community legal centres to be established in South Australia?

Mr Bourke—The joint media release by the Commonwealth Attorney and the South Australian Attorney identifies the areas. The service for the southern region will be established at the Noarlunga Community Legal Service. The service in the western region will be the existing Parks Community Legal Service. The service in the central region will be provided by the Adelaide Central Mission and the Adelaide Inner North Community Legal Service, and the northern region will be provided by the Para Districts Community Legal Service.

Senator McKIERNAN—Did the Noarlunga Community Legal Service previously receive Commonwealth funding and, if so, how much?

Mr Bourke—I would need to confirm how much but, yes, it received Commonwealth funding.

Senator McKIERNAN—Where was it previously located?

Mr Bourke—I do not have the precise information. It will be a street address somewhere in the Noarlunga region.

Senator McKIERNAN—Is Noarlunga a district within Adelaide or is it a country town?

Mr Bourke—I think it is a suburb in the south of Adelaide. Senator Bolkus would be able to help us out there.

Senator McKIERNAN—Where is Senator Bolkus when we need him?

CHAIR—Don't tempt fate like that, Mr Bourke.

Mr Bourke—He is conspicuous by his absence.

Senator McKIERNAN—What areas does the southern region include?

Mr Bourke—I am sorry, but I missed that question.

Senator McKIERNAN—What areas does the southern region include?

Mr Bourke—I will just see if I can locate a geographic map for you.

Senator McKIERNAN—It would be useful, because I will be asking similar questions in regard to the northern, the western and the central region as well.

Mr Bourke—The report by the implementation advisory group of May 1998 has a map of the geographic location. I can provide that to the committee, if it would help.

Senator McKIERNAN—Is that a report the committee has already been provided with on a previous occasion?

Mr Bourke—I would need to confirm that.

Senator McKIERNAN—I have a feeling we have.

Mr Bourke—I imagine you would have asked for it in the past. It is on page 26 of that report.

Senator McKIERNAN—Thank you. Just in case I am not able to find that readily, perhaps you could supply us with a copy of the map rather than the whole report.

Mr Bourke—Certainly.

Senator McKIERNAN—I am pretty certain we have received it, but I am not so sure I could actually go to my office at this moment in time and locate it. That is the unfortunate thing about the limited staff travel allocation that we have.

CHAIR—Thank you for that, Senator McKiernan!

Senator Ellison—I am sorry I cannot help you anymore with that.

Senator McKIERNAN—It is always worth a try, though. It does cause difficulties at times like this, when you have got estimates and limited staff travel allocations as well, but enough of that at the moment. How much funding will be provided to Noarlunga Community Legal Service?

Mr Bourke—I will need to take that on notice.

Senator McKIERNAN—I have a similar question with regard to the western region, the central region—

Mr Bourke—I can take them all on notice and provide you with the details.

Senator McKIERNAN—All right. Did the Parks Legal Service previously receive Commonwealth funding and, if so, how much and where were they previously located?

Mr Bourke—Parks was actually serviced by the Bowden Brompton Community Legal Service. I will need to confirm the quantum of funding that that service received.

Senator McKIERNAN—I am not so sure that is an answer to my question. I asked if Parks Legal Service had previously received Commonwealth funding.

Mr Bourke—I think Parks Legal Service is a new service which tendered for the provision of the service in the western region.

Senator McKIERNAN—So they would not have previously received Commonwealth funding if they are new?

Mr Bourke—That is my understanding.

Senator McKIERNAN—Did the Adelaide Inner Northern Community Legal Service previously receive Commonwealth funding or are they a new service as well?

Mr Bourke—A new service.

Senator McKIERNAN—Have you taken on notice how much funding will be provided to establish the new service in the central region, as with all of the regions.

Mr Bourke—Yes, I have taken that on notice with the others.

Senator McKIERNAN—Has the Para District Community Legal Service previously received Commonwealth funding?

Mr Bourke—No, the Para District is also a new service which tendered for the provision in the northern region.

Senator McKIERNAN—Just to go through it again to make sure we understand each other, I am asking on notice: how much funding is going to be provided to each of the services covering the southern, western, central and northern regions, whether each of them has previously received Commonwealth funding, and where each of them was previously located if they are not a new service? You have identified at least two that are new services. You are also providing that map, which will define the various regions. Can you identify now which community legal centres previously funded under the arrangements have had their funding removed or reduced as a result of the review?

Mr Bourke—The unsuccessful tenderers were the Marion Community Legal Service, the Norwood Community Legal Service and the Bowden Brompton Community Legal Service.

Senator McKIERNAN—Three have not been funded.

Mr Bourke—They were unsuccessful tenderers.

Senator McKIERNAN—So they have gone from a situation of being funded to provide a service to not being funded at all? There is no allocation at all to those three services that you have so identified?

Mr Bourke—That is the situation, but you need to be aware that the services which were provided by those CLCs are now catered for by the new community legal services.

Senator McKIERNAN—With regard to the Women's Legal Service, how much Commonwealth funding did they previously receive and how much will they receive as a result of the ministerial announcement of 9 February 2001?

Mr Bourke—The Women's Legal Service continues its current funding level. I will need to confirm precisely what that is for this financial year.

Senator McKIERNAN—And that service will continue to have a catchment region of the whole of South Australia?

Mr Bourke—That is right, Senator.

Senator McKIERNAN—There are some figures given here that the South Australian government has committed an extra quarter of a million a year to support the work of the new regional centres and the Commonwealth has allocated a one-off funding of \$300,000, with further funds from the state government, to cover costs associated with the implementation of the review. I gather these figures would be for a financial year, or maybe they are only for part of the year. Do you know what total funding we are talking about from the Commonwealth's point of view? Is it just \$300,000, or is there more?

Mr Bourke—The \$300,000 is implementation costs only. Over and above that, there will be the costs which will be provided for under the service agreements for the four new centres.

Senator McKIERNAN—What amounts are we looking at in regard to that?

Mr Bourke—It would be in the region of \$250,000 a year, but I will need to confirm that. We have that question on notice.

Senator McKIERNAN—If you would, Mr Bourke, thank you very much. I want to move on to Victoria in regard to the community legal services as well. What is the status of the review of the Victorian CLCs? When will it be complete?

Mr Bourke—The review in Victoria is now at the stage where there is the preparation of the report of the implementation advisory group. That group continues to meet and a report is due in about April of this year.

Senator McKIERNAN—In regard to that review of the South Australian community legal centres, a copy of the final review document has probably been provided to us. If that document has not been provided to the committee, could you on notice undertake to provide the committee with a copy?

Mr Bourke—Certainly, Senator.

Senator McKIERNAN—I have just got some doubts in my mind now; we may not have actually got the final document. I know we have had quite a deal of information about Victoria, but I am not certain sure in my own mind that we have actually received that, so would you do that inquiry. If we have been provided with the document, I do not want you to repeat it.

Mr Bourke—Okay, Senator. The report of the implementation advisory group in South Australia is public. If it has not been provided I am only too happy to provide it. I would be surprised if it has not been provided, but I can certainly confirm it.

Senator McKIERNAN—Yes, just in case. How is funding paid to the various community legal centres? Is it by way of an annual grant, or is it paid quarterly, or more regularly, or is it paid through the state bodies?

Mr Bourke—They usually receive a quarterly cheque. In most instances it is paid through the state or territory legal aid commissions; on some occasions it is paid directly by the Commonwealth. We fund in the region of 115 community legal services in Australia.

Senator McKIERNAN—Perhaps you could provide the committee with a list of all those community legal centres, including the 115, showing the address of each organisation, the annual amount of Commonwealth funding which each receives, the date on which each organisation has been assured of Commonwealth funding and the periodic arrangements by which funding is paid to each organisation.

Mr Bourke—Certainly, Senator.

Senator McKIERNAN—Where possible, could you also provide information on other sources of funding for each organisation—if, indeed, you have that information. I understand you may have it in light of the news release that I referred to earlier when we were talking about South Australia—a joint release by the Commonwealth Attorney and the South Australian Attorney-General, the Hon. Trevor Griffin.

Mr Bourke—There are some occasions when we may have some information about other sources of funding, but the information we have may not be up to date. Certainly, some of the CLCs do get funding from other sources. We have no right to ask for the quantum of that, nor are we provided with it as a matter of course. With respect to the column in the table that we will provide to you, I may need to echo a note of caution about any information we provide in that.

Senator McKIERNAN—Indeed, but you probably would have information where there was some joint funding arrangement with the relevant state or territory governments. If you have that information, I would be pleased if you could provide that to us.

Mr Bourke—I will see what we have, Senator, and provide what we can.

Senator McKIERNAN—I understand what you are saying in regard to other sources of funding. I have some questions relating to civil marriage celebrants, pre-marriage education vouchers and international reporting on compliance.

Senator COONEY—Can I ask some questions on legal aid?

Senator McKIERNAN—I am just going through what I have left. I also have questions on ministerial meetings, on which I think we already have information, and the Northern Territory juvenile diversion and Aboriginal interpreter problems.

Senator COONEY—What is happening with Victoria? Have the irreconcilable differences disappeared?

Mr Bourke—No, Senator, we are still talking to Victoria to conclude an agreement with them.

Senator COONEY—How long has that been going on?

Mr Bourke—Since the beginning of this financial year.

Senator COONEY—And you are funding Commonwealth matters only?

Mr Bourke—That is right, Senator.

Senator COONEY—Coming back to the Administrative Review Tribunal, has the Commonwealth funded any FOI applications in recent times?

Mr Bourke—I would have to look at the database.

Senator COONEY—No, don't do that. What about export market development grants?

Mr Bourke—It is the same answer, Senator—I would have to look at the database. I do not know that information off-hand.

Senator COONEY—The impression would be that you would not have too many Commonwealth funds going to support somebody making an export development grant application.

Mr Bourke—Those sorts of matters would be unlikely to attract legal aid funding.

Senator COONEY—Would it be mainly family law matters?

Mr Bourke—The bulk of Commonwealth funding does go to family law and then to Commonwealth crimes.

Senator COONEY—The area that the Commonwealth actually funds is very narrow, when you think about it. It covers only two jurisdictions?

Mr Bourke—There is a civil jurisdiction as well which is covered by the Commonwealth guidelines.

Senator COONEY—Yes, but not too much goes into that.

Mr Bourke—I would need to confirm how much we spend on the three categories, but typically, in any legal aid funding, there are three categories—family, criminal and civil.

Senator COONEY—Are you suggesting that there is equality between the funds that go—

Mr Bourke—I am not suggesting that there is equality of funding; I am just suggesting they are the three main categories.

Senator COONEY—Every now and again you fund a civil matter?

Mr Bourke—No, it is not every now and again. There is certainly funding every year for civil matters, but I would need to get the figures for you in order to say what the distribution is.

Senator COONEY—How does your funding of civil matters compare to that given by PILCH, say?

Mr Bourke—I have no knowledge of the funding that the clearing house gives to their matters, but I could certainly look at it.

Senator COONEY—When we are looking at Commonwealth legal aid funding, we are just looking at that very narrowly; we do not take an expansive view of what other resources might be going to support it?

Mr Bourke—The Commonwealth legal aid picture involves the funding which goes directly to the legal aid commissions. In addition, there is funding for areas of Commonwealth law which are reserved to the Commonwealth. The Commonwealth assigns legal aid in those areas, and that is the Public Interest Test Cases Scheme, overseas child custody matters and a range of others under a range of statutory provisions.

Senator COONEY—So you would toss in the industrial law cases?

Mr Bourke—That is right, yes.

Senator COONEY—The run of the mill cases are the sort of thing that every man and every woman is looking for—

Mr Bourke—They would have to test their eligibility under the Commonwealth civil law guidelines.

Senator McKIERNAN—What about in relation to civil marriage celebrants? How many responses were received to the proposals paper released by the Attorney last year, which was due on 31 January?

Mr Bourke—The proposals paper attracted in excess of 1,000 submissions. I do not have a final number, as some late ones have been trickling in, but it was certainly in excess of 1,000.

Senator McKIERNAN—Where is that review process up to now? When is it expected to be completed? When are modified proposals going to be announced?

Mr Bourke—We do not have a firm time when proposals will be announced. Our process from here is to assess the submissions and provide a report to the Attorney and then have discussions with the Attorney as to what direction he wants to take the program.

Senator McKIERNAN—How many departmental staff have been involved in considering the responses and the process?

Mr Bourke—In the responses, there have been two departmental officers involved, and I have just put a third departmental officer on that. So there are three departmental officers involved. One of those officers also does other duties. Two are on it full time and one is on it in amongst other duties.

Senator McKIERNAN—I was momentarily distracted when you were talking about this before, but do you have a time when your proposals are going to be finalised?

Mr Bourke—I do not have a time. I mentioned that we have to have discussions with the Attorney, once we have assessed the submissions, and provide a report to him.

Senator McKIERNAN—It almost gives me the impression that you are going to consider what is in the submissions and take that into account in providing a submission to the Attorney.

Mr Bourke—Of course, Senator.

Senator McKIERNAN—That is radical thinking.

Mr Bourke—That is not radical. It is just par for the course in the department.

Senator McKIERNAN—Thank you, Mr Bourke. What about pre-marriage education vouchers? How many couples to date have been involved in the pre-marriage education voucher program? If you are able to provide figures, can you break this down by location?

Mr Bourke—The pre-marriage education voucher pilot is managed through the Department of Family and Community Services. We would need to direct the question to that portfolio.

Senator WEST—We will do that tomorrow. We have Family and Community Services on tomorrow.

Senator McKIERNAN—Thank you, Senator West. Thank you, Mr Bourke. I am sure Family and Community Services will appreciate your assistance.

Mr Bourke—I do not think they will.

Senator McKIERNAN—I have a question on output 1.4, international reporting on compliance with human rights treaties and responses to communications. Are there any reports or responses currently outstanding from the government?

Mr Campbell—Is that in relation to communications as opposed to reports or would you like me to deal with both?

Senator McKIERNAN—I just want to understand the question that you have addressed to me. A communication is when a person has made a complaint to a United Nations body. That is deemed to be a communication. The Australian state is given an opportunity to respond to that before it is formally accepted by the UN body. Is that the proper definition of what a communication is?

Mr Campbell—A communication is from an individual to one of three human rights committees in Geneva and is a complaint about Australia's compliance with that convention which they administer. The state is then given the opportunity of responding to the communication, as to both its admissibility and its merits, and then those issues are considered by the committee and it expresses its views on the matter.

Senator McKIERNAN—In that case, I am talking about communications. Thank you.

Mr Campbell—There are 22 communications currently. Australia has provided submissions on 16 of those, and that leaves six in which the responses from Australia have to be made to the committee—that is, the response to the communication. Four of those responses that are still to be made to the committee are under the International Covenant on Civil and Political Rights. Two of those are beyond the date—which is normally six months from the date of the communication—established by the committee. In both those cases, we hope to have those lodged before the next meeting of a working group of the UN Human Rights Committee, which commences on 12 March.

In relation to the Committee Against Torture, there are two outstanding communications, both relating to non-refoulement. One of those is overdue. It was due for response by 29 December, but I anticipate that that will be lodged quite soon—well before the next meeting of the Committee Against Torture, which I think commences on 30 April.

Senator McKIERNAN—I understood you to say that, of the six that were outstanding, four were to the ICCPR, two were to the Human Rights Committee and two were to the Committee Against Torture—

Mr Campbell—I think I said there were six communications to which we had not yet provided a response. Four of the responses were overdue. There is one under the ICCPR and one under the CAT in which the responses are not yet due, and we are working on those.

Senator McKIERNAN—With the refoulement one to the Committee Against Torture, what is the reason for the delay in regard to that? It is a very serious complaint and one that the committee could probably expect almost immediate action on.

Mr Campbell—In regard to that particular matter, I cannot name the person involved. You will understand that. The person is not in immigration custody. There is a question of law in that. There have been a number of other communications that have to be dealt with and the person is not being removed from Australia until the committee examines the communication. As I said, we will have it in before the next meeting of the torture committee when it can first be considered.

Senator McKIERNAN—Has the delay been caused in any way because the government has been reviewing Australia's obligations under the various United Nations treaties?

Mr Campbell—No.

Senator McKIERNAN—Not at all?

Mr Campbell—Not at all.

Senator McKIERNAN—Of the 16 which have been responded to, without going into the details, could you break it down as to which of the conventions those 16 communications have been relating to.

Mr Campbell—The secretary has kindly pointed out my own notes here. There are nine under the International Covenant on Civil and Political Rights and there are seven under the torture convention. Those are all cases in which we have provided responses and in which we are awaiting the views of the committee.

Senator McKIERNAN—I know we are not in the right portfolio here, but the minister for immigration—

CHAIR—It is just a matter of time.

Senator McKIERNAN—made a statement to the effect that Australia is reviewing our obligations under the convention against torture.

Mr Campbell—I am not sure that he has actually stated that, Senator. I think there is a review of the substance of the obligations under the refugee convention, but I am not aware that there is a review of Australia's obligations under the convention against torture. There was a review of Australia's relations with United Nations committees carried out by the government, the results of which were announced on 29 August. It did in part encompass that review of obligations under the refugee convention, which I mentioned earlier.

Senator McKIERNAN—What about the convention against torture—the CAT?

Mr Campbell—In relation to the CAT, the question was that in every communication made in a non-refoulement case under the CAT the committee had requested interim measures that the person not be deported pending their consideration of the communication. The government said that, whereas previously it had virtually automatically agreed to that, it was going to consider each new interim measures request on a case-by-case basis.

Senator McKIERNAN—Thank you for helping me on that. In regard to responses to human rights treaties, we are obliged with some of the treaty arrangements to provide reports or responses to reports on a periodic basis. I am thinking of the Convention on the Rights of the Child—CROC is the colloquial term for it—being one, but there are others. Where does Australia stand in regard to the fulfilment of those obligations? Are there any outstanding? I think we addressed the information from the last estimates committee that there were two reports due on the CROC.

Mr Campbell—Senator, the Attorney-General's Department is responsible for reporting under three conventions. They are the International Covenant on Civil and Political Rights, the convention against torture and the Convention on the Rights of the Child. There are no outstanding reports on that at the moment. I can give you the dates when the next reports are due.

Senator McKIERNAN—If you would, that would be helpful.

Mr Campbell—Under the convention against torture, the next report is due in November 2004. Under the Convention on the Rights of the Child, the next report is due in January 2003, and under the International Covenant on Civil and Political Rights the next report is due on 31 July 2005.

Senator McKIERNAN—Thank you very much. I do not think I will be asking questions about them in the future.

CHAIR—Is that a blessing?

Senator McKIERNAN—Some people would say so. I think these questions have already been answered, but I do not have the dates of the next SCAG meetings. I think they are on the record but, in case they are not, can you repeat them quickly? I think one meeting was scheduled for March. Information was provided to us earlier today, including when the next censorship ministers meeting will be held. I think that is also in March.

Mr Cornall—The next SCAG meeting will be held in Adelaide on 22 and 23 March—that is a Thursday and a Friday. The censorship ministers meeting will be held at the same time.

Senator McKIERNAN—Thank you. I have some questions about the Northern Territory juvenile diversion and Aboriginal interpreter programs and then I will conclude for this evening.

CHAIR—We will then go to Senator West's questions on the APS. I believe some questions from Senator Ludwig on IT outsourcing will be put on notice.

Mr Cornall—I am sorry, Chair, the questions on IT outsourcing—

CHAIR—I am sorry. I misunderstood what Senator McKiernan said. Those questions are for DIMA tomorrow and not for the Attorney-General's.

Senator McKIERNAN—Can you advise the committee about the current expenditure package of \$20 million for the Northern Territory to minimise the impact of mandatory sentencing on juveniles?

Mr Carnell—Certainly. To date, four payments have been made to the Northern Territory covering the first five months of the agreement, which commenced on 1 September last year. The first payment covered both the months of September and October and totalled \$1,097,174. The second payment covered November and totalled \$208,542.50.

Senator McKIERNAN—When was the second payment made?

Mr Carnell—It was in respect of the month of November and was made on 21 November. The payment for the month of December was made on 4 January and totalled \$192,728.50. The payment in respect of January totalled \$177,096.50. That makes a total of a little more than \$1.6 million to date over those five months.

Senator McKIERNAN—Are these payments made in accordance with a formula?

Mr Carnell—Yes. It is not a formula, but there are five elements to the payments in the first year. The intention is that there will be a total for the Northern Territory Police for setting up the juvenile diversion unit and conducting conferences and other diversionary measures. That total will be \$2,489,000. All these totals will eventually add up to \$5 million for the first year. The second payment is to the Northern Territory Police to purchase community based diversion programs and it will total \$1,338,490. The agreement then has us paying 50 per cent of the recurrent costs of the Aboriginal Interpreter Service, including annual training costs. The total envisaged there is \$522,510. There is to be extra training of Aboriginal interpreters in the first year which will total \$250,000. Lastly, the intention is to make a payment of \$400,000 for direct funding to the Northern Territory Aboriginal Legal Service to purchase interpreter services. Those five amounts add up to \$5 million.

Senator McKIERNAN—Of the funding that has been provided so far, is it possible to give a breakdown of where those allocations were made? Are they allocated to a central agency and then distributed or are they paid directly to the service providers? I use that term loosely because it may be that it is for the interpreting service or it may be for one of the diversionary programs on which the Northern Territory Police are seeking information.

Mr Carnell—The first two categories of payment that I mentioned go to the Northern Territory Police. The third, the recurrent costs of the Aboriginal Interpreter Service, go directly to the service. With respect to the extra training of Aboriginal interpreters in the first year, the payments go to the Office of Aboriginal Development in the Northern Territory, and the direct funding to the Aboriginal Legal Services will go directly to those services. Agreements with the services are close to being concluded.

Senator McKIERNAN—Is the Aboriginal Interpreter Service intended to operate on a cost recovery basis?

Dr Heriot—Yes, the Interpreter Service invoices agencies for the cost of interpreters but the administrative costs are met under the agreement.

Senator McKIERNAN—What is the expectation of the agencies that are using or will be using the service? What agencies are they?

Dr Heriot—The Northern Territory Health Services, the police, corrections, the Aboriginal Legal Services, and the service is also available for other agencies to use. It runs a booking service and they apply for interpreters for specific cases.

Senator McKIERNAN—So it will be a matter of the agency determining whether or not an interpreting service is necessary and they will be making that decision on the basis that they know they have got to pay for that service being provided to the client?

Dr Heriot—Aboriginal Legal Services are getting funding to meet the costs of using interpreter services in criminal matters. There is also funding made available to some of the Northern Territory services such as health, corrections and police to meet that cost.

Senator McKIERNAN—Is there any service that is currently in need of the interpreting service for its clients that would not be funded directly either by the Commonwealth or by the territory government to access this service?

Dr Heriot—I am not aware of any, Senator.

Senator McKIERNAN—There might be a need for some juvenile diversionary programs within the education system. These are designed more for where crimes have been committed and where we are actually into the diversionary programs. That is where the police and the prison authorities would come to the fore. But health would not necessarily involve the criminal area. Is the interpreting service being funded mainly in the juvenile diversionary program or is it going to be available more generally to the Aboriginal community in the Northern Territory?

Dr Heriot—The Aboriginal Interpreter Service is being funded as a service and certain agencies have received funding to enable them to meet costs for that service, but it is available to be used by other organisations. It is not restricted.

Senator McKIERNAN—So it is going to have a broader impact than just in the juvenile diversionary programs?

Dr Heriot—It is available as a service for them.

Senator McKIERNAN—Are there any plans for an evaluation of the service? Is that built into the funding proposals?

Dr Heriot—There is a review of the operation of the agreement before the end of the first 12 months, and then a larger evaluation before the end of the agreement, before the five years is up.

Senator McKIERNAN—Will that be an evaluation of the programs that have been put in place, or will there be, for example, a test of individual diversionary programs that have been set up in one of the regional areas, as opposed to something that is more metropolitan based? Will you get down to the detail of how the service is actually being delivered and analyse the delivery of the service at a local level?

Mr Carnell—We have not devised the evaluation yet. That is obviously a matter that we will have to talk with the Northern Territory about. There is to be a senior officers group established to ensure liaison on the operation of the agreement, and that is likely to have its first meeting in March.

Senator McKIERNAN—Are meetings such as you have just described funded out of this \$20 million package, or would it come from normal departmental funding where officers of your department, other Commonwealth departments and the territory government would be attending, rather than a cost to the specific funding package that we are talking about?

Mr Carnell—Our participation in it will have to be borne from our normal running costs.

Senator McKIERNAN—Are you able to provide the committee with a breakdown of the one-off set-up costs, as distinct from recurrent costs, paid by the Commonwealth to any of the subprograms that are covered by the \$20 million package?

Mr Carnell—Is this in relation to the interpreter service?

Senator McKIERNAN—No, it is in relation to the whole of the package.

Mr Carnell—Could I take that on notice?

Senator McKIERNAN—If you would, thanks very much.

[10.38 p.m.]

CHAIR—I turn now to Senator West, who I understand has questions in relation to the Australian Protective Service.

Senator WEST—I am not sure whether this is just for the APS or the Protective Security Coordination Centre as well. I am trying to clarify some issues in my mind before I go to another department to ask them questions. The information I am seeking relates to a period prior to the cessation of the analog network. I am not interested in what is happening now; I am not wanting to compromise any security operations or anything like that. I am interested in knowing about the security alarm systems that were operated by the analog network prior to its closure. What was the role of the APS in the provision of those systems?

Mr Studdert—We monitor the alarms, at the behest of the Protective Security Coordination Centre.

Senator WEST—Does the Protective Security Coordination Centre do work for other departments and agencies as well, or do you have your own specific area of operation which I should not go into?

Mr Cornall—Mr Studdert is the director of the APS; Mr Tyrie is the head of the PSCC.

Senator WEST—Does the PSCC do work for the APS and other government departments or does it just do its own discrete thing?

Mr Tyrie—The answer to your question is neither. We do not work for any agency. Our job is the coordination of the protective security of Australian high office holders and visiting dignitaries, on behalf of the government.

Senator WEST—So you are not involved in the security systems of any department, such as the Department of Defence or any of the armed force elements facilities?

Mr Tyrie—We certainly work with them.

Mr Studdert—The Australian Protection Service monitors some alarms of the Department of Defence.

Senator WEST—Was either group monitoring any alarms for the Department of Defence for any of their facilities, or part thereof within a facility, that had either its primary alarm system or the back-up alarm system reliant on the analog network prior to the closure of—

Mr Tyrrie—The answer from the PSCC is no.

Mr Studdert—We were monitoring 13 systems that were on the analog system.

Senator WEST—Were any of those for the Department of Defence, an element within the Department of Defence or the Australian Defence Force?

Mr Studdert—I will have to take that on notice.

Senator WEST—It may be that they were back-up systems, not the primary system.

Mr Studdert—They were all back-up systems.

Senator WEST—I presume from the dates you have given me in your answer to question on notice No. 2751 that the upgrade of the systems was completed. You have given me a series of dates, the first of which is 24 March. Am I right in assuming that that upgrade took place after the closure of the analog system to which that system was assigned?

Mr Studdert—Correct.

Senator WEST—A degree of security was obviously required to necessitate a back-up system. What was the replacement for that back-up system from 1 January to 24 March 2000?

Mr Studdert—The redundant system—or back-up system, as you call it—was an extension of the PSTN. The primary means was using one route on the PSTN, and the back-up system was using an alternate route.

Senator WEST—A PSTN is a public switched telecommunication network?

Mr Studdert—Yes.

Senator WEST—You had two means until 1 January 2002 for this one that you changed over with the back-up system. What did you use for the back-up system of those systems that closed where there was a time lapse between the closure of the analog system and your implementing an upgrade of the back-up system?

Mr Studdert—What was used as the back-up system for that period—after the analog system closed and before the digital system upgrade was completed—was a redundant arm of the PSTN network. When I say ‘redundant’, I mean redundant from the primary bearer. The PSTN has alternate routes in it that are completely independent of each other. So one arm of that route can go down, for whatever reason, and there remains a complete route that is the back-up. So that second PSTN route was used during the period you refer to.

Senator WEST—So at no stage where these 13 sites left without a back-up system?

Mr Studdert—That is correct.

Senator WEST—That was what I needed to find out, and you will get back to me with how many were from Defence. Thank you very much.

CHAIR—Does that complete questions in that area, Senator West?

Senator WEST—Yes, it does.

CHAIR—I have a number of written questions on notice from Senator Harradine: firstly, those which pertain to the Office of Film and Literature Classification; and, secondly, some which pertain to CrimTrac. They will be made available to the department in due course.

That concludes questions on the Attorney-General's Department for these additional estimates 2000-2001. Mr Cornall, I would like to thank you and your officers very much for persisting with us throughout the day in getting a great deal accomplished. The committee is very grateful for that. Minister, thank you very much for your assistance and support; and, of course, thanks to the secretariat and Hansard. The committee reconvenes tomorrow morning at 9 o'clock to consider additional estimates 2000-2001 for the Department of Immigration and Multicultural Affairs.

Mr Cornall—I just want to say that I am quite concerned about the comments that you and Senator McKiernan made about lack of cooperation from the department. I would like the opportunity to discuss those concerns with you as soon as it is convenient.

CHAIR—Perhaps we will meet in the next day and be in contact with you to pursue that. Thank you, Mr Cornall.

Committee adjourned at 10.45 p.m.