



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

**Consideration of Budget Estimates**

MONDAY, 28 MAY 2001

CANBERRA

BY AUTHORITY OF THE SENATE



**SENATE**

**LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE**

**Monday, 28 May 2001**

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

**Senators in attendance:** Senators Bolkus, Carr, Coonan, Cooney, Greig, Ludwig, McKiernan and Payne

**Committee met at 9.05 a.m.**

**ATTORNEY-GENERAL'S PORTFOLIO**

**In Attendance**

Senator Ellison, Minister for Justice and Customs

**Australian Transaction Reports and Analysis Centre**

Ms Liz Atkins, Deputy Director, Money Laundering Deterrence

Mr Alf Mazzitelli, Senior Manager, Corporate Resources

**Administrative Appeals Tribunal**

Ms Kay Ransome, Registrar

**Australian Law Reform Commission**

Professor David Weisbrot, President

Ms Rosemary Adams, Executive Director

**National Native Title Tribunal**

Mr Christopher Doepel, Registrar

Ms Marion Schoen, Director, Corporate Services and Public Affairs

Mr Hugh Chevis, Director, Service Delivery

**Federal Magistrates Service**

Mr Peter May, Chief Executive Officer

**Office of Film and Literature Classification**

Mr Des Clark, Director

Mr Simon Webb, Deputy Director

Mr Paul Tenison, Business Manager

**Office of Privacy Commissioner**

Mr Malcolm Crompton, Federal Privacy Commissioner

Mr Timothy Pilgrim, Deputy Federal Privacy Commissioner

Ms Robyn Ephgrave, Manager, Finance & Services

**Federal Court of Australia**

Mr Warwick Soden, Registrar, Federal Court of Australia

Mr Alan Dawson, Senior Deputy Registrar

Mr Philip Williams, Director, Human Resources & Finance

**National Crime Authority**

Mr Adrien Whiddett, General Manager Operations

Mr Lionel Newman, Acting General Manager Corporate

**Human Rights and Equal Opportunity Commission**

Dr Sev Ozdowski OAM, Human Rights Commissioner

Ms Diana Temby, Executive Director

Ms Rocky Clifford, Director, Complaint Handling

Ms Margaret Donaldson, Director, Native Title Unit

Ms Robyn Ephgrave, Manager, Finance & Services

Mr David Mason, Director, Disability Discrimination Unit

Ms Sally Moyle, Director, Sex Discrimination Unit

**Office of Director of Public Prosecutions**

Mr Damian Bugg, Director

Mr Graeme Delaney, Principal Advisor Commercial Prosecutions & Policy

Mr John Thornton, Deputy Director Legal & Practice Management

**High Court of Australia**

Mr Christopher Doogan, Chief Executive & Principal Registrar

Ms Elisa Harris, Senior Registrar

Mr Lex Howard, Marshal

**Australian Government Solicitor**

Mr David Riggs, Chief Finance Officer

Mr Norm Holcroft, Corporate Secretary

**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

Ms Gail Batman, National Director Passengers and Information Technology

Rear Admiral Russ Shalders, Director-General Coastwatch

Mr Alistair Cochrane, Chief Financial Officer

Ms Sue Pitman, National Manager Trade Measures

Ms Philomena Bisshop, National Manager Planning and International

Ms Marion Grant, National Manager Border Operations

**Australian Federal Police**

Mr Mick Keelty, Commissioner

Ms Audrey Fagan, A/g Deputy Commissioner

Mr Simon Overland, Chief Operating Officer

Mr Brian Cooney, Chief Financial Officer

**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

Ms Angela Filippello, Principal Registrar

Mr Mario Cattapan, National Manager Planing and Relationships

Mr Wayne Lodge

**Australian Institute of Criminology**

Dr Adam Graycar, Director

**Criminology Research Council**

Dr Adam Graycar, Director

**Australian Security Intelligence Organisation**

Mr Dennis Richardson, Director-General

Mr Jim Nockels, Assistant Director-General Corporate Management & Security

Mr Mark Aspin, Coordinator Financial Strategies

**Office of Parliamentary Counsel**

Ms Hilary Penfold, First Parliamentary Counsel

Mr Tony Perkins, Executive Officer

**Insolvency and Trustee Service Australia (ITSA)**

Mr Terry Gallagher, Chief Executive

Ms Kerry Hunting, Chief Finance Officer

**Attorney-General's Department**

Mr Robert Cornall, Secretary

Mr Geoff Dabb, Executive Adviser

Mr Ian Govey, General Manager Civil Justice and Legal Services

Mr Ian Carnell, General Manager Criminal Justice and Security

Mr Geoff Hine, General Manager Corporate Services

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

Mr Chris Meaney, A/g First Assistant Secretary Native Title Division

Mr Stephen Bourke, A/g First Assistant Secretary Family Law and Legal Assistance  
Division

Mr Keith Holland, A/g First Assistant Secretary Information and Security Law Division

Mr Mark Jennings, Assistant Secretary Office of International Law

Mr Mark Zanker, Assistant Secretary Office of International Law

Ms Philippa Lynch, Assistant Secretary Office of Legal Services Coordination

Mr Ed Tyrie, Director Protective Security Coordination Centre

Mr Martin Studdert, Director Australian Protective Service

Mr Johnathan Mobbs, Chief Executive Officer CrimTrac

Ms Fran Raymond, Chief Finance Officer CrimTrac

**CHAIR**—I declare open this public hearing of the Senate Legal and Constitutional Legislation Committee. On 22 May 2001, the Senate referred to the committee the particulars of proposed expenditure for the year ending 30 June 2002 for the Attorney-General's and the 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. This hearing will be suspended for a lunch break from 1 to 2 p.m. and for a dinner break from 6 to 7 p.m. Brief morning and afternoon breaks will be from approximately 10.30 to 10.45 a.m. and 3.30 to 3.45 p.m., and those will be taken as closely to the scheduled times as possible. The committee has authorised the recording and rebroadcasting of its proceedings in accordance with the rules contained in the order of the

Senate dated 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 content of the Portfolio Budget Statements. If there are any comments that 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 welcome Senator the Hon. Chris Ellison, the Minister for Justice and Customs and the Minister representing the Attorney-General, and officers of the Attorney-General's Department and associated agencies. Officers will not be required to answer questions relating to policy or the advice that they have given in the formulation of policy.

I would like to take this opportunity to note that there are only seven outstanding questions, which relate to the Australian Federal Police, from the February 2001 additional estimates. The committee does particularly wish to express its gratitude to departmental offices and to the minister for providing the majority of responses to questions on notice before and on the due date. The committee acknowledges, and is very grateful for, the overall improvement made by the department and agencies in providing those responses within shorter time frames. It enables us to do our job better and it is a great assistance to the operation of the estimates process.

Finally, before beginning, I would like to comment very briefly on what as committee chair I regard as an unprecedented number of requests by agencies to change the time of appearance. The committee is well aware of difficulties experienced by interstate agencies, and it is for this reason that these are placed after general questions. But I do want to note that senators have many commitments to other estimates committees, including the fact that one senator of this committee is the chair of a committee which meets at the same time as this committee. It is important therefore that the original program be changed as little as possible. It does make it very difficult for senators to attend the committee at the time of the agency in which they are interested if we have agencies changing times on very little notice. As much as possible, we have attempted to accommodate agencies which had given prior notice that they cannot attend on a particular day, and those changes have been and will be incorporated into the timetable. It is last minute changes and requests for no reason other than airline scheduling that are really unacceptable. With the agreement of the committee—and we will discuss this later in a private meeting—I will ask that we try as far as possible to ensure that no change is made where there has not been three days notice prior to the program being first published. Minister, do you or Mr Cornall wish to make an opening statement?

**Senator Ellison**—Thank you. In relation to that comment you have just made—this is not an attempt to change the order of witnesses—I just wondered if there was any way, where the committee clearly saw that someone was not going to be required before lunchtime, by way of directions it could be said that someone will not be required before a certain time.

**CHAIR**—I appreciate that those are different issues.

**Senator Ellison**—That is a different aspect, and I have seen that done on occasions with success.

**CHAIR**—I will consult with the committee members and we will see what we can ascertain.

**Senator Ellison**—I thought I would just raise that, and if that could be done especially with agencies that appear further down the list and the committee knows that it is not going to get to them before lunchtime, it would be of assistance.

**CHAIR**—Certainly I will consult with committee members and we will do that as far as possible.

**Senator Ellison**—Apart from that, I have no opening statement.

**CHAIR**—We will now proceed to departmental questions as listed in relation to the departmental executive.

### **Attorney-General's Department**

#### Departmental Executive

**Senator McKIERNAN**—You should, Minister, have taken the opportunity of making a statement to the committee. It will probably be your last opportunity, as I hope that an election will be held before the next round of estimates and then there will be the likelihood of a change in personnel. Before going directly to the questions, I would like to comment on the timeliness of the responses to questions taken on notice on the last occasion. There has been a dramatic improvement—and I say ‘dramatic’ to emphasise the point that the vast majority of questions put on notice on the last occasion were responded to within time, and we are very grateful for that. We are also grateful because, in the November hearings, we put questions on notice about time lines—when questions were responded to by the department, when they were sent to the minister and then when they were sent to the committee. The indications to the committee are that there is a blockage in the Attorney-General's office. It is on the record that that occurred in the past, but on this occasion—from the February hearings—it appears that there was a clearing process not only from the department but also from the Attorney's office. I appreciate that and I put it on the record. We are very grateful for it. The fact that those responses to questions came in on time will probably be reflected in the questions and the details of the questions that we are putting to you today. We have had the opportunity to examine those responses, to tease them through and to prepare ourselves for these particular estimates. So they have been useful to us on the way through.

There are a few other blockages in the Attorney's office, which I would draw attention to, because the situation causes concern. On 20 March this year there were four very important reports presented to the parliament. Two were from the Attorney-General's Department—reports Nos 11 and 12 from the Human Rights and Equal Opportunity Commission. The point is that these two reports were received by the Attorney on 5 February but they were not tabled until 28 March, and I am wondering whether you could give a reason for the delay. They were very important reports, particularly report No. 12 in which HREOC actually brought a finding against the Department of Immigration and Multicultural Affairs and levied a payment of \$20,000 against that department on one occasion and \$15,000 on another. I would have thought that it would have been in the interests of the department and good public policy if this were brought to the attention of the public earlier.

Another report—the Telecommunications (Interception) Act report for the year ending 30 June—was received by the Attorney on 11 January and not presented to the parliament until 28 March. Interceptions are an important matter. Also, the social justice report from HREOC was sent to the Attorney on 21 December, received on 4 January and not presented to the parliament until 28 March. The report, in places, is critical of various acts of government. Again, I would have thought that it would have been in the interests of good public policy if

these matters were brought to the attention of the parliament at the earliest opportunity. I do not think that 28 March—on the occasion of the four reports I am referring to—was the earliest opportunity.

**Senator Ellison**—I do not know the circumstances surrounding that, but you have to look at sitting times and also the fact that no doubt the Attorney-General had to examine these reports. It is not just a question of being a postbox. I dare say the Attorney-General, as diligent as he is, takes these reports seriously. To simply say that you get a report and you table it the next day is not appropriate. It is appropriate for a minister to examine a report of this sort and I do not think that the time difference is an undue one.

**Senator McKIERNAN**—I understand the process on reports such as these—the toing-and-froing that occurs between the Attorney and the relevant agency prior to the report being formally printed and formally sent to the Attorney, not afterwards. Mr Jonas, in his covering letter of 21 December 2000 to the Attorney—that is the complete document and it does not change after that. Is that right?

**Senator Ellison**—My note has 5 February and 28 March. Are you talking about that?

**Senator McKIERNAN**—The covering letter contained in the report was dated 21 December, then in the report itself—

**Senator Ellison**—You have a period of January there in any event which is—

**Senator McKIERNAN**—It was received on 4 January.

**Senator Ellison**—widely acknowledged as a holiday period. Parliament did not start sitting again until 6 February. I will make inquiries, but I do not think that, when you look at the Attorney-General's workload and the number of reports that come before him, is an undue period.

**Senator McKIERNAN**—How many staff does the Attorney have in his office, and what are the functions?

**Mr Cornall**—I am not sure of the exact number; we can find that out. There are obviously DLOs and private staff. I am not sure of the exact numbers. It is of the order of 10 or 11 or 12.

**Senator McKIERNAN**—Ten or 11?

**Mr Cornall**—I do not want to be quoted on that without checking.

**Senator McKIERNAN**—I accept the qualification. How many of those are dedicated to the media—media mentoring or taking responsibility for responding to the media on behalf of the Attorney?

**Senator Ellison**—I will have to take that on notice, Senator. I am not aware of those details.

**Senator McKIERNAN**—In taking it on notice, you will not be able to answer the next question, and that is what it costs to have those people in the Attorney's office—media monitoring. Indeed, Minister, you would have some in your own office.

**Senator Ellison**—I can tell you what I have. I have one press secretary and that is it. I have other staff. It is well known that the government has media monitoring services, which it is contracted with, and, like other ministers, I have the same service available. But that is not a member of staff. That is a service such as Rehome, which you would be well acquainted with. As far as staff go, I only have a press secretary.

**Senator McKIERNAN**—How much does Rehome cost your office, if that is the company that does your media monitoring?

**Senator Ellison**—I will have to make those inquiries to give you the latest figures, and I will do that.

**Senator McKIERNAN**—Can you do that, and also for the Attorney-General as well.

**Senator Ellison**—Yes, I will.

**Senator McKIERNAN**—Thank you. Page 22 of the PBS states that the department will defer an estimated \$24 million-plus in departmental appropriations from 2000-01 to 2001-02. These deferrals are further particularised in appendix 6 of page 65. I do not want to take all the time of the committee now while other agencies are waiting, but we may return to these departmental outputs. I will have a number of questions when we return to them later. I will also have questions about the changes to outcomes and outputs listed on page 26 of the PBS and changes in the departmental and administrative appropriations on pages 30 to 32. I ask a general question at the beginning. What inflation figure has been factored into the department's budgets across the department itself? What is the CPI figure?

**Mr Cornall**—Are you talking about the department's own internal budget?

**Senator McKIERNAN**—Yes, at this stage. We will deal with the agencies as they arise.

**Mr Hine**—An indexation factor of 1.6 per cent has been used across all of the department's outlays.

**Senator McKIERNAN**—Are you in a position to say why 1.6 per cent was determined?

**Mr Hine**—No, I will get that information for you before the department appears. I do not have it with me at this stage.

**Senator McKIERNAN**—Thank you very much for that. What was the methodology by which the department and DOFA conducted the joint output pricing review? I am referring to page 29 of the PBS.

**Mr Hine**—As there was a joint pricing review, we work with the Department of Finance and Administration to identify various elements of the cost structures within the department and, as a consequence of that, agree that savings of the order of \$1 million might be available from within the overall departmental funding.

**Senator McKIERNAN**—Can you elaborate on the methodology that was used?

**Mr Hine**—We looked at the costs that we incur in undertaking certain activities. We looked at a number of benchmark partners where they were available. It is very difficult to get accurate benchmarking with a policy department, but we did do some comparisons with other like agencies—the Department of Finance and Administration had some figures on those. It was more a subjective rather than qualitative detail analysis. We had tried to seek information from overseas—from the New Zealand government—and from some state governments as well, but it is very difficult to find a department or agency that undertakes the wide variety of functions that we discharge.

**Senator McKIERNAN**—Will there be any cuts as a result of this \$1 million 'shortfall'? That is my term; it might not be the right terminology. Will there be any reductions in either service or staff as a result of this?

**Mr Hine**—We would not anticipate any reductions in service; reductions in staff we do not anticipate either but that will depend on natural attrition. We would be hoping to address the

cost reductions by looking at our supplier costs—consultancies and those other areas. Additional funding has been provided to undertake the establishment of the pro bono and the national information infrastructure, so there is a little bit of an offset there as well.

**Senator McKIERNAN**—But those additional funds are allocated funding while this \$1 million is money that is not going to be available, as I read it.

**Mr Hine**—That is right.

**Senator McKIERNAN**—In general, what is the department's policy if you have women writing to you—as I expect you do—about sexual harassment claims within the department?

**Mr Cornall**—We do have policies on a wide range of issues in relation to occupational health and safety issues, and those policies could be made available if that would be of any assistance to you.

**Senator McKIERNAN**—Is there a particular one on sexual harassment?

**Mr Hine**—There is a policy on harassment and I would assume that would be part of it. I cannot recall the exact breakdown of that, but we will have that available when the department appears before the committee.

**Senator McKIERNAN**—Can anybody tell me the mechanisms in the department for dealing with claims or allegations of sexual harassment?

**Mr Cornall**—There is a process for independent evaluation and there is a process for the person who makes the claim to be advised of the outcome of that evaluation and to express views about it. In terms of the exact details of the policy, it is administered through our human resources section and I just do not have all the details at my fingertips. If they are of interest to you, we can certainly provide all of them.

**Senator McKIERNAN**—If you would, and the number of claims that have been made within the department over the last 12 months would be of use. Also, how they have been resolved, obviously without going into the names of either the accuser or the accused. I move on to the Auditor-General's report on the use of confidentiality provisions in Commonwealth contracts—that is report No. 38, which was tabled on 24 May this year. The report concluded that there are weaknesses in how agencies generally deal with the inclusion of confidentiality provisions in contracts. The weaknesses include:

- consideration of what information should be confidential is generally not addressed in a rigorous manner in the development of contracts;
- where there are confidentiality provisions in contracts, there is usually no indication of what specific contractual information in the contract is confidential; and
- there is uncertainty among officers working with contracts over what information should properly be classified as confidential.

There are some other quotes there, but I will not go into them now. We will see how the questions go and we may have to come back to them. How does the department respond to the findings of this report? Are you aware of the report? Has it been read and digested within the department? Have any actions been put in place to address the recommendations contained in it?

**Mr Cornall**—I am aware of that report. I am not aware of any contracts that the department has entered into where this is an issue, although we are in the process of seeking tenders for some of our corporate services and we are also looking at outsourcing some of our

IT services. We would take the comments in that report into account in any contractual arrangements we enter into as a result of those processes.

**Senator McKIERNAN**—I am racking my brain as to whether there was a contract discussed at a previous estimates committee where the response was that it was commercial-in-confidence. I am probably getting mixed up. If there are any contracts that may come under the concerns that the Auditor has addressed in his report, could you, on notice, identify those to the committee?

**Mr Cornall**—Yes.

**Senator LUDWIG**—I have a general question in relation to East Timor. Has your department been asked to supply any justice or legal aid to East Timor to assist in setting up their judicial system? Have you offered any?

**Mr Cornall**—No, we are not aware of any involvement by the department in that area.

**Senator LUDWIG**—It is not a matter that you would consider would normally come within your sphere?

**Mr Cornall**—I would not expect so, unless it was part of some AusAID program or something of that nature.

**Senator LUDWIG**—This may or may not be a general question; we can defer it if it is not. In relation to the special forum on racial discrimination—which is a world conference, as you may know, on comparative experiences on racism and racial discrimination, which is being planned in conjunction with the World Conference Against Racism—has the department taken a view about whether it intends to send people from the various agencies or the department to that conference or whether it intends to present a paper?

**Ms Leigh**—Regarding the World Conference Against Racism, there is a preparatory commission meeting on at the moment and the department has a representative at that meeting. The details of the delegation for the World Conference Against Racism meeting have not been finalised yet.

**Senator LUDWIG**—So you are intending to send someone?

**Ms Leigh**—The department almost certainly will be sending somebody to that meeting.

**Senator LUDWIG**—I will leave further questions in relation to that area to the particular agency involved. Thank you.

**Senator BOLKUS**—I have one or two general questions. Does the department or any agency within the department administer any grants program?

**Mr Cornall**—The department has a small grants program that is referred to in the Portfolio Budget Statements.

**Senator BOLKUS**—What is the value of that program?

**Mr Cornall**—On page 30 of the Portfolio Budget Statements, grants for the coming year are at \$350,000.

**Senator BOLKUS**—That is administered by which section of the department?

**Mr Cornall**—These are a series of small grants, mainly administered through the civil justice group. Of course, I am not including in this answer the community legal centres grants, the legal aid grants and so on, which are administered funds.

**Senator BOLKUS**—When I asked who administers it, you said?

**Mr Cornall**—It is done through the civil justice group of divisions.

**Senator BOLKUS**—I want to get an indication of where the grants programs are and we can pursue them in the relevant sections later on. Which were the other ones you mentioned?

**Mr Cornall**—The Community Legal Centres Funding Program, the Legal Aid Program, the Family Services Program and the Financial Assistance Program for Commonwealth legal aid grants.

**Senator BOLKUS**—Who administers the Financial Assistance Program?

**Mr Cornall**—It is administered through our Family Law and Legal Assistance Division within the civil justice group. These items are set out on page 30 as well.

**Senator BOLKUS**—Thanks very much. We will get to them.

**Senator COONEY**—Who updates the legal aid programs? In Outcome 1, An equitable and accessible system of federal law and justice, there is an amount given for a pro bono secretariat this year.

**Mr Cornall**—That is correct.

**Senator COONEY**—I notice that the Victorian Bar is setting up a pro bono service. I do not know whether you know of that.

**Mr Cornall**—I do not personally know of it, Senator, although there have been a number of programs of that type over a number of years.

**Senator COONEY**—It is called the Victorian Bar's legal assistance scheme. No doubt it will work well. I think the Federal Court has an approach to this as well. I was just wondering where we are getting to with the whole legal aid situation and whether the Attorney-General's Department has got any criteria by which legal aid can be distributed. I just get the feeling it has got out of control a bit, that there are a number of inquiries going on—and you would know this better than I would—with terms of references that are all over the place, it seems to me. So you have a situation where you have got PILCH, a most excellent organisation in Melbourne, you have got the Bar pro bono scheme, you have got the Federal Court pro bono scheme, you have got the community legal centres and you have got legal aid itself. I was just wondering whether there is any purchase that the Attorney-General has got on this whole area. We will come to this later on, I know, but just in this context I would be interested to know whether the Attorney-General's Department has got any idea of where we are going.

**Mr Cornall**—As you know, there is additional funding over the next four years for legal aid. The extra funding was allocated under four-year agreements based on the needs study. All states except Victoria and the Northern Territory have signed up to four-year funding agreements with us for the provision of Commonwealth legal aid in their jurisdictions. Victoria is still the subject of negotiation, as is the ACT. That is the legal aid side. Under the legal aid agreements there are Commonwealth guidelines for the provision of legal assistance, which the legal aid commissions implement on the Commonwealth's behalf. There has always be a significant measure of pro bono work undertaken by the legal profession, and there are also organisations which are designed to undertake certain aspects of pro bono work, such as the Public Interest Law Clearing House in Melbourne and similar sorts of centres in Sydney. The purpose of the pro bono conference last year was to try to scope out the existence of the pro bono work that was being done, and the pro bono secretariat follows on from that

with a view to trying to give some more cohesion, and therefore effectiveness, to that pro bono work.

**Senator COONEY**—I do not want to put this in an antagonistic way, but it seems to me—and, as I say, we can perhaps discuss this later in the day—that we as a community are going around this whole idea of legal aid in the general sense without really defining what various parts of that system perform. Community legal centres, I think, are often seen as providers of representation in court. Their function as a community location almost around which a community coalesces and where information is given out and so on is overlooked. I was just wondering whether we should not be looking at the standards or the criteria by which we judge these various bodies. Has the Attorney-General's Department had any thoughts about that? Perhaps I can just help you. There is an inquiry going on now into the community legal centres in Victoria, isn't there?

**Mr Cornall**—Yes, there is.

**Senator COONEY**—I was just wondering what the criteria is against which that is being carried out and whether it could be better changed to something else. Would you like us to leave that perhaps until later in the day?

**Mr Cornall**—We could. The inquiry has terms of reference, and it is similar to inquiries which have been undertaken in South Australia and I think also in Queensland. We can go into those in more detail later if that might be of assistance.

Madam Chair, I understand I incorrectly said that the ACT had signed an agreement for legal aid for the four years. If I did say that, I should have said the Northern Territory.

**CHAIR**—Thank you.

**Senator COONEY**—I reckon anything you say that is not quite right today, Mr Cornall, must be looked at in the light of the terrible affliction that is upon you.

**Mr Hine**—Excuse me, Madam Chair. I need to correct my answer to Senator McKiernan. The indexation factor is 2.6 per cent. That is offset by an efficiency dividend of one per cent, giving a net adjustment of 1.6 per cent, which is what I indicated. With respect to the details of the 2.6 per cent indexation factor, we do not have that information. It is provided to us by the Department of Finance and Administration.

**CHAIR**—Thank you for clarifying that, Mr Hine.

**Senator BOLKUS**—Can I go back to the program I referred to earlier. I indicated that I would get back to that when we came to the department, but I will indicate now the sorts of questions that I will be asking at that stage so that the relevant officers are up to date with the information we need. In respect of each of those grants programs, I will be asking how much has been allocated to the program, when and how the appropriation was made, how much money was left in the program as of 1 January this year, the details of disbursements made from the program from 1 January to the present, the timetable for the application assessment process for the current financial year and for the next financial year, and also details of any decision as to disbursements but not announced at this stage. Are there any one-off grants which the department is funding through these budget appropriations?

**Mr Cornall**—There would be some small grants under the grants program. Some of them have been going on for some years. I could get those details for you.

**Senator BOLKUS**—Mr Cornall, what are you referring to there? What do you mean by 'small grants'?

**Mr Cornall**—According to my recollection of one I saw recently, it was only \$2,000.

**Senator BOLKUS**—Okay. When we get to the department, can we have details of those grants as well. In respect of the caretaker conventions and their applications to the operations of the grants program during an election campaign, can you tell us what steps you may have taken to date or that you intend to take to ensure that those conventions are honoured during the campaign?

**Mr Cornall**—As to the first part of your question, we have not taken any steps at this stage, in view of the anticipated calling of the election later in the year. I have not yet turned my mind to the application of those conventions to the grants program. I might ask Mr Dabb if he is able to assist any further.

**Mr Dabb**—The so-called caretaker conventions are normally clearly stated. They come from the Department of the Prime Minister and Cabinet and they are across the government. Guidelines are issued which cover in some detail the steps that need to be taken. So, if there are questions about the substance of the conventions themselves, they would be best addressed to the Department of the Prime Minister and Cabinet.

**Senator BOLKUS**—I am not going to the substance of the conventions, Mr Dabb. I am going to, firstly, your department's awareness of them and, secondly, what steps you have taken to ensure that they are followed. To what extent, for instance, has the department factored them in to decision making over the next six months? Are you aware of the conventions, for a start, and the convention particularly with respect to making decisions during the caretaker period—major policy decisions that are likely to commit an incoming government? I presume that you are aware of the conventions.

**Mr Dabb**—Exactly. The department is aware of them and has complied with them in each election that has occurred in the past. The basic rule is that the ordinary machinery of government has to continue. Action might be suspended in relation to political decisions that depend for their validity or authority on the current government of the time, but you need to work through each program and see what the policy decision making was that might be involved.

**Senator BOLKUS**—But when it comes to the grants programs that we referred to earlier and that we will come back to later have you taken any steps to alert officials as to the implications of those conventions?

**Mr Dabb**—No, I believe not. Mr Cornall will correct me if that is not correct. But perhaps the most helpful thing, if we are looking at the effect of the caretaker conventions on grants programs that have continued over very many years, would be to go back and see what the practice has been under various governments during each election. That may be the most useful way to approach it.

**Senator BOLKUS**—Are you saying that would be the most helpful thing for you to do?

**Mr Dabb**—I think that might be the way to most clearly focus on what the issues might be in relation to individual grants programs.

**Senator BOLKUS**—So when do you think you will start doing that? I think it is your job, Mr Dabb; it is not mine.

**Mr Dabb**—No. I was trying to give a helpful answer. No action has been taken so far, given that we are probably only about 60, 70 or 80 per cent through the election cycle at this stage.

**Senator BOLKUS**—Unless you believe what you hear in some of the stories around the place that there could be an earlier one rather than a later one, shouldn't you be prepared at this stage? Shouldn't you have done this work by now?

**Mr Dabb**—Can I go back and see what has been done in relation to past elections in the cycle. I do not think there is any work in relation to grants that is required of the department now. That is the best answer I can give at this stage.

**Senator BOLKUS**—The advice that you were giving me, which I would suggest you take, is to go back and look at that and put measures in place at an early date.

**Mr Dabb**—Yes, the department will take guidance from the Department of the Prime Minister and Cabinet and do whatever the proper course is that has been taken in the past.

**Senator BOLKUS**—So you are waiting now for the Prime Minister's department to alert you to this, are you? Is that the situation?

**Mr Dabb**—Frankly, I am having a little bit of difficulty in understanding—

**Senator BOLKUS**—Sorry, are you waiting for the Prime Minister's department to trigger off your response; you are not doing this work in the meantime?

**Mr Dabb**—What are normally called 'caretaker conventions' that come into effect on the announcement of an election, which is what I understand the questions to be about, are promulgated by the Department of the Prime Minister and Cabinet when an election is announced and are rigidly adhered to by the department

**Senator BOLKUS**—Sure.

**Mr Dabb**—If there are some other conventions that relate to the period during the life of a parliament before an election has been announced, I am not sure what you referring to, Senator.

**Senator BOLKUS**—I am referring to the normal caretaker conventions. You have suggested to me that it would be useful to go back in respect of each grant program and see what has happened in the past. On the one hand, you are saying that you are going to wait for the Prime Minister's department; on the other hand, you are suggesting that it would be useful to go back and look at what has happened over recent years. Are you prepared to do the latter before you get a request from the Prime Minister's department?

**Mr Dabb**—I think we are at cross-purposes somewhere. The 'caretaker conventions' I understood you meant were the conventions that come into operation when an election has been announced. If there are some other caretaker conventions that apply before an election—

**Senator BOLKUS**—Mr Dabb, I do not think that we are at cross-purposes; we are talking about the same conventions. You are telling me that it would be useful in interpreting those conventions to see what has happened in the past. I am asking you: when will you start this process? They do not come out of anywhere, and I would presume that the A-G's Department would have a fair awareness of these conventions and their implications. You have suggested that it would be really useful to go back and see how they have operated in the past; I suggest to you that it might be a very useful thing for you to do very quickly rather than wait for a trigger at the end of the day.

**Senator Ellison**—Madam Chair, I think the situation here is that Senator Bolkus is perhaps inviting Mr Dabb to speculate on when an election might be called.

**Senator BOLKUS**—I do not think that is the case at all, Minister.

**Senator Ellison**—I think it is, because the fact is that the answer has clearly been given: there are caretaker provisions and the department is well aware of them. PM&C handles how that is administered when the time comes—and that is the relevant part. What Mr Dabb is saying by way of added assistance is, ‘Look, I’ll go back and have a look at what’s taken place in the past in relation to how the department has been briefed and how it has briefed its officials and give you an idea of what has happened in the past.’ But he cannot say, ‘Well, look, we are going to do X, Y and Z,’ without knowing when the election is called. The conventions come into play when the election is called—not before. That is a widely known fact.

**Senator BOLKUS**—I am prepared to move on at this stage. Mr Cornall, there is much consternation in the legal community as to the operation of the GST and the GST accruing on an account going out rather than when a client pays the bill. Has that been brought to your department’s attention

**Mr Cornall**—Not in any direct sense, no.

**Senator BOLKUS**—There have been no representations to you?

**Mr Cornall**—None that I can recall.

**Senator BOLKUS**—When you say, ‘Not in a direct sense,’ what is an indirect sense?

**Mr Cornall**—Mr Bourke tells me that we have had a representation from the family law section of the Law Council of Australia on this issue.

**Senator BOLKUS**—And what you intend to with that?

**Mr Cornall**—I will ask Mr Bourke to report on this.

**Mr Bourke**—We have a project with the Australian Taxation Office working through the issue, but the Taxation Office, as you would be well aware, has a number of matters which are raised about the application of the GST, and that is one of them. We continue to work with the tax office to try to seek a resolution of the matter. We report regularly to the family law section of the Law Council on our progress. At this stage, the matter is not resolved.

**Senator BOLKUS**—What is the status of the working group with the tax office? Is that an IDC? Is it just you and the tax office? Are there other departments involved?

**Mr Bourke**—No, it is just Attorney-General’s officials and tax office officials.

**Senator BOLKUS**—At what level?

**Mr Bourke**—I have attended one meeting; other meetings are attended by assistant secretaries and also principal legal officers.

**Senator BOLKUS**—Has this complaint only come up through the family law area or has it come up through other areas as well?

**Mr Bourke**—I only deal with the family law section of the Law Council. That is the only one that I am aware of.

**Senator BOLKUS**—Did your discussions with the tax office go purely to the plight of family law practitioners or were they more general than that?

**Mr Bourke**—I think it may have more general application, but our inquiries are in relation to the application of fees or accounts which are generated by family law practitioners.

**Senator BOLKUS**—Has this committee been going for some time? Can you tell us when you first put it together?

**Mr Bourke**—We met with the tax office late last year. I would need to check the times, but I think we have met on a couple of occasions since then.

**Senator BOLKUS**—Do you have a working deadline?

**Mr Bourke**—We have not set a working deadline, because the matter just needs to be worked through with the tax office.

**Mr Cornall**—We are aware that the Law Council of Australia has raised this issue with the minister for financial services.

**Senator BOLKUS**—I gather it is a pretty substantive issue. There is one major law firm in my home town which is having enormous cash flow problems. Is that the sort of information that has been put to you through the Law Council, Mr Bourke.

**Mr Bourke**—I do not know about that.

**Senator BOLKUS**—Thank you.

**Senator LUDWIG**—I have a general question about the drug advertisement program that has been run on television. Has that been a matter that you have contributed to from the department, or is it a matter that has been run out of another agency?

**Mr Cornall**—We have not been involved in that matter.

**Senator LUDWIG**—Have you sought to be involved in the outcomes, whether or not it has been an effective campaign, whether it has targeted drug use generally, whether it has raised awareness within the local communities that it has targeted or whether it has sought to respond in any meaningful way in relation to the people who do run it?

**Mr Cornall**—I do not know the answer to that question. We can check and see if there has been any involvement.

**Senator LUDWIG**—So what you are saying is that, in relation to a targeted drug advertisement in relation to illicit drugs, in relation to law enforcement, your department has no involvement—has not sought to follow up in relation to whether the program has been successful or otherwise?

**Mr Cornall**—Firstly, I think it is a current program but, secondly, drugs is an issue which cuts across health and also across law enforcement. My understanding is that this program has a health focus.

**Senator LUDWIG**—You would agree with me that one of your outputs is about law enforcement, though?

**Mr Cornall**—Yes, it certainly is.

**Senator LUDWIG**—So would you say that it is an area that you should have an interest in?

**Mr Cornall**—There are a number of areas to do with drugs where we have overlapping interests with health and educational programs.

**Senator LUDWIG**—That is right, so don't you think it is a matter that you should take an interest in?

**Mr Cornall**—Yes. We take an interest in it, but we have not been actively involved in this program.

**Senator LUDWIG**—But to date, even though it is an active program as far as you are aware, you have not had any information in relation to it or sought to be involved in the program?

**Mr Cornall**—No, not at this stage.

**Senator Ellison**—Madam Chair, I would just add that there is a Ministerial Council on Drugs Strategy which I think involves the areas of health, education and law enforcement—I might have to check on education. But I understand that these adverts are part of the national drug strategy, which really the Prime Minister has the purview of. It might be better if these questions were directed to the area of health and perhaps even to PM&C, if that is of any assistance.

**CHAIR**—Thank you.

**Senator LUDWIG**—Do you have a plan of advertisements or programs like the drugs ad program?

**Mr Cornall**—No, we do not.

**Senator Ellison**—Madam Chair, I might say that the best advertisements for law enforcement are the record rates of seizures by Customs and the AFP.

**CHAIR**—Thank you, Minister.

**Senator COONEY**—I want to come back to law enforcement in a minute, but I have a question on that issue of legal aid—and this may be of help for later in the day. There was a news release by the Attorney-General on 20 March 2001 headed ‘Labor ignores needs of people in outer metro areas’. I do not want to go into the politics of it all, but the fourth paragraph of that press release says:

The demographic profile of our cities has changed since then—

since previous times; the seventies is what I think is referred to—

particularly in many inner suburbs and growing outer suburbs of major metropolitan centres. The availability of services needs to reflect these changes and another emerging trends.

That seems to me to be a methodology that has been adopted in assessing where these centres ought to go. What I want to ask later in the day is whether that methodology was right. I just give some notice of that now and that might help later on.

**Mr Cornall**—Yes.

**Senator COONEY**—On the issue of law and order that has been mentioned, I noticed on the news this morning that there was a raid on Port Hedland. That is under the jurisdiction of Immigration—I understand that—but I think the Federal Police were in on that and no doubt there will be prosecutions to follow which the Director of Public Prosecutions will have some say about. I was not too sure whether to put the questions about this to you, but I was worried about the publicity that was given to it—how that came about and whether people were tipped off about these raids—given the fact that these people are going to be prosecuted and that they are entitled to a fair hearing. I was wondering whether that had happened on this occasion. Secondly, I wondered whether the Federal Police had ever gone into a detention centre or a jail before. I was wondering whether that was the situation. I am a bit concerned that we have now had some people charged with offences—I do not know whether or not they are serious

offences; I do not suppose it matters—coming before the courts who have had very bad publicity given to them without a reasonable chance of them answering it. That is not a good way to conduct our legal system, particularly our criminal law system.

**CHAIR**—Is that a question for the minister?

**Senator COONEY**—Yes.

**Senator Ellison**—I think there are some details there which are best left to when the Australian Federal Police attends later today.

**CHAIR**—Of course we also have DIMA later in the week.

**Senator Ellison**—DIMA of course comes into the second part of this committee's estimates hearings. But there are a number of issues there, Senator Cooney. I think it is helpful if we take them on notice and, when the AFP comes up, you can remind us and we can address those issues.

**Senator COONEY**—I was also going to ask the Director of Public Prosecutions whether he thinks it is a good idea to prosecute cases, given the publicity that went on beforehand.

**Senator Ellison**—The DPP is coming in, but I can say that there is certainly no government policy to advertise these operations—quite the reverse, from a policy point of view. I have stressed in all the interviews I have given that these people have the same rights of access to the Australian judicial system as any other person.

**Senator COONEY**—I do not doubt your approach to this, but the other aspect of it is—I do not want to know the details of any advice—whether DIMA got any advice from you on this matter.

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

**Senator COONEY**—I will put it in context. Here we have what is in effect a jail—it is called a detention centre—and it is not usual to have riots like this going on in places of detention. It does happen, but it is quite rare. A question arises as to whether or not the place is being properly conducted—and I understand that is a matter that we ought to put to DIMA—and whether the actual problem was administered correctly, and that is something that does concern this department.

**Senator Ellison**—On the issue of jurisdiction, you have a centre which is the responsibility of the Commonwealth. You gave the example of a prison. Prisons are normally in the state jurisdiction, fairly and squarely. There is no Commonwealth prison in Australia. These detention centres are a Commonwealth responsibility but, of course, they are not prisons with people serving sentences. Therefore, it would be appropriate, it being a Commonwealth responsibility, that there be a Commonwealth response. There were officers from the Australian Federal Police, the Australian Protective Service and the Western Australia Police Service and other Commonwealth officials involved in the operation. If jurisdiction and the involvement of Commonwealth agencies is a query, that is the square for it—it is a Commonwealth responsibility, although the state police force was used for assistance.

**Senator COONEY**—I cannot quite follow what the state police were doing in there. The point you make is a good one, and that raises the issue of the Commonwealth running what I suppose—it is not a prison—is a place more comparable to a remand yard and when the states run remand yards you do not get this sort of problem. It just seems extraordinary that the Commonwealth, when it comes to running a place of detention, should have all this trouble, and not only in this one but in other ones as well.

**Senator Ellison**—There have been disturbances in many remand centres across Australia, and certainly we have had riots, one which I have some knowledge of—the Fremantle jail riot, which was a very big one.

**Senator COONEY**—In the remand yard?

**Senator Ellison**—That had a remand facility in it, as I recall, at the time. There would have been remand prisoners there mixed in with sentenced prisoners. But there have been disturbances in remand centres across Australia from time to time.

**Senator COONEY**—But not ones which need almost an army to come down and which require cameras to be out there.

**Senator Ellison**—When you look at some of the state prisons, they have their own response groups and they have used the services of police for disturbances, but the prisons departments—and some of them are now using contractors of course—have always had their own people to deal with any disturbances. I do not think that the Commonwealth can be singled out as having experienced something that is unique in Australia.

**Senator COONEY**—It is not unique, but it is rare, I suggest. The states seem to be able to run their prisons without the difficulties that the Commonwealth have experienced, not only here but at Woomera and there was trouble at Curtin.

**Senator Ellison**—I do not think the states have men, women and children in the same detention area. I have been to both Curtin and Port Hedland and I went into prisons throughout my practising career and I can tell you that I think they are very different places indeed. You have a centre where you have men, woman and children and where activities are allowed you would not get in a prison. You have a totally different situation. It is comparing apples with pears, with due respect.

**Senator COONEY**—You had a very honourable career in the criminal law and—you never know—you might go back there in years to come. But it does seem an extraordinary business that you have these problems arising around the country. If it is true that religious places have been intruded upon, then it seems to have been done in a way calculated to raise problems. Has the department looked at all of this?

**Senator Ellison**—I would have to place on record that I do not necessarily accept that as a statement of fact, but perhaps that is detail which could be better put to the Australian Federal Police when they attend later in the morning.

**Senator COONEY**—All right. You are right, they are private prison operators. Did the department draw up the contract between the Commonwealth and the private prison operators or did the Australian Government Solicitor?

**Senator Ellison**—I think that is a DIMA question. We will take it on notice and, if it is DIMA, we will ask them to deal with it when they appear.

**Senator COONEY**—What I was getting at was whether or not they are getting proper advice about how to draw up their contracts. They will be here tomorrow or the next day. It is a real problem. Obviously something is going wrong. From the publicity, it is the government suggestion that all the wrong is being done by the people who are in the detention centres, the detainees. I would have thought that, with that sort of impression being given, when these cases come on for trial, and with no effort being made that I can see to try to neutralise that, our justice system is not being run as it ought to be run, as you would know.

**Senator Ellison**—I have been very careful not to comment on the detail involved, because obviously proceedings are pending—they are appearing in court today. I would submit that the government is not responsible for creating any climate or any feeling in relation to this matter. Quite the contrary; the government takes the view that there has been a breach of the law. There are allegations in relation to these charges and the due process has been observed. These people will be treated in the normal course of the law, just like anybody else appearing in our courts. As to the details touching on those proceedings, it would be inappropriate for me to comment.

**Senator COONEY**—I suggest that the government has been more vocal than that. There have been statements about these people being troublemakers, that they have been rejected for the grant of asylum and, as a result of that, act in this particular way. I would have thought that that did come from government.

**Senator Ellison**—The question of asylum or otherwise is a question for DIMA.

**CHAIR**—Minister, I do not wish to interrupt but, Senator Cooney, I do think we are straying into the area of Immigration and Multicultural Affairs estimates questions, and I would like to hold those for Wednesday and Thursday, so we can get through as much of this as possible.

**Senator COONEY**—Whatever you say, Chair, I will do it.

**CHAIR**—I wish that was so, Senator Cooney, but unfortunately it is not! If there are no further general questions—

**Mr Cornall**—Just before we continue, Senator McKiernan asked about the times that it took for those four reports to be tabled. We have checked, and they were all tabled within the 15 sitting days prescribed period.

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

[10.09 a.m.]

#### **Australian Transaction Reports and Analysis Centre**

**CHAIR**—I understand, Senator Cooney, that you particularly have questions for AUSTRAC.

**Senator COONEY**—Yes, I do. It always seems to me that this body does not get enough credit for the work that it does; that is why I want to ask questions.

**CHAIR**—I am sure they will be very grateful for your attention this morning.

**Senator COONEY**—Without going into operational detail, how much intelligence have you provided this year? I will leave it up to you to work out what you can and cannot tell us.

**Ms Atkins**—AUSTRAC, as usual, provides a great deal of intelligence to both revenue and law enforcement agencies. What I can say is that over the last six months, the first half of this financial year, we have assisted in over 300 significant cases of law enforcement. We have obviously assisted in many others and there are many that we have assisted in but we cannot identify because law enforcement and revenue agencies have access to our databases and we do not always have records of exactly what use they have made of our information.

**Senator COONEY**—Do you never give evidence? It is just a sheer intelligence producing agency?

**Ms Atkins**—That is correct.

**Senator COONEY**—Have they given you an increase this year?

**Ms Atkins**—No, we have received pretty much the same funding as we always receive.

**Senator COONEY**—Is that sufficient to keep your work going?

**Ms Atkins**—Absolutely; in particular, with the funding which we receive through the National Illicit Drugs Strategy, we have increased our work on both the analysis and regulatory sides.

**Senator COONEY**—The other thing in this area that interests me concerns the intelligence you gather. Does anybody not do what they are supposed to do? I take it that all the banks provide their information. What about other centres that might be engaged in money transactions? Do you have any problems with any of those?

**Ms Atkins**—In particular, under the National Illicit Drugs Strategy, one of the things that AUSTRAC received funding for was to identify what we refer to as ‘high risk cash dealers’. They are mainly remittance dealers within various communities who transfer money overseas for people in Australia and vice-versa. Through our compliance program within that industry we have actually identified people who were not aware of their reporting responsibilities under our legislation. We are conducting a campaign to make sure that such industries do become more aware. Under that strategy we have conducted almost 100 compliance audits under that high risk cash dealers strategy and, of course, that helps to make those industries very much more aware of what their reporting responsibilities are.

**Senator COONEY**—If anyone takes more than \$10,000 out of Australia, do they have to tell you?

**Ms Atkins**—Absolutely.

**Senator COONEY**—On Friday my wife went off to heavy matters at Wimbledon, Epsom and Lord’s. When she said, ‘What’s this form about?’ I said, ‘It’s very important: this is about the Australian Transaction Reports and Analysis Centre and about the business of keeping Australia safe.’ You do too, so thanks very much for your work.

**Ms Atkins**—Thank you, Senator.

**CHAIR**—Senator McKiernan has some questions on this area. I am not sure if he is going to put his wife’s travel plans on the record.

**Senator COONEY**—My wife’s name is Lillian, I might say. Senator McKiernan, you will have to talk about Sean.

**Senator McKIERNAN**—Sean got his mention last week, and he is still doing well. Sean, incidentally, is my new grandson.

**Ms Atkins**—Congratulations, Senator.

**CHAIR**—For those who are unaware, there is a new tradition of committee members identifying their grandchildren, new and otherwise, for the record.

**Senator McKIERNAN**—Congratulations are in order because on page 240 you tell us, at the top of that page, that the regulation review of the FTR Act was completed in June 2001. Well done! Has it actually been completed?

**Ms Atkins**—It has indeed been completed; in fact, that was probably around January 2001. It makes a number of recommendations in relation to the legislation that covers AUSTRAC

and those recommendations are being considered at the moment—within both the department and AUSTRAC—in terms of how they are going to be implemented.

**Senator McKIERNAN**—Has the report of the Office of Regulation Review been publicised? Is it a public document or is it a general working document?

**Ms Atkins**—I believe that it is on the minister's web site, but I would have to confirm that for you. It is a public document.

**Senator McKIERNAN**—Thanks very much. You mentioned to Senator Cooney that you are getting about the same amount of money as you have always had. I do not think your funding for 2001-02 takes into account the projected inflationary figures for that year. So in effect you would be getting a reduction in funding, in real terms, for next year.

**Mr Mazzitelli**—The figures for 2001-02 include the wage costs indices which are placed against the salaries and supplies costs.

**Senator McKIERNAN**—We were told earlier that 1.6 per cent is the inflationary figure for next year. On my very rough calculations, you are not getting anywhere near 1.6 per cent in those figures that are here.

**Mr Mazzitelli**—The figure also includes the efficiency dividend taken away from that.

**Senator McKIERNAN**—So in real terms there would be a reduction in funding for next year.

**Mr Mazzitelli**—Essentially, yes.

**Senator LUDWIG**—In relation to AUSTRAC, I understand that your mission statement is to make a value contribution towards the financial environment hostile to money laundering, major crime and tax evasion, and that it works with law enforcement, revenue and national security agencies. I was curious as to whether or not you have had a request from either the Australian Taxation Office or ASIC, the Australian Securities and Investments Commission, in relation to what we may commonly call the HIH issue, as to whether or not they have made any requests for financial information.

**Ms Atkins**—I would have to take that on notice, Senator. We will get that information to you as quickly as possible.

**Senator LUDWIG**—Whilst you are having a look at that, can you also tell me whether you have initiated—now that you are aware of the HIH matter—any proactive examination of the financial environment under the Financial Transaction Reports Act 1988 in relation to the HIH matter.

**Ms Atkins**—I am not able to answer that question, Senator. You may wish to direct that to the relevant agencies. Again, I can take that on notice. To the extent we can answer that question, I will do so.

**Senator LUDWIG**—Can you tell me why you cannot answer the question? I am just curious. I do not quite understand your answer.

**Ms Atkins**—Because of the side of the agency my involvement is in, I do not have at my fingertips the particular investigatory cases that people are using our financial data for. I am not sure that anybody in the agency, except for officers who have been asked specifically for analysis, would be able to answer that question because officers from our partner agencies can directly interrogate our database. So without asking the database for the statistics—

**Senator LUDWIG**—That is what I am trying to understand. I am sorry to cut you off; I will give you an opportunity to finish that, if you like. It is not a matter that you as an agency then provide, I guess, a bureaucratic answer. It is the ability to come in and ask for information and then leave without necessarily the agency, represented by yourself, knowing. Is that what you are telling me?

**Ms Atkins**—That is correct. Obviously our logs would show that so that we could check, but at a particular time we do not know that a particular agency is interrogating the system as to particular issues, no.

**Senator LUDWIG**—Perhaps you could have a look at that. I was particularly interested in the dates that any of those matters might have been initiated by ATO or the Australian Securities and Investments Commission in relation to HIH and whether or not your agency has then initiated any to be disseminated to ASIC or ATO or any other agency from now onwards, I guess, now that you have become aware. I was interested as to whether or not your section has a proactive role; in other words, it will then examine, under the Financial Transaction Reports Act, matters of a public interest nature such as HIH.

**Ms Atkins**—I can answer that in general terms. We do have a proactive role as well as our dissemination role: we have an analysis role as well. As to whether AUSTRAC itself has undertaken any analysis in relation to HIH, I will have to take that on notice and come back to you.

**Senator LUDWIG**—I was curious as to why you would not know that. It is a major issue, I suspect, out there in the public and it has been aired on television and the national news and is of serious concern to a range of people. Why wouldn't you initiate or be aware of the initiation of an examination as to whether there have been any matters that might come within your area of expertise?

**Ms Atkins**—I am sure of that my director or the other deputy director who is responsible for the law enforcement side of AUSTRAC will be able to answer that. It is obviously something that I did not check on, in terms of appearing before this committee on behalf of AUSTRAC, but I will do so.

**Senator LUDWIG**—Minister, I was wondering when that could be responded to, or whether we could then ask the agency to come back when they know that. It is a matter that may raise further questions in response to the answer, for argument's sake. I do not want to second-guess what the answer is.

**Senator Ellison**—Yes. I understand from the agency that they can come back with that information and will undertake to do so.

**Senator LUDWIG**—Thank you.

**Senator BOLKUS**—Can they come back after lunch? Will that be enough time? It will probably just take a couple of phone calls, I would imagine.

**Senator Ellison**—Yes. Let us say today, and give them some room to skate.

**CHAIR**—As there are no further questions for AUSTRAC, I thank Ms Atkins and Mr Mazzitelli very much for assisting the committee this morning.

[10.22 a.m.]

#### **Administrative Appeals Tribunal**

**CHAIR**—Welcome, Ms Ransome. We will begin with questions from Senator McKiernan.

**Senator McKIERNAN**—Savings of half a million from increased efficiencies have been factored in to the 2001-02 appropriation for the AAT. What are those efficiencies?

**Ms Ransome**—The decision to impose savings on the AAT as well as the three other tribunals that were to form the administrative review tribunal is a fairly recent decision. Our understanding is that those savings and efficiencies are to be gained through cooperative measures among the four tribunals: for example, co-location of premises and some sharing of administrative resources or information technology infrastructure. Our understanding is that the Attorney-General's Department will be establishing a working party comprising the four tribunals and the relevant agencies, along with DOFA, to examine how the savings can be achieved.

**Senator McKIERNAN**—So at this stage it is an arbitrary figure that has been put forward. It has not been a case of the tribunals meeting together and saying, 'Okay, we can save money here by doing X, Y or Z.' You have been told what the figure is, and you had better meet that figure.

**Ms Ransome**—That is about right, Senator.

**Senator McKIERNAN**—So there is no point in asking what methodology there is in that. It is rather like a big state chairman coming down and saying, 'You deliver us half a million bucks,' and you are going to deliver it.

**Ms Ransome**—There were some negotiations entered into around that figure. In fact, originally, the Department of Finance and Administration was suggesting a figure far in excess of that half million for the AAT.

**Senator McKIERNAN**—The Attorney still has hopes that the ART will come to fruition. Indeed, without wandering into the DIMA portfolio, I will use it as a reference. On page 5 of the PBS for Immigration and Multicultural Affairs, the following appears:

The establishment of the Administrative Review Tribunal (ART) has been delayed beyond the planned 1 July 2001 commencement date due to the Senate not passing the necessary enabling legislation. The Attorney-General is pursuing discussions with interested parties with a view to securing passage of the legislation.

I think it is fair to ask who are those interested parties that the Attorney is pursuing discussions with.

**Senator Ellison**—Speaking on behalf of the Attorney-General, it is a matter, really, for him. I am not aware of who that is. I daresay he has in his mind whom he needs to speak to.

**Senator McKIERNAN**—Would you take it on notice, come back to us and tell us who it is?

**Senator Ellison**—I will take it on notice and see what I can come back with.

**Senator McKIERNAN**—This afternoon?

**Senator Ellison**—I cannot give an undertaking for the provision of information on behalf of the Attorney-General, but I will try—

**Mr Cornall**—Mr Govey might be able to advance the question slightly.

**Mr Govey**—We have had some preliminary discussions with the Law Council on the ART, and we are planning to have some more discussions with other interested groups in the welfare sector. But those discussions are still at an early stage.

**Senator McKIERNAN**—The way it reads in here is that the discussions would be of a political nature rather than with the Law Council or other such important bodies—

**CHAIR**—That is perhaps not a matter for Mr Govey to comment on.

**Senator McKIERNAN**—That is the idea of addressing the question to the minister and asking the minister whether he can come back to us with further information. It is a very important point if we are being provided, through one particular portfolio statement, with some information that there is progress on this.

**Senator Ellison**—The department has taken as much as it can and the ball rests in my court.

**Senator McKIERNAN**—Can you come back to us this afternoon?

**Senator Ellison**—As I said before, I will come back to you as soon as I can but it means contacting the Attorney-General. I cannot give undertakings which really relate to him.

**Senator McKIERNAN**—But there are people in your office and I daresay people in the Attorney's office who are monitoring these proceedings, and this is not a situation in which one would have to run around a whole host of departments and offices in order to get answers. It seems to me that it would be a pretty easy question to respond to.

**Senator Ellison**—I do not know whether that is so. I do not have sufficient knowledge of the matter to say whether or not it is easy. I will do my best.

**Senator McKIERNAN**—It might save time in the chamber if it were done here.

**Senator Ellison**—I agree. I think that the department—as we have seen evidenced today and at the last estimates—has shown a desire to accommodate the requests of the committee as expeditiously as possible.

**Senator McKIERNAN**—I appreciate that, but we realise from those answers that it was not necessarily the department that was causing the blockage, hence my seeking to press the matter. But the information will come, and if it does not come through these processes, it can come through the chamber.

**Senator COONEY**—Are matters still to be heard by the Administrative Review Tribunal still coming to the register?

**Ms Ransome**—Applications continue to be lodged and matters are being dealt with.

**Senator COONEY**—Are you behind at all in the work that you have to do? In other words, do you have enough people to do the work that is coming before you?

**Ms Ransome**—As you would probably realise, a number of appointments to the tribunal expire on 30 June, because the start date of the ART was anticipated to be 1 July. Our understanding is that some reappointments and appointments are due to be made to the tribunal this week.

**Senator COONEY**—How many permanent appointments do you have? Say there were no appointments made during June: who would you be left with?

**Ms Ransome**—There are approximately 12 members of the tribunal who have tenure. Two of those are currently on leave of absence, which would bring it down to 10 people. That does not include a number of Federal Court judges who are presidential members of the tribunal; their availability is limited. There are some 62 members of the tribunal whose appointments expire between now and the end of July.

**Senator COONEY**—Have any of those 62 expressed concern to you about what they are going to do after June? In other words, is there any concern expressed about the future by any of those 62?

**Ms Ransome**—I think it would be fair to say that there has been an atmosphere of uncertainty in the tribunal for quite some time which has followed the path of the ART.

**Senator COONEY**—I think that is understandable. I notice, for example, forward estimates to 2004-05 for the Family Court of Australia and the Magistrates Service but no forward estimates to 2004-05 for the Administrative Appeals Tribunal, so I suppose there must be a deal of uncertainty not only amongst the 62 but amongst the permanent people as well.

**Ms Ransome**—That goes back to the question that Senator McKiernan was asking before concerned with negotiations that may be going on around the passage of the ART legislation.

**Senator COONEY**—Thanks for reminding me of that. I am talking rather about the temper in the court, the morale of the court. If you are going to have a body that is making the sorts of decisions that the Administrative Appeals Tribunal does, matters of importance in taxation and what have you, you would need, I suggest, to have a court with confidence. You would not want to send the Australian test side over to England with the prospect that they are not going to get any support after the first test match. You might find that they are a bit concerned in the way they play. It is in that context that I ask—if you do not want to answer I can perfectly understand it—whether there is a concern in the Administrative Appeals Tribunal about the future and whether that is affecting the work they do.

**Ms Ransome**—I think it is fair to say and natural enough that there is an element of concern amongst both members and staff in the tribunal about the future of the tribunal and what that might hold. But it is also important to say that the tribunal has endeavoured all the way along to maintain its workload and its commitment to providing services and, while there may be some morale issues, the overall workload matters have remained on track.

**Senator COONEY**—How many different matters do you hear? There are taxation matters, some migration matters. How many acts do you hear appeals in respect of?

**Ms Ransome**—The tribunal has jurisdiction under in excess of 300 different pieces of legislation. The primary jurisdictions are in relation to veterans' appeals matters, taxation, as you have mentioned, income support in terms of social welfare payments and Commonwealth employees' workers compensation. Those are the four main jurisdictions where the bulk of applications lie.

**Senator COONEY**—So at this stage, if you were a person who had a problem as a veteran or as a social security recipient or a person who had a claim under Comcare, you would not quite know what is going to happen in July-August.

**Ms Ransome**—I do not know that I can really answer that, Senator.

**Senator COONEY**—At this stage nobody has been appointed, beyond the 12—the 12 apostles, if I can call them that. Nobody has been appointed beyond the 12 apostles. There are no disciples for July, August, September as yet.

**Mr Cornall**—Everyone can be quite confident that the AAT will continue to function as now and that new appointments will be made to the tribunal before 1 July so that it will be able to continue with its work.

**Senator COONEY**—I have no need to tell you, Mr Cornall, that if you are a practitioner—this comes in at different levels—who has one of the four matters, or indeed any matter, you would want to be a little uneasy about what is going to happen to your client. It is almost June. There are no appointments for July, August, September, beyond the 12. The 12 are not going to be able to deal with them all.

**Mr Cornall**—No, Senator, but the matters are well in hand. I anticipate that appointments will be announced in time for the workload on 1 July to continue without any significant interruption.

**Senator COONEY**—Are they going to be new appointments or are the old ones going to be renewed? You might not want to answer that, but the reason I ask is that, if you are going to appoint a whole new 62, they are not going to get up to speed in time.

**Mr Cornall**—The appointments are obviously a matter for the government, as is the mix of appointments.

**Senator COONEY**—It is a bit hard on a whole series of people—on the profession, the clients themselves and indeed on the people who are going to sit on the AAT. It seems fairly extraordinary that the administrative justice in this area should reach the point it has.

**Senator Ellison**—I think what is being said is that it is business as usual and that's it. The AAT will continue to function as is. Whether or not the appointments are new or otherwise remains for the government. I am not aware of what the decision will be and I cannot pre-empt that. Suffice it to say, it is business as usual for the AAT; it will continue.

**Senator COONEY**—I suggest to you that that is an unfair way—and I am not criticising you in any way—for government to be doing business, given the importance of this body and its importance to all these people. In just over a month's time a solicitor would have to say, 'We might be able to get you on in August—the government says there will be people appointed—but maybe it will not be until next year.'

**Senator Ellison**—The advice would be that we have an AAT there, that it is going to continue, and that we proceed with the matter as we would have done. Across all jurisdictions you get intended change, and you know the fate of the ART legislation. In many jurisdictions, under governments of both political persuasions, there have been mooted changes and that has not caused uncertainty or lack of efficacy, if you like, of the judicial system. From time to time things are changed. There has been a great change in the way in which workers compensation is dealt with. That has been done by all sides of politics. The question of a number of jurisdictions changing their format has changed. It is a question of evolution. Things do change in the judicial arena. What we have here is a case where we are saying, 'Look, the AAT is there. It is business as usual and you should treat it as such.'

**Senator COONEY**—What we are really saying—and I use the word 'we' in the sense I used it before—is, 'We are going to try to change the present process. We are going to try to change the AAT to an ART, which will be different from the last one we put forward. We are negotiating and we hope to get a piece of legislation together which we will be able to put through the parliament. We have some reasonable expectations about that. We are going to appoint some people but not on a long-term basis because we want the ART in there. It may be that the ART will come in when your case is half-way through. We do not know. It depends on what happens in court. We will appoint somebody through June, we think, and we are not going to tell you who.' Litigation is a nervous making process anyhow and this just adds to it in a terrible way, I would have thought.

**Senator Ellison**—But I think that if you had a change in any system you could reasonably expect that pending cases would be dealt with appropriately. We have had that before, where pending cases have been dealt with on many occasions in state and federal jurisdictions where there has been a change and you have got pending cases and you have to look at how you deal with those because they have been commenced under a previous regime or a different regime. That is nothing new to the Australian judicial system.

**Senator COONEY**—With respect, can I just say this—this may well be a political statement, but it is more than that; I understand all of the politics: you have got a perfectly good system as it is with the AAT and you are saying to litigants, to lawyers and so on: ‘Look, even though this is a pretty good system we’re going to change it, or we hope we’re going to change it. We’re not sure what we are going to change it to, because it is a matter of negotiations.’ It just seems to me that to be a bad use of resources. I suppose you would just answer me in the same way, which is reasonable enough.

**Senator CARR**—Can I come in on that point. I was just listening to this inquiry that is being made here and what troubles me when I look at the agency budget statements is that—despite what you have said, Minister, that there is to be a continuing function performed by a body—there are no forward estimates for the AAT. Can you explain to me why are there no forward estimates?

**Mr Hine**—The moneys are reflected in the department’s forward estimates, because the funds are held by the department for the establishment of the ART.

**Senator CARR**—Are you saying, therefore, that this body will cease because it has no money after that point? Or are you saying you will make another allocation, another appropriation? If so, why is that not recorded against this body?

**Mr Cornall**—I think what Mr Hine is saying is that the way that the ART was intended to be structured is that the department would administer the funding and that the forward estimates are in the department’s funding, on the assumption that the ART will be established in the future.

**Senator CARR**—It is just that Senator Cooney has drawn my attention to a number of other agencies. The courts, which presumably would be regarded as equivalent, have forward estimates moneys allocated to them—

**Mr Cornall**—Yes, they do.

**Senator CARR**—but not this body. Is this the traditional way in which allocations are made to this court?

**Mr Cornall**—The AAT?

**Senator CARR**—Yes.

**Mr Cornall**—No, it is not. But it reflects the changed arrangements that were proposed for the financing of the ART, which would involve contributions coming from other departments for the services that that tribunal provided to them. So the funding in the forward estimates is reflected in the department’s—

**Senator CARR**—So there has been a unilateral decision to allocate moneys in this way—no legislation, no plans finalised, no method by which the parliament can assess these appropriations, because they are in your general revenue, or your general expenditures, if you like. Is that usual?

**Mr Cornall**—No, I do not think it is usual, because I do not think this circumstance arises very often.

**Senator CARR**—I hope I will be forgiven, but my presumption is that there has been a pre-emptive decision made here.

**Mr Cornall**—No, I do not think so. The funding is provided. We have allocated it through the department on the assumption that the ART will be established in accordance with the government's intention.

**Senator CARR**—So the policy decision has been taken; it is only a matter of time before it is implemented. Is that what you are saying?

**Mr Cornall**—That is the government's intention. But the funding for the AAT is available within the total budget for the portfolio.

**Senator CARR**—How much will that be for the period 2002-03?

**Mr Hine**—On page 56 of the Portfolio Budget Statements approximately \$19.5 million is included in the annual appropriation.

**Senator CARR**—In 2003-04?

**Mr Hine**—That would be—yes.

**Senator CARR**—So it is the same amount again?

**Mr Hine**—I would presume so, yes.

**Senator CARR**—And in 2004-05?

**Mr Hine**—I would presume so, Senator.

**Senator CARR**—So there is no cost indexation? There are no other increases provided?

**Mr Hine**—Not at this stage.

**Senator CARR**—Does it remain static?

**Mr Hine**—At this stage, yes. As the Secretary said, pending passing of the legislation, the necessary adjustments would be made.

**Senator CARR**—So I take it that there is a presumption that the workload is not going to increase, or is it presumed that it is going to decrease?

**Mr Hine**—I cannot comment on that.

**Senator CARR**—Why does the budget remains static for three years, even though it is not declared in these forward estimates? I wonder how many other courts the same principle would apply to.

**Mr Hine**—We basically round it out to \$19.5 million for presentation purposes because the debate at the moment is about the appropriation bills for this year. But obviously, as the figures become more clear, there will be necessary adjustments in the appropriation bills at that particular point in time.

**Senator COONEY**—What Senator Carr is asking is correct in that the budget for this year ran for the future—that those budgets have been developed on the basis that the AAT will pass away through legislation. That just leads to the uncertainty of the whole thing, doesn't it? Don't the figures that Senator Carr is pointing out to you again demonstrate the uncertainty about the whole thing? It must. That is not a political question. A political question is whether

we ought to have an AAT or an ART, but this is a question about uncertainty leaving people uncomfortable, if you like—to use a very mild word; ‘distressed’ is more probably the word that would be used—about the whole thing.

**Mr Cornall**—I think that part of the answer to your question is that there is forward funding for the AAT in the total Portfolio Budget Statements. To that extent, I do not think that should cause concern.

**Senator COONEY**—But, as Senator Carr said, there seems to be the expectation that things will change but there is a fear that it might not. That position has not been accommodated. What you are saying is, ‘Look, we’ve put away \$19.5 million’—or whatever it is—‘per year and we’ll increase that in the next budget if needed.’ But certainly the whole signal is that we ought to be most uncertain about the AAT, whether it will be there or not. What that does for the system generally, I do not know. I do not think it is good.

**CHAIR**—Do you have a question on the AAT, Senator Ludwig?

**Senator LUDWIG**—My questions are related to where Senator Carr and Senator Cooney were going. Senator McKiernan might have more direct questions, so I am happy to wait for his conclusion to see if they have not been asked.

**Senator McKIERNAN**—We will tease this out when we have the department in front of us tomorrow, I think—hopefully, later today. But, as we have now gone down this track, it is probably appropriate that we follow the questions through at this stage. Which branch is responsible for the implementation of the government’s policy on the establishment of the ART?

**Mr Cornall**—The Civil Justice Division.

**Senator McKIERNAN**—How many full-time equivalent staff were working on the ART project prior to the Senate decision to defeat the bills?

**Mr Cornall**—Ms Leigh will be able to answer this question. We had different groups of people working on different aspects of the development of the proposal at different times.

**Ms Leigh**—We had two groups of people working on the ART implementation. We had an implementation team which was looking at operational issues—that comprised four people. In addition, we had policy officers looking at the legislative development. There was a total of four people—although not necessarily full time at all points—working on that.

**Senator McKIERNAN**—How many are currently working on it?

**Ms Leigh**—Sorry, I should also add that there were senior officers then involved.

**Senator McKIERNAN**—How many are currently working on the project?

**Ms Leigh**—Currently, there would be the four implementation team people continuing to work on it. The amount of time spent by the policy officers varies. Three policy officers would have some involvement, but these would not be the only things they would be working on. Again, senior staff will get involved as appropriate.

**Senator McKIERNAN**—Would the senior staff be in a supervisory role, or would it be a like supervisory role?

**Ms Leigh**—It would depend on the issue.

**Senator McKIERNAN**—In regard to that matter I raised earlier from DIMA, it says ‘pursuing discussions’. Would that be where the senior officers could be involved? I do know if you were aware of what I quoted earlier from DIMA.

**Ms Leigh**—I have not seen it, but I did listen to what you were saying before. Yes, that would be an appropriate role for senior officers.

**Senator McKIERNAN**—What are the staff who are no longer working on the project doing—where have they been redeployed to?

**Ms Leigh**—As I indicated before, the policy staff would be those who are working to a lesser extent on the project at the moment. As I indicated, they were not always full-time on it anyway. So they are simply working on other matters in the division, according to priorities. We work quite flexibly in our division to move staff according to priorities. There were times during the ART work when people were fully engaged and other times when they were dealing with other divisional matters.

**Senator McKIERNAN**—I am aware that earlier in the year, probably around January, there was a major advertisement in the national newspapers calling for applicants to apply for ART positions. But we are into a different ball game when the appointment is for AAT positions. What was the process involved in the appointment or reappointment of AAT personnel?

**Ms Leigh**—All of the AAT members whose terms are expiring were asked if they were interested in being considered for reappointment. In addition, people who had applied for the ART and were suitable for consideration as AAT members were also asked if they would like to be considered for the AAT.

**Senator McKIERNAN**—That happened after the defeat of the bills in the Senate?

**Ms Leigh**—Yes.

**Senator McKIERNAN**—So all AAT persons whose terms were expiring were given the option of indicating whether or not they would be interested in serving another term on the AAT.

**Ms Leigh**—That is correct.

**Senator McKIERNAN**—Were there any advertisements calling for applicants for new positions?

**Ms Leigh**—No.

**Senator McKIERNAN**—How many positions were going to expire? Did they all expire at 30 June?

**Ms Leigh**—A large number did—about 63.

**Senator McKIERNAN**—Were there any other expiry times around that time?

**Ms Leigh**—I believe there might be one that expired shortly after that date.

**Senator McKIERNAN**—That is just for my information. Were advertisements undertaken to call for applicants for new positions, or is that still going to happen?

**Ms Leigh**—At this stage, there has been no advertising.

**Senator McKIERNAN**—You mentioned that people who had applied for the ART positions were also asked if they were interested in serving on the AAT.

**Ms Leigh**—Not all of them. First of all, consideration was given to those applications to see whether they would be suitable for the AAT. Then those who, on the face of their applications, appeared to be suitable were asked if they would like to be considered.

**Senator McKIERNAN**—Do you have an idea of when the new appointments or reappointments will be announced?

**Ms Leigh**—Very shortly, I understand.

**Senator McKIERNAN**—What was the interviewing process—if indeed there was one?

**Ms Leigh**—Yes, there was an interviewing process. There were two interview panels and they each comprised an officer of the department and an officer of the Attorney-General's office.

**Senator McKIERNAN**—So, a two-person panel in each case?

**Ms Leigh**—Yes.

**Senator McKIERNAN**—Where were the interviews conducted—were they nationwide?

**Ms Leigh**—Yes, they were.

**Senator McKIERNAN**—Who was the officer from the Attorney-General's office that was part of the interviewing panel?

**Ms Leigh**—There were two—one on each panel: Ms Phoebe Dunn and Ms Karen Moore.

**Senator McKIERNAN**—Thank you. On each of the occasions when interviews were conducted other than in Canberra, who attended the interviews? I do not need the name of the applicants for the positions—you would not give me them anyway, even if I asked.

**Ms Leigh**—You mean the panels?

**Senator McKIERNAN**—Yes.

**Ms Leigh**—The two members of the panel and a scribe who was assisting them.

**Senator McKIERNAN**—What was the expenditure on travel allowance for nights in which staff of the Attorney-General's office were required to stay away from Canberra due to their involvement in the interviewing process for AAT members?

**Ms Leigh**—I do not think that I have the detailed breakdown with me, so perhaps I would be better to take that on notice.

**Senator McKIERNAN**—During the course of the interview, were individuals questioned on their attitude to the concept of an ART, which, of course, there was some controversy about?

**Ms Leigh**—Questions were asked about the ART. I could take it on notice if you wanted more detail but, basically, the ART is a topical issue and questions about the ART would be a useful mechanism for asking people who are interested in being on tribunals about tribunal related issues.

**Senator McKIERNAN**—What is its relevance to AAT members in doing their job, adjudicating on administrative matters that are in dispute?

**Ms Leigh**—Could you just repeat that, please?

**Senator McKIERNAN**—What is the relevance of an applicant's attitude to the ART? I know it is a topical matter; it is also a political issue—with clear divisions between the

government, the opposition and other parties on the matter. However, in terms of being an AAT member, how is it applicable to whether or not they can adjudicate on a matter that is in administrative dispute?

**Mr Cornall**—It is not relevant to the adjudication of an individual dispute. The issue arose in this way: in making appointments from 1 July—and against the background of the government anticipating that the ART will at some point become a reality—we had to address the question about moving membership from the AAT to the ART without getting into problems affecting their tenure and so forth. So the question had to be addressed in that way.

**Senator McKIERNAN**—Thank you.

**Senator LUDWIG**—I have a question relating to the ART. As I understand it, when it was first mooted, one of the issues was the funding matter. There was a criticism—I do not know who from—that there was a shift from its own budget, and the budget for projected out years as well, to departmental funding. The criticism was that there would be undue influence in relation to the department. Whether that be right or wrong, that was one of the criticisms that was raised. As I understand it, Senator Carr has teased out part of that, but what has happened is that the ART has not been established and the AAT's funding is contingent upon the department's budget—in other words, the money will flow across—

**Mr Cornall**—Not for 2001-2002, only for the further years.

**Senator LUDWIG**—Yes. So in effect what you have set out is this: where that ART criticism is levelled, it can now be levelled in relation to the out years in relation to the AAT, where it no longer has its own budget for the out years. The department has set aside the money. In other words, the question is: how are you dealing with the perception of undue influence now in relation to those out years where it might be levelled that the AAT is now funded from within the department for those out years rather than having its own budget and then being distinct from the operation of the department? Of course, the further issue in relation to that is whether you have taken any legal advice in relation to that point. In effect—I am trying to make sure you understand where I am coming from—it could be said that it is in fact moving to an ART by stealth in relation to the funding issue.

**Mr Cornall**—That is certainly not the intention. This is a question of the appropriate accounting treatment of these matters. Not being an accountant, I am not qualified to comment on that, but it seems to me that, if the AAT is continuing beyond 30 June 2002, the same budgetary arrangements as existed this year will exist for the following year—in other words, it will have its budget allocation, as it has at the present time. The centralisation of funding within the department had nothing to do with issues affecting independence. It was to do with the financing of the ART when contributions were coming from several departments.

**Senator COONEY**—Returning to the theme I was on before, it does seem awful to have people on the AAT just waiting for their fate, as it were. There has to be some sense of decency, some sensitivity to having people just, as it were, swinging in the wind for the length of time that these people will have to. We are not all brutal, are we, in the Attorney-General's Department? I always used to think it was a place where there was kindness and generosity. This is hardly an example of it. Perhaps you had best not answer that.

**Senator CARR**—Before you go, can I just say this. I have been listening to this, Minister. These matters are all very interesting. How you can have courts without forward funding does trouble me a little. Does this have implications for the independence of the court if it does not have any money allocated and appropriated in its own right as distinct from being dependent

upon a government department? I am sure my colleagues would have addressed this issue in the past, but could you explain it to me.

**Senator Ellison**—I think we have here a situation where the AAT has been funded previously from the department in the same manner as is being proposed.

**Senator CARR**—I understood you to be saying that the money is dependent upon the department, that there is no separate appropriation, that it is to be allocated within departmental revenues, with no forward estimates. That is the impression I have.

**Mr Cornall**—It is not dependent on the department. It is where it is shown in the statements that is the issue. It is not just a question of us saying, ‘If we don’t give this money to the ART, we can spend it on something else.’ It is not that situation.

**Senator CARR**—So it is not discretionary in any way?

**Mr Cornall**—No.

**Ms Ransome**—My understanding is that the funding has been provided for the coming financial year. Should the ART not eventuate within that time, the correct appropriation for the following years and out will be provided to the AAT in accordance with normal practice.

**Senator CARR**—It seems to me to be very different from normal practice, because it does not have any forward estimates in the PBS.

**Mr Cornall**—No, but we are going back to the earlier explanation that the forward estimates beyond 2001-02 have been put into the departmental allocations—not as money that is discretionary for us to spend, but that is where they are presently placed—on the assumption that the ART will become an operating body by June next year. If that is not the case, as Ms Ransome says, I do not doubt that future funding will be provided to the AAT on the current year’s basis and on the historical basis.

**Mr Hine**—There is no legal authority to put the funding to the ART at this time because the legislation is yet to be passed, so therefore the funds have been appropriated or parked, if you like, within the department. In the event that the legislation is not passed, then the AAT continues. Those funds will then be allocated to the AAT, as Ms Ransome said, in accordance with normal processes. It is an administrative process. Because the ART does not have any legal status at this stage, as the legislation is yet to be passed, funds are set aside as part of the forward estimates process. They are clearly identified there as being funds held, if you like, by the department for the ART. As Ms Ransome indicated, if the legislation is not passed, then the funding for the AAT would continue in the normal manner.

**Senator COONEY**—But Senator Carr is right about the independence. This is an administrative body—I understand that—and it is not a judicial body. But, if you are going to make those distinctions, they become fairly fine in this situation where people have to hear matters which involve the government. You are telling the 62 and the 12, ‘Look, you might have a job and you might not. You might have a job in the short term and you might not. There might be another body and there might not. We think we have enough money, but perhaps we haven’t. We are going to tell you sooner or later whether you are appointed.’ It is not the sort of situation that would allow for that comfortable feeling that a decision maker ought to have when he or she is making a decision. If you compare it with the courts, there are two things that you traditionally give people on the courts: you give them security of tenure and you give them a pension, so they are not going to be tempted. You give them security so that they feel above it all. As Senator Carr said, the situation created here is one where you

could not say that in any way you have given the decision maker that comfortable feeling that would allow him or her to judge without fear or favour and to be seen to be judging without fear or favour. So I think Senator Carr is right.

**Mr Cornall**—This is not a court; it is an administrative tribunal. The people who are appointed to it will be term appointees and they will have security of appointment for the duration of that term.

**Senator COONEY**—That is what I said, that is how I started off—I said it was an administrative body. But it starts to become a fine distinction. If you go along with a tax case to the Federal Court you come out with a decision, and if you go along with a tax case the AAT you come out with a decision. I do not think it is right to say that you are going to get the same sort of result and you are going to be seen to be getting the same sort a result. Otherwise, why isn't the Federal Court appointed on the same basis as the AAT? The fact that it is an administrative body does not take away from it the quality of it being a decision making body, the same as the Federal Court is a decision making body. This is a political question not for you to answer, but we could get ourselves into all sorts of silly positions if we said, 'This is an administrative body and this is a judicial body, and therefore you can treat them differently.' If I am on the end of a decision on a workers comp case or a wrongful dismissal or anything else, I go to the Industrial Relations Commission. We all make distinctions these days but, in reality, we are looking at decision making bodies. That is how it ought to be looked at: whether they are making decisions, not the nature of their beginnings.

**Proceedings suspended from 11.09 a.m. to 11.21 a.m.**

**Australian Transaction Reports and Analysis Centre**

**CHAIR**—Before we begin with the Australian Law Reform Commission, we are going to take an answer from Ms Atkins from the Australian Transaction Reports and Analysis Centre in response to Senator Ludwig's question earlier.

**Ms Atkins**—To the extent that we can answer the question in detail, ASIC has online access to our information and it can make inquiries based on the details that it has in relation to the HIH matter. It is the same situation with the Taxation Office as well. We have had a series of talks with ASIC on what AUSTRAC could do in this matter, including using certain tools that we have. In a public forum we would prefer not to give the specifics of those tools, but we are quite happy to talk to the committee in camera about those at some later stage. The use of those mechanisms has been agreed to, but they are not in place yet. ASIC will need to provide information to AUSTRAC so that certain things can be done.

As to analysis by AUSTRAC, we are not running any specific automated analysis. We have not been asked by either ASIC or the ATO to do so. We are a small agency and the way AUSTRAC works—the way we find we get the best results—is in fact to have combined efforts with the relevant partner agencies. We are not running specific automated analysis, but we do have a watch on for any suspect transaction reports that come in in relation to any of the bodies or individuals that we know are involved in the HIH issues. ASIC, of course, has other lines of inquiry within the financial sector. We have not run anything for the ATO either. As far as I am aware, we have not been approached by the ATO, but they do have online access to our information and can analyse it themselves. In relation to whether or not ASIC or the ATO have in fact accessed that data, we could tell later on from our logs and from the reports that they have to give to us under our memorandum of understanding with them but at this stage I cannot provide that specific information.

**Senator LUDWIG**—What is a suspect transaction? For argument's sake, does an \$8 million mortgage show up?

**Ms Atkins**—Suspect transaction reports are defined in the act. It is in fact the cash dealer, the reporting agency, which makes a judgment as to whether something is suspect and reports it to us.

**Senator LUDWIG**—To put it neatly, you have not investigated and are not intending to investigate any transactions in relation to HIH. ASIC, the Australian Securities and Investments Commission, has not put any mechanisms in place at the moment but a series of talks have contemplated that. When were those series of talks commenced?

**Ms Atkins**—I am not sure when they were commenced, but they were certainly still going on as late as last week.

**Senator LUDWIG**—Were they commenced a month ago, two months ago?

**Ms Atkins**—I am sorry; I do not have that particular information.

**Senator LUDWIG**—Could you take that on notice?

**Ms Atkins**—Yes.

**Senator LUDWIG**—In relation to the ATO and ASIC online access, does that show up in a log or in data that you could then access to determine whether or not they have asked or accessed relevant people in relation to HIH about that information?

**Ms Atkins**—It should do, but we would not have that information until obviously after the event, and that would take us some time to get out of our systems, but I can take that on notice as well.

**Senator LUDWIG**—Thank you.

**CHAIR**—Thank you for assisting the committee in that way.

[11.25 a.m.]

#### **Australian Law Reform Commission**

**CHAIR**—I welcome Professor Weisbrot and Ms Adams from the Australian Law Reform Commission. I understand Senator Bolkus is beginning the questions.

**Senator BOLKUS**—Could I start off by asking what terms of reference you currently have on foot, and what their due completion dates are.

**Prof. Weisbrot**—One reference was completed just the other day, which is worth mentioning—the review of the Marine Insurance Act 1909. That report was tabled in parliament on budget night, so you may not have heard the publicity then.

**Senator BOLKUS**—No, we have seen some of that.

**Prof. Weisbrot**—We have three other projects that are ongoing. One is a review of the Commonwealth Judiciary Act. That is due for reporting by 30 June, and we will meet that deadline. Two other projects are the review of civil and administrative penalties in the federal regulatory system which is due for completion in March 2002, and the most recent reference is a joint reference to the Law Reform Commission and AHEC, the Australian Health Ethics Committee of the NHMRC, and that is due for reporting by 30 June next year—2002.

**Senator BOLKUS**—You call them reviews. Are they technically references as well?

**Prof. Weisbrot**—Yes.

**Senator BOLKUS**—Are you saying that those three references are all on track?

**Prof. Weisbrot**—Yes.

**Senator BOLKUS**—Having now completed one of three ongoing, is the commission stretched or do you have the capacity, for instance, to pick up another reference at the moment?

**Prof. Weisbrot**—Just at the very moment we are fairly stretched, but once we complete the Judiciary Act, and we are talking about just a few months, we could probably pick up another reference on the other side.

**Senator BOLKUS**—Could I refer you to some questions with respect to your position as chairman of the pro bono task force. Departmental officers might help us as well. Can you tell us how many times the task force has met?

**Prof. Weisbrot**—In a plenary session, we had a two-day weekend workshop in March. I have also met individually with members of a sort of New South Wales group a couple of times, a Victorian group once, and I have had meetings in South Australia and Perth with members there. One member from Queensland has been to one of the Sydney meetings. We have done a lot of the other work virtually by circulation of drafts and so on over the Internet and comments coming back concerning it.

**Senator BOLKUS**—So there has been one actual meeting, but you have had discussions in separate states.

**Prof. Weisbrot**—One full planning meeting. There are 17 members of the task force.

**Senator BOLKUS**—Could we get a list of the names of the members of the task force?

**Prof. Weisbrot**—Yes. Do you want that now? I could certainly supply it later in the day.

**Senator BOLKUS**—If we could get it now that would be great. Has anyone from the department got it?

**Prof. Weisbrot**—I have it on disk because it is something I am working on; so, if we could have the facility to do that, we can give it to you a little bit later.

**Senator BOLKUS**—Do you produce minutes of your meetings?

**Prof. Weisbrot**—I produce them for internal use, for the working use of our committee.

**Senator BOLKUS**—Could we get a copy of those minutes?

**Prof. Weisbrot**—I do not think there is any reason not to. They are essentially working documents for the committee to prepare the report. We are not at the stage of delivering the report yet, although we will be shortly.

**Senator Ellison**—There is no great secrecy, Senator Bolkus. It is not normal to provide that.

**Senator BOLKUS**—What is and what is not normal in this process, Minister?

**Senator Ellison**—As you know very well, working documents are not normally included in this sort of thing. For future precedence, it might be undesirable that the Australian Law Reform Commission has to divulge every note it takes and deliberation it makes in coming to generating a report. The report is made and that is public; that is all very well. Regarding the workings of it, it might be in the best interests of public policy that they have that ability to do that without having it all exposed.

**Senator BOLKUS**—I think there are probably two points here. I have been involved in committees in the past when some of your colleagues have been very keen to get documentation. Firstly, they have been able to get it and, secondly, it was probably all FOIable, anyway.

**Senator Ellison**—If it is FOIable, it is certainly something which is able to be released in the public domain, and I will leave it to the professor.

**Senator BOLKUS**—But the first point is that we have actually asked for similar documents in the past, generated by your side of the House, and they have been delivered—and not all that long ago. I do not know that there is a real problem. I do not know if you want to press it.

**Senator Ellison**—I will leave it to the professor.

**Prof. Weisbrot**—There are two versions that I have prepared. One is for my own use which has names attached to particular comments. There is another one which is ‘anonymised’—if that is a word—except for my own comments. That is what was circulated to the committee and the task force at large. That was because I did not go back and check every word with the people who had spoken. I would certainly feel more comfortable about giving you the ones that gave you the tenor of the meeting without attribution.

**Senator BOLKUS**—That is probably good enough at this stage. Has the task force prepared any reports or made any recommendations to the Attorney-General?

**Prof. Weisbrot**—No; it will. Our report is due by 30 June. I have had some discussions with the Attorney’s office about likely directions. I am working on a draft which I hope to complete this week and then it will be circulated to the members of the task force. Whether we will have another plenary session or whether it will be approved by the email voices, we are not certain at this time.

**Senator BOLKUS**—Can you give us an idea of what the total cost of the exercise has been—firstly, the cost of convening meetings?

**Prof. Weisbrot**—The budget we were given to support the workings of the committee was \$50,000. We have spent nowhere near that. I am a fairly frugal committee chair. At the moment, as at 30 April, we are reporting expenditure of \$3,678.

**Senator BOLKUS**—And that includes sitting fees and travel allowance? Are there sitting fees?

**Prof. Weisbrot**—No, there are no sitting fees and there is no travel allowance. We did pick up the airfares and the hotel bills for people coming out of state for the plenary session in Sydney.

**Senator BOLKUS**—There is supposed to be new funding of \$259,000 per year for the pro bono secretariat purchase. Can you tell us what that will provide? Will there be full-time staff? Will there be part-time staff? Will there be other costs?

**Prof. Weisbrot**—I think the Attorney sought essentially ambit claim funding to support the recommendations of the task force. We are still developing the proposal to the Attorney. I am reluctant to come into it at this time because it has not been finalised and it has not been cleared with other members of the task force. But it is essentially to provide a coordinating role for national pro bono activity to tender out some research projects—for example, the ascertainment of client needs in the pro bono area, to provide a billboard and web site for information sharing. These are the sorts of basic comments that came up at the national

conference in August last year from about the 400 or 500 people who attended—that there was a need for those various things.

**Senator BOLKUS**—So you would agree with that prioritisation—the need for further research and a web site? Is that the sort of direction you would advocate?

**Prof. Weisbrot**—Yes.

**Senator BOLKUS**—You said some of that \$259,000 would be for coordination and some would be for research consultation. Have you got any idea of what sort of break-up we can expect?

**Prof. Weisbrot**—No. I was not a party to the development of any budget figures; we simply gave an indication to the Attorney of where we were heading, and that was an appropriation in the budget. If the task force proceeded to recommend some sort of secretariat, then our recommendations, I guess, would give a list of tasks and so on. But it would also be a matter for that body to help set its own priorities.

**Senator BOLKUS**—Would you like to see a secretariat? Do you think that is a critical aspect of moving forward?

**Prof. Weisbrot**—A secretariat as such—we have been trying to avoid that word within the task force. One of our working assumptions is that we would like to see the resource devoted to front-line delivery of pro bono services and not eaten up with bureaucracy. So we have been trying to push as much of the resource into direct delivery and assistance as possible. But there is certainly a national calling for some sort of coordination. So we have been experimenting with different forms of a centre that might be affiliated with a university or a law foundation, something along those lines, where infrastructure and other resources would be provided and you would not be eating up the funds in rental and computer systems.

**Senator BOLKUS**—So you would essentially contract out the service to an existing law school research capacity.

**Prof. Weisbrot**—You are looking at issues of affiliation, so you would have a centre that might be affiliated, and cross-subsidise in that way.

**Senator BOLKUS**—You said you were allocated \$50,000 for this financial year but only spent \$3,600 or thereabouts. Do you have any anticipated budget for the rest of this financial year?

**Prof. Weisbrot**—We will be reporting by 30 June, and we would be wrapping up at that time, so under the terms of the grant any funds that are not spent would return back to the department, as I understand it.

**Senator BOLKUS**—So much of that \$50,000 would probably be rolled over into the \$259,000?

**Prof. Weisbrot**—I would hope that would be the case.

**Senator BOLKUS**—Where do you start researching this field? You said that a research study would be quite useful, but what sort of priorities, which regions would you look at—country, city?

**Prof. Weisbrot**—Those are the things that we have been discussing. The test was—and it is a very broad based test—that we had representatives of most states and a wide variety of sectors and we have had the benefit of the conference and papers that were presented there and further discussion within the task force itself. For example, a client needs proposal was

developed further by Jill Anderson, who is a member of ACOSS, and Mark Herron, who is the head of the Victorian Law Foundation. They have also got a research base and broad experience in that area.

**Senator BOLKUS**—You said there were representatives of almost every state. Which state missed out?

**Prof. Weisbrot**—I hope I am not wrong. I do not think there is a member from Tasmania. I hope I am not doing someone an injustice.

**Senator BOLKUS**—Or a justice. I just have one or two final questions. Would you be making recommendations as to the direction of such a research study to the minister before June, or is that part of your—

**Prof. Weisbrot**—Again, the task force is developing those. We have got some ideas that have not been given a final sign off by the full task force. It is difficult for me to say.

**Senator BOLKUS**—Is that really the last outstanding function you have got: to develop directions for a research study? What else do you anticipate having to finalise in the next few weeks?

**Prof. Weisbrot**—It is just refining and signing off the actual report to the Attorney, which contains an action plan. We have got some general discussion about needs and philosophy, then we have got an action plan for implementation, and we are polishing up all of those. As I said, I hope to get those to the remaining members of the task force later this week. Once all members have signed off on that, we will be presenting that to the Attorney-General.

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

**Senator LUDWIG**—In relation to the judicial college, in your new *Reform*, the journal of national and international law reform—and, as an aside, I congratulate you on your new logo—it states ‘a working group consisting of judicial officers from the Commonwealth and state courts’, and it goes on from there. Is that a matter that you are now involved in or is that a matter that is now in the departmental area?

**Prof. Weisbrot**—As I understand it, it is a project of SCAG and that the committee is advising SCAG on the development.

**Senator LUDWIG**—So you have no further involvement in relation to that project?

**Prof. Weisbrot**—No.

**Senator COONEY**—To follow on from what Senator Bolkus was asking—this work you are doing on pro bono work—does that include the community legal centres and the whole gamut or just what you might call strict pro bono organisations?

**Prof. Weisbrot**—Our conception does not directly include the direct provision of legal aid or other work by community legal centres, so it is really that work by other practitioners that supplements that. I will not say that it is limited to private practitioners, however, because there are crown law officers, corporate lawyers and others who provide a significant amount of pro bono to the extent that there is no conflict of interest in their doing so—the proper meaning of pro bono.

**Senator COONEY**—It just seems to me that this area of what might be generally called ‘legal assistance’ is fragmented. If you look at the portfolio statements, we might have a pro bono secretariat that, as it were, takes off another part of legal assistance and gives it a

discrete area of its own. The question is whether that will be a good thing. Will you set this out in a discussion paper?

**Prof. Weisbrot**—It is advice to the Attorney following on from the conference last year.

**Senator COONEY**—I just notice that the Victorian Bar has set up a pro bono scheme. Have you taken them on board?

**Prof. Weisbrot**—Yes—in fact, a number of the groups you mentioned earlier. The Victorian PILCH is represented on the task force by Samantha Burchell. The Victorian Bar is represented on the task force by Alexander Richards QC. In fact, your earlier question, Senator Cooney, in which you mentioned five or six different initiatives in Victoria, probably is also part of the rationale behind the need for some sort of centralising, coordinating body. There are dozens and dozens of initiatives nationally. They mainly do not know what each other is doing and they have not learned the positive and negative lessons. So the view is that this would be a sensible thing. On our committee we also have Andrea Durback, who is the Director of PIAC in the New South Wales PILCH. Those sorts of groups are very much in favour of the general direction the task force is seeing. They do not see it as derogating from the provision of other forms of pro bono assistance or indeed other legal assistance generally.

**Senator COONEY**—It is a good thing to have pro bono, as it were, brought into a sensible situation. What I mean by that is one where each element knows what the other is doing so they can provide that work and then perhaps look at that body's relationship with community legal centres and Legal Aid, et cetera.

**Prof. Weisbrot**—Among the things we have been looking at are the partnering and twinning arrangements, for example, with large law firms and community legal centres. So part of the idea behind pro bono is also to assist those direct front-line providers with assistance they might not otherwise be able to gain.

**Senator COONEY**—I will turn to another matter. You are saying that you are doing a matter on penalties—and I think in fact that you are having a conference from Thursday, 7 June to Saturday, 9 June. Can I be a bit ungracious about how you have gone about that, Professor. I should say that the Scrutiny of Bills Committee has produced a definitive report on this. I do not know whether you have read that.

**CHAIR**—That is your committee, isn't it, Senator Cooney?

**Senator COONEY**—Of the Senate.

**CHAIR**—Yes—just to make the point.

**Senator COONEY**—This conference is on penalties of policy principles and practices in government regulation. You have some very learned speakers, but you have not got one parliamentarian amongst your presenters. Indeed, the only parliamentarian there, appearing as a parliamentarian, is Senator Marise Payne, Senator for New South Wales. I do not know anybody better than Senator Marise Payne, an outstanding parliamentarian, but she only gets a chair—she only sits there. She does not contribute the vast knowledge and wisdom she has. I was just wondering why she should be a chair and why she is not giving all these people the joy and goodness of her wisdom.

**Prof. Weisbrot**—That is a difficult question for me to answer. We tried to construct a program in which we were providing advice. As you can see from the program, we are taking a thematic approach. So we are not looking at individual agencies or taking one area at the time—customs or environment—but trying to look at common themes that cut across those

things. In that, we have an organising committee that has looked to present a mix of local and international speakers and to have a mix of people from regulators and the regulated community. We have tended not to utilise members of parliament extensively for a number of reasons: they have other forums to deliver their reviews and reports and this is an opportunity for people that are not so often heard from in these sorts of public forums. We did not use members of parliament much or at all in the previous ‘Managing justice’ conference and that did not seem to attract any criticism at that time.

**Senator COONEY**—I notice, when you say that you have picked people who have not got an opportunity for a public profile, a Professor Allan Fels here. I have seen him somewhere, I am sure.

**Prof. Weisbrot**—He is a commentator on someone else’s major address.

**Senator COONEY**—How Senator Payne did not even get to be a commentator! I just want to make the point that there often seems to be an approach to conferences that deal with administrative law, penalties and so on where, if you have a conference, you do not have anybody from the parliament. That seems to me to be the result of where trying to bring justice to the world is compartmentalised so that the politicians pass the law and the judges do something about it but never the twain shall meet. Have you ever thought about that—that there ought to be more symmetry between the parliament and the judicial arm?

**Prof. Weisbrot**—There are process issues for us, in that the conference is a part of our research and consultation program for the reference into civil and administrative penalties, the result of which is a report that is then tabled in parliament. It is common at that time that it may well be referred to a parliamentary committee in which there is the sort of discussion and debate that you referred to. So it is really a question of knowing at which stage to insert different members of the process.

**Senator COONEY**—I follow that. I just thought it might be helpful to have a meeting of the minds before that. I notice that the session that Senator Payne is chairing mentions an Adolf Berle. Is he the fellow who wrote the book on corporations in 1933—on corporations and private property? It would not be the same one, would it?

**Prof. Weisbrot**—That is a named chair—the ‘Adolf Berle Chair’. It is currently held by Professor Jack Coffee.

**Senator COONEY**—I see.

**Prof. Weisbrot**—Professor Berle has since passed on.

**Senator COONEY**—And then Joseph Longo, who is from ASIC, and now at Freehills.

**Prof. Weisbrot**—Formerly of ASIC.

**Senator COONEY**—That is the point I want to make. I am glad that you did at least ask Senator Payne along.

**Prof. Weisbrot**—I do take your point, Senator Cooney, and at a future conference of the organisation we will take those matters on board.

**Senator COONEY**—Thanks very much.

**CHAIR**—As there are no further questions of the Australian Law Reform Commission, Professor Weisbrot and Ms Adams, we thank you very much for your time this morning.

[11.51 a.m.]

### **National Native Title Tribunal**

**CHAIR**—I welcome the officers from the National Native Title Tribunal—in particular, Mr Doepel. I think it has been some time since you appeared before estimates, and it is a good opportunity to meet with you today. Senator Bolkus is beginning with questions in this area.

**Senator BOLKUS**—It is just like the old times. Mr Doepel, the tribunal has received an increase in funding of about \$36 million over four years in this year's budget. Was the tribunal involved in coming up with that figure? Were you involved in consultations in determining how much initial funding was required?

**Mr Doepel**—We were. We were involved in discussions with the Attorney-General's Department, the Federal Court and ATSIC in the latter half of last year.

**Senator BOLKUS**—Is there some formula that links this funding to workload, to the number of cases?

**Mr Doepel**—Yes, there is. In our case, we have used a direct formula that is based on projections of activities. My colleague Mr Chevis would be able to address that. It has been based on extensive activity based costing, projecting into the out years what we believe might be the likely scenario, but also taking a pinch of realism there, in that, because we do have a fairly changeable external operating environment, things can come on and things can go off, and we have to try to draw a line through what might be a likely sequence of workload.

**Senator BOLKUS**—Mr Chevis, can you explain the formula to us, or is it best to give it to us in writing?

**Mr Chevis**—I could explain it briefly, but we could also provide it in writing. The activity based costing model is a model whereby we have attributed costs to activities. In our case we have identified 29 activities, and they build to the 11 outputs which are in the PBS. The method whereby we have allocated those costs to the activities is through an exercise we completed last year where we looked at the actual costs of carrying out activities and worked out our unit cost based on the level of activity that had been occurring. With those unit costs and projections of the likely activity in future years, it is possible to build budgets for those out years.

**Senator BOLKUS**—Could you supplement that by giving us details as to figures, X and Y and so on? We would like to see the formula, in other words.

**Mr Chevis**—Yes. Okay.

**Senator BOLKUS**—That would be great. Could you advise the committee how legislative or executive changes in the states have actually led to a different level of workload from each state and territory?

**Mr Doepel**—Yes. The answers are fairly straightforward. For example, in the Northern Territory, there is a clear example of where the Territory government made a decision at government level in about March or April last year to use the federal scheme for the processing of applications for mining and exploration tenements. There were some 800 or 900 of those tenements backed up. The Territory government began to issue those from September last year and they have had the consequential effect—and this is a very good example—of increasing workload for us. Just to give you something concrete, from September 1998 to November last year, the rate of claimant applications in the Northern Territory was one per month. In response, with 279 notices issued under the expedited procedures and, with another

27 under the right to negotiate that the Territory government has issued since late last year, there has been a marked increase in claimant application rates, at the rate of eight per month. We have now a steadily rising workload in the Northern Territory, both on the claims application side and on the future act side that we need to deal with, and we have had to allocate resources and staff-up and provide member allocations accordingly.

**Senator BOLKUS**—I will get to some of those details in a minute. That was for the Northern Territory. What about any other state?

**Mr Doepel**—Queensland, I think, is another good example. The Queensland Land and Resource Tribunal began operations on 18 September 2000. That tribunal has jurisdiction for all future act matters in relation to the grant of tenements other than those for petroleum exploration. There have been some 1,400—we hear various figures being quoted—exploration and mining tenements warehoused in that state. The state has not gone through those to any great degree but has put 170 new ones through the system, and they are also now generating work. Even though we do not pick that up on the future act side, in response to the various notices by the Queensland government, for example, we have had 10 claim applications since late last year, and the number continues to rise.

**Senator BOLKUS**—So they are two states where there has been an increase in the workload.

**Mr Doepel**—A clear increase in the workload in relation to the issue of mining and exploration notices—which goes two ways through the statutory system. It generates the processes in relation to the right to negotiate or to expedite the procedure. Claimants do two things in response: they lodge an objection on the future act side about the exploration and, invariably, if they want to maintain the right to negotiate they also lodge—if they do not have a claim in already—a claim for determination of native title. So it generates two streams of work for the organisation.

**Senator BOLKUS**—My next question was going to be about the Northern Territory and Queensland. Is there any other state where there has been an increase or a decrease?

**Mr Doepel**—In Western Australia, there has been a return to some mediation. We are waiting to see the outcomes of some working groups that the Western Australian government has established since taking office earlier this year. They have put together two working groups: one is to review mediation practice on the state's part as a major party in proceedings and the second is to look at other approaches to dealing with the issue of exploration and mining tenements. Depending on the outcomes of those working groups, work could increase dramatically in some areas in WA or it could even decrease. For example, if the Western Australian government were to come out with a process that many of the traditional owners and the mining industry were to accept for frameworks of regional agreements, that might divert a lot of work that would otherwise have to go through the future act processes.

**Senator BOLKUS**—Has there been any state in which there has been a decrease in the level of work?

**Mr Chevis**—For the tribunal, I would probably say no. In addition to the work that Mr Doepel has mentioned, we have been involved in notifying many applications this year, which has meant work for the tribunal which will eventually flow on to other agencies. Perhaps of any state, New South Wales would be the only one where there has been no actual increase in external work for the tribunal.

**Senator BOLKUS**—You may want to take this on notice—I am pretty sure you will: can you provide us with a statement on the formal table 2.1.1 on page 183—a budget estimate is shown on page 182 for each of the out years to 2004-05—broken down by output subgroups and, to the extent that you can do this, broken down by state or territory as well?

**Mr Doepel**—We can do that as a companion document to the activity based costing methodology—they would sit well together.

**Senator BOLKUS**—Can you tell us when registrations are expected to peak?

**Mr Doepel**—It may assist the committee if I hand up, with the chair's permission, a chart that outlines a number of things that are going on in our area generally. I can perhaps address your question to some extent by looking at that.

**Senator BOLKUS**—I am concerned about registrations, agreement making, arbitration, and assistance, notification and reporting.

**Mr Doepel**—Let me tell you about what you have in front of you. This is effectively looking at claimant applications. The shaded background area is the shifting number of active applications. They are the applications that we in the court acknowledge that we have on our books. You can see the peak going back to 1998-99, around the time of the amendments, when we had some 700-odd applications on the books, including 678 that had to be registration tested. If you have a look under that, you will see the registration test—the green line—starting there effectively in—

**Senator BOLKUS**—The last quarter of 1998.

**Mr Doepel**—Yes, 1998-99.

**Senator COONEY**—I cannot follow this.

**Mr Doepel**—The dates are by quarters and years, down on the bottom axis. You can see, going up to the present time, the trend in registration testing. We had to deal with 678 matters that were on the books as of 30 September 1998—put them back through the system, as you will recall.

**Senator COONEY**—Sorry, how do you get 1998-99?

**Mr Doepel**—If you look along the bottom axis, you will see that it is done by year and it is broken into quarters—quarter 1, quarter 2, quarter 3 and quarter 4.

**Senator COONEY**—But then you get 1,005.

**Mr Doepel**—Sorry, where are you?

**CHAIR**—No, I think it says '1995'.

**Mr Doepel**—It is '1995'. It starts back in quarter 1, 1994.

**Senator COONEY**—I see—it looks like a zero.

**Mr Doepel**—It is a 9—sorry. It tracks the years through to the present time. What you see there is a peak of registration test activity, which is essentially around the old caseload, going through the latter part of 1999 and well into 2000. Then it starts to flatten out around quarter 3 and quarter 4 in 2000 and starts to pick up again this year. It picks up again this year in part due to the increase in workload coming out of the Northern Territory and also the fact that we are continuing to receive new claims throughout the country. So in answer to your question, when will it peak, the trend there will be a continuing, gradual heightening of the continuation of registration activity over the next couple of years.

**Senator BOLKUS**—You cannot project after that?

**Mr Doepel**—We can project after that.

**Mr Chevis**—As part of that—the exercise where we looked at work in the out years—we have done a projection of the number of registration tests out to 2004-05.

**Mr Doepel**—We will show that in the papers we provide you, Senator.

**Senator BOLKUS**—Okay. What about agreement making?

**Mr Doepel**—There are a couple of things, conditions, precedent to agreement making, of course. Again this chart does have some use. It shows you—on the red or brown line—the trend line in relation to notifications. Once I have dealt with them under the registration test, I then have to notify the claims. There is a three-month period in which people come back to the Federal Court to notify whether or not they wish to become a party and then the court formally refers them back to us in mediation. You will see the blue line there gradually coming up. We have a situation where about half the current matters are formally back with us in mediation. I think something like 277 out of 584 are formally back with us in mediation and, as the court settles those lists, the number of formal mediations increases. We have projected too the likely levels of agreement making, having taken into account that gradual shift through the notifications where all notifications will be completed except for new claims coming on board. We can also provide those details.

In summary, when we look from 1998 to the present day, we can divide activity into two or three phases—1998-1999 was essentially our registration period when we and also other external parties, particularly the representative bodies and native title claimant group holders, were largely concerned with renegotiating the registration test. We get into 2000 and we start to pick up notification, because we then had to go back to notify most of these claims again. In mid-2000 the Federal Court starts to come in, picks up those notifications, settles the party lists and starts referring them back out to mediation. So we are on the threshold of a fourth phase in the implementation of the 1998 amendments where we are coming back to periods of high levels of mediation under the supervision of the court.

**Senator BOLKUS**—So you can come back to us with—

**Mr Doepel**—Yes, we can come back to you with those details.

**Senator BOLKUS**—arbitration as well; and assistance, notification and reporting?

**Mr Doepel**—Yes.

**Senator BOLKUS**—Looking at table 2.3.1, Performance information for outcome 1, on pages 186 and 187, can you tell us how the tribunal is meeting the performance measures in each output group? I would like you to go through each one, but perhaps it might be easier for you and better for us that you take it on notice. Could you do that now?

**Mr Doepel**—I will see if I can do it now for you. These are the projections for the coming financial year. Do you want me to go through the current year?

**Senator BOLKUS**—What if you go through the current year and take the out years on notice.

**Mr Doepel**—That might be difficult to do. I will attempt to go through the current year.

**Senator BOLKUS**—Actually, it might just be best to go through the current year.

**Mr Doepel**—I use as the source of the figures the Portfolio Additional Estimates Statements 2000-01 from late last year. For Output 1.1.1: Claimant applications, we expected to make 255 registration test decisions; we are looking at a revised target of 150. For Output 1.1.2: Native title determinations, we expected to register 26 native title determinations of this year; we are looking at a revised target of 18. For Output 1.1.3: Indigenous land use agreements, we expected to deal with up to 90 lodged for registration; our revised target is 44. For Output group 1.2: Agreement-making, Output 1.2.1: Indigenous land use and access, we expected to assist in the negotiation of 38 agreements; our revised target is 40. For Output 1.2.2: Claimant, non-claimant and compensation, we expected mediating and assisting in 110 agreements; our revised target is 75. For Output 1.2.3: Future act, we expected 87 mediations; for the year we will end up with 60. For Output group 1.3: Arbitration, Output 1.3.1: Future act determinations, we expected 11; we are so far anticipating 6. For Output 1.3.2: Objections to the expedited procedure, we expected 950; so far we are up to 700 and we believe that the outcome will be roughly of that order. For Output group 1.4: Assistance, notification and reporting, Output 1.4.1: Assistance to applicants and other persons—here we record events and those events are contacts, telephone and other, recorded by our staff—we expected something like 10,090 events; we are heading to approximately 11,800 events for the year. For Output 1.4.2: Notification, we had expected 379; at the end of the year we may have done 214 or more. For Output 1.4.2: Notification, there has been a marked jump in what was originally estimated for notification letters for reasons that I can explain. We thought that we would need to notify 27,689 individual interest holders; we estimate that we will need to notify close to 58,000 people and deal with them in their inquiries. That is a very sharp increase.

**Senator BOLKUS**—What has led to that, Mr Doepel?

**Mr Doepel**—A couple of things. One was South Australia. We had to eventually notify in South Australia, as you recall, late last year, even though the South Australian parliament had not dealt with the state's validation legislation. I am under no specific statutory obligation as to timing of notification once matters come out of the registration test, but I have to proceed to do it within a reasonable time. We did put those through. Some of those claims had up to 13,000 letters going out to individuals. This is multiparty on a grand scale. In the event, several weeks later the South Australian parliament did pass this validation legislation and we had to work with the South Australian government and go back and identify those people and assist in making sure that they were not confused about whether they were caught up in the tribunal process or not.

We continually search registers, as you would appreciate, under the statutory powers of the registrar to carry out notification and we keep turning up extensive interests right around the country. One of the larger sets of interests that we have uncovered in recent times is fisheries licences. They too have been far greater than expected. When it comes to making notification, there is a core of interest holders that I must notify and then there is a discretion, which has been elaborated on by Justice French in the *Bropho* matter that was handed down early last year. We tend, where we can, to notify all those licence and other interest holders whom we can get off these registers. For a combination of reasons, and in particular those two, we have had a much larger than anticipated workload flowing out of notification.

**Senator BOLKUS**—When you mention fishing interests, is that across the nation or is it in some regions more than others?

**Mr Chevis**—It is across the nation.

**Mr Doepel**—The final item, for completeness, concerns reports to the Federal Court. We contemplated in the additional estimates papers late last year 985; we expect 750 or more. Several of the output groups, in percentage terms, are down; several are up. The difficulty we have in predicting with precision outputs is that—I have to be frank—the tribunal has not had a normal year yet to benchmark its work flows through, as you would appreciate, with the implementation post-98 of the legislation.

**Senator BOLKUS**—You probably will not get one, either.

**Mr Doepel**—The president and I muse over this: we do not think we are ever going to see one. We have had to be fairly flexible, in our view. We face the same basic methodological difficulty in trying to give a decent, reliable projection into the future. However, if we simply lined up all the contingencies, we would never be able to plan in our business. So we have to come down somewhere and declare what we think might happen.

**Senator BOLKUS**—Thank you very much. We look forward to further answers on notice. I turn to the Northern Territory. I think it was to the joint standing committee on native title that you also referred to increased workload costs of the Northern Territory. I think at that stage you said it was \$700,000 in 1999-2000 and \$2.6 million in 2000-01. I think you have repeated today that much of this is because of the publishing of section 29 notices in the Territory. Is that still 16 to 20 per fortnight?

**Mr Doepel**—Yes, that is the publication rate. It goes up and down: 16 would be the average, Senator.

**Senator BOLKUS**—Are they published in any coordinated way? Are they grouped into particular formats such as similar areas or same native title claimants or whatever, or are they just haphazard?

**Mr Chevis**—There is some order to the process. The Northern Territory government has indicated publicly where the backlog of tenement applications is located. Certainly the representative bodies do have some understanding as to where the applications will be made. But the actual order in which the tenement applications are then advertised is not necessarily grouped, but it is in some sort of other priority order that is determined by the Northern Territory government. What at least one of the representative bodies is doing is lodging a claimant application which not only covers the immediate tenement that has been advertised but anticipates that the other tenements adjacent to it will be advertised some time in the future. So they are seeking to manage in an orderly fashion to some degree.

**Senator BOLKUS**—I suppose this question goes both to here and to Western Australia, which I will get to in a second. From your experience, do you have any suggestions that you are able to discuss with the Northern Territory government? Is there a process to raise suggestions with them as to how to issue notices and which areas and so on?

**Mr Doepel**—We are in constant discussion with Territory officials, but ultimately it is their prerogative under their government's directions to have the sequencing that they will adopt. While we do convey some views about the overall management of the notice issue, the pattern has been as Mr Chevis has described. It is not clustered and it does lead to, I think, quite a bit of work on people's part to respond to that pattern of issue. I might add, though, that the rate of issue in the Northern Territory of roughly 16 a fortnight is appreciably far less than the rate of issue that we had several years ago in Western Australia where we had up to 200 at a time being issued every fortnight. So there are some interesting comparisons of scale.

**Senator BOLKUS**—In terms of clustering to do it better, how would you cluster?

**Mr Doepel**—I hesitate to speak on behalf of Territory officials, but if you were looking at the overall map, as Mr Chevis has just described, we have got 800 backed up tenement applications. You could possibly divide the Territory up into a grid and you would have this group up here and that group next to it, and then the group adjoining. What happened, particularly in the first issues, was that you had some at the top, some at the bottom and some in the middle. Some of these licences I think are over very small areas—they are what is called in the game ‘polygons’, simply the tenement area that the explorer or miner wishes to deal with—and they appear in many instances as small geometrical patches on the map. In the case of one of the land councils, they have decided, ‘Well, we will anticipate future issues and we will broaden up the claim area so you do not have to claim again when another polygon is put out on notice within the vicinity.’

**Senator BOLKUS**—So clustering by area is probably—

**Mr Doepel**—It is one way of dealing with it, yes.

**Senator BOLKUS**—Does that lead us to the problems that the community land council had with the Relinkin claim, which I think was dropped by the Federal Court? You are obviously feeling the need for extra resources, and you are getting them, but we have always anticipated that land councils would also have an enormous need for extra resources to process these claims. They requested a third adjournment, and so requested because of the lack of funding, lack of resources, but it was knocked back. Have you contemplated what that means, and whether you could talk to the Federal Court about somehow coordinating their activities as well?

**Mr Doepel**—The concept of interdependence of parts of the native title system has been a matter that has been discussed by the key agencies for some time. In fact, our president in the prelude to the annual report last year actually puts this concept out in black and white. We have a range of liaison mechanisms with the court, including the president periodically taking part in the native title coordination committee of the judges where these overall pressures on the system—on everybody in the system—are discussed. I certainly discuss it with my colleagues, Mr Soden and other officials, and Mr Chevis and others are dealing with the program administrative officers. At the end of the day, I think that the court is probably the better place to speak about this. We are looking at overall coordination in a strategic sense and the exercise of individual judges and, in our case, members’ discretion to manage their lists as they consider appropriate and looking at the merits of the case. We are aware of these problems, and it is a matter of general discussion amongst the institutions as to what the implications are for refusing to vacate dates or, in our case, insisting that mediations continue according to the program.

**Senator BOLKUS**—You can see the problem. If there is an influx of cases in one council area and they have got to run those cases—

**Mr Doepel**—I think that is a fair point. We have not disguised our comments in the past, that you would meet three or four matters in formal litigation before the court where mediation has had to cease for some reason, and that would effectively take a council out of a whole range of other native title activities. I think that is certainly a fair point.

**Senator BOLKUS**—Okay. We will get to the Federal Court when they come before us. Just one last question: with respect to the increase of \$1.9 million in 2000-01, do you anticipate that that will be an ongoing increase? Will that be factored into your ongoing income?

**Mr Doepel**—Where did the \$1.9 million come from?

**Senator BOLKUS**—From the 2000-01 financial year.

**Mr Doepel**—I am not quite sure that I am following you. Can you take me to a page reference?

**Senator BOLKUS**—I must admit that, looking back at this question, I think we will move on.

**Mr Doepel**—Okay.

**Senator McKIERNAN**—In one of your answers to Senator Bolkus, you mentioned the rate of applications in Western Australia a couple of years ago. Does that situation that occurred then in Western Australia correlate to, or is it matched by, what is happening in the Northern Territory now?

**Mr Doepel**—I was talking there about the rate of the Western Australian state government's issue of mining and exploration tenements. A few years ago that was a very high rate of issue—some 200 a fortnight. I was just using that as an example of proportionality. You have 16 to 20 being issued by the Territory government, and yet in Western Australia four or five years ago we had 200 a fortnight being issued. So I was just looking at the overall magnitude of difference between the two jurisdictions.

**Senator McKIERNAN**—Is what is happening in the Territory at the moment unique to the experience of the tribunal to date?

**Mr Doepel**—Where states have deferred the use of future act processes, we have had this late kick-in of work. Queensland and the Northern Territory are two clear examples of that. In the early days, before my time, Western Australia was warehousing for a while, but then made a commitment back in the mid-nineties to start using the federal system. So you have this more natural rate of future act processing and the more natural rate of flow-through of claimant applications. When you go to Queensland and the Northern Territory and you find in one jurisdiction some 800 backed-up matters and in another one some 1,400—or whatever the figure is—then that is a delayed entry of these matters into the system which, in turn, on the one hand generates future act work—resolution of determinations, arbitration and mediation if necessary—and on the other hand generates claimant applications. There is an interesting divergence here: in the Territory we are getting a fairly high rate, as I said, of claimant application lodgment in response to this latest batch of notice issuing; in Queensland we have more applications but the rate is not as high. Bear in mind that Queensland has had an history since the mid-nineties of progressive application right around the state. So, many of these backed-up licences, and the new ones, are actually going out onto ground where there is already a registered claim for determination of native title. So we do not have to go back through and registration test—that has already been done; we did that in the past.

**Senator McKIERNAN**—One of the reasons that we do not see you too often at estimates committees is that your head office is in Perth. Despite what Senator Cooney says, it is the greatest city in the Commonwealth.

**CHAIR**—I think the minister is in agreement with you.

**Senator McKIERNAN**—I expected the minister to be.

**Senator Ellison**—It is one thing that we do agree on!

**Senator McKIERNAN**—How is that working out? It is somewhat unique to have a head office of a tribunal such as yours located so distant from freezing Canberra. Is it working in practical terms?

**Mr Doepel**—It does work in practice. The reasons for it are largely historical. The bulk of the claims in the early days and the future act work were in Western Australia. Our first permanently appointed president was a judge of the Federal Court in Western Australia. So the critical mass of people was largest in that state. Since then, other states have grown—for example, Queensland, is an administrative operation that is not quite the same size as Western Australia but it is a fairly sizeable one, and the Northern Territory office is growing, of course, with this work. The president is located in Brisbane; I am in Western Australia. Given the range of priorities to deal with work and the expenditure of appropriated moneys, it does not make sense for us, while we still have such a large critical mass in Perth, to relocate the office.

In fact, in 1998-99 after the amendments—where there was a prospect, as you will recall, of the Western Australian government legislating to remove us from the native title field altogether in Western Australia—we did face the critical issue of having to relocate, if necessary, the entire central registry. We estimated that we would have only had about 10 to 15 per cent of the staff, because everyone likes Perth, prepared to cross over to the other side of the country. So for the time being it works and it is cost effective to stay there.

**Senator McKIERNAN**—It would be almost perfect if we could get some of our footballers back to play with our two teams. Thank you.

**CHAIR**—Today is not a good day to speak to me about football. Any further questions?

**Senator COONEY**—Senator Bolkus was asking you about table 2.3.1 on page 187, and you took us through that. The issue of quality varies. The answer you give to 1.1.1 is that 70 per cent decided within two months, that quality is the rapidity or the expedition with which things are got through. Is that what you mean by that—the quality depends upon the expedition with which things are done?

**Mr Chevis**—That is right. In the case of registration testing of claimant applications that is the quality indicator.

**Senator COONEY**—It is the same for 1.1.2. Then when you get to output group 1.2.1 you talk about level of client satisfaction. Can you develop that concept? What do you mean by that?

**Mr Doepel**—There is nothing terribly highfalutin about that. It is about going out and commissioning some independent client research, to go out there and talk to people who have been on the receiving end of our services to ask them a range of questions in a controlled way about how we as an institution have performed. We see that there are two reasons compelling that. Firstly, we do need more direct information from clients as to how we are perceived and whether we can improve and, secondly, it is part of the accountability requirements for the modern budgeting format that we have. The Department of Finance and Administration expects agencies like us to periodically conduct evaluations and learn from them. Our timetable for that is we are just settling the terms of a request for tender at the moment—we have budgeted some \$100,000 for that. We hope to have that out in June, and we hope to have the first major benchmarked client survey done by December of this year. Then we will do some selective sampling after that.

**Senator COONEY**—So that is the test you are going to apply. That is not the outcome; that is the test.

**Mr Doepel**—That is our indication to the parliament that we are actually going to go out and—

**Senator COONEY**—What you have said is you will get a—

**Mr Doepel**—We will get a report from an independent consultant group.

**Senator COONEY**—On a number of criteria.

**Mr Doepel**—Yes.

**Senator COONEY**—A report from an independent—

**Mr Doepel**—We will have some input into the questions, of course, but then we will stand back and let them do the focus groups and the surveying of a range of clients of the organisation.

**Senator COONEY**—I will be asking a bit about this later on with legal aid. Because they are an independent body, that does not mean to say that they are necessarily going to ask the right questions.

**Mr Doepel**—We are the clients in terms of commissioning the survey. We will have some pretty direct discussion with the survey company as to what questions we want asked, and they will be pretty pointed. They will go to issues such as the quality of the information we provide as a prelude to mediation, whether our staff were effective in helping people get ready for mediation, the nature of the mediation experience, how members assisted them or otherwise. We will ask a raft of questions like those.

**Senator COONEY**—A lot of that would depend on the outcome, though, would it not? Your attitude to whether a thing is of quality or not depends on what you have got from it.

**Mr Doepel**—That is right. Also, it may depend on one's deep-seated feelings about native title and the processes. But we cannot hide behind that indefinitely. We have to go out and actually do some testing as to whether we are effective service providers.

**Senator COONEY**—When will you have those tests ready?

**Mr Doepel**—We hope to have the first big formal client survey done by December of this year.

**Senator COONEY**—I suppose that is something we can ask about next year.

**Mr Doepel**—We will respond with pleasure.

**Senator COONEY**—Depending on the result, we can say whether you had the right criteria or not.

**Mr Doepel**—Like any agency that does this, we would expect the good and the bad out of that, and—

**Senator COONEY**—If it is the right criteria we will say it was questions from this committee that got you right, and if it is the wrong criteria we will say you have mucked it up in a big way!

**CHAIR**—Mr Doepel and Mr Chevis, thank you very much for your time.

[12.29 p.m.]

### **Federal Magistrates Service**

**Senator LUDWIG**—Have all the 16 magistrates been appointed at this time or is there still a vacancy?

**Mr May**—Of the initial group of federal magistrates that the Attorney announced when the court was established—and that was to be 15 plus one—there is one appointment yet to be made. I understand that that appointment is very close to happening.

**Senator LUDWIG**—Is there a specific location for that person to be appointed to?

**Mr May**—That person is to be appointed in Melbourne.

**Senator LUDWIG**—Your answer begs the next question: is there another round of appointments in the wind?

**Mr May**—There was a position advertised earlier in the year for appointment to either Adelaide or Darwin. The process of interviewing the applicants for that position is continuing.

**Senator LUDWIG**—Has the decision been made as to whether it will be Adelaide or Darwin?

**Mr Cornall**—I understood it was going to be a Darwin based appointment, but I may be wrong. Having checked, I am advised that no final decision has been made. It may depend in that case on the appointee.

**Senator LUDWIG**—That was my next question, whether the appointee might not have an interest in whether it be Adelaide or Darwin. Are there any other appointments mooted?

**Mr May**—No.

**Senator LUDWIG**—So there is one vacancy in Melbourne and a vacancy for either Adelaide or Darwin?

**Mr May**—Indeed.

**Mr Cornall**—Can I confirm, in terms of what Mr May said, that we do anticipate the appointment in Melbourne to be announced very shortly, and the appointment for Adelaide/Darwin is under active consideration at the present time.

**Senator LUDWIG**—When is that likely to be finalised? Do you have a time frame?

**Mr Cornall**—No, I do not have a time frame.

**Senator LUDWIG**—In relation to the Federal Magistrates Service transfer to each of the federal courts and to the Family Court for services provided by those agencies and in terms of money in 2000-01, how much has been apportioned?

**Mr May**—The Federal Magistrates Service is appropriated the moneys that it needs for the federal magistrates and for the administrative office of the court located in Melbourne. The Federal Court and the Family Court have within their appropriations sums of money that came from their earlier forward estimates for the operations of those courts and included in that are the amounts required for, for example, providing registry services that they provide to us without charge, accommodation that they provide to us without charge and a range of other services. In due course there will be a reckoning done of the value of those services and a transfer of the appropriations will occur. I anticipate that at least the first estimate of the value of that work will be shown in the statement of financial circumstances that appears with the

annual report this year. I understand that work is being done in both the Federal Court and the Family Court to develop a methodology and some figures about that value.

**Senator LUDWIG**—So at this point in time we cannot say, in terms of the FMS transfer to each of the federal courts, how much is involved for the Federal Court and the Family Court for services provided to those agencies?

**Mr May**—There is no transfer to those courts from the FMS.

**Senator LUDWIG**—You have talked about it in that way, but you say there is none the other way.

**Mr May**—We provide no funds to either of the superior courts. The funds for them to provide services to us are part of their appropriation and they are matters that appear in their appropriation descriptions in the Portfolio Budget Statements. As to how much is involved, I do not have any evidence about that at this stage. I have some anecdotal suggestion that something in the order of 10 per cent of the staff of the Family Court might be involved in the delivery of services to the Federal Magistrates Service, but I have absolutely no basis of verifying that at this point.

**Senator LUDWIG**—That is where my next question was going to go—in terms of a breakdown of the costs of each type of service provided by both the Family Court and the Federal Court to the FMS. You do not have those figures?

**Mr May**—No.

**Senator LUDWIG**—You say they are anecdotal and you think it is 10 per cent in relation to staffing. When will you be able to have those figures or be able to demonstrate a breakdown of the gross figures from the Federal Court and the Family Court?

**Mr May**—I have asked both courts to work with us to develop a better understanding of what the value of services provided by them is so that we can both put into our financial statements some indication of that value. That should be October this year. I suspect that there is going to be a need for quite a bit of work to refine those estimates of value and that we really will not see final figures until about this time next year.

**Senator LUDWIG**—If they become available earlier, perhaps you could make them available to the committee. I did not want to have them as one of those issues that are outstanding in terms of being unanswered questions. We might get to the next sittings before that is made available. Perhaps you could go back and have a look, and provide at least a short answer to the committee in terms of when that information is likely to be made available—if you could firm that up—and whether or not you will have any breakdown of those costs.

**Mr May**—I can certainly talk to the other courts to see if we can develop a timetable with that in mind. I should say, however, that the continued operations of the court are not in question. We have arrangements with each of the courts for them to provide services to us. The work of the court will continue without knowing what that value is. The only operational value in knowing those amounts is to be able to achieve a resource transfer in the appropriation.

**Senator LUDWIG**—But it is unusual that you would not know—at least from my perspective.

**Mr May**—That is the way the courts have been set up in this case.

**Senator LUDWIG**—I would want to know how much I was transferring to the FMS, what it was going to and what it was funding, because it is then ultimately coming out of their budget in services and they could then recoup later on down the track. Or know how much the FMS was receiving so that they could reconcile it with what they had to reconcile back to the Federal Court or the Family Court. You say that is not a matter that concerns you?

**Mr May**—While I am receiving the services, it is not a major issue for me as an administrator of the court. It will be useful to know in due course, and, as I said, I expect to have at least a primary indication of that amount in the statement of financial circumstances later this year.

**Senator LUDWIG**—What was the outcome of the service putting its primary dispute resolution or PDR work out to tender?

**Mr May**—We received somewhere in excess of 40 tenders, with a fair coverage around the country. Those tenders are being evaluated as we speak. There were certainly meetings of the tender evaluation committee on Thursday and Friday of last week, and the advice I have is that the contracts will be able to be let and to commence from 1 July.

**Senator LUDWIG**—The annual amount allocated for PDR is, I think, about \$600,000.

**Mr May**—The amount for that program is \$600,000 in each of two years.

**Senator LUDWIG**—How much of that \$600,000 will the service spend in 2000-01?

**Mr May**—None. The amount is rolled over into 2002-03 and 2003-04.

**Senator LUDWIG**—So the unspent portion will be rolled over?

**Mr May**—Yes.

**Senator LUDWIG**—Do you know what that will be?

**Mr May**—We have not spent any of that amount in this financial year.

**Senator LUDWIG**—So it is zero at the moment.

**Mr May**—Yes, that is right.

**Senator LUDWIG**—Do you have any projections?

**Mr May**—We expect to expend the full amount of that \$600,000 in each of the two out years.

**Senator LUDWIG**—You recently published the draft Federal Magistrates Court rules. Submissions from the public on the rules were due by 7 May. Did you receive any responses from that?

**Mr May**—We received a significant number of responses from the Law Council, as would you expect, from most of the state and territory solicitors' and barristers' representative bodies, from the family law sections of each of those groups, from legal aid authorities in most states, from various individuals—mostly lawyers—from the Australian Law Reform Commission and from other commentators on both the activities of the FMS and legal issues generally. Copies of the rules were sent to a very broad range of groups that we thought would be interested in the rules. While I do not have a count of the number of responses we received, there was certainly a very significant number of responses covering all aspects of the draft rules.

**Senator LUDWIG**—When are you likely to finalise the rules?

**Mr May**—The draft rules are currently being revised by the legislative draftsmen in response to instructions that were given following a quite extensive, in terms of time, review of all of the submissions we have received. The instructions have been given to the legislative draftsmen. I expect to see a final draft of the rules to go back to the federal magistrates at the end of this week. We will then work out a program for the rules to be promulgated and come into force on 2 July.

**Senator LUDWIG**—That is a relatively short time to take into consideration all those submissions that have been generated since 7 May.

**Mr May**—There was a lot of hard work done to do that, Senator.

**Senator LUDWIG**—In relation to circuits planned by the FMS, up until the end of this calendar year, is there a program that has been circulated or put about as to what this circuit will be?

**Mr May**—Are you talking about for the next calendar year?

**Senator LUDWIG**—Yes, the next calendar year, I should say.

**Mr May**—We are currently working with the Family Court to develop the circuit program for next year. The major area where we have not developed a circuit program is New South Wales. Discussions are ongoing about how we service New South Wales, although we have been going to some locations within New South Wales, such as Albury last week. We have a program established now for Tasmania, South Australia, Victoria and Queensland and for Darwin although, as I mentioned before, there is the prospect of a federal magistrate providing a more extensive service there at some stage. It is too early to say what the full circuit program will be for the next calendar year, but I can undertake to provide the committee with details of the circuit program as and when it is developed.

**Senator LUDWIG**—That would be helpful, and also the corresponding location that the court will visit. Perhaps you could provide it at least on a piecemeal basis at this point in time so we have some understanding of where it will be heading in the short term. You can put a caveat on it that it will be revised and an update provided to the committee in due course.

**Mr May**—We are happy to do that, Senator.

**Senator LUDWIG**—Perhaps this is a question more to the department. Mr Cornall, in relation to appointing federal magistrates, is there a process in place to have probity checks in relation to the magistrates that are appointed?

**Mr Cornall**—Yes, there is, Senator. Ms Leigh can speak to that.

**Ms Leigh**—In relation to appointments, there is a bankruptcy check done and a review of media reports. All potential appointees for judicial appointments are asked whether they have any conflict of interest or any other issue that would raise concerns in relation to their appointment.

**Senator LUDWIG**—So, in relation to the federal magistrates, there was a probity check done prior to their appointment?

**Ms Leigh**—Sorry; could you repeat that?

**Senator LUDWIG**—In regard to the 15 federal magistrates that were appointed—presumably two more, but you cannot talk about who they are—prior to their appointment were probity checks, as you have outlined, performed?

**Ms Leigh**—They were asked. The comments I made about bankruptcy and media searches relate to a more recent process.

**Senator LUDWIG**—So the bankruptcy and media searches were not done in relation to the 15 magistrates that were appointed? Is that what you are telling me?

**Ms Leigh**—As far as I know, that is correct.

**Senator LUDWIG**—What was done in relation to the 15 magistrates?

**Ms Leigh**—They were asked about whether they had any personal affairs, including financial affairs, that might cause a conflict of interest with their duties.

**Senator LUDWIG**—Was that the only probity check that was done—a question asked of them?

**Ms Leigh**—As far as I am aware.

**Senator LUDWIG**—Do you have the responses? It is a bit hard to second-guess, but were any other departmental agencies asked—the Australian Federal Police, for example?

**Ms Leigh**—Not as far as I am aware.

**Senator LUDWIG**—Is that usual? Is that the usual process?

**Ms Leigh**—It was usual at the time. As I have indicated, it is now standard to do a bankruptcy check.

**Senator LUDWIG**—And any other checks?

**Ms Leigh**—And to do a media search.

**Senator LUDWIG**—Why a media search?

**Ms Leigh**—It is a way that issues might be brought to attention.

**Senator LUDWIG**—Have you taken advice on whether or not that is an appropriate process to adopt in terms of doing a proper probity check?

**Ms Leigh**—Not as far as I am aware.

**Senator LUDWIG**—So this is your way of checking the probity?

**Ms Leigh**—It is the government's current approach to checking probity.

**Senator LUDWIG**—Throughout the Attorney-General's Department or just a process that you have adopted in the Federal Magistrates Service?

**Ms Leigh**—Certainly in relation to all judicial appointments, and I believe generally in the department.

**Senator LUDWIG**—And that has only come in in the last short while—that you have expanded it beyond one question to include two questions.

**Ms Leigh**—It is not the questions that have been expanded; it is the actual checking by the department in relation to bankruptcy and routinely doing a media search that is the change.

**Senator LUDWIG**—So you have not taken any advice as to whether or not that is still an appropriate probity check or a mechanism to be employed to do probity checking from external agencies?

**Ms Leigh**—Not to my knowledge.

**Senator McKIERNAN**—There was an article in the *Weekend Australian* saying that the FMS was going to be used to relieve some of the pressure on the High Court in migration cases. If the substance of the article is correct, it reflects a major shift in policy direction for the government. Is anybody in a position to say anything on this at this juncture or is it something that we should probably leave to DIMA when they appear on Wednesday?

**Ms Leigh**—I think the policy issue is more appropriately a matter for DIMA. It is a broader issue than just the FMS. I could simply say that the Attorney is aware of the general issue as reflected in that newspaper report. He has had discussions with Minister Ruddock about it, and the Attorney-General's Department will be assisting the immigration department in looking at the issue. That is quite a new development, so there is not really anything more I can tell you at this stage.

**Senator McKIERNAN**—I appreciate what you have said, but when the committee—and it was this committee—was looking at the Federal Magistrates Bill last year, I recall some questions being directed into the migration area to see if FMS was going to be given any jurisdiction in that area. Clearly, the barriers were put up at that stage. If the barriers are now being let down—

**Ms Leigh**—It is too early to say.

**Senator McKIERNAN**—They have been discussed.

**Ms Leigh**—As I say, that newspaper report—I think it was in this morning's and yesterday's papers—

**Senator McKIERNAN**—Saturday.

**Ms Leigh**—It is just too early to speculate on what might be considered.

**Senator McKIERNAN**—Maybe it is and maybe it is not. Certainly more questions will have to be directed to it, because there is in the *Notice Paper* in the Senate a bill on judicial review. It is on the *Notice Paper* of the Senate and it has been sitting there for some time. It proposes a different direction for handling litigation in the migration area. Let me just leave it at this. Hopefully, DIMA are monitoring the process and preparing for some questions on this on Wednesday when they appear before the committee. I will leave it at that.

**CHAIR**—Are there further questions for the FMS?

**Senator COONEY**—Mr May, when you were talking to Senator Ludwig, you talked about an outsourcing contract. Do you have many outsourcing contracts on the go? What I will then ask you is who prepares the contracts and what their sizes are.

**Mr May**—The contract we were talking about was the contract for the provision of primary dispute resolution services, which was put out to tender earlier in the year. That contract, on its terms, was limited to responses from community providers who are registered through the Department of Family and Community Services in one of their programs. The other programs that we have that might be outsourced, apart from the arrangements that we have for the provision of services by the two superior courts, are small activities such as the conduct of a survey to assess the awareness of the legal profession about the services we provide and their assessment of the standards of service we provide. We also have contracts for the provision of internal audit services and for the delivery of some financial services to assist us to establish our own internal systems.

**Senator COONEY**—Have you seen all the contracts?

**Mr May**—I sign all the contracts.

**Senator COONEY**—How big is the biggest one?

**Mr May**—My guess would be around 20 to 30 pages. They have all been drafted for us by the Australian Government Solicitor and they are in a fairly standard form.

**Senator COONEY**—I was thinking that these days contracts seem to be getting bigger and bigger with the growth of use of the word processing machine. What is the smallest one?

**Mr May**—The smallest contracts that I get to see would generally be fairly limited consultancy agreements which, on my recollection, run to about 10 pages of fairly open print.

**Senator COONEY**—Contracts are expanding all the time. They used to be very small in the old days.

**Mr May**—Not in my day, Senator.

**Senator COONEY**—Not in your time, but you are a young man, Mr May. The bigger the contract, the more likely you are to overlook something or the more likely you are to get litigation arising, because it gets more and more complicated. The Commonwealth is supposed to be a model litigant; it is time that it became a model contract writer, isn't it?

**Mr May**—My recollection is that the model contract has something to do with the model litigant policy.

**Senator COONEY**—The minister would know that contracts used to be little ones. Now they are getting bigger and bigger. I do not think anybody checks them: someone just puts the next term in the word processing machine and that becomes part of it. You haven't noticed that, Minister?

**Senator Ellison**—Senator Cooney, I think the conveyancers have a lot to say about this; I think it is a bit unfair.

**Senator COONEY**—You have seen some of the contracts—they are so big. People have to sit down and read them all, and then you get sued if you miss something. It is said that the court has one outcome: to provide a cheaper, simpler and faster method of dealing with less complex Family Court and Federal Court matters. Is there any test that you can think of that we can apply to find out whether that is happening?

**Mr May**—I mentioned before a small contract that we have let for an awareness survey which is being conducted for us. It is just about to commence. Some of the questions that we are asking in that survey go to issues such as these: is the service providing your clients—the people we are asking are solicitors in the main and there are some barristers—with a service that is regarded as simpler? Is your client getting greater access? Are your clients generally seeing some difference in the way this court operates, as opposed to the way the others do?

**Senator COONEY**—Are you asking them what fees they are charging?

**Mr May**—The level of cost in the transaction is an issue that we are asking them about.

**Senator COONEY**—Isn't that commercial-in-confidence?

**Mr May**—The fees that a solicitor charges for certain matters will not be significantly greater on the scale but we expect that the fees will be lower in most of the transactions in the Federal Magistrates Service because of the way the court operates. Its procedures are different to the procedures in the superior courts because we are handling different types of matters,

and we expect that the average transaction cost in the court will be very much lower than the average transaction cost in the superior courts.

**Senator COONEY**—It is no good comparing the transactions in the magistrates courts and the transactions in the Federal Court and Family Court, because they are doing different transactions. You would have to compare one transaction with exactly the same transaction.

**Mr May**—You can, for many matters. To give an example, Senator: an application for residence and contact—an application about the children of the marriage—can be brought in either the Family Court or the Federal Magistrates Service. In either court, that matter might get resolved very early in the piece after primary dispute resolution, and the costs are going to be fairly similar in both courts. But, if there is a fight, the procedure in the Family Court may involve an interim hearing and then a subsequent full hearing. In the Magistrates Service, because federal magistrates can exercise the final powers of the court, the matter gets resolved a lot more quickly and without a lot of the interim transactions that occur in the Family Court and lead to increased costs.

**Senator COONEY**—I cannot follow that. You either get a quality decision or you do not, and here you are saying that you can get a quality decision from the magistrates court which is the same decision as you would get from the Family Court.

**Mr May**—I think the outcome in terms of the quality of the decision is the same. What I am saying is that in many cases in the Family Court, as a superior court applying superior court procedures, the parties have to come back to court far more frequently than they do in the Federal Magistrates Service, and the way in which they produce the evidence results in increased costs. For some cases that may be entirely appropriate—

**Senator COONEY**—You say that; do you have any evidence of that? What you are putting to us—and this is what concerns you—is that the outcome is going to be the same in a complex matter. In a simple matter, the costs are going to be much the same in the magistrates court as in the Family Court or the Federal Court. But, when it gets more complex, it is going to be a lot cheaper in the magistrates court. A conclusion—I am not saying that this is the right conclusion—consistent with what you say is that you are going to get just as good a decision with a simpler process. Then, what we should be asking the Family Court and the Federal Court is why they do not use those simple processes. You are saying to us that the quality of the decision is just the same.

**Mr May**—They are certainly questions that you should address to those two courts. But, from our perspective, we would say that the Federal Magistrates Service was set up to, in a sense, stream off in a different direction the simpler matters, leaving the superior courts to deal with those matters that need a more complex procedure. It is that streaming into two separate ways of dealing with them that really creates the capacity to have lower costs for many parties. Obviously, an option might be to do that streaming within the existing organisations. That was not the government's decision and, from the perspective of the Federal Magistrates Service, we think that operating as a separate organisation is in fact one of the strengths of the Federal Magistrates Service, ensuring the integrity of that streaming arrangement.

**Senator COONEY**—That would seem to follow. I can follow that, where you say that the simpler matters are streamed off into the magistrates court. You said that the simpler matters, whether they are dealt with in the Federal Court, the Family Court or the magistrates court, are going to cost almost the same; the difference is with the more complex matters, and that is

the part that I am worried about. I can see an argument for saying, ‘Let’s stream off the simpler matters,’ but that is not necessarily going to save costs. It is going to make it, perhaps, a bit quicker or less formal or something; but I do not see how it saves a great deal of costs.

If, on the other hand, what you are saying is, ‘We now handle the complex matters in a much more expeditious and cheaper fashion than the superior courts do,’ then that is a good thing. The worry seems to be either that the Federal Court and the Family Court are using clumsy procedures which tax the people with fees that are too high or that the type of justice that you get in the magistrates courts is not quite as good—in either case, there are some worries, I think.

**Mr May**—I am not saying either of those things, Senator. Firstly, on the issue of simple and complex, the Federal Magistrates Service is not taking the complex matters, so we are not reducing the costs in complex matters. I think it is the case, although we do not have the hard evidence to prove how it operates across the system, that in many of the simpler matters we are reducing the costs that many parties will incur, because they can get a final decision the first time they come to a federal magistrate—a final, arbitrated decision. They can always make their own decision in either of the two courts. But when they come to the Federal Magistrates Service, they can go before a federal magistrate, whereas in the Family Court, for example, they would go before an SES registrar or a judicial registrar, who does not have the power to make that final decision. What we are observing is that our procedure is resulting in far quicker decisions for many parties—decisions that they are very happy about and decisions that, anecdotally, produce lower costs. I think it will be some time before we have the hard evidence to prove that.

**Senator COONEY**—I think that is a fair comment, but there is still an issue for us to look at. You are saying, ‘A litigant comes along with a case. It goes into one court and it is dealt with much more quickly and, on the anecdotal evidence, much more cheaply. If the same case goes into another court, it is dealt with more expensively and it is slower, and yet it is the same matter.’ I think the government has to look at why that would be so.

**Mr May**—Indeed.

**Senator McKIERNAN**—On the matter of the Federal Magistrates Service and the High Court referring matters to it, there is something that I think I will pursue a little bit further within the High Court section this afternoon. I just wanted to alert you to that. I will not wait until DIMA appears.

**CHAIR**—What I would like to do, with the committee’s concurrence, is to try to complete questions to the Office of Film and Literature Classification before we break for lunch so that we can complete that first block of agencies. We will resume an hour after we conclude, on that basis. I ask Mr Clark and Mr Webb, who have been waiting patiently, to come to the table.

[1.03 p.m.]

#### **Office of Film and Literature Classification**

**CHAIR**—Welcome. We begin questions to the officers from the Office of Film and Literature Classification with Senator Cooney.

**Senator COONEY**—I think you have been out of trouble, which is extraordinary! What is this?

**CHAIR**—You are congratulating Mr Clark’s stewardship, are you, Senator Cooney?

**Senator COONEY**—I am—Mr Clark, Mr Webb and Mr Tenison. Normally the Assyrian comes down like the wolf on the fold—and here is the fold without the Assyrians! Well, I hope not. I see Senator Grieg has arrived to question you. But I reckon that we ought to get you out of here fairly smart.

**CHAIR**—Thank you, Senator Cooney. I will turn to Senator Greig.

**Senator GREIG**—Thank you, Chair. Good afternoon, gentlemen.

**CHAIR**—We are honoured to have a Democrat with us, Senator Greig.

**Senator GREIG**—Thank you very much. I have a range of questions, and I will try to deal with them efficiently, Chair. I will begin with a question on the principles in the act—that is, the classifications act. What does the OFLC consider to be most paramount in the act? There are, of course, three aspects to the act, those being the substantive sections, the classification code contained in the schedule of the act as well as the guidelines, which are created by state, territory and Commonwealth attorneys-general.

**Mr Clark**—In terms of the application of the acts, the code and the guidelines, they are all used by the board, but at the end of the day, when they go back to the act, that is the guiding principle that will be the most important determinant.

**Senator GREIG**—With regard to the X classification system, which is, as I understand it, a specialist classification dealing with explicit sexual material, what has been the impact of the guidelines, which have changed, in terms of the content of X-rated videos, since 18 September last year?

**Mr Clark**—There have been limitations put on certain fetish and other activities which would have previously fitted into the X classification, but, in terms of the number of applications within that category, there has been very little change in the numbers of applications made.

**Senator GREIG**—What was it that the guidelines outlawed which until last year were permissible?

**Mr Clark**—I will just get the guidelines out. The particular wording is:

No depiction of violence, sexual violence, sexualised violence or coercion is allowed in the category. It does not allow sexually assaultive language. Nor does it allow consensual depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers.

Fetishes such as body piercing, application of substances such as candle wax, ‘golden showers’, bondage, spanking or fisting, are not permitted.

**Senator GREIG**—Has there been any difficulty in determining what is meant by the terminology of ‘demean’?

**Mr Clark**—There has not been, no.

**Senator GREIG**—Does the OFLC place the same weighting on the act, the code and the guidelines? How would you differentiate conflicts between the principles of the act, the code and the guidelines?

**Mr Clark**—It is something that the board would talk through in coming to its decision. It will have regard back to each grouping, but they go back to the act ultimately.

**Senator GREIG**—How have the OFLC or the Attorney-General’s department assessed the impact of the guidelines, and has there been any consultation with the industry and/or consumers?

**Mr Clark**—Certainly, we have had discussions with individual clients and with the Eros Foundation in relation to the new guidelines and their views of the application of the guidelines. But, as I say, the statistics at this stage show very little difference in the number of applications and very little difference in the number of refusals there.

**Senator GREIG**—How many classifications are there in total?

**Mr Tenison**—For the current financial year, there have been approximately 5,500 classification decisions made.

**Senator GREIG**—What percentage of films and videos are classified in Australia?

**Mr Clark**—All films for public exhibition, sale or hire are required to be classified in Australia.

**Senator GREIG**—Does the OFLC consider a percentage of videos or films complying with the legislation to be an important benchmark indication of the effectiveness of the classification regime?

**Mr Clark**—Yes. The compliance with the scheme and the integrity of the scheme is certainly enhanced by full compliance.

**Senator GREIG**—Where can the X classification be lawfully sold in Australia? Does the OFLC have any feedback from these jurisdictions concerning the effectiveness of the regulatory regimes or those of any other state or territory?

**Mr Clark**—It is available for sale in the Australian Capital Territory and the Northern Territory. There are regular discussions at an officer level in relation to the operation of the scheme with the states and territories, and that is associated with a censorship ministers meeting. That happens three times a year.

**Senator GREIG**—The 1999-2000 annual report of the OFLC, under objective one on page 26, notes that the objective of the OFLC—and I quote:

is to assist adults to make informed decisions about publications, films and computer games which they and those in their care may read, view or play, by providing classification advice which is consistent with community standards.

As I read through the subsequent pages of the report under the heading of objective one, I note that all of the classifications are represented there except the X classification. Why is that?

**Mr Webb**—Senator, do you have a page reference in the annual report?

**Senator GREIG**—Not in front of me, although I do note that from pages 30 to 37 there are summaries about the classifications, except X, and I would ask again: why is that?

**Mr Clark**—Can I take that on notice, Senator? I do not have an answer to that at the minute.

**Senator GREIG**—Certainly. What percentage of films and videos classified by the OFLC are classified in the X category? I understand it is about one-third. I understand there is reference to that on page 107.

**Mr Tenison**—Yes, Senator. It is approximately one-third. In the current year to date, at least when these figures were taken, 996 X classification decisions were made out of a total of 2,892 sale or hire classifications.

**Senator GREIG**—So as I understand it then, the annual report presented to parliament has actually omitted one-third of the business transacted by the OFLC. If that is the case, and it seems to be, isn't that a scenario of the OFLC censoring its own report on censoring?

**Mr Clark**—Certainly not deliberately so, Senator. The statistics are all there. An elaboration on the X classification was probably not deemed to be necessary, but I will have to go back and take that on notice.

**Senator GREIG**—Thank you. In a letter of transmission from the director, in the annual report it states under the signature of Mr Clark that he is:

... pleased to forward this report on the management and administrative affairs of the Classification Board and financial statements for both the Classification Board and the Classification Review Board for the year ended 30 June 2000.

Does that mean then that this report is at best misleading, given the fact that the director of the OFLC has, in this letter of transmission, misrepresented to the Attorney the fact that some one-third of the business transacted was not in fact dealt with in that report?

**Mr Clark**—Certainly not misleading, Senator, or trying to be obscure about it. As I say, I would prefer to take that on notice as to why it is not there in some fuller form, but it is reported statistically throughout the report.

**Senator GREIG**—What is the purpose of the community consultation panels?

**Mr Clark**—The purpose of the community assessment panels is to measure the decision making of the board against community standards or community attitudes.

**Senator GREIG**—As I understand it, within those panels the X classification was excluded. Is that correct?

**Mr Clark**—That is correct. It is only used for films within the G through to M classification because it is really directed at that larger consumer market.

**Senator GREIG**—Given the volume of material classified by the OFLC, particularly in the politically sensitive areas of sex and sexuality, would you agree that there is a greater imperative to explore what reasonable Australians who enjoy the consumption of non-violent erotica think?

**Mr Clark**—I think that we have addressed this in the past, Senator, through our consultations with the industry. As to what they are seeking to market out there, we have regard to their figures, but at this stage we have not undertaken any research ourselves into that area.

**Senator GREIG**—Why do all other classifications get community-consulted upon but X does not? Would you agree that, given that that is the scenario, it skews the outcome and the effectiveness of the community consultation process?

**Mr Clark**—This is very much devised as community based in terms of families and children, essentially, in terms of that mass market of films, and so we have not actually undertaken any research into, for instance, R ratings either. So it is not just an X issue. We have limited ourselves to where the vast amount of the community have their interest in film classification.

**Senator GREIG**—How can the government and the minister be adequately advised by the OFLC when it is suggested that the public consultation and research is claimed as a key

outcome, but when in fact in the area of, for example, DVD, videos and films you have ignored the largest single classification, that of X?

**Mr Clark**—As I say, I will take on notice the actual specific reporting. At this stage we work fairly closely with the industry in terms of individual clients and the Eros Foundation, about their concerns in relation to classifications. They have their research, which they certainly make available to us; and I feel that we are reasonably well-informed at this stage.

**Senator GREIG**—I note from objective No. 2 in the annual report that another key outcome of the OFLC is client-industry liaison. What liaison has been done with the X-rated industry, with which the agency seems preoccupied, at least in terms of it being one-third of its total workload?

**Mr Clark**—The liaison has been educational presentation with representatives of the industry in terms of the new guidelines, initially. There have been meetings with me and Mr Webb and individual clients and with the Eros Foundation, and telephone conversations on a regular basis with them as well, and meetings with publishers in relation to their classification issues, as well.

**Senator GREIG**—How does that compare with other industries, in terms of other classifications?

**Mr Clark**—I would say that we would be talking with the X industry more frequently than with other client groups.

**Senator GREIG**—Is it the case that the only classification scheme we have is for film and video?

**Mr Clark**—Yes—and computer games.

**Senator GREIG**—What weight, what consideration, does the OFLC place on the continued commercial viability of the clients who deal with the OFLC?

**Mr Clark**—We place a great deal of interest in the commercial interests of clients, particularly in terms of timeliness and particularly in terms of the new media coming through—which is why we are looking at a review of the guidelines in relation to film, video and computer games. So we do have regard to their needs, but we also must have regard to the statutory requirements of the scheme and the act.

**Senator GREIG**—Is it the view of the OFLC and, for that matter, of the government that decisions made by the agency are always correct? If the guidelines or the administration of the classification board or the review board result in the wiping out of a business which had previously lawfully traded, you would care about that?

**Mr Clark**—Well, it comes back to the requirements of the scheme and the act, in that we apply the guidelines and that decisions are made. Yes, sometimes I am sure we are wrong in a decision; but, overall, with the level of applications we have; the reviews that we have would indicate that it is not too bad. But the review board is there to ensure that the process is working for the community.

**Senator McKIERNAN**—I am pleased you did not take that question on notice.

**Senator GREIG**—How does that sit with government industry policy? Is there any interrelationship, liaison or consultation between the OFLC and the various departments of trade and industry? Do you consider that to be relevant?

**Mr Clark**—There has not been, up to this point. It has not been, in my time at the office, an item that has preoccupied my mind a great deal but, if I see a need for that, certainly I will.

**Mr Webb**—On that, over previous years there have been consultations to do with the regulation impact on business of the work of the OLFC. So, as with any government agency in the Commonwealth sector, we certainly take into account the impact that our business has on our clients, for example.

**Senator GREIG**—Am I right in saying, then, that we have a situation where a Commonwealth agency critical to the functioning of various industries has no relationship with the main Commonwealth industry policy of the Australian government?

**Mr Webb**—As I say, at this stage there has not been in my time, but it is something that we are mindful of.

**CHAIR**—Senator Greig, may I seek your guidance at this point? I did indicate that we would go past the scheduled lunch period of 1 p.m. to try to complete the OLFC in what I had hoped would be a relatively short period of time. Can you give me some indication as to how much longer you require?

**Senator GREIG**—Fewer than 10 minutes.

**CHAIR**—Fewer than 10 minutes is good.

**Senator GREIG**—For what mediums do we have a national classification regime?

**Mr Clark**—Publications, films, videos and computer games.

**Senator GREIG**—So we have national classifications for—

**Mr Clark**—No—publications, apart from Tasmania and Western Australia.

**Senator GREIG**—Is it true that a category 2 image in a magazine is approximately the same as an X-rated image and that, in most cases, the difference is between a moving and a still image? Can you lawfully purchase category 2 images in the states? Can you lawfully purchase or retail X-classifications of videos and/or films in the states?

**Mr Clark**—You can buy category 2 images in the states, apart from in Queensland, I think.

**Mr Webb**—Yes, there are various differences between different jurisdictions as to what you can purchase and what sorts of conditions are placed on the purchase of material that you are referring to. To take the first part of your comment, there are differences between the category 2 image and the X-rated image. It is illegal in each of the states to sell an X-rated video.

**Senator GREIG**—My last few questions relate to the review board. Who is Mr Joel Greenberg? If you could take a question on notice, could I be provided with a copy of his job description?

**Mr Clark**—Yes, certainly.

**Senator GREIG**—Can you indicate briefly who Mr Greenberg is?

**Mr Clark**—Mr Greenberg is a member of the Australian Public Service. He is an officer of the Office of Film and Literature Classification who has been there for some years.

**Senator GREIG**—What is Mr Greenberg's role during review board hearings?

**Mr Clark**—He acts as the secretariat to the review board, although in some recent hearings he has not been in attendance at the review board—he was on leave. But generally he acts secretariat to the review board.

**Senator GREIG**—Does the review board have any standing orders as to its operation?

**Mr Clark**—As I understand it, it does not have standing orders as such. When the review board comes into operation, it effectively takes on the role of the board and so it is governed by the act.

**Senator GREIG**—How many appeals from the adult industry have been heard by the review board to date this year?

**Mr Clark**—This year, there have been 11 appeals heard—that was a batch of nine and then a further application of six, of which the review board chose only to hear two because they were out of time anyway.

**Senator GREIG**—How does that compare with the last financial year? Do you work in a financial year bracket?

**Mr Clark**—That is a significant increase from X applications.

**Senator GREIG**—What do you feel the increase has been caused by? What do you put it down to?

**Mr Clark**—It certainly was the application of the new guidelines and interpretation of those. The board took a view; there was an appeal against that. I think that five decisions in the first batch were reversed and four were sustained. In the second batch, one was sustained and the other one was reversed.

**Senator GREIG**—Finally, is the review board privy to the community consultation and/or industry liaison work of the OFLC?

**Mr Clark**—The review board operates independently of the OFLC. They certainly do not partake in the workings of the OFLC; they are part-time members. They attend for the purpose of the review board hearings and occasionally for training.

**Mr Cornall**—Just before we close, in response to questions from Senator Bolkus about GST, I referred earlier today to a letter from the President of the Law Council to the Minister for Financial Services and Administration. It was in fact a letter from the President of the Law Council to the Treasurer, Mr Costello. I have also had brought to my attention—in case it is of interest to the committee—that the Law Council of Australia issued a media release on 17 May 2001 headed, ‘GST causing serious cash flow problems for law firms’. I can give a copy of that media release to the committee if it is of interest.

**CHAIR**—Thank you very much, Mr Cornall. Mr Clark, Mr Webb and Mr Tenison, thank you very much for waiting until this point in the day to assist the committee. We are grateful for your presence. I think you have taken a number of questions on notice, Mr Clark, and we will set a return date for those at the end of these proceedings.

**Proceedings suspended from 1.26 p.m. to 2.32 p.m.**

**Office of the Privacy Commissioner**

**CHAIR**—I welcome Mr Malcolm Crompton and Mr Timothy Pilgrim to the table.

**Senator BOLKUS**—I will start with a dorothy dixer and ask what steps you have taken since we last met to implement the Privacy Amendment (Private Sector) Act.

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**Mr Crompton**—We are now five months into the countdown to the full 12 months between the passage of the act and its becoming effective, which is 21 December this year. Our main focus since then has been to prepare three large documents of guidelines on the practical application of the national privacy principles around the private sector, and we have put those draft guidelines out for public comment. We are part the way through that process at the moment, and it has been a very effective instrument for encouraging people to think about the issues and to give us feedback.

**Senator BOLKUS**—When you say that they have gone out for public comment, through what mechanism? Is there a formal consultative process, are they on the Net or are they just advertised?

**Mr Crompton**—We have set up a very staged process. I felt that what we needed to do was essentially to find out what a wider group of people thought the questions were before we then actually developed some draft answers which, at that stage, we would then make public and get input on before we finalised. So we used a small informal reference group to help our thinking on generating what we thought the questions were and to help us think what the draft answers should be. That is what has led to the three documents that we have now put out for public comment. The consultation process will be closed at different times over the next few months.

**Senator BOLKUS**—Can you give us those time lines?

**Mr Crompton**—Yes, we intend to finalise in July, I think, of this year the code development guidelines for those organisations that want to develop their own code of principles to replace the national privacy principles. We intend to finalise the second document, which relates to guidelines on the national privacy principles generally, in October of this year. The third document relates to health issues in particular and the national privacy principles, and we intend to finalise that in November-December this year. Our main mechanism for getting public input at this stage has been to publicise as widely as possible what we are doing. We have done that by writing to as many people as we could have possibly made contact with. I think we have written to about a thousand different people and we have emailed about 500 other people. We have put press advertisements about each of the three documents in the major daily newspapers in each capital city and we have also loaded the material onto our web site. At the last count, we had had 25,000 downloads of the documents, in aggregate.

It is a very hard figure to estimate, but if there are around two million small businesses in Australia and if about three per cent of those businesses are going to be regulated—according to government estimates—probably something like 60,000 organisations will be regulated in this way. That means that we have probably had a download roughly equivalent to one in three of those regulated businesses. Hopefully, that has not been just businesses downloading the information, because we need consumer input just as much as we need business and organisational input. We have actually started developing a strategy with a particular focus on getting input from organisations such as people with interest in disability issues, indigenous issues and so forth. Nevertheless, the rate of impact that we are having at the moment appears to be going quite well.

**Senator BOLKUS**—What about tenancy issues?

**Mr Crompton**—Can I seek clarification on what you would like to know about.

**Senator BOLKUS**—There are issues arising in the private sector with respect to tenancy.

**Mr Crompton**—Yes.

**Senator BOLKUS**—There is a number of tenancy organisations around the country. Are they being consulted?

**Mr Crompton**—Almost certainly, without having the names in front of me, in among the 1,500 we have made direct contact with, I am pretty sure, at least a few tenancy organisations.

**Senator BOLKUS**—Can you come back to us with that—who has been consulted in that area?

**Mr Crompton**—Yes, we can.

**Senator BOLKUS**—Legislation is due to come into effect on 21 December. Do you anticipate any problem with that date? Can you meet that schedule?

**Mr Crompton**—I think we can.

**Senator BOLKUS**—What happens if you find that you cannot? Is the legislation capable of being deferred?

**Mr Crompton**—No. Unless the parliament amends the act, there is no way that those dates can be deferred.

**Senator BOLKUS**—When you were before us in February, I think you had not done any work at that stage to calculate the cost of Senate amendments. Have you been able to do that since?

**Mr Crompton**—I may see whether the deputy commissioner has something to add, but I would have to say that what we have been doing is proceeding with all of the resources of the organisation and the act as it has now been passed by the parliament rather than trying to subdivide the issues in that way.

**Senator BOLKUS**—There was some question as to the effect of those amendments on the workload of the office, what sorts of costs they would entail that would be directly or indirectly related to appeal rights and so on. You have not done any costing. Has anyone else?

**Mr Pilgrim**—As the commissioner was indicating, we have been seeking to implement the legislation in accordance with the strategic planning process we have put in place for that implementation. In direct answer to your question, we have not done any additional calculations on the changes as put forward in the last round of the Senate debate into the legislation. The way we have been approaching it is to tackle the substantive question—which is taking up the majority of our officers' time—which has been the development of those guidelines.

**Senator BOLKUS**—In that context, had you had a comprehension that the amendments would have been costly, you would have been focusing on them, I imagine, to ensure that you got extra resources from the government. Is it your assessment that maybe they are not as costly as people may have feared initially?

**Mr Crompton**—It really is extremely difficult to make such estimates. Probably a better approach will be to see what happens once the legislation comes into effect. We have very little to tell us, for example, how many codes will be sought for approval, how many of those codes will have their own code adjudicator or how many of those codes are going to go wrong in some way, which might mean that, as a result of the Senate amendments, the Privacy Commissioner has to review a decision in a way that otherwise was not going to be the case.

Similarly, in other parts of the legislation it is going to be very difficult for us to tell beforehand, especially because the base estimates themselves are very difficult to estimate. For example, in terms of the total number of complaints, we can only have the most rough figures in estimates in front of us as to how many complaints will come in. We are budgeting, essentially, on the number of complaints coming in doubling, but we could be wildly wrong in that estimate. I think the best thing to do is to just get down and do the job.

**Senator BOLKUS**—So essentially what you are saying is that the legislation itself is hard to assess in terms of the costs of implementing it, regardless of what the Senate amendments were.

**Mr Crompton**—We are putting in place an implementation plan that fits within the budget that we have been given. The way we are undertaking the process through the guidelines process, the way we are undertaking the consultation process, the various exercises we are undertaking through our privacy connections network and so forth, are all the result of the strategic planning process that we have been through within the budget that we have been given. Had we had been given a very different budget figure, we would have undertaken a different plan.

**Senator BOLKUS**—But that goes to planning. It does not actually go to the operation of the legislation, which is what I am going towards. You indicated that you will probably finish up getting twice the number of inquiries or complaints that you may have anticipated. I suppose my point again is that you are in a situation where it is hard enough to assess what the actual costs of implementing the legislation are in those circumstances.

**Mr Crompton**—I am sorry, the point that I was making was that, as a result of the legislation going through, we are planning on the number of complaints we receive doubling—not the changes made in the Senate causing a doubling. Given that that base figure is very hard to estimate in advance, it is very hard for us, on top of that, to make an estimate of the variation that might be caused by the Senate amendments.

**Senator BOLKUS**—So you have not made any assessment as to how many more appeals might flow through the system because of the Senate amendments?

**Mr Crompton**—No, I have not.

**Senator BOLKUS**—So how then do you factor that process into your overall costing? You say you have a budget. You have to tailor everything to meet the budget. How do you tailor that? How do you factor that in?

**Mr Crompton**—Clearly, the rock bottom function of the office is to handle complaints and to try to do so in a timely manner. We have other tasks that are, in my view, equally important—for example, the promotion of and education on the legislation—but the immediate thing that we would have to do if the cost of handling complaints was vastly different from what we had estimated would be to adjust some other parts of our budget.

**Senator BOLKUS**—You have been involved in developing a number of partnerships with business and government organisations for the funding of research into privacy. Can you tell what the value of those partnerships is to the office?

**Mr Crompton**—In very round terms, in terms of both cash and in kind arrangements, we are raising about \$90,000, plus GST.

**Senator BOLKUS**—Can you give us a breakdown as to where that money is coming from?

**Mr Crompton**—Yes. Firm by firm we can do that. Do you want me to read them out to you now?

**Senator BOLKUS**—Yes.

**Mr Crompton**—The law firm Freehills, \$15,000; the consulting firm PricewaterhouseCoopers, \$15,000; the Australian Information Industry Association, \$15,000; Centrelink, \$35,000; the Australian Taxation Office, \$10,000.

**Senator BOLKUS**—The Taxation Office got off lightly. Will you go back to them again?

**Mr Crompton**—We were offering two levels of involvement and the tax office charged the lower level. We spelt out the levels of offer to the potential sponsors clearly and carefully in detail before we went to any of them, and the different organisations made their own choice as to how much they would like to become involved. There were a number of organisations that did not want to become involved at all.

**Senator BOLKUS**—Telecommunications carriers have got much to gain from this legislation. You have not gone to them?

**Mr Crompton**—I cannot say, off the top of my head, whether we have approached any of the telecommunications carriers.

**Senator BOLKUS**—I think you should.

**Senator COONEY**—Mr Crompton, you say that, as a result of the Senate amendments, the impact on your budget is going to be much more than it otherwise would have been, or significantly more—or whatever adjective you care to use.

**Mr Crompton**—I am sorry, but the answer that I have been giving is that I expect there is more impact but the scale of that impact is very hard for us to measure at the moment. It is going to depend on choices yet to be made by organisations as to, for example, whether or not they have codes and, when they have codes, whether or not they obey the law well themselves or some of it defaults to us.

**Senator COONEY**—How many people will you have available to you to see whether there is conformity with the codes? Have you factored that in? I will put that in context. There has been a lot of criticism recently, as you know, that government agencies have not been carrying out their regulatory duties as they ought. It is in that context that I am asking about your position. If you cannot do it, that is just it. But we do not want to be back here next year with you saying that you did not quite know what was going to go on and that this is what in fact happened. I would like some assessment now so at least you are on the record, giving an idea of how you are placed. If you have not got the finance to do it, you cannot do it. But that is not what you are saying. You seem to be saying, 'I think we will be able to muddle through'—to use a wartime phrase.

**Mr Pilgrim**—In regard to actual resourcing by way of staff to handle each of the different functions that we will pick up from 21 December, at the moment we are running on an office staffing level of 39 people. The area which we call the policy section is the area that will pick up some of the work in assessing, after 21 December, any codes that come through to the organisation for approval. Within that section itself, there are 15 staff, all of whom have a number of different tasks, as you can appreciate, apart from the private sector work. For example, we have still got the jurisdiction of the Commonwealth, credit reporting, TFN areas and those sorts of particular functions under the act that we have to provide advice and guidance on.

So what we are doing at the moment is devoting a fair bit of our resourcing to the new legislation and the implementation of that legislation through the development of the guidelines. At this stage, a rough figure would be that by 21 December we would probably have in the vicinity of four or five people who will be given the task of assessing codes as they are presented to the office for approval. As the commissioner said, it is fairly hard for us at the moment to work out how many organisations or sectors will be approaching us to get codes approved. So, on the basis that we have that number who are working on the guideline development and the code approval guideline development process, they are the same staff that, come 21 December, will form the basis of those people assessing the codes.

**Senator COONEY**—Have you got any teeth to police the codes in any way at all or, as long as they write out the code, would that be satisfactory to the commission?

**Mr Pilgrim**—In regard to the approval of the code process, there is quite a lengthy process that organisations must go through in developing their codes. For example, they have to demonstrate that there has been considerable public consultation. That is an important factor we will be looking at. They cannot just simply put an ad in the paper saying that the code is going to be developed. They will have to demonstrate to us that they have actually sought out those particular interest groups in the community—consumer advocates and the like—and given them the opportunity to participate in the development of the code. Once that code comes into our organisation, we will of course assess it against criteria to make sure that it is suitable to be approved. Having been approved, there are powers within the act for us to review that code and, if necessary, revoke it if we believe there is some major infringement going on within the code itself.

**Senator COONEY**—But what I am putting to you is that it does not seem, on the figures in the budget and from what you say, there is going to be the ability to see whether or not the various codes are adhered to.

**Mr Pilgrim**—The code authority, or the person who is going to be responsible for the code, if there is a separate adjudicator, will have to report to our office on an annual basis in a quite detailed way to outline the number of complaints they have had, how they have been resolved and the general operation of the code. We will also, I would suggest, through our normal inquiries and hotline phone service, be getting calls if members of the community are not satisfied with the behaviour of those codes. As I indicated, we would be able to initiate a review if we think there is a problem.

**Senator COONEY**—I take it from that that, if there is any complaint in the months or years to come that codes have been breached, we will be able to say: ‘Well, we asked the Office of the Privacy Commissioner whether they had sufficient resources and they said yes, they did; so if the code is being breached, we have been able to conclude there has been a lack of regulatory vigour’?

**Mr Pilgrim**—As I said earlier, what we will need to do is assess—

**Senator COONEY**—Is that a fair comment? Every time I ask you a question about your resources, you will say there is sufficient. I can understand that, because that is your position. But I want to know whether or not any code that is put up is going to be enforced in some sort of way. I have been persisting for a while with whether you will be able to enforce it, and the message I get back from you is, ‘Yes, we will.’ So it is not a lack of resources that will stop you from enforcing codes. So, if we come back next year and we have had some employee or

worker complaining about what has happened, we can say this has happened because the Office of the Privacy Commissioner has failed to carry out its regulatory duty.

**Mr Pilgrim**—No, I would not like you to say that at all. We will have to assess, as I said, the number of codes we are going to be presented with for approval. At this stage we do not know how many there are. If it looks as though we are going to have quite a large number of codes presented to the office for approval, then we will have to look within our current budgeting restraints as to whether we can provide enough resources to do a full and comprehensive assessment of those codes and, if not, it may be necessary for us to approach the government for additional funding. But we just do not have the facts at the moment.

**Senator COONEY**—There seems to be two things. I think we are sailing past each other. I keep asking about whether, once the code is in operation, once you have got the code, and it is all ticked off, people are going to adhere to it. Every time I ask about that you talk about how you are going to assess the code—which is something different, I suggest to you. Whether the code is a sufficient code is one point—I can understand what you say about that—but I am concerned about whether or not the code will be enforced once it is ticked off that it is a good code. There are some countries in the world with the best bill of rights that you could possibly have written down but it is never enforced. That is a point that is made again and again, and you have heard that. That is what I am asking you here: whether the thing is going to operate in the sense of somebody looking to it and seeing whether it is enforced. It does not seem to be within your vision that it would be enforced. I might be wrong about this.

**Mr Pilgrim**—What I was referring to earlier is that there is a mechanism for us to review the operation of the code once it has come into force, and we will do that through complaints that have come in to our organisation and also through the annual reporting process of the codes. Each of the codes will have to report to us on the operation of their code and how they handle complaints and how they have resolved those complaints.

**Senator COONEY**—So the regulation of the code will come through a process of complaints and of annual reports, and that is the totality?

**Mr Crompton**—On top of the points the deputy is making is that, as I recall it, in the code development guidelines we have made it clear that the codes themselves are to be reviewed every few years. In the same way as the banking code has recently been reviewed, these codes—

**Senator COONEY**—I will not persist. We have got collapses of companies and all sorts of trouble with airlines and what have you, and what has been said is: ‘Look, the law was all right. There was no problem with the law that covers all of this. The problem was that these things were not enforced.’ I suggest that you have got a charge from the community to look after privacy—in fact, that is what you say down here: ‘to build a culture of privacy’—but all you seem to conceive of is that you will make a code. Years ago people wrote out the 10 commandments, but the 10 commandments are often broken. Can you follow? I am asking you whether there is anybody to oversee whether the 10 commandments are going to be complied with, and you seem to be saying no, other than that you will listen to complaints and that you will get an annual report. Am I right about that?

**Mr Crompton**—And, on top of that, each code has to be reviewed every few years. We will be looking for the indicators in a normal risk management sense. We are in a position to revoke a code at any stage, if we have evidence to do so. We have said so in the code

development guidelines. Do you want us to audit each code each year? I am trying to find out what answer you want.

**Senator COONEY**—No, what I am getting at—

**Senator McKIERNAN**—There are times when we get very frustrated in committees such as this when our questions are not being answered. I am hearing Senator Cooney asking you very clear questions and we are getting evasion.

**Mr Crompton**—I am terribly sorry.

**Senator McKIERNAN**—I invite you afterwards to look at the *Hansard*, because it really is frustrating from this side. Senator Cooney is asking you about the code that is in existence now, not the review of the codes in years to come.

**Mr Crompton**—I must admit that I am reaching the point where I am obviously not understanding the questions.

**Senator COONEY**—That is probably the problem. You do not understand if there is a problem with actually enforcing the code once it is written. I do not know how much clearer I can make it for you. You seem to be saying: ‘We are going to have a code. We are going to tick off the code and say that it is a good code, and then we are going to listen to complaints about it. And we are going to have an annual report.’ That seems to be the way that you are going to try to regulate it. Is that right?

**Mr Crompton**—The thing that I have not said to you is whether or not we ourselves would be actually auditing a code or whether we would be doing things like seeding a code in terms of having someone lodge a complaint on our behalf and seeing how the complaint goes or having other more active mechanisms. Is that what you are looking for us to say?

**Senator COONEY**—I am paid as a senator; I thought you were paid as the Privacy Commissioner. I thought the idea of the legislation was that we were going to have privacy throughout the community insofar as we can. One of the outcomes is: ‘An Australian culture in which privacy is respected, promoted and protected’. We now have an act of parliament, which was amended by the Senate and ticked off, and we now have a certain program aimed at getting privacy going. There are going to be some privacy codes developed, and you are going to look at the privacy codes—I think you made that very clear—and decide whether or not they are reasonable privacy codes. So the privacy codes are all in operation in the sense that they are ticked off and you as the Privacy Commissioner have said that this is all right.

So have we got privacy? We might or might not, depending upon whether the privacy codes are adhered to and enforced. You can have as many laws as you like, but unless they are enforced they sit on the book. All I have gathered from you is that you are going to enforce them by listening to complaints, by having annual reports and, as I understand it, by testing them in some way that I am trying to find out about. You asked me what I would do. I would have a band of people going around to see whether or not these privacy codes were adhered to, because oftentimes complaints are not sufficient to cover them. But what I would do is clearly not what you are going to do, and I do not have to answer to the Senate committee.

**Senator Ellison**—Senator Cooney is talking about sanction or enforcement, and the question of complaint has been mentioned—what happens if the complaint is upheld. If the complaint is upheld, there is a sanction which attaches which gives you some enforcement.

**Senator COONEY**—It is a matter of degree. I think the picture of this privacy regime is one where we trust—and this is a fair enough approach on one level—that privacy is going to

be developed and you are going to ask the private sector to develop codes and what have you. That is all very good, but there does not seem to be any sort of rigorous plan to enforce these codes. Anyhow, leave it be, Mr Crompton.

**CHAIR**—Senator Cooney, before you move on to the next issue, perhaps I could say that, if the commissioner wants to provide you with further information, he can examine the *Hansard* and do so in due course. That would be of assistance.

**Senator COONEY**—Thank you, Chair. Mr Crompton, I have noted the issue of medical records. Have you worked out a plan for those people who get the records, read them and suddenly see that they have, say, a level 1 melanoma? What are you going to do about that? You must have thought about this.

**Mr Crompton**—The national privacy principles as passed by the parliament spell out that an individual has the right of access to their information. The guidelines that we have currently put out for consultation suggest a mechanism for providing access, including that an individual be given that access within 30 days and in a form that suits the individual making that request for access to their own record. We have not had a response yet; it is too early for a response on whether that is an appropriate guideline. If there is a dispute—meaning somebody does not give access—and if we are the complaint handler, we will make sure that the access is given.

**Senator COONEY**—I am not asking about that. I think you have a program for privacy that is good, but I am not sure that you have thought about the outcomes that might eventuate from these sorts of things. Say somebody has access to his medical records and there are things in them which are quite alarming. The one I suggested was a level 1 melanoma, which is not fatal—although a level 3 or a level 4 melanoma is, as I understand it. Do you have any plans to look after people who may have access to a record such as that and who get information in a way that might well shock them? Can you follow what I am saying? With great respect, you seem to have this vision of how this commission is going to work: the private sector writes out certain regulations and codes and that is all there is to it. With great respect, you do not seem to be accepting any responsibility for what might result from not having information or what might result from having information. Have you thought about that at all?

**Mr Crompton**—Other than giving a right of access, the act does not provide for the compassionate component that you are talking about.

**Senator COONEY**—So that is how the act reads?

**Mr Crompton**—Yes.

**Senator COONEY**—So you will apply it and if an ill results from it that is a consequence of the act.

**Mr Crompton**—The act does provide an exception to giving somebody access if access would have a serious impact on anybody's health—not just the individual's but somebody else's—and maybe that would be a consideration in circumstances possibly beyond the example that you have given. But in the case of a non life threatening melanoma, where the person is psychiatrically reasonably stable—in other words, it is not likely to cause major harm—then probably the person would have the right of access and could demand it and be given it.

**Senator LUDWIG**—In relation to the Privacy Amendment (Private Sector) Act, which was passed last November, an issue was raised about whether or not it was adequate for the protection of children's privacy. Do you recall that?

**Mr Crompton**—Yes.

**Senator LUDWIG**—One of the answers, as I understand it, was that the government was to look at the issue of children's privacy by establishing a consultative group to examine the issue and prepare a discussion paper. Were you involved in any of that?

**Mr Crompton**—That is a process being run entirely by the Attorney-General's Department.

**Senator LUDWIG**—Have they consulted you about it?

**Mr Crompton**—They have informed us of progress, but I think the question is probably best taken by the Attorney-General's Department.

**Senator LUDWIG**—Am I addressing it to the wrong person then, Mr Cornall? Do we want to leave it until that part?

**Mr Cornall**—I think it might be better to do so.

**Senator LUDWIG**—All right, I am happy to do that. I just wanted to ascertain what involvement the Privacy Commissioner himself had had in it, and so I will continue with you shortly then. Mr Crompton, at least since the act was passed, you have not turned your mind to the issue of child privacy protection?

**Mr Crompton**—We have been leaving it until the outcomes of the inquiry.

**Senator LUDWIG**—But you are the Privacy Commissioner, are you not?

**Mr Crompton**—Indeed. And, in terms of a number of elements of child privacy, the draft guidelines that we put out for consultation have quite a lot in them, trying to address the question of essentially the changeover between when the person is a minor and is being looked after by their parents or guardian and when the person becomes, if you like, sufficiently adult to take over the responsibility for themselves. Probably the main point coming out of those guidelines is that we have not made a particular call as to there being a particular age at which a person should always be deemed as responsible for themselves.

**Senator LUDWIG**—And you have not looked at that issue, as far as your scope of office is concerned?

**Mr Crompton**—I am sorry, in the draft guidelines that we have put out—

**Senator LUDWIG**—Can they be made available to the committee?

**Mr Crompton**—Yes, most certainly. I do not know if we have a spare copy that we can table straightaway.

**Senator LUDWIG**—Whenever you can would be fine. One of the elements of the draft guidelines, if I am looking at the stuff correctly, deals with the issue of child privacy protection; is that right?

**Mr Crompton**—One or two elements of it, rather than comprehensively: that is the point that I was making.

**Senator LUDWIG**—All right. And that is the extent to which you have so far, since November, dealt with the issue of child privacy?

**Mr Crompton**—It is probably the only extent to which we are able to do it, until this inquiry finalises.

**Senator LUDWIG**—And have you made inquiries of the department as to where the consultant group is that is meeting, who is on it, why they have not asked you, when the report is likely to be finalised—or where the discussion paper is, for that matter?

**Mr Crompton**—I must submit that I did not brief myself on exactly that question for this morning.

**Senator LUDWIG**—Perhaps you could go away and have a look at it.

**Mr Crompton**—Yes. Probably most of the answers will come from talking to the Attorney-General's Department, because they have kept us informed of progress.

**Senator LUDWIG**—Don't misread me; I am asking you what involvement you have had.

**Mr Crompton**—Okay. At this point we have been kept informed of progress, and I do not know that an issues paper has been written. It certainly has not been shown to us.

**Senator LUDWIG**—All right. What have you been told, and when? I am happy for you to take that on notice.

**Mr Crompton**—We meet once a month with the Attorney-General's Department to review a number of developments as they will have happened through the last month. We in fact have the next meeting tomorrow.

**Senator LUDWIG**—And do you go to those meetings?

**Mr Crompton**—Yes.

**Senator LUDWIG**—And the issue of the discussion paper on the agenda there: do you raise it as a matter that you are waiting for?

**Mr Crompton**—It has been discussed at two or three of the monthly meetings.

**Senator LUDWIG**—Are those minutes available?

**Mr Crompton**—We are really only recording action sheets out of it, rather than minutes.

**Senator LUDWIG**—Are they available?

**Mr Crompton**—Some of that material, I suspect, may well be considered by the government to be cabinet-in-confidence.

**Senator BOLKUS**—The privacy of the Privacy Commissioner!

**Senator LUDWIG**—Can you have a look? What you could at least obtain for me is when the issue was raised in those meetings and what questions you have put to ensure that it is still on the agenda—

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

**Senator LUDWIG**—and when it is likely to get to you. What I want to look for is pro-action in relation to this matter, from you or not at all. That is the issue. I leave it in your hands to tell me how you have been going with it. In relation to a question that was raised by Senator Cooney, Mr Pilgrim, you mentioned that there were 39 staff. Is that right?

**Mr Pilgrim**—Yes, Senator. We have had an increase in the last few months of some staffing levels. Some of those are temporary staff who are on temporary secondment to our office for a number of months.

**Senator LUDWIG**—There are four, are there? I have an answer which says that in February 2000 there were 35 staff.

**Mr Pilgrim**—That is correct. There were 35.

**Senator LUDWIG**—What did you form the task group to do? Is there a specific program that you have put in place to require the additional four to do?

**Mr Pilgrim**—Yes.

**Senator LUDWIG**—Or is the expansion of the regulatory framework being contemplated?

**Mr Pilgrim**—In part. We are doing some additional work in the health sector and we have taken some staff on in our policy area for a period of 12 months to pick up some of the work there. They have spread out over a number of the areas, some being in the policy area looking at health related aspects of the new legislation. At least one of those staff is working in another part of the policy section, where they are focusing on the general guidelines for the national privacy principles, looking in part at the issues relating to code development. I can give you a break-up of those.

**Senator LUDWIG**—If you wouldn't mind. Without going to the Portfolio Budget Statements, was that budgeted for and within budget? In other words, was it seen beforehand, I guess?

**Mr Pilgrim**—In part. We have actually got an arrangement where we have been provided with some additional funding from the Health Insurance Commission to undertake some of that additional health policy work that has come up in relation to the new private sector amendment.

**Senator LUDWIG**—How much is that?

**Mr Pilgrim**—Approximately \$250,000 per annum.

**Senator LUDWIG**—That is not reflected in the Portfolio Budget Statements, is it?

**Mr Pilgrim**—It does appear, I think, Senator, if you can bear with me for a moment while I look at it.

**Senator LUDWIG**—Whilst you are looking at that, are there any moneys that come in from other departments for this one as well?

**Mr Pilgrim**—There is. That figure appears under revenue from other sources.

**Senator LUDWIG**—Could you give me a breakdown of that revenue from other sources as to what agencies?

**Mr Pilgrim**—I can give you an approximate figure now, Senator.

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

**Mr Pilgrim**—We have \$250,000 from the Health Insurance Commission. We are provided with approximately \$331,000 per annum from Centrelink for our data matching functions. We are provided with approximately \$79,500 from the ACT government for the functions we undertake on behalf of the ACT government for the Office of the Privacy Commissioner.

**Senator LUDWIG**—The Centrelink data matching—what is that again? Can you remind me of what that is?

**Mr Pilgrim**—We have statutory responsibility under the data matching act for undertaking monitoring work, which is basically assessing data matching protocols that are being put

forward for data matching through Centrelink and using information from the Taxation Office. That money is provided on an ongoing basis to allow us to undertake that function.

**CHAIR**—Mr Crompton and Mr Pilgrim, thank you very much for assisting the committee with our considerations this afternoon.

[3.13 p.m.]

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

**CHAIR**—I welcome Mr Soden, Mr Dawson and Mr Williams from the Federal Court of Australia.

**Senator BOLKUS**—The court has received an increase in funding of somewhere close to \$5.5 million in this year's budget, with decreasing amounts in the out years. Can you tell us what this money will be spent on?

**Mr Soden**—It is almost exclusively for additional native title work of the court. There is a combination of pluses and minuses. I have not worked out the percentage, but it must be almost 99 per cent associated with additional native title work.

**Senator BOLKUS**—Can you tell us what that means in terms of staff costs, travel and other outgoings? Is there a break-up?

**Mr Soden**—Yes, we do have a break-up. I can take that on notice and give you the details of that break-up. But you might recall that Mr Doepel earlier mentioned that the funding had been calculated in accordance with criteria that had been agreed with the tribunal and the court in relation to throughput of cases over the next few years. The way in which we were able to calculate the cost of that additional throughput came about as a result of—the committee might remember—a few years ago our receiving quite a large additional allocation for native title and we undertook to acquit for that in relation to every dollar that we spent. The benefit of being able to do that was to be able to project into the future the likely throughput agreed with the Native Title Tribunal and ATSIC—how much it will cost us into the future to support additional hearings, additional case management, conferences, et cetera.

**Senator BOLKUS**—Are you saying that you have a formula as well?

**Mr Soden**—The formula was worked out with the tribunal and ATSIC. We do not have that here. It is quite a detailed formula. As Chris Doepel said, we are happy to give that to you, and will take it on notice.

**Senator BOLKUS**—If you could give that to us, that would be good. But are you telling me that the increase is based purely on that formula?

**Mr Soden**—Yes, it is.

**Senator BOLKUS**—So you get \$5.3 million in this year's budget. What do you get next year under that formula?

**Mr Soden**—It is a decreasing amount. It is \$4.572 million for 2002-03, \$4.053 million for 2003-04, reducing to \$2.974 million for 2004-05.

**Senator BOLKUS**—The obvious question then—and it flows on from Mr Doepel's evidence earlier—is: from what we have been told and from what we can expect, there will be no abatement of native title case interest within the next five, if not 10, years. How is it that you are getting \$5.3 million this year but you are getting less in the out years—much less within three years?

**Mr Soden**—It has been agreed that the nature of the work that we will do in the next two years will be the most resource intensive and there will be not necessarily an abatement in the numbers but an abatement in the very expensive cases. That is the expectation.

**Senator BOLKUS**—So you expect that the hard cases will be out of the way during this three-year period?

**Mr Soden**—That is an estimate that has been taken.

**Senator BOLKUS**—Is that taken by the Federal Court?

**Mr Soden**—Not solely. No, it was in conjunction with the tribunal and with ATSIC.

**Senator BOLKUS**—I would not have thought, from what Mr Doepel was saying this morning, that the tribunal is of the view that the hard cases would be out of the way in this three-year period. Is that your view?

**Mr Soden**—I am not sure that he was actually saying that.

**Senator BOLKUS**—He was not saying that directly, but the charts he was giving us and the predictions he was making as to the caseload—

**Mr Soden**—If I can put it this way: we see that there is a difference between the number of cases and the complexity of cases. I think there is agreement between the tribunal and us that it is more likely that there will be a larger number of more complex, more expensive cases in the next three years but that there will still be a large number of smaller cases into the future which will not be as resource intensive.

**Senator BOLKUS**—So you are telling us that we should expect that the time spent by the Federal Court on native title will be at its peak this year and will go down over the next three years? Are they the figures you have?

**Mr Soden**—Yes. If I can give you the figures for what we expect to spend totally on native title over the next three years, I think you might agree that there is a peak that will go over the next three periods. The figures are: \$12.031 million—

**Senator BOLKUS**—That is this year?

**Mr Soden**—That is the coming financial year, 2001-02. For 2002-03, it is \$11.178 million. For 2003-04, it is \$10.558, reducing in 2004-05 to \$9.474 million. That is our expected total expenditure over the next few years.

**Senator BOLKUS**—You may want to take this on notice. Going back to this forthcoming year, can you give us a breakdown of staff costs—full-time and part-time—travel and other outgoings for that additional expenditure?

**Mr Soden**—Yes, we can take that on notice. I do not have the figures with me, but I know it has been calculated.

**Senator BOLKUS**—So you apply the formula and they are your estimates for native title for this four-year period. So you are pretty heavily involved in determining the additional funding requirements?

**Mr Soden**—Very closely involved, yes.

**Senator BOLKUS**—In terms of those increases, can you tell us what the court's experience has been with respect to the legislative and executive changes in each state jurisdiction? Are you finding that some state jurisdictions, because of those changes, are impacting on the workload of the court? If so, which states?

**Mr Soden**—I had the benefit of hearing the registrar of the tribunal earlier this morning. It is probably safe for me to confirm that the impact that that tribunal is feeling has a similar impact in the court. The Northern Territory is a good example. The government's approach in the Northern Territory, with its section 29 notices, has meant a large number of applications being lodged in the tribunal and therefore a large flow-on to the Federal Court. Part of the funding we have just been talking about will be directed to setting up a special native title unit of our court in Darwin. We do not have a native title unit up there at the moment. We know we need to do that because of the number of cases coming through. Again, just recalling the comments of Mr Doepel, I would agree with his comments in relation to the other states as well. There is a consequential impact on us arising from increased notification work that we have to do, et cetera.

**Senator BOLKUS**—You are setting up a native title unit in Darwin: what will that consist of? What is the budget for it?

**Mr Soden**—I do not have the budget figure. At this stage, we have not finalised our budget calculations as to what will be required in Darwin over the next four years. We recently advertised for and recruited a specialist registrar to perform native title work. That person will be supported by three people up there to assist in the case management work. I think that is a start in terms of what we will need up there.

**Senator BOLKUS**—So that registrar will be posted in Darwin?

**Mr Soden**—Yes, on a full-time basis, with three supporting staff.

**Senator BOLKUS**—So there are four staff?

**Mr Soden**—Yes, at this stage.

**Senator BOLKUS**—What do you see the functions of the unit being?

**Mr Soden**—They could be best described as supporting the work of the judges in managing the native title cases. That supportive work is, obviously, a lot of the registry related work in terms of filing and accepting documents, but a large proportion of the work, particularly of the registrar, will be actually dealing with aspects of matters on behalf of the judge—clarifying party issues and clarifying issues in relation to overlapping claims. We have undertaken mediations in addition to those conducted by the tribunal to resolve overlapping claims and to sort out party issues. Some of those mediations have actually gone a long way to settling disputes. Again, I go back and say it is work associated with supporting the judges in the way in which they deal with the actual cases.

**Senator BOLKUS**—Will they have any role in, for instance, developing relations with the Northern Territory government—its administration?

**Mr Soden**—A critical role. It is included in the specific duties. I should have mentioned that. There will be a very high level of requirement to liaise, to consult and particularly to ensure the best possible coordination between affected bodies and the court in terms of which are the most appropriate cases to manage first.

**Senator BOLKUS**—You would have heard evidence this morning that there is some concern in the tribunal that, for instance, the process has been triggered and notices are going out in a somewhat haphazard way in the Territory. Clustering by location was seen to be a preferred way. Does the court have any view on that? Is that something that would be pursued with the Territory government, for instance?

**Mr Soden**—One of the first things I will expect our new registrar in Darwin to initiate will be meetings of the kind that will focus on how to better coordinate a lot of the activities undertaken that have an effect on native title. I am fairly confident that the NT government people associated with managing their native title work will be quite willing to participate in those meetings.

**Senator BOLKUS**—It seems like this might be a prime objective of the units. Would that be so?

**Mr Soden**—It is a high-level objective of all our units across the country. Under the umbrella of our national coordinating committee, which is convened by judges from each state and which is supported by officers, yes, this liaison and coordination is a high priority.

**Senator BOLKUS**—That coordinating committee, who does it consists of?

**Mr Soden**—The convener is Justice Beaumont, a judge in New South Wales; Justice French represents Western Australia; Justice O'Loughlin represents South Australia; Justice North represents Victoria; Justice O'Loughlin also represents the Northern Territory, there being no resident Northern Territory judge; and Justice Drummond represents Queensland. Those particular judges are also the judges who we call the provisional docket judges. That means that they are the judges responsible for receiving all fresh native title applications for the purpose of making decisions about how they ought to be managed or whether they ought to be allocated to a judge immediately for further management. Each judge is coordinating on a state-by-state basis and they come to a national coordinating committee where we attempt to coordinate on a national basis. That was the committee which Mr Doepel mentioned this morning which the president of the tribunal attends.

**Senator BOLKUS**—I must refer you to the case involving the Kimberley Land Council. I think that right at the start of this process there was an appreciation that the new legislation, new notices, provisions and so on would immediately lead to extra resource demands on the court, on the tribunal and also on land councils. We have had the Wilinggin claim arising from the Kimberley knocked back by the Federal Court, a request for adjournment being knocked back and I think it might have been a third request. I think there is an appreciation that, because of the increased workload, land councils may not be in a position to resource adequately all applications that they have to run. Is that something that you are talking to be Native Title Tribunal about in terms, for instance, of trying to have a policy or guidelines for staggering native title cases before the court?

**Mr Soden**—Yes, we do, and we take other action as well. The funding which has been provided to us and to the tribunal is part of a broader allocation of funding, some of which has gone to ATSIC, which is, as I understand it, for further resources for the representative bodies, therefore the land councils. Those amounts were calculated having regard to the tribunal's and the court's calculations of what matters were likely to come on and where in the future. So I believe that ATSIC now has information that will help it makes those informed funding decisions which will help the land councils. We are very alive to the difficulties of the land councils and their funding situations. We are also alive to some of the ways in which decisions are made concerning land council funding and which applicant or group of applicants might receive funding support. There has not yet been an occasion where the court has proceeded to force on a hearing where applicants have not been funded. However, what we have found is that a gentle approach of not removing the hearing date has produced the result that ultimately funding has been found for the applicants and the trials have been able to proceed in a properly prepared fashion. We have yet to get to the question of whether the

court would force on a matter where an applicant is not funded—importantly, that issue has not arisen.

**Senator McKIERNAN**—As I understood what you have just said, Mr Soden, the matter is now listed—according to this newspaper article—for 23 July. So the court lists are booked for 23 July on this particular case. It is a newspaper report on the date.

**Mr Soden**—I do not have the details of the case or the details of the dates that are fixed. I know of a matter where there has been a deal of concern about the fixture, and there have been adjournment applications. My most recent informal advice is that the problems have been solved and there will be no difficulty about the hearing proceeding. What I cannot confirm, Senator, is that we are talking about the same matter.

**Senator McKIERNAN**—The one that is mentioned in a newspaper article which Senator Bolkus has just been questioning you on is Wilinggin. The newspaper article is dated 26 April 2001. It is the *West Australian* newspaper. The purpose of my question is not to repeat what Senator Bolkus has asked. Here we have a report of an application for an adjournment being made and your response was that gentle pressure has ensured in the past that there has been no unrepresented litigant in these types of proceedings in the Federal Court.

**Mr Soden**—I can confirm that, Senator. There has not been an occasion when a trial has commenced over an application for an adjournment where an applicant is not funded.

**Senator McKIERNAN**—Dare I suggest that there is a bit of risk management in handling your lists on these matters? If indeed the application is not funded—the legal assistance is not legally funded—the case could in fact proceed on 23 July without legal representation, or the court could end up having a free day to do other work?

**Mr Soden**—I am pretty sure we are talking about the same matter, and that matter is listed for many, many weeks of hearing. There has been a lot of investment by a lot of people in that matter proceeding. I cannot talk for the reasoning of the judge in relation to not at that time agreeing to the adjournment application, but there probably are a number of factors that the court was informed of and that the media may not be aware of that have led the judge to believe that there was a possibility of funding being found. It has occurred in the past. Let us not vacate the trial date at this stage. I am not saying, however, that if funding is not found and another application is made shortly before the commencement of the trial that that subsequent application will not be successful. It all depends on the circumstances at the time.

**Senator McKIERNAN**—Will there be another call-over on the list management? Are those the correct terms to use?

**Mr Soden**—There would be some event automatically occurring, either at the request of the court or at the request of the parties. Can I just give you another example? Justice Beaumont, a judge of our court, has been hearing a long case in Broome. Very unfortunately there was the death of two young Aboriginal people in the Broome area the weekend before last, which meant that that trial needed to be postponed for a few weeks. These circumstances occur. We have a system in place that enables the judges to do other work in other places. We manage it the best way we can.

**Senator BOLKUS**—I was going to ask about the Federal Magistrates Service and how much money it will transfer to the Federal Court for services provided by the court in the financial year 2000-01.

**Mr Soden**—There has been no calculation yet of the money to be transferred by the FMS to the Federal Court. Again, I was in the room this morning when I heard Mr May, the chief executive of that court, answer some questions about this. Maybe I could help the committee in this context: on the last occasion we discussed the development of the memorandum of understanding between the two courts, we reported to this committee that that was in effect settled but not signed. It has subsequently been signed. There are provisions in that memorandum of understanding which will enable the two courts to work together in calculating, principally through workload figures and then through costs associated with that workload, what work we are doing on behalf of the FMS to enable, at some time in the future, a transfer of an allocation from our court to the FMS so that in effect they can pay us for the services that we provide to them.

**Senator BOLKUS**—We have a copy of the MOU. What section was it?

**Mr Soden**—I suggest clause 1.2.

**Senator BOLKUS**—Do you have an estimated figure? You are obviously about to settle this year's budget. Is there a figure that you expect will—

**Mr Soden**—We have not yet worked out the detail of what it might be. One of the principal reasons for that is it is a little too early to tell in terms of the case mix that is occurring between the courts. It had been assumed that any drop in the work of the Federal Court would be as a direct result of an increase in work in the Federal Magistrates Service. That may not be the case. It may well be that the Federal Magistrates Service is attracting some additional jurisdiction that was not originally in our court. We need to look at all this information very carefully, rather than just cost and transfer the amount associated with cases not commenced in our court—if I could put it that way—because it does not follow that those cases have gone to the Magistrates Court.

**Senator BOLKUS**—So with two months to go this financial year, do you expect something from the Federal Magistrates Service?

**Mr Soden**—We are not pressing them for the coming financial year for money to be transferred. We anticipate, during the balance of this calendar year, that we will work on the figures that ultimately I hope we will agree upon in terms of what ought to be transferred. I presume that in the next financial year we will work towards adjustments in the budget to reflect that cost.

**Senator LUDWIG**—Have you got a figure in mind? You sound as if you have got a figure in mind, but you are not going to tell the FMS that.

**Mr Soden**—To be honest, I have not. The only thing I have in my mind—it is not even a dollar figure—is that I want to make sure I have got as much information as I can have available to me to make sure that what is transferred properly reflects the work that has gone to the FMS. In other words, I do not want money transferred from our budget that might be a windfall for the FMS.

**Senator BOLKUS**—Let us leave aside what you might expect or what you might ask for and go down to what it is costing you. Can you give us a breakdown of the costs of the types of services that the Federal Court is providing to the service?

**Mr Soden**—I can, but I will have to take that on notice because we have not calculated it yet. We can do those calculations and give you some figures on it, but I do not have those figures because we have not calculated—

**Senator BOLKUS**—No-one at the table knows this? A few million dollars are floating around the place and you guys do not know how much it is? You are afraid of incurring GST on the bill if you put it out, are you?

**Mr Soden**—No, we have not calculated a figure yet.

**Senator BOLKUS**—Have you calculated, for instance, how many staff or what sort of other costs—

**Mr Soden**—No.

**Senator BOLKUS**—Have you got component figures?

**Mr Soden**—No; as I say, the plan is to do that this calendar year. There has not been an imperative to do so from either our part or the Magistrates Service's part.

**Senator BOLKUS**—You must be very richly resourced, then.

**Mr Soden**—No. I should explain that the bulk of the work we are doing for the FMS is work that we previously did ourselves.

**Senator BOLKUS**—That is right. If I were you, I would be looking forward to sending a bill.

**Mr Williams**—I might explain something here. It is important to understand that, once we have costed the amount of work that we do in supporting the federal magistrates, there would be a funding transfer from the Federal Court to the Federal Magistrates Service and then they would use those funds to pay us for those services. So there is no specific incentive in it for us to do it quickly or to give a particularly high figure. As Mr Soden just pointed out, the work that we are doing on behalf of the magistrates at the moment is, effectively, work that we were doing previously ourselves, so we are not out of pocket in that sense. The MOU, as you would see, is quite complex and the workload is varied and growing in some areas. We really do not have a good feel for it at the moment. We have put together an internal working party to start gathering the data that will help us in arriving at those figures. Initially, though, the first imperative is to arrive at a figure that would reflect a notional amount in our financial statements and the financial statements of the Federal Magistrates Service for services initially provided free of charge by us to the magistrates and, in their financial statements, for services provided free of charge.

**Senator BOLKUS**—Mr Soden, you promised that you would come back to us with some figures as to what it might cost you. Can you still do that?

**Mr Soden**—Yes. We will do some early costings. I will be qualifying those along the lines of what Mr Williams said. We need to be very careful that we calculate the precise costs so that, when the money is transferred, the money given to the FMS is sufficient to enable them to purchase the services from us. So we can give you some indicative costings.

**Senator BOLKUS**—What happens if there is a dispute between you and the FMS as to the real cost? Where does that go? Who makes the decision? Who arbitrates?

**Mr Soden**—I do not think that there is a specific provision in the MOU for dispute resolution mechanisms. I think that we have worked on the assumption that we will work it out one way or the other. It would be done first at officer level. I would hate to think that it would need to go to either a chief justice or a chief magistrate if we could not work it out at our level.

**Senator BOLKUS**—Justice Street is always available.

**Mr Soden**—That makes me think about dollar figures!

**Senator LUDWIG**—I have a couple of questions, particularly in relation to the work of the Federal Court. I think that you were here this morning to hear the question about the High Court and the workload being taken up in the immigration area by the FMS. Of course, that is a longer bow, and I think that that was reflected in the *Australian* today. The work would normally be remitted to the Federal Court to be dealt with, would it not? Have you been asked about that, about whether or not there is capacity for the Federal Court to take the overflow, if there is any, from the High Court in relation to the immigration area?

**Mr Soden**—We have a large amount of immigration work in our own right—a very large proportion. There have been no discussions between the High Court and the Federal Court about any more of its work coming to us.

**Senator LUDWIG**—What about between you and the department?

**Mr Soden**—This committee might recall a discussion, when it was inquiring into the [Federal Magistrates Bill](#), about the jurisdiction of magistrates. If I recall correctly, there was a question about the immigration jurisdiction being part of that new court's jurisdiction.

**Senator LUDWIG**—Yes.

**Mr Soden**—Again, if my recollection is correct, I think the Federal Court at that time supported the immigration jurisdiction being given to the FMS. For this reason, the applicants would have a choice to commence in either the FMS or the Federal Court. Appeals from the Federal Magistrates Service may go to one judge of the Federal Court, if the Chief Justice certifies that it does not need three judges. However, if a matter is commenced in the Federal Court and a judge of the Federal Court thinks that it is a matter that could be dealt with by a magistrate, it could be remitted to a magistrate. So we did see that there are a lot of very good structural reasons and safeguards that would enable the Federal Magistrates Service to receive and hear quickly simple migration matters of a kind that would normally come to us or possibly to the High Court. On the other hand, some very important cases—possibly test cases—could come to our court, cases that we could keep. If they went on appeal, it could be dealt with by three of our judges. So I think that there are some good structural reasons, from our perspective, as to why the FMS should have migration jurisdiction.

**Senator LUDWIG**—In relation to the new corporations scheme, is that on track for 1 July?

**Mr Soden**—As far as we are concerned. I noticed a press release, I think of the Attorney—

**Senator LUDWIG**—That is the one I am looking at. I am not deliberately keeping you in the dark. It is dated 24 May and headed 'New corporations scheme on track for 1 July target'. It is a joint news release from the Attorney-General and the Hon. Joe Hockey. My question is: are you on track?

**Mr Soden**—Yes, Senator. By way of background, we have had a committee of judges looking at the 1 July date for some time now. As you would be aware, our court has been closely involved in discussions concerning the return of the jurisdiction and we see no reason not to be ready by 1 July.

**Senator LUDWIG**—And you do not see any difficulties with New South Wales and Victoria being the only ones available—in other words, if no others sign up, so to speak?

**Mr Soden**—The bulk of the Corporations Law work is done out of those two states. I do not see any particular procedural difficulty with the others not being on board, but I understand that may not be the case.

**Mr Govey**—Perhaps I can add something to that. As I understood that press release, it was not just referring to the expectation that New South Wales and Victoria would be ready, but rather that all jurisdictions would be ready.

**Senator LUDWIG**—No, I am obviously feeding it to you in part. It goes on to say that the other states have agreed in principle. But agreeing in principle and being in the position of New South Wales and Victoria in having already passed legislation is a different kettle of fish, especially for a 1 July start-up.

**Mr Govey**—On that score, we have been staying in contact with the state officers. It is a matter for their parliaments, ultimately, as to whether they meet that 1 July deadline, but, on the basis of the information we have been given, there is no reason to believe that they cannot do so.

**Senator LUDWIG**—I see. It is predicated on the basis that all the states will sign up by 1 July?

**Mr Govey**—That is right.

**Senator LUDWIG**—I see—a badly written press statement. Perhaps you could take that on notice and tell me, after 1 July, if that is not the case.

**Mr Govey**—I think we will all be very much aware if we do not make that 1 July deadline, but I can make a specific response on it.

**Senator COONEY**—We are going to become the knowledge nation, the intellectual giant of the world. In that context, I was wondering whether much work is being done by the court in the area of intellectual property. You could take that on notice.

**Mr Soden**—If you can just give me a moment, I can give you some figures. The more important thing, I think, is that the kind of work we do in the intellectual property area is changing. You might have noticed that our court has suggested that perhaps we should create a cyber panel—that is, judges dealing with cyber cases. It is being suggested to us that maybe some judges in some courts are not on top of the cyber related issues. We try to let it be known that we are by creating a cyber panel, and of course we have recently launched our e-court, which is judges working in a completely electronic environment. It is those types of cases that are coming. So the raw figures are not all that meaningful; it is the nature of the cases that are coming.

**Senator COONEY**—If you can get the figures now, good; if you cannot, I will put the context in which I asked the question. We are doing some legislation now to do with copyrights and parallel imports, et cetera. We have been listening to evidence about intellectual property and property rights, and the lack of protection we as a community give to them. I thought that when I next saw you—which is now—I might ask you just how effective we are. The suggestion that you made adds to that—just what are we doing in this area? The allegation made by some in the hearing was that as a community we do not do enough to protect intellectual property, and I just thought that some indication might come from the Federal Court, which deals with these issues.

**Mr Soden**—The extent to which the court gets involved in public policy is an issue in itself.

**Senator COONEY**—This is not a public policy issue. What I want from you is the number of cases. Is a contest about intellectual property a common thing in the courts?

**Mr Soden**—Yes. Just before we give you the numbers, another aspect that you may not be aware of is that our judges that do intellectual property work have given assistance to Indonesia, Vietnam, Thailand and the Philippines in relation to intellectual property case training for the judiciary of those courts. That is a result of the recognition of the expertise of the judges in our court. But the added economical benefit for our country in terms of the establishment in those places is an intellectual property regime which supports investment by our country in those places and the intellectual property of our companies in those places. It is a two-way street.

**Mr Dawson**—A quick look through the filings would indicate that from the period 1 July to 1 May there were 66 copyright matters filed in the court, two under the Designs Act and 33 under the Patents Act. Though in themselves those numbers are not large, they are very complex, and they are usually very long cases.

**Senator COONEY**—From what you can gather, there is certainly a consciousness of the ability to use the law, if it is needed, in the community. Is there a steady flow of cases into the court, or do they come in rushes? What happens?

**Mr Soden**—Anecdotally, it is consistent. But the nature of the cases is changing, along the lines that I mentioned earlier.

**Mr Dawson**—If I could just follow on, in relation to copyright you could have an average of five to six per month.

**Senator COONEY**—That is more than I thought there might be. The other matter I want to ask you about is the pro bono scheme that the court runs, and I think the Victorian bar has set up one as well. We had Professor Weisbrot in here before, who is doing a report into trying to coordinate pro bono work. Is the court contributing to Professor Weisbrot's report in the sense of telling him about the pro bono work that they do, or is that separate? I just want to get a purchase on where pro bono work is going and whether it is coordinated in any way and what its relationship is with other things, like legal aid and community legal centres. Do you know anything about that?

**Mr Soden**—You might recall that the *Managing justice* report of the ALRC dealt very intensely with the way we operate—DP 62, I think it was; *Managing justice*. There was a large discussion in that report on our order 80 pro bono rules. As well as that—and that is to say they would have a good knowledge of how our system works—we have two judges who are deputy commissioners of the ALRC, Justice von Doussa and Justice Weinberg, from Melbourne, who no doubt will keep the commission informed.

**Senator COONEY**—He gave evidence earlier in the day. Did you hear him?

**Mr Soden**—Yes, I did.

**Senator COONEY**—It was in that context that I was wondering what part the court played. Did they simply leave it up to him to know about it, or did somebody go along and talk to him?

**Mr Soden**—There has been no proactive role that the court has played in informing the commission of what we do. On the other hand, there has been no recent contact, so far as I am aware, from the commission to us in relation to our pro bono scheme. I think that is because, to be fair to them, how our scheme works is very well known by them, and there has been no

major change to it since it was established. It is used quite rarely and quite carefully. The number of times that we use it are not high compared to how a pro bono scheme might be used in some other places. The model that we implemented has been copied by a large number of jurisdictions across Australia, and that of itself is one of the reasons for a call for a better coordination of pro bono, because the fact of our model being copied in a number of places has put pressure on the bar and the law societies to produce pro bono practitioners to a greater degree than they think they might be able to.

**Senator COONEY**—That is a good thing. What Professor Weisbrot was charged with doing, I gather, was just to correlate all these various services.

**Mr Soden**—That is my understanding.

**Senator COONEY**—In any event, he is well aware—

**Mr Soden**—He would be very well aware of how we operate.

**CHAIR**—I thank the witnesses for assisting the committee.

**Mr Soden**—Could I just correct one piece of my earlier evidence? It was something that slipped my mind. I mentioned that Justice Beaumont was the convenor of the native title coordinating committee. I am reminded now that he resigned from that position due to workload a few weeks ago; Justice O'Loughlin from South Australia has agreed to be convenor of that coordinating committee for the time being.

[3.56 p.m.]

#### **National Crime Authority**

**Senator McKIERNAN**—The total appropriation is in excess of \$58 million, and there was an increase of \$7 million from the budget, but I cannot find in the PBS an explanation of where this \$7 million is going. I hope it is not to buy the worn-out roneos that Immigration no longer use.

**Mr Whiddett**—I can speak to \$5 million of that money. It was special funds for sensitive operations, the details of which it would not be appropriate to raise at a public forum. As for the balance of that money, I will defer to Mr Newman.

**Mr Newman**—The remaining funds there can be attributed to approximately \$700,000 that was granted to cover increases in seconded police salaries that the NCA incurred and adjustments through indexation.

**Senator McKIERNAN**—There is still \$1.3 million outstanding.

**Mr Newman**—The expected number for 2001-02 was actually a total budget of \$53 million, as I understand it. We are talking about \$7 million from our 2000-01 Portfolio Budget Statements.

**Senator McKIERNAN**—Am I right about the \$7 million?

**Mr Newman**—It is \$7 million in terms of—

**Senator McKIERNAN**—\$5.7 million.

**Mr Newman**—Yes. It is \$7 million in total—\$4.9 million, as Mr Whiddett has indicated, and approximately \$700,000 from the allowances for salaries; the remaining moneys, as we said, will be in relation to indexation and allowances.

**Senator McKIERNAN**—So this is new money on top of the normal budget allocation to NCA, so if I were to go back to last year's PBS I would see a figure for it there. I would have thought that would have taken into account the additions that were accounting for inflation and so forth, adjustments as to whether inflation is up or down.

**Mr Newman**—As I said, the total figure in last year's PBS was 53,507, which was going to be the total revenue that was expected by the NCA. There was an increase, as indicated in the PBS. The difference between the 53 and the 59 total—the 59,450 that we will be receiving—would have been about six million.

**Senator McKIERNAN**—Most of the NCA's work is sensitive and there has always been respect for that on this side of the table, and I am talking about the committee as a whole. We have an extra \$5 million coming for sensitive operations. How much more can you tell the committee about what that is without breaching the sensitivity of the matter? I will give you notice that I am not going to press it if you say it is too sensitive to put here, but there has always been a willingness among some agencies to share information with us. Whilst we do not explore each and every dollar spent by an organisation such as the NCA or the AFP or ASIO, who will be appearing later, there is usually some information given to the committee as to what the expenditure is. How far can you go, Mr Whiddett?

**Mr Whiddett**—In the investigation of complex national organised crime, the ground has shifted somewhat from several years ago and there is a requirement for the NCA to be a lot more proactive and to counter the measures that are being introduced by contemporary criminals. This is a new initiative. It involves the employment of different people. It involves the setting up of a special infrastructure to cater for it. Effectively, all I can say is that it is a new inroad into sophisticated organised crime and equally we have to be sufficiently sophisticated ourselves.

**Mr Cornall**—I was party to the discussions with Finance and the NCA in relation to this funding. I really do think that Mr Whiddett cannot take the matter any further.

**Senator McKIERNAN**—That is fine; I said that I was not going to press it. I am not pressing that particular sensitivity but just finding out where things are going. You did mention increased staff. If we look at page 82, we actually see that there is going to be a reduction in staff within the NCA over the next budget.

**Mr Newman**—We have had an attrition rate within the NCA over the last 12 months. As for the estimated numbers that we are looking at, I think you will find that there is an increase in funding in our salaries. The money that has come recently will require an adjustment in terms of our staffing levels.

**Senator McKIERNAN**—So there will not be a reduction in staff in the next financial year, as opposed to this financial year: is that what you are saying?

**Mr Newman**—For next financial year we will need to re-source the activities, as Mr Whiddett has outlined, and there are some estimates on the numbers of that.

**Senator McKIERNAN**—My reading of the estimates that are contained in this PBS is that next year there is going to be a reduction in staff. Am I reading them wrongly? I have read them wrongly in the past.

**Mr Newman**—The budget estimate of 265 is based essentially on APS staff. The total staffing for the NCA will probably increase because of the seconded number of police. Our total staff number is 397 as at 30 April. The figures here are for APS staff.

**Senator McKIERNAN**—How many seconded staff does the NCA have? I imagine the number varies from month to month, depending on the operations that you are engaged in.

**Mr Whiddett**—It is in the vicinity of 150. There are about 120 law enforcement officers and then there is another number made up of people from Taxation and other departments from time to time. It is a floating number. The organisation has a reasonably high attrition rate compared with other departments. There is a continual exchange of police and in some years that can account for almost 50 per cent of the staff. Last year there was a reasonably high attrition rate of permanent staff. It is difficult to give a precise figure at any particular time, but around 400 is the strength of the authority.

**Senator McKIERNAN**—Are there any major operations or activities in which the NCA was engaged during the current financial that will not continue at the same level in the next financial year?

**Mr Whiddett**—That has to be answered on two levels. Certainly we will be continuing to complete the matters that are now before the authority, but it is true to say that, under the future directions statement of the chairman, there will be a reduction in the numbers of jobs that the NCA will undertake, but at the same time they will be more complex and of a higher quality. Certainly we have moved towards that over the last 12 months—that is, undertaking the work that we must do and progressively shedding work that is inappropriate under the new directions.

**Senator McKIERNAN**—Is there any additional money anywhere in the appropriations for new equipment or re-equipment for the NCA?

**Mr Whiddett**—Certainly in relation to the new initiative—

**Senator McKIERNAN**—Apart from the new initiative, which I did not want to explore any further.

**Mr Whiddett**—It is built into special funding, such as the Swordfish funding which is continuing beyond this year, and money also continues for the National Illicit Drugs Strategy. Within those two programs, there is money for equipment.

**Senator McKIERNAN**—Is there a breakdown on that? How much would be for equipment as opposed to salary and other on-costs?

**Mr Whiddett**—I do not have those figures, but I could take that question on notice.

**Senator McKIERNAN**—If you would, because we have heard in other forums that there is a need within the authority for some up-to-date equipment to assist the authority in carrying out its objectives. That is all I have to ask the NCA.

**Mr Newman**—The NCA is conscious of upgrading our IT infrastructure and is making some capital allowances for next year to ensure that we do upgrade our IT.

**Senator McKIERNAN**—Where are they in here?

**Mr Newman**—It is not a new initiative. It has not been funded separately as such. This is doing some internal funding.

**Senator McKIERNAN**—Could you provide the committee with a breakdown of that?

**Mr Newman**—Yes.

**Senator McKIERNAN**—I am pleased to hear of this funding.

**CHAIR**—As there are no further questions, Mr Whiddett and Mr Newman, thank you very much for appearing today.

[4.10 p.m.]

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

**CHAIR**—I welcome the officers from the Human Rights and Equal Opportunity Commission and, in particular, Dr Ozdowski, the new Human Rights Commissioner, to his first meeting of the Legal and Constitutional Legislation Committee estimates hearing. It is a pleasure to have you before the hearing this afternoon. Dr Ozdowski, just before we move to Senator McKiernan, who is going to begin with questions, I wondered, given that it is your first opportunity to appear in front of the committee, whether you might just explain briefly what your focus has been during your initial period as commissioner.

**Dr Ozdowski**—I started work as a commissioner by the end of last year—10 December last year. Of course, it is a major field, so part of the time it was familiarisation with the jurisdiction and with all the functions of the commission. Then I focused very much on introducing myself to a whole range of NGOs and also to members of parliament and relevant colleagues in the bureaucracy. Then I got involved with a range of programs. Part of my focus was on immigration. I visited some of the detention centres. I also published additional work on the Internet. I conducted limited consultations in Melbourne, Sydney and Adelaide in terms of my role as the Disability Discrimination Commissioner. I initiated a number of new initiatives—for example, we started an inquiry into the tax industry—and finalised about five projects which I inherited from the previous commissioner.

**CHAIR**—Thank you very much. That sets the scene well for the committee.

**Senator McKIERNAN**—I also welcome you to the hearings. Perhaps I should start with a matter I raised earlier today, a report that was tabled in the parliament in March this year; that is, report No. 12—*Report of an inquiry into a complaint of acts or practices inconsistent with or contrary to human rights in an immigration detention centre*. The last recommendation in that report, which is not numbered, reads:

I also recommend that the Department pay Mr Su the sum of \$20,000 and Mr Quan the sum of \$15,000 by way of compensation for the damages each suffered as a result of the human rights violations to which he was subjected.

Following that recommendation, on page 28 is the respondent's reply. I am not going to read each and every part of it. The respondent, which is the Department of Immigration and Multicultural Affairs, will not pay that compensation. Where does the matter lie now that a finding has been made by the commission? Where will it proceed from here?

**Dr Ozdowski**—This report was the last report finalised by the previous commissioner, so I refer this question to Rocky Clifford, who is responsible for complaint handling.

**Ms Clifford**—The reports are in relation to findings of breaches of human rights by the Commonwealth. They have quite a different complaint handling process, I suppose, to those of unlawful discrimination in that the initial part of the inquiry is about inquiring into the matter and, where possible, to attempt conciliation of the matters. If the current president—I think that was from the previous human rights commissioner; I do not have that information before me—who is responsible for complaint handling under the new amendment legislation, is of the view, after some further inquiry, that there is there has been a breach of a human right, she may make a report and recommendation, which of course finds its way to parliament through the Attorney-General tabling it. Then the matter rests with parliament and

on how they will follow those recommendations. As I understand it, there has been no follow-up of that matter. The commission of course, in terms of other reports, will continue to table matters that concern breaches of human rights and make the various recommendations, but essentially the follow-up of the recommendations is in the hands of parliament.

**Senator McKIERNAN**—If I am understanding you correctly, Ms Clifford, it would now be up to the parliament to enforce the recommendations that are contained in this report.

**Ms Clifford**—That is if the parliament agrees with the recommendations; that is correct.

**Senator McKIERNAN**—I must admit that I was not in the parliament when this particular report was tabled and I do believe it is no longer on the *Notice Paper* for the debate on government documents. I may be wrong on that; it is not something I have—

**Senator COONEY**—I might say there was a brilliant speech made on that matter.

**CHAIR**—Was there, Senator Cooney?

**Senator COONEY**—Yes, there was.

**CHAIR**—Would you draw our attention to the *Hansard*?

**Senator COONEY**—I would.

**Senator McKIERNAN**—Do you know if it is still on the *Notice Paper*, Senator Cooney?

**Senator COONEY**—I am not sure whether it is or not; it could be. I think Senator Ludwig was going to—

**Senator LUDWIG**—Which one? There were two.

**Senator McKIERNAN**—That was No. 12, the one on detention centres. Incidentally, the covering letter on it was signed by the President, Professor Tay—if that helps you along. I was not aware that the parliament had a role in this.

**Ms Clifford**—Under the Human Rights and Equal Opportunity Commission Act, complaints that allege breaches of human rights and discrimination in employment are not unlawful discrimination. As I explained earlier, the earlier processes of the complaint handling are to inquire into and try to conciliate the matters; but, if they are unable to be settled, they have no avenue to proceed with the complaint to the Federal Court or the Federal Magistrates Service, as in the unlawful discrimination cases. It is really a matter of the President, after further inquiry, making findings and recommendations on what she is of the view would remedy the situation; and then it is left in the hands of parliament.

**Senator McKIERNAN**—Thanks very much for that. There are a number of doublings-up and duplications of the functions of the commissioners. I have found it a little difficult to keep pace with all of those developments. Perhaps, Dr Ozdowski, you could tell the committee what the current roles are and who holds what particular commissions at this moment in time—and these do change.

**Dr Ozdowski**—I have two separate roles. In one role I am the Human Rights Commissioner and in the other role I am the Acting Disability Discrimination Commissioner. The person who is on top of the commission as President of the Commission is Alice Tay; and then we have Dr Bill Jonas, who is responsible for social justice issues and for race discrimination issues. We also have a Sex Discrimination Commissioner, and the position is vacant at the moment. But Alice, the President of the Commission, is acting as the Sex Discrimination Commissioner for the moment.

**Senator McKIERNAN**—So there is duplication all around at the top: each of you has two hats to wear.

**Dr Ozdowski**—Yes.

**Senator McKIERNAN**—Is there any indication, Minister, of when these positions will be filled, if indeed they will be will—the ones where there is duplication?

**Senator Ellison**—Senator McKiernan, the only thing I can tell you is that in relation to the Sex Discrimination Commissioner, it is under consideration at the moment. I can make inquiries and see if there is anything further I can add to that and get back to you.

**Mr Cornall**—Ms Leigh may be able to answer that.

**Ms Leigh**—I am afraid I actually missed the detail of the question, but there is a recruitment process under way to fill the Sex Discrimination Commissioner position. I cannot give you an exact date for when that is going to be finalised. In the meantime, the President is acting as the Sex Discrimination Commissioner.

**Senator McKIERNAN**—Is there active consideration on filling the role of Disability Discrimination Commissioner?

**Ms Leigh**—There are delegations in place to deal with that. That is not an issue that particularly arises at the moment because we have the acting arrangements in place. I do not think I can say anything more useful about that, Senator.

**Senator McKIERNAN**—So the Disability Discrimination Commissioner is going to remain as an acting position, is it?

**Ms Leigh**—As you know, Senator, there is a bill before the parliament about the restructure of the commission.

**Senator McKIERNAN**—Yes.

**Ms Leigh**—And the structuring with the actings is consistent with the government's policy in relation to that bill.

**Senator McKIERNAN**—Okay, but the bill has been before the parliament for a considerable period of time now. It would probably be from 1999, from my memory—I do not have the bill in front of me. Would I be right?

**Ms Leigh**—It was before the 1998 election was called that it was first introduced and then it was introduced again and passed the House in October 1999—there were amendments made in the House. It is awaiting reintroduction in the Senate.

**Senator McKIERNAN**—In the meantime, disability is treated in an active capacity by an overworked Human Rights Commissioner.

**Ms Leigh**—I believe the government is confident that the duties of the position are being fully discharged.

**Senator McKIERNAN**—So the Human Rights Commissioner is not overworked?

**CHAIR**—I am not sure that that is a matter that Ms Leigh can comment on, Senator McKiernan.

**Senator McKIERNAN**—Ms Leigh is usually pretty forthright in her comments.

**CHAIR**—We are looking after Mr Cornall's health today. I do not think we need to look after the discrimination commissioner as well.

**Senator McKIERNAN**—What is the other duplication of functions? What are the functions of the president—sex discrimination?

**Mr Cornall**—The president is the acting Sex Discrimination Commissioner until late July.

**Ms Leigh**—You were asking about the other acting arrangements. Was that the question?

**Senator McKIERNAN**—Yes—Dr Jonas.

**Ms Leigh**—He is acting as Race Discrimination Commissioner until 1 October this year.

**Senator McKIERNAN**—Is there active consideration for appointing a Race Discrimination Commissioner? Is that contained in the bill? The bill has been around for that long that I forget what it contains.

**Ms Leigh**—It is the same issue. It is all related to the bill.

**Senator McKIERNAN**—So the government is getting its way in restructuring the commission without necessarily having the will of the parliament behind it.

**Ms Leigh**—I believe the government wants to pursue that legislation. I think it still views it as something needing to be done that can be done by legislation.

**Senator McKIERNAN**—I hope that they do not want it through in the next couple of weeks because a number of pieces of legislation are already on that list. I think you have an interest in some of them, Senator Ellison.

**Senator Ellison**—The speed of these things can always be helped by the opposition, can't it?

**Senator McKIERNAN**—Indeed. Put it on the *Notice Paper* and let us talk about it. Our shadow wants to talk to you about another piece of legislation which is yours particularly.

**Senator Ellison**—The door is always open.

**Senator COONEY**—Can I make a point, which Senator McKiernan has also made. Clearly, what has happened is that the executive is just ignoring the will of the parliament. I do not want you to comment on this because it is probably a thing that you should not comment on. What is happening here is that acts of parliament are just not being followed.

**Senator Ellison**—As you know, the Senate is an uncertain place on occasions. There is a volume of legislation to get through the Senate—the prior government had the same situation—where things do not necessarily happen that quickly. I think that is the problem.

**Senator COONEY**—If we regard the Human Rights and Equal Opportunity Commission as a serious body, and parliament seems to think it is—it has passed legislation—and if the system just ignores the whole thing, it damages the commission, I would suggest. Also, it presents a picture where the executive is thumbing its nose at parliament. The Senate is a very reputable body, we would all agree.

**Senator LUDWIG**—Coming back to the report of an inquiry into a complaint of acts and so on, can you provide me with a snapshot of, say, the last couple of years—I do not know whether you keep these statistics—as to which of the reports under this part have been satisfied, or at least to the satisfaction of the complainant in the matter? I notice that in relation to the one regarding age discrimination it had in the front that the finding was that the matter was satisfied, the solicitor had made the payment and so the Human Rights and Equal Opportunity Commission could be congratulated on bringing that to a resolution. But what occurred is not so clear in relation to the detention centre matter. Can you at least provide a

table about how many of these you produce, how many are successfully resolved to the complainant's satisfaction and how many are not, how many you then expect the A-G to provide advice on, or what happens after that? Do they just sit there on your books forever more as an unsatisfied complaint in relation to the matter?

**Dr Ozdowski**—I will take this question on notice and you will be provided with the information for the last two years you wanted.

**Senator LUDWIG**—I know your resources are limited. Please let us know if it is an exhaustive search and we can curtail it.

**Senator COONEY**—On the question of the two people in the detention centres, I think we ought to note that Professor Tay has put that report forward. It seems to me that a person of her outstanding reputation and ability is not well treated by government when her work is ignored. She is a woman who deserves praise, rather than a process which demeans her. But, in any event, that is what has happened here. Dr Ozdowski, I also add my welcome to you at this table. I also use this as an occasion for noting the outstanding service that Chris Sidoti gave in this area. I notice one of these reports here is to do with the issue of age in employment. This is the second time he has talked about this. I think this is a very vital area, and a very relevant issue—

**CHAIR**—Pertinent, perhaps?

**Senator COONEY**—Yes, pertinent—too right—the issue of being moved on, on account of age. I would like to acknowledge both Professor Tay and Mr Sidoti. I wish Professor Tay had been better treated.

**Senator McKIERNAN**—I have a couple more general questions on matters that we have just been addressing. What is HREOC's participation in the United Nations' World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in South Africa from 31 August to 7 September?

**Ms Temby**—My colleague Margaret Donaldson will also assist in some of the finer detail if you are interested in those talking points. Commissioner Jonas, who is the Acting Race Discrimination Commissioner and Indigenous Social Justice Commissioner, is taking a very active role in consulting with the Australian community in the world conference against racism. He will be attending the conference and putting forward the views that he will gain after the process of consultation with the Australian community.

**Senator McKIERNAN**—So it will only be Dr Jonas who will be attending the conference?

**Ms Temby**—At the moment Dr Jonas will be heading those. Probably a couple of staff will accompany Dr Jonas, but at the moment he is the only commissioner who is likely to attend.

**Senator McKIERNAN**—You have got nothing to add, Ms Donaldson?

**Ms Donaldson**—I would just expand on the consultations that the commissioner has been conducting. A national summit was held in Canberra on 8 and 9 May, where views were sought from a range of institutions. In addition, the commissioner is conducting regional consultations over the coming months, June and July, predominantly throughout the country, to consolidate and obtain the views of the Australian community to take to the world conference.

**Senator McKIERNAN**—On 23 April this year the commission launched a postcard aimed at raising awareness about advertising which demeans women or is offensive. How many

postcards were produced and what was the cost of that? Is there any preliminary reaction to what the project did or achieved?

**Ms Temby**—We would have to take that on notice.

**Senator BOLKUS**—Who designed them?

**Ms Temby**—They were designed in consultation with a design company. It is the group that have that arrangement where they distribute postcards for free. You often see them in cafes, cinemas and those kinds of places.

**Senator McKIERNAN**—Cafes? I never go to those places.

**CHAIR**—Do you have them in pubs?

**Ms Temby**—I do not know about pubs, but the objective is to reach the youth market in particular. It is another way in which the commission endeavours, in as many ways as possible, to reach the community.

**Senator McKIERNAN**—What systems are in place to measure the effectiveness of the project? Are there any or was it just a good idea which the commission decided to do?

**Ms Temby**—The commission does get a lot of feedback from the community and a range of NGOs from the web sites and a whole range of places. We cannot afford to have major evaluations into every one of the projects and programs in community education, but generally staff, particularly the commissioners in the community, get a lot of feedback. Just simply by the work that Ms Halliday did, she got a lot of feedback. This was, as you know, one of Ms Halliday's last projects before her term ended.

**Senator McKIERNAN**—Where were the postcards addressed to?

**Ms Temby**—They are not actually addressed to anyone. They are distributed in points throughout the community where young people in particular would expect to see them. You might see a stand in a theatre company or a cinema. There is information on the postcards, if you have ever seen them, to call the Human Rights and Equal Opportunity Commission. It gives our web site address, where there is more information on issues about the subject of the postcard. So the aim is—it is a bit of a teaser out there in the community—to get people to come and look at the postcard and learn more about the topic.

**Senator McKIERNAN**—Teasing postcards about demeaning women!

**CHAIR**—Do not go there, Senator McKiernan.

**Senator McKIERNAN**—I will take your advice, Chair. Were they particularly targeted at young people, Ms Temby?

**Ms Temby**—We would be happy to supply the committee with a range of these postcards. The aim is certainly to reach the community to whom the ads are aimed. Many of these ads—

**Senator McKIERNAN**—The postcards are?

**Ms Temby**—Exactly. Many of the advertisements, on recruitment, et cetera, are aimed at the younger generation. The postcards are often a good way of reaching those target communities.

**Senator BOLKUS**—You are saying that Senator McKiernan might be too old for this?

**Ms Temby**—I am sure Senator McKiernan would look up our web site and look in depth at what the web site can offer on the topics.

**Dr Ozdowski**—They are usually in places where young people meet. There are postcards from different sources. They usually pick one or two—quite often it depends on the artwork—and they can send them to their friends or they can just use them as a contact for the commission.

**Senator BOLKUS**—Are you considering using them for other aspects of discrimination—for instance, for indigenous discrimination? Commissioner, you might have an interest in this.

**Ms Temby**—I have the name of the company. It is Avanti cards. I think that the commissioner considers it as part of an overall community education strategy. If it fits in with the topic and the kinds of things that are being said and it is believed it had something to offer, then it would be part of an overall strategy. It would rarely stand alone.

**Senator McKIERNAN**—You have taken on notice that you will tell the committee how many were produced. Can you also tell us at what cost?

**Ms Temby**—Yes.

**Senator McKIERNAN**—If there are any indicators of the success or otherwise of the project, we would be interested to hear of them, because if it works it should be encouraged. It may be something that could be used in other areas, as Senator Bolkus has said, like the disability area or the race area. There is a focus this year on xenophobia, with the UN commissioner coming to Australia, so it may be of use. I would appreciate anything you can provide the committee on that, including samples, because I have not seen them, I must admit.

**Ms Temby**—My colleague says that we actually have one at the moment about to come out on general discrimination, with our complaints information line. It is again one of our strategies to get information out to people about who to call—targeted at that market.

**Senator McKIERNAN**—Thank you very much for that information. Have you got any other projects under way or under active consideration by the commission—not necessarily postcards but similar or like projects?

**Ms Temby**—One of our biggest initiatives for community education at the moment is to upgrade our web site and to keep the web site relevant to those who use it. We know for a fact that it is extremely popular, but it will only remain popular if we keep it looking right. It has to be written properly; the connectors have to be there to the search engines. Certainly that is one of our major education projects for the next 12 months.

**Dr Ozdowski**—We are also looking at the possibility of establishing a newsletter. We are looking at the feasibility of it. If it is found feasible, the commission will consider the issue.

**Senator McKIERNAN**—Thank you very much for that. Can you give the committee a breakdown of revenue which the commission receives from other sources?

**Ms Temby**—I do not have the exact details here, but that revenue in terms of topics that it covers are sale of publications and particularly work that the commission does on behalf of the United Nations, AusAID and other governments in human rights internationally. That forms a large part of the revenue that we receive.

**Senator McKIERNAN**—It is a substantial amount of money that you have earned over the current financial year. The budget estimate for next year is the same figure—\$1.7 million. I am surprised that there is not some more certainty about money, because it would seem to me that any shortfall in these earnings could cause some damage within the commission itself, could it not?

**Ms Temby**—Indeed it would, if it was in fact revenue in the sense that we spend all of it on commission programs. But that is not the case. For example, the commission hosts the Asia Pacific Forum of Human Rights Institutions, and we provide corporate and other support for what is essentially a part of HREOC but, if you like, acts independently on behalf of the other human rights institutions in the region. That is funded this year \$250,000 from AusAID, about \$100,000 from the United Nations and \$30,000 from the New Zealand government. That is a discrete unit. That budget is managed within that unit. That is not, in a sense, profit to the commission. It is revenue which we spend in the exercise of specific functions. For example, we also have an arrangement whereby we provide the Privacy Commissioner with corporate support. That is in the region of \$400,000 for the provision of the corporate support. There is the sale of publications—approximately \$200,000. As well, there are programs that we run—the Australia-China technical assistance program—where we in fact deliver a program on behalf of AusAID and are funded accordingly. But, of course, there is expenditure connected with the delivery of that program.

**Senator McKIERNAN**—Is there any of that \$1.7 million that is noted on page 366 as revenue from other sources that is money that the commission is dependent upon to run its normal affairs? I am obviously talking now about the current financial year which is about to end.

**Ms Temby**—Certainly we are structured to provide support to the Privacy Commissioner. If we did not provide that support to the Privacy Commissioner, we would have to reorganise our own corporate services area in terms of volume. As regards the sale of publications, we have a clear estimate of that, and that in fact goes towards the recoupment of costs for the publications. Presumably, if we stopped selling our publications, we would have less money to offset the production of further publications.

**Senator McKIERNAN**—I think you mentioned the figure of \$200,000 in sale of publications.

**Ms Temby**—Yes.

**Senator McKIERNAN**—How much would you spend in marketing in order to recover that \$200,000 or to earn that \$200,000?

**Ms Temby**—They are sales. A lot of our marketing for our publications goes on through our web site, so it costs us very little. We find there is a consistent demand for many of our publications. Some marketing obviously is in the media—the general media itself. We publish lists of our publications in certain journals. We generally have the availability of commission publications. The sales cover the reprints of publications. Our publications are not necessarily all new publications, but we know what the demand is and we just feed the sales back into reprinting.

**Senator McKIERNAN**—In relation to the money you get for organising a conference or a seminar—I am not picking on any particular one—would all the funds coming in which would be expended on the conference or seminar and the organising office also cover the salaries for the personnel in the commission who were assisting with that work? Is that how it is costed?

**Ms Temby**—The commission budget is expended on our functions. Part of the function is judged by a commissioner. A conference on, for example, racism would be clearly part of the work of the unit and we would aim to recoup costs. We would often do that. For example, the World Conference against Racism was funded directly by the office of the United Nations

High Commissioner for Human Rights. What we would always try to do is recoup what we can, but we would not be doing the conference unless it were in the exercise of our functions and therefore the staff time would probably be extra to that. But if, for example, we engaged a temporary for a couple of weeks to help us, we would expect those costs to probably be recouped out of the costs of the conference.

**Senator McKIERNAN**—The last set of questions I have are these. What proportion of the commission's resources is devoted to undertaking the raising of awareness of human rights in other countries?

**Ms Temby**—Nil. I suppose in the documentation before you, Senator, where the revenue comes in as the total cost of the output, one would say that some of that percentage of the \$1.7 million in revenue goes towards raising awareness of human rights, but that is because that is funded externally, often by AusAID. For example, we have such a program in Indonesia which is part of the Australian government's assistance to Komnas HAM, the Indonesian human rights commission, but that is fully funded, including all staff costs.

**Senator McKIERNAN**—So grants for that type of activity would be included in this \$1.7 million?

**Ms Temby**—Yes, Senator.

**Senator McKIERNAN**—So when Dr Jonas went off to China last year or this year—we had him set down to appear before the committee and then he could not appear because he had to go to China—that would have been an AusAID funded thing?

**Ms Temby**—Yes. The ethnic minorities workshop that Dr Jonas participated in was an AusAID funded workshop. Dr Jonas, through the commission, would be paid consultancy fees for his time—or not, depending on what the arrangement was. Certainly all of his fares and costs would be covered as part of the normal proposal to AusAID. So we have in fact a contractual arrangement with AusAID for the provision of a workshop as part of the overall human rights technical assistance initiative.

**Senator McKIERNAN**—I recall Dr Jonas being there only because he was due to appear before our committee on something else. Would that be on a full cost recovery basis with AusAID? That would include air fares, a proportion of Dr Jonas's salary and his subsistence allowances while he was overseas.

**Ms Temby**—Yes. In fact, one could say that we are actually paid to provide the service, so it is more than cost recovery.

**Senator McKIERNAN**—Excellent.

**CHAIR**—There being no further questions, I would like to thank the officers of the Human Rights and Equal Opportunity Commission, particularly Dr Ozdowski. Thank you very much for assisting the committee this afternoon. I am sure we will see you again. For the information of committee members, the minister and officers present, there is one very minor variation to the program this afternoon, and that is that the Australian Institute of Criminology and the Criminology Research Council—the director of both of which is Dr Graycar—will be appearing immediately after the High Court. We will move now to consideration of estimates for the Office of the Director of Public Prosecutions.

[4.47 p.m.]

**Attorney-General's Department**

Departmental Executive

**Mr Cornall**—While those officers are taking their seats, Senator McKiernan asked a question this morning about whether we had received any claims of sexual harassment in the last 12 months. We have received one such claim and the claim will be dealt with under the procedures which are set out in the department's management memorandum No. 3 of 2000, 'A diverse workplace free from harassment', which deals with all forms of harassment. This applies now only to the Australian Protective Service because we have another very similar policy in relation to Attorney-General's Department staff which comes up under our certified agreement, but the department's certified agreement does not affect the APS. I have the guidelines that affect the APS, if you are interested for those to be tabled.

**Senator McKIERNAN**—Thank you very much, if you could table those.

[4.48 p.m.]

**Office of the Director of Public Prosecutions**

**CHAIR**—Welcome, Mr Bugg and officers of the DPP.

**Senator BOLKUS**—On 6 March, you issued a media release relating to a decision not to prosecute former Senator Colston. I refer to the statement where you say:

The process took somewhat longer than had been anticipated.

What was the reason for that?

**Mr Bugg**—The availability of one of the medical experts who was to undertake on behalf of my office—at my request—the examination of Senator Colston or the examination of the available material on Senator Colston, and to report to me. I forget what the dates were, but I think I could probably tell you. One report was received on 13 December and the second report was not received until 9 March—that is the report from the other practitioner. That is what took longer than I thought the process would take. I had hoped that it would be finished before Christmas, but as you can see from those dates it was quite some time before the second report was available.

**Senator BOLKUS**—Who was that practitioner?

**Mr Bugg**—I have not named the practitioner in the press statement and I would rather not.

**Senator BOLKUS**—Why not?

**Mr Bugg**—I suspect that if the practitioner were named there would be a fair barrage of inquiry at that practitioner's office, and it was the request in fact of both practitioners at the time that there be no disclosure of their identity. The qualifications of each of the practitioners engaged have certainly been provided in a series of questions on notice, I thought, actually in this forum, but I may be wrong about that. No, I am sorry; it was in the House of Representatives. I forget when the answers were tabled; there were questions on notice.

**Senator BOLKUS**—What are the qualifications of both practitioners?

**Mr Bugg**—One is a Professor of Medicine, a Doctor of Medicine and a Fellow of the Royal Australian College of Physicians. The other's expertise is in surgery. He is a Professor of Surgery, a Doctor of Medicine, a Fellow of the Royal College of Surgery and a Fellow of the American College of Surgeons.

**Senator BOLKUS**—Before you put out the statement, was there any consultation with the minister's office?

**Mr Bugg**—In terms of consultation, do you mean discussion?

**Senator BOLKUS**—Any discussion or any pre-warning?

**Mr Bugg**—I would need to check this, but I am fairly confident there would have been notification to the Attorney's office of the proposal to make the release.

**Senator BOLKUS**—Was there any discussion further than notification?

**Mr Bugg**—No.

**Senator BOLKUS**—You said that you got the second report on 9 March, though the statement is dated 6 March.

**Mr Bugg**—I am sorry, I may be wrong about that. It was 9 February—sorry—not 9 March.

**Senator BOLKUS**—At the time that those assessments were made, were you aware that Senator Colston had been travelling about at government expense?

**Mr Bugg**—If you are referring to the press coverage of that factor on the weekend, I understand that relates to claims for travel in the financial year ended 30 June 2000.

**Senator BOLKUS**—That is 30 June 2000. You sought the advice at the end of 2000. You got the first advice in September 2000. My question is still relevant: were you or the medical practitioners aware that former senator Colston had been travelling up to a few months before that?

**Mr Bugg**—I do not wish to put this in any sense of a pursuit, but I am aware that there had been sightings of him and that he had been travelling. I was not aware of the timing of those sightings, but I am reasonably confident that in the briefing to the medical practitioners there was some reference made to the reports of his alleged travel or sightings near airports. I was aware that he had attended a funeral service—I think at Duntroon—but that was fairly early in the year 2000.

**Senator BOLKUS**—So you did not check, for instance, where he might have been travelling to? You did not want to assure yourself that he was travelling to, say, a health farm or anything like that?

**Mr Bugg**—No. As I say, I was aware of that and I am reasonably confident reference was made to the suggestion that he had been seen travelling in terms of the inconsistency of that with his reported state of health.

**Senator BOLKUS**—Would you know if the medical practitioners were aware of his travel?

**Mr Bugg**—In the detail that is contained in the weekend press?

**Senator BOLKUS**—Sure.

**Mr Bugg**—I would be confident not.

**Senator BOLKUS**—Is this the final time that you might review his health and make a decision or are you prepared to look at it now in the context of these travel revelations?

**Mr Bugg**—As I understand it, he has not made a travel claim in 11 months. In other words, there is no suggestion that he has travelled in 11 months. If there were some suggestion that he has travelled in recent weeks in a sense other than being accompanied and assisted, that

might give rise to a reconsideration of it. I must say that I saw that on the weekend and I read it. It was not inconsistent with the position that we were aware of, which is one of the factors which gave rise to my revisiting the matter late last year.

**Senator BOLKUS**—I suppose what concerns us is that a decision was made previous to this one as to his fitness to stand trial. At that particular time he would have been doing some travelling, and I do not know to what extent you might have been aware of that travel at the time of the previous decision.

**Mr Bugg**—At the time of the previous decision, I do not think he had resigned or retired from the Senate. I may be wrong about that. But the first decision was in mid to late July 1999. I was appointed on 2 August 1999, and I was asked by my deputy, who had been acting in the absence of a director, to examine the file and review it. I was certainly aware at that time that he had recently travelled to Canberra, but the reports at that time did not exclude that as a possibility open to him in terms of his condition.

**Senator BOLKUS**—So, in your mind, is the matter now closed?

**Mr Bugg**—The medical evidence that I examined, which I have reported on in the press statement, indicates that at this stage he is not fit to stand trial and is unlikely in the future to be fit to stand trial. If there is anything that gives rise to a change in those circumstances—and having seen the medical reports that have been provided to me that is highly unlikely—obviously I would revisit the matter.

**Senator BOLKUS**—Thank you. On another matter, on 21 May this year some allegations were made by Mrs Firebrace in the Joint Committee on Native Title and Aboriginal and Torres Strait Islander Land Fund. They related to what she says are three Federal Police investigations into matters arising from the Skehill report into Roebuck Plains and Mount Tabor. She claims that former minister Senator Herron is being investigated by the Federal Police. Have these matters been brought to your attention?

**Mr Bugg**—They certainly have not been brought to my personal attention. I would have to take that on notice. We are not aware of it. I would have thought that something of that nature would have been referred quickly to head office.

**Senator BOLKUS**—If you take that on notice, can I refer you to the joint standing committee's *Hansard* of 21 May. There is one particular paragraph, on page 68, which refers to those AFP investigations.

**Mr Bugg**—Yes.

**Senator COONEY**—I think it is because of the way it is put, but on page 312 under the heading 'Purchaser/Provider' it says that the Taxation Office is going to take some prosecutorial services from you. It gives the impression that people will be prosecuted only if the ATO can afford it. It is probably just a matter of expression.

**Mr Bugg**—That relates to the activities of my office in a new area of work—that is, the GST and matters arising under the new tax system, which would be additional to the activities my office currently undertakes in prosecuting tax offences. There was an anticipation that, once that system was in place and the enforcement activities of the Taxation Office were undertaken—that is the investigation of breaches and alleged frauds—my office would have to not only be in a position to prosecute them but have officers who were trained and familiar with the system. We have been negotiating with the ATO for support in the provision of those resources within my office. So that is what that is about.

**Senator COONEY**—I was just wondering whether it should come out of consolidated revenue. As your duties expand, then the provision for you to carry them out ought to expand, but I suppose that is a matter for government. I wonder why that was done.

**Mr Bugg**—I can plead not guilty to that because I was not in office when it happened. It was something which we noted when we were reviewing matters for the future and, as a consequence, I took the matter up, and that is where we have got to.

**Senator COONEY**—Do you prosecute the strict liability offences? There is a whole myriad of them; they seem to be growing. Do you think there is a growth in strict liability offences?

**Mr Bugg**—I wish I could see it from your side of the table. From the prosecutor's viewpoint they are in fact shrinking. Strict liability offences are gradually being, for want of a better word, 'phased out'.

**Mr Delaney**—That is right. There is less opportunity, particularly with the new Criminal Code where elements require in general a mental element.

**Senator COONEY**—I am on the Scrutiny of Bills Committee and we were talking about this the other day. I think I got it right. There seemed to be a growth in strict liability offences, but that might be that now you have to specify them. Is that right?

**Mr Delaney**—Yes.

**Senator COONEY**—If there is going to be strict liability, you might have to specify them.

**Mr Delaney**—I think that is the explanation.

**Senator COONEY**—Mr Bugg, I have to give a fellow DPP of yours a plug—Nicholas Cowdery and his book *Getting Justice Wrong*. Have you read that excellent book?

**Mr Bugg**—I hate to admit this publicly but, no, I have not. I know I will get into trouble when I see him next.

**Senator COONEY**—One of the things that he talks about is that policing crime and statistics can be made to look worse than they are and that there is always a law and order campaign. I have a specific thing in mind, but I had better not specify it because it is current. Is there ever any problem for the Director of Public Prosecutions in the way that a particular incident or a particular matter is dealt with in the media? Does that ever become a problem?

**Mr Bugg**—It can vary from matter to matter. The principal concern is when the matter is under investigation and likely to proceed to a hearing. If that hearing primarily is going to be before a jury, there is the question of contamination of the minds of the jury with unnecessary and perhaps inaccurate pre-trial publicity. It has always been a fairly difficult issue. That is in relation to pre-trial matters. As for public perceptions of whether there is a crime wave or whatever, that is always very difficult. Some interesting research has been done by Dr Graycar, who I heard is being moved up the witness list. He is perhaps a better person to talk to you about this.

**Senator COONEY**—I was going to ask him that very question. It was a question that perhaps I should not have asked you, but I was interested in your opinion and I also wanted to give Mr Cowdery some profile in the area.

**Mr Bugg**—In my personal experience, publicity about the increased number of house burglaries is quite true. Up until the year before last, I think I had reached eight.

**Senator COONEY**—It tests the patience a bit.

**Mr Bugg**—Yes. It upsets the family too.

**CHAIR**—If there are no further questions, Mr Bugg, Mr Delaney and Mr Thorton, thank you very much for your assistance to the committee. I now invite the officers of the High Court to the table.

[5.07 p.m.]

### High Court of Australia

**CHAIR**—I welcome Mr Doogan, Mr Howard and Ms Harris from the High Court.

**Senator COONEY**—This year we celebrate the Centenary of Federation. When is the High Court's centenary—next year or the year after?

**Mr Doogan**—2003, Senator.

**Senator COONEY**—Are there moves afoot to mark the occasion?

**Mr Doogan**—There are, indeed.

**Senator McKIERNAN**—Who is sponsoring it? There was sponsorship in Melbourne for the Centenary of Federation.

**Mr Doogan**—I do not think you will see any sponsorship, Senator.

**Senator McKIERNAN**—I did not think we would see it in Melbourne either, but we did.

**Senator COONEY**—They put up little monuments for it in Melbourne. I take it that there is an appropriate appropriation to meet the costs of the centenary?

**Mr Doogan**—Not yet. Recently the Chief Justice wrote to the Prime Minister and the Prime Minister responded, supporting funding in principle to celebrate the centenary of the court, and indicated that he would ask his colleague the Attorney-General to look into the matter.

**Senator COONEY**—I must ask the minister: has the Attorney-General looked into the matter?

**Mr Doogan**—Could I answer that. Not as yet, I would not think, because it happened very recently. In fact, my recollection is that this happened late last week.

**Senator COONEY**—I think the first sitting was in Melbourne.

**Mr Doogan**—Yes, it was.

**Senator COONEY**—I hope that there is no interstate rivalry, that people from Western Australia—in the form of the Attorney-General and the Minister for Justice and Customs—are not going to be meaner because it is in Melbourne.

**Mr Doogan**—I can tell you that the Chief Justice of Victoria has very kindly agreed to allow the High Court to have a sitting in the original chamber on the actual day, which is 6 October 2003.

**Senator COONEY**—Are there plans to give it a public profile? The reasons I ask that are twofold: I think it is a very historic occasion in any event but also the part that the High Court has played in Australian history is quite magnificent. It is not going to be confined simply to the courts and perhaps to the legal profession, do you know?

**Mr Doogan**—No, it will not be. The intention is to have it as a fairly broad celebration. At this stage the people who have been involved are the Australian National University and the

Australian Bar Association and I have had informal discussions with the secretary to the department, who graciously agreed to work with the court and to sit on a subcommittee to plan the celebrations.

**Senator COONEY**—He is a Melbourne person, so he has grown up in the shadows of the original court. Is there any proposal to write a history of the court?

**Mr Doogan**—At the moment, the *Oxford Companion to the High Court of Australia* is almost completed. This is a project that was taken on by, again, the Australian National University predominantly, but has a group of law professors as the general editors who realised that it was such a large project to write this companion that they have engaged different authors—it could well be as many as 1,000—to write particular entries for the companion. It is expected that that should be finalised towards the end of this year.

**Senator COONEY**—I suppose there are two aspects: there is the history of the decisions which have been made, which could be quite technical, and then there is just the history of the court and the sorts of effects it has had, such as the Communist Party Dissolution Act and things like that. Do you know whether there is going to be a history which the person on the street can read, as well as a more technical history?

**Mr Doogan**—I think that is the intention of the *Oxford Companion to the High Court of Australia*.

**Senator COONEY**—What, to make it—

**Mr Doogan**—To have something that could be of interest to anyone, whether or not they are a lawyer and whether or not they are an academic. The breadth of the subject matter covered in this companion ranges right across the more famous cases, to which you have referred, through to the nuts and bolts administration and the history of the seal of the court, those types of things that might be of interest to a broader range.

**Senator COONEY**—And the history of the judges?

**Mr Doogan**—As for the judges, one of the items that we have in mind for 2003 is that there would be, for want of a better word, a coffee table book which would include a short biography on each and every one of the judges that has been in the court. This has been done successfully in earlier times for other courts, such as the United States Supreme Court and the Supreme Court of Canada. History shows that it is of general interest well beyond the courts and the legal profession.

**Senator COONEY**—We will have a chance to ask you at the next estimates how it is progressing.

**Mr Doogan**—Yes. We are trying to interest other agencies as well, such as Australia Post to do a series of stamps and other agencies that might be interested to produce coins, for example.

**Senator COONEY**—For the Centenary of Federation, I think the ABC put on a television program.

**Mr Doogan**—Yes. That is also something we had in mind as a follow-up to the program that was privately made but run on the ABC a year and a half or two years ago on what happens behind the scenes of the High Court. Certainly the response that we had through our web site when that program was run indicated a great deal of interest.

**Senator COONEY**—I wonder what old footage exists of the court. We had some old footage of Federation in Centennial Park. I wonder what the earliest footage is of the High Court.

**Mr Doogan**—That I do not know, but it is certainly worth inquiring of the archives to see whether there is any footage. It seems that in 1903, as best I can tell from the reports on the day, it was regarded as a fairly low-key event and I suspect it was also thought that the court would not achieve the prominence that it has in the last 100 years.

**Senator McKIERNAN**—I indicated this morning that I was going to return to questions about that newspaper article that I picked up on Saturday from the *Weekend Australian* about divesting some of the matters from the High Court to the Federal Magistrates Service. Since then, my attention has been drawn to a further article that appeared in today's *Australian* entitled 'Little appeal in justice strained by heavy migrant load'. I do not want to question you on all of the contents, in particular the opening of the article and the prose that is used in it, but he does give some figures in there, and there is a claim in both articles that the workload of the High Court on migration matters has blown out sixfold since 1998. Would that be a correct figure?

**Mr Doogan**—Yes. I think in fact that Mr Haslem has taken those figures from page 7 of the 1999-2000 annual report, where there is a heading 'Increased Workload'. The figures are consistent with what is in the annual report.

**Senator McKIERNAN**—And the current figures, which are mentioned later? It goes into figures for 1999-2000 and then the current figures, which are 495 Full Court matters, 282 single-justice matters and 411 applications. They would be correct as well?

**Mr Doogan**—I can only assume they are. The reason for that assumption is that he telephoned me and asked me for the figures. The registry produced the figures, and I think they are precisely accurate. What I am reading here refers only to 1999-2000, and those figures are out of the annual report.

**Senator McKIERNAN**—The sixfold increase between 1998 and currently—would that be pretty close to the mark? He is actually saying between 1998 and 2000, rather than currently. It is probably even larger than that at the moment.

**Mr Doogan**—Let me read from the annual report. At page 7, paragraph 2, in the middle of the paragraph, it says:

In 1998-99 there were 25 single Justice hearings involving order nisi applications. In 1999-00, this figure soared to 173, of which 88% involved immigration matters.

I think that to get his sixfold he has taken 25 in the previous year and looked at the 173. I think that is where he has got the figure from.

**Senator McKIERNAN**—I am intrigued by this change in policy—and it is quite a dramatic change in policy—from the discussion and the intent of the establishment of the Federal Magistrates Service. Migration matters were specifically excluded from the coverage of the FMS. Am I correct in that? My memory is that.

**Ms Leigh**—There was no migration jurisdiction conferred on the Federal Magistrates Service by the legislation.

**Senator McKIERNAN**—My comment was actually more pointed than that. It was specifically excluded.

**Ms Leigh**—To describe the way the legislation operates, it confers specific jurisdiction; it does not give plenary jurisdiction and then exclude some areas. You could go through the Federal Court's jurisdiction and work out which bits are not covered, but the way the bill operates is that it specifically confers jurisdiction.

**Senator McKIERNAN**—Yes. I hear you on that. My recall is of the comments that were made in the second reading speech; but I am not going to hold you to that and I am not going to change on that. But I am surprised at the change in policy direction on this particular matter.

**Ms Leigh**—I think it is a bit too early to describe it as a change in policy direction. There has been no government decision about a change in the Federal Magistrates Service jurisdiction.

**Senator McKIERNAN**—With all due respect, there was no denial this morning and certainly there was no denial when I gave notice at a later point, after asking the initial questions on the matter, that I would be readdressing them at a later time. I thought I had given notice of it before we left for lunch, so that it would give the minister, the secretary or you the option of making such statement to say that there is no change in direction being considered and to refute the comments in the media report. I was only dealing with the one media report at that time. I was not aware of this much larger one that appeared in this morning's newspaper.

**Ms Leigh**—I am not sure what the difficulty is that you have with what I have said. What I said was that the government has not made any decision to change the Federal Magistrates Service jurisdiction. What I was able to tell you this morning is that the broader question of the workload of the High Court is something that the Attorney is aware of and that he has discussed with Mr Ruddock; and they have asked departments to look at that issue. So we are now about to look at it, Senator—at the whole question.

**Senator McKIERNAN**—And those discussions are happening with the knowledge that in the Senate, for some two years or in fact even longer, you have had the judicial review bill sitting there. It was previously in the last parliament and then it lapsed when the election was held. It was reintroduced, and that bill is at least two years old and it sits there. The intent in that bill is, in part, to further restrict access to the Federal Court of Australia for migration matters.

**CHAIR**—Senator McKiernan, these are perhaps policy questions that may be more appropriately addressed to the minister.

**Senator McKIERNAN**—Yes, indeed; I am addressing them to the minister.

**CHAIR**—I thought you were in an exchange with Ms Leigh.

**Senator McKIERNAN**—No. Every question is addressed to the minister, and he is delegating the answer to Ms Leigh. I am not making that decision.

**Senator Ellison**—What we have here is the sort of overlapping which we tend to get with DIMA and this portfolio. As to why that legislation has not been brought on—I think that is what Senator McKiernan is driving at—I would have to seek advice in relation to that. I do not see that there is any problem in looking at the FMS whilst there is this legislation there. The fact remains that the government has a lot of legislation in the Senate, which we have talked about earlier; and simply to stand still and do nothing just because you cannot get your legislation up would be inappropriate. From the point of view of government, you are quite

entitled to take measures, despite the fact that there are bills pending. We just cannot get it on. I have some legislation I would love to get on and I cannot get it on. You have the budget and there are essential bills that have to be dealt with in relation to the budget.

**CHAIR**—Our committee has been assiduous in its attention to your legislation, Minister.

**Senator Ellison**—I want to thank the committee, actually, for the expeditious way you have dealt with it.

**Senator McKIERNAN**—We have worked very, very hard. But let us not get diverted. The reason I came back to it today is that, if it is not a change of policy, it certainly is foreshadowing a dramatic change in policy. I thought it appropriate that the matter should be discussed during the appearance of the High Court before the committee, because it is the High Court workload that is in question. If one reads the media reports, and if the media reports are accurate, it is the initiative of the Attorney-General to do something to alleviate the work of the High Court; so it is entirely appropriate to address the matter here.

**Senator Ellison**—Yes; I am not saying it isn't.

**Senator McKIERNAN**—I am intrigued also because, with migration matters—particularly matters which have been through the Refugee Review Tribunal—if those matters are in dispute, they cannot go to the Federal Court. They can only go to the Federal Court if there is a point of law in dispute, and the Federal Court can deal with that matter only if a point of law is in dispute: am I correct?

**Ms Leigh**—Senator, certainly in answering that, that issue is covered in legislation administered by DIMA, and I personally am not able to answer.

**Senator McKIERNAN**—Minister?

**Senator Ellison**—I would have to take that on notice. I think you are thinking that this is the A-G's portfolio, that the courts come under this portfolio and that the question of what they decide—I am talking from an estimates point of view—is something that would be in the purview of the Attorney-General's Department. What I think we are saying is that there is immigration legislation which determines what goes to the Federal Court and what does not.

**Senator McKIERNAN**—It is already on the statute books, and the matters—

**Senator Ellison**—I would pursue that too, because we will be dealing with it on Wednesday, no doubt.

**Senator McKIERNAN**—No doubt. But I want to just follow it through for a moment, because the matters, as I understand them, that are going on to the High Court are not matters of law. That is my understanding of it. They are the matters in dispute which are going to the High Court and represent the sixfold increase in migration matters before the High Court. Now the thinking is, if one believes what one reads in the media—and I am qualifying my remarks all the way through, although I do commend the journalists for going to the direct source for the information; it does not always happen like that, so it has to be made—

**Mr Doogan**—I merely referred him to the figures that are published in the annual report, and they are accurate.

**Senator McKIERNAN**—I would find it odd, though, that the Attorney-General is now considering the referral of matters that are not within the province of the Federal Court of Australia, that he is considering referring the matters which may be before the High Court of Australia back to a lower or a lesser court, the Federal Magistrates Service. I find that really

odd. I also find it odd that in the period of time when this workload for the High Court has been building up there has been public comment, by judges included—and one of them is named in this article in today's newspaper—about the workload of the court and that was a matter that was in the minds, I would suggest, of all concerned when the Federal Magistrates Service was being established.

**Senator Ellison**—So that I understand it, Madam Chair—and I just want to get this right—Senator McKiernan is saying that his understanding is that the Attorney-General is transferring, or having transferred, from the High Court pending proceedings to the federal magistrates jurisdiction. Is that what you are saying?

**Senator McKIERNAN**—That is what the article is indicating.

**CHAIR**—That is what Senator McKiernan is suggesting the article indicates, yes; and that he is in discussions with the Minister for Immigration and Multicultural Affairs on the matter.

**Senator Ellison**—I just want to make sure that I understand it.

**CHAIR**—We will obtain a copy of the article for you and make sure that you receive it.

**Senator Ellison**—I will take that up with the Attorney.

**Senator McKIERNAN**—The matter will be further explored when DIMA appear before us, because it is their legislation. But it is something that has an impact on the High Court of Australia, and they are currently in front of us.

**Senator Ellison**—The advice I have is that that would require legislative amendment for the Federal Magistrates Service. However, I appreciate that your question is whether it is being contemplated.

**CHAIR**—Thank you.

**Senator LUDWIG**—This matter goes to the question that Senator McKiernan was attempting to shed some light on. The High Court has the jurisdiction to deal with those matters, so it cannot, invariably, refuse it. As I understand it—and I am happy to be corrected by Ms Leigh—it cannot refuse matters of fact and determine them as such, which then adds to its burden, because normally the High Court is regarded as a court which deals with more judicial determinations that come before it, rather than examining matters of fact, making determinations on matters of fact and then declaring the law in relation to those matters of fact. That went to the earlier legislation that is sitting around on the books as a method to at least circumscribe the original jurisdiction of the High Court, as I understand it. The question that that exercises in my mind, Mr Doogan, is whether you have received any complaints from at least the complainants or the defendants in the High Court about the delay in matters, if there is any delay in matters, or the time that matters have taken for determination, if you can go that far.

**Mr Doogan**—There have been no complaints about delay that we are aware of. Occasionally lawyers for one side or the other may make comment about the fact that they thought the matter might be better dealt with elsewhere. But in terms of actual delay in the High Court there is not a difficulty.

**Senator LUDWIG**—How do the judges—I guess this is a sensitive matter—express to you whether or not their plate is full or half full in terms of their workload and their capacity? The article that Senator McKiernan has referred to talks about a particular judge or, if I refer to it a different way, the fluorescent burning late into the night, presumably with a judge studying or writing judgments. That is a matter of concern to whom? Would it be a matter of

concern for you if your judges were spending such long hours at work? Is that a matter that they would raise with you, or is that part and parcel of the job?

**Mr Doogan**—It is, but I think, by the mere fact that the lights are on in the judges' chambers at night, it does not necessarily follow that they are beavering away on migration matters. It may well be any matter that is before the court.

**Senator LUDWIG**—The inference is that it is because of the migration matters, but I was really casting a bit more generally in the sense that immigration alone will not be the straw that breaks the camel's back. But, if the workload is increasing, will you apprehend that, or how is the administration then dealt with?

**Mr Doogan**—I refer you to page 7 of the 1999-2000 annual report.

**Senator LUDWIG**—I do recall what that says—we dealt with that in February.

**Mr Doogan**—We did.

**Senator LUDWIG**—Has nothing changed?

**Mr Doogan**—Nothing has changed.

**Senator LUDWIG**—A very diplomatic answer, I must say.

**Senator McKIERNAN**—I made that flippant remark about sponsorship. I would hope that the court, in raising funds to celebrate the centenary, does not have to go down the road of sponsorship. I personally felt that what happened in Melbourne was quite unseemly to the process. This is not the forum to dwell on that here. I certainly hope that the High Court does not have to go down that route in raising resources in order to celebrate the centenary of that particular establishment.

**Mr Doogan**—I can only say in response that I think you and the High Court are of a like mind on that subject.

**Senator COONEY**—I have a question, and this is to dampen down any debate that might take place when DIMA come before us. I take it that the increased number of cases before the High Court is coming by way of prerogative writ. Is that right?

**Mr Doogan**—Yes.

**Senator COONEY**—Mr Govey and Mr Cornall would know this, but prerogative writs are always directed to matters of fact, aren't they—matters of fact where there is an injustice done?

**Mr Govey**—I would have thought that matters of fact would be predominant, but I do not think you could rule out the possibility that questions of law would also be involved.

**Senator COONEY**—But that would be a question of whether or not there was a miscarriage of justice, wouldn't it—which is a question of fact?

**Mr Govey**—I am not sure.

**Senator COONEY**—But you get the point. I want to start getting DIMA tomorrow talking about matters of fact. Predominantly that is the basis of issuing a prerogative writ, isn't it—a dispute on what is a matter of fact, in effect?

**Mr Govey**—Yes.

**Mr Doogan**—There is a mixture, I think, as there is also a mixture in the size and scope of the cases. Most of them are matters involving a single person, but they range up to and

include—I have got a particular case in mind which is working its way through at the moment; I cannot give you a precise figure—between 1,000 and 2,000 named parties.

**Senator COONEY**—On the one writ?

**Mr Doogan**—Yes. Sorry, three related cases have in excess of 1,000 parties. It is essentially a class.

**CHAIR**—Thank you, Mr Doogan, Mr Howard and Ms Harris, for assisting the committee.  
[5.35 p.m.]

**Australian Institute of Criminology  
Criminology Research Council**

**CHAIR**—Welcome, Dr Graycar.

**Senator COONEY**—Have you done any research on the effect of law and order campaigns by various governments around Australia? I ask you that in the context of the riots at Port Hedland.

**Dr Graycar**—Not in terms of the effectiveness of law and order campaigns. There are many aspects of research that contribute to our understanding of what drives crime, and we at the institute have not actually focused on things like law and order campaigns.

**Senator COONEY**—Have you read this excellent book I am holding, by Nicholas Cowdery?

**Dr Graycar**—I am afraid that I have not read that either.

**Senator COONEY**—I have come along prepared to ask these series of questions and the witnesses have not yet read the book. He quotes Disraeli—saying there are lies, damn lies and statistics—in the context that I am talking about now: the way that people perceive crime and the problems associated with it. Have you done any research on that?

**Dr Graycar**—In the past the Australian Institute of Criminology has done work on public opinion and crime. We did a survey—well before my time; it must have been about 10 to 12 years ago—about how the public perceived the seriousness of different levels of crime and how safe they felt. Each year the Productivity Commission report some data from a survey known as the population survey monitor in which people are asked how safe they feel in a whole variety of contexts—do you feel safe at home at night, do you feel safe at home during the day, do you feel safe walking in the streets, and so on—and generally the responses are fairly high, though things like travelling on public transport after dark are not perceived as very safe activities.

**Senator COONEY**—If you were asked to do research into that, would you do it as the Australian Institute of Criminology or as the Criminology Research Council? I have never quite picked up the distinction. You appear as the revered and venerable leader of both.

**Dr Graycar**—The Australian Institute of Criminology is a research agency and the Criminology Research Council is a body that, under the same piece of legislation, represents the Commonwealth and the states and sets priorities for the funding of research. As such, we as the Australian Institute of Criminology do work that is within our work program and the Criminology Research Council sets its priorities and then puts these out to tender or also seeks submissions from researchers to undertake pieces of work that it thinks are important.

**Senator COONEY**—Have you been asked by any governments to look at the issue of immigration detention? I suppose you might well not have been, because it has not been a criminal issue up till recently.

**Dr Graycar**—We have not been asked to look at that.

**Senator COONEY**—Have you done any work in recent times on legal aid?

**Dr Graycar**—No, we have not done that either. We certainly have a very extensive research portfolio, and we keep senators and members informed. From time to time I write to all senators and members asking whether there are issues that they would like to suggest we put before our board and look at in priority terms.

**Senator COONEY**—I can confirm that, and I should. Thank you.

[5.40 p.m.]

#### **Australian Government Solicitor**

**CHAIR**—Welcome, Mr Riggs and Mr Holcroft.

**Senator COONEY**—In the old days when Attorney-General's and the Australian Government Solicitor were all one, the concept was that the government ought to be a model litigant. I do not know whether that idea is still current. But, presuming it is, I am just wondering whether you have got to the point now where the government ought to be model contract makers. I am getting very fascinated with the size of contracts and commercial transactions, et cetera. Do you prepare contracts for clients, the departments, Mr Riggs?

**Mr Riggs**—First of all, may I give Ms de Gruchy's apologies for her absence this evening. She has recently had surgery but will be back in circulation, I think, later this week.

**CHAIR**—Thank you, Mr Riggs. Please send Ms de Gruchy the committee's best wishes for her improved health.

**Ms Ransome**—AGS does assist many of the Commonwealth clients in relation to commercial contracts and drafting thereof, and every one of them, of course, has its own special characteristics. So there is a very active program of assistance to clients in that respect.

**Senator COONEY**—Do you have any pro formas on the word processors?

**Mr Riggs**—Very often the base for contractual advice will be around a template document, but every one of them does need to be considered carefully, having regard to what the parties to the contract wish to achieve.

**Senator COONEY**—I just wondered how much this is adding to the costs of the legal system. I have noticed some contracts of biblical and Shakespearean proportions. I do not know about the language—or even the sentiment, talking about the Bible. I just wonder whether, looking at these contracts, you just say, 'This is another terrific term of contract we've found in a contract from some other solicitors; we'll add that in and away we go.' Is that an unkind picture of how these contracts are made?

**Mr Riggs**—Contracts do need to continue to evolve to reflect changing business needs from different business situations. That learning is constant.

**Senator COONEY**—You will have to have a team of people to look at a contract shortly. A small solicitor just will not have a purchase on practice any more, the way things are going.

Have you thought of that? When a contract is sent to you from another firm, how long do you take to look at it—say a commercial contract, which is in confidence, of course?

**Mr Riggs**—It would vary hugely depending on the complexity of the matter. It could be a matter of hours; it could be many weeks. It depends very much on the complexity of the matter and the business relationship that clients are trying to achieve.

**Senator COONEY**—The trend seems to be to increase the size of contracts, rather than to reduce them. We could almost have a law and order campaign in contracts. We could go to the people saying that we are going to reduce the size of contracts, make them more sensible and more understandable. I suppose you cannot take it any further than that. Are you still getting a good share of the clientele of the government?

**Mr Riggs**—I am pleased to say that AGS continues to attract a good share of Commonwealth legal business.

**Senator COONEY**—I was going to ask you what fees you charge, but that would be commercial-in-confidence. That would give advantage to your opponents.

**Mr Riggs**—The details would be, that is right.

**Senator COONEY**—What about the brief fees you pay?

**Mr Riggs**—Brief fees are always in accordance with the Attorney-General's directions on brief fees.

**Senator COONEY**—And you will not brief anybody beyond what the Attorney-General says?

**Mr Riggs**—There are procedures where a particular case emerges for the Attorney-General to exercise a higher discretion, but we always live within those limits, as amended from time to time and subject to that discretion.

**Senator COONEY**—What sort of relationship is there between the Attorney-General and the Australian Government Solicitor? Are you growing apart? The twins having been separated: are they floating away or do you still have some contact?

**Mr Riggs**—There are various relationships between AGS and AGD. We are part of that portfolio, of course. One of our principal objectives is to ensure that the Commonwealth has quality legal services available to it. It is not simply a financial relationship with the Commonwealth. We support the first law officer and that is a very important part of our objectives.

**Senator COONEY**—That is not your official function. The Attorney-General's Department supports the Attorney-General, does it not?

**Mr Riggs**—It is one of the two principal characteristics that AGS is required to achieve: one is a financial return to the Commonwealth and the other is to ensure the availability of high quality legal services in support of Commonwealth clients, including the first law officer.

**Senator COONEY**—But if a Commonwealth client does not pay you, you do not have to give them service for nothing.

**Mr Riggs**—I am afraid AGS is not in a position to give service for nothing any more.

**Senator COONEY**—That is right. So when you say you are obliged to give help to the Attorney-General and the Commonwealth, that is only if you are paid.

**Mr Riggs**—Yes, that is right, but we have to organise to be able to do that. That is one of the objectives that is set under the corporation governance arrangements for AGS.

**Senator COONEY**—Thank you.

**Senator LUDWIG**—In relation to the use of confidentiality provisions in Commonwealth contracts by the Audit Office—I take it you are familiar with those—will that be a matter that you will incorporate in future contracts, the suggested model that is being put in the auditor's report?

**Mr Riggs**—As you know, the contracts are not between AGS and other parties; the contracts are between our clients and other parties, and we will certainly take full account of that.

**Senator LUDWIG**—Yes, effectively you will be taking account of that. Is that a matter that you will then have a policy on in relation to advising your clients?

**Mr Riggs**—We certainly would offer advice to clients on that.

**Senator LUDWIG**—Thank you.

**CHAIR**—As there are no further questions to the Australian Government Solicitor, Mr Riggs and Mr Holcroft, thank you very much. We will now begin with Customs.

[5.51 p.m.]

#### **Australian Customs Service**

**Senator McKIERNAN**—The PBSs say that Customs will receive an equity injection of over \$11 million for marine vessel finance lease of \$4.386 million and to purchase assets for Australia's response to foot-and-mouth disease and other quarantine risks, \$6.7 million. What is covered by the marine vessel finance lease? Is this a charter for bringing people apprehended on boats entering Australia illegally, which was announced in the last budget?

**Mr Woodward**—The short answer is no, but I will get our chief finance officer to explain in a little more detail.

**Mr Cochrane**—The money you refer to is for the purchase of the Bay class vessels.

**Senator McKIERNAN**—Vessels or vessel?

**Mr Cochrane**—Vessels.

**Senator McKIERNAN**—Plural?

**Mr Cochrane**—Plural.

**Senator McKIERNAN**—How many?

**Mr Woodward**—It is not the *Samson Explorer*.

**Mr Cochrane**—No.

**Mr Woodward**—In our last discussion, we spoke about a two-year lease of the *Samson Explorer*, which goes out to Ashmore and carries up to 150 suspected unlawful non-citizens, mainly to Darwin, sometimes to Broome. This amount relates to our eight Bay class vessels.

**Senator McKIERNAN**—Thank you for that and for the clarification on it. Can we have details of the vessels that are leased, the term of the lease, who the vessels are leased from, what the purpose of the Bay class vessels is and whether we can be provided with a copy of the lease document.

**Mr Woodward**—Would you like to repeat that?

**Senator McKIERNAN**—Details of the vessels that are leased.

**Mr Woodward**—We have eight vessels. They are leased from the firm that actually built them, Austal, which is a Western Australian company south of Fremantle.

**Senator McKIERNAN**—What is the term of the lease?

**Mr Woodward**—Ten years. My understanding is that it is 10 years.

**Senator COONEY**—Did you see the lease?

**Mr Woodward**—I do not think that the documentation is as extensive as some of our other documentation. While I was actually involved in the signing of it, it was a few years ago now and we have signed a few other contracts. I am just not sure of the thickness of it.

**Senator COONEY**—That is the point. If you signed them 10 years ago—

**Mr Woodward**—No, a few years ago, a couple of years ago.

**CHAIR**—Isn't that like assessing the difficulty of a novel based on its thickness, Senator Cooney?

**Senator COONEY**—But the more there is in the contract the more people have to read up, the more expensive it becomes and the more danger there is of somebody being negligent.

**CHAIR**—I do not know why I said that, because I knew this would happen!

**Senator McKIERNAN**—You have answered most of the range of five questions that I asked at the beginning. I understand from you that the Bay class vessels are vessels that you currently have.

**Mr Woodward**—They are all there, all in operation. The minister commissioned the last vessel, which was the *Arnhem Bay*. They are Bay class vessels. They are the Customs vessels that quite often appear on television.

**Senator Ellison**—Patrol boats.

**Mr Woodward**—They are our equivalent, yes.

**Senator COONEY**—Is there a plaque to the minister?

**Senator Ellison**—I hope so!

**Mr Woodward**—There is a plaque that indicates that the minister commissioned the vessel, yes.

**Senator McKIERNAN**—Why do they appear as a new capital or equity injection if the vessels are already with Customs?

**Mr Woodward**—I think this covers depreciation.

**Mr Cochrane**—It has been purchased for a financing lease as opposed to being an acquisition. Consequently, over the next four or five years we show the asset and liability in the accounts and draw down as a capital injection each year the capital payment for them.

**Senator McKIERNAN**—Did you say they were purchased by a financing lease?

**Mr Cochrane**—Yes. I am sorry—acquired.

**Senator McKIERNAN**—Acquired by a financing lease.

**Senator BOLKUS**—When did you enter into these leases?

**Mr Woodward**—It was in Minister Truss's time, so it would have been 1997-98.

**Senator BOLKUS**—Was it one lease for all the vessels or individual leases for each one?

**Mr Woodward**—No, it was a program that involved expenditure of about \$58 million and it picked up the actual construction costs and major aspects of maintenance as well.

**Senator BOLKUS**—That was for all the vessels?

**Mr Woodward**—For all eight, yes.

**Senator BOLKUS**—What year was that?

**Mr Woodward**—It was in the 1997-98 financial year.

**Senator McKIERNAN**—These vessels are located around Australia?

**Mr Woodward**—Yes.

**Senator McKIERNAN**—Are they located in any particular spot?

**Mr Woodward**—No, they are located around Australia. I think I may have mentioned at one previous hearing when we discussed these vessels that we fly the crews to the vessels. In other words, we do not have—certainly at the moment—crews permanently attached to vessels. The vessels are there, we get crews together and we fly them to the location. But as they are all basically the same, any crew can handle the work of any of the vessels.

**Senator McKIERNAN**—With the \$3.86 million for this year, is there any funding for out years on this leasing?

**Mr Woodward**—I think Mr Cochrane was saying that it is an amount drawn down each year.

**Mr Cochrane**—Yes. It goes down as the principal component increases into the future out years, but it is approximately \$4.5 to \$5 million as we go out into the out years.

**Senator COONEY**—There is the leasing contract and there is a financing contract as well, is there, or is the only contract the leasing contract?

**Mr Cochrane**—There is only one contract. The terms and conditions are included—

**Senator COONEY**—And you lease it off the person who built it. What do you do? Do you pay an amount each month or each year? What happens—do you know?

**Mr Cochrane**—They are annual payments, broken into interest and capital. One goes onto the balance sheet and the other goes through to the income statement.

**Senator COONEY**—But there is no hire purchase arrangement. They do not become the Commonwealth's vessels at the end of 10 years.

**Mr Cochrane**—No.

**Mr Woodward**—Can we just check that? My recollection is that, for a very small payment at the end, they then become Australian government vessels—in 10 years.

**Senator McKIERNAN**—So it will be 2008.

**Mr Woodward**—Approximately. The first one was delivered in February 1999, so around 2008-09. If there are any changes in those dates, obviously we will let the committee know. That is my understanding.

**Senator BOLKUS**—In terms of being able to use them after they are fully acquired, is there a lifespan for these vessels?

**Mr Woodward**—They obviously do have a lifespan, but it depends very heavily on how much they are used in the period. We have been using the vessels very extensively. There has been a lot of activity in the north-west and also in the east.

**Senator BOLKUS**—When you have factored that in, Mr Woodward, what is the life expectancy of these vessels?

**Mr Woodward**—My recollection was that we expected in the vicinity of 10 to 15 years; but, again, if there is any correction of that I will let the committee know.

**Senator BOLKUS**—Is there any other officer here who knows? There seem to be a few officers with you. Does anyone know precisely?

**Rear Adm. Shalders**—With these sorts of vessels you would expect to get 10 to 15 years, but it depends on the surveys that are conducted throughout the life of the vessel. Things that are surveyed are the hull thickness, the wear on the hull, machinery state: it is difficult to say exactly how much life you would get. But, based on the sort of vessel they are, our expectation would be 10 to 15 years.

**Senator BOLKUS**—That is a pretty broad leeway of flexibility there. From 10 to 15 is 50 per cent: can you be more precise?

**Rear Adm. Shalders**—No, I cannot be. If the vessels had been made of steel, the window is even wider. With naval vessels, you really cannot define it more than about 10 years out. A naval vessel you would expect to last for 20 or 30 perhaps years. An aluminium vessel would be less.

**Senator BOLKUS**—How do you intend to dispose of these vessels when the time comes?

**Mr Woodward**—The idea of having a depreciation arrangement is that, as years go by, we will be funding a replacement; so that, by the end of the 10-year period, we should be able to fund replacement vessels.

**Senator BOLKUS**—I do not think that was the question, Mr Woodward. The question was how you dispose of them: how do you destroy the vessels after their life expectancy is up?

**Mr Woodward**—I suppose we would consider it in the same way as we have considered what we called our Minister class vessels. Some have been sold. I do not know whether there would be a lot of interest in these vessels, but the previous vessels have been sold. There has been an agreement that at least one would be made available to a South Pacific country, and so that is another option. I would be very surprised if you would want to sink them.

**Senator COONEY**—Under the agreement, does the builder whom we have leased them from keep them in shape, or has the Commonwealth got to keep the vessels in shape? If you lease a home, I suppose you would change a light globe yourself but, if there were some issue with getting new pipes put in for your waterworks, you might get the owners to do something about it.

**Mr Woodward**—The major maintenance work is covered under the agreement, and the company concerned has arrangements with a number of companies in the major centres throughout Australia; and so we would bring them in there to have major repairs done.

**Senator COONEY**—So if something happened on the ship you would ring up the owner, and the owner would get somebody down to service it. With the rooms we have got down in Melbourne, they get people in to look after the airconditioning: you ring up the landlord and

the landlord rings up some contractor, who may or may not come. We had all sorts of problems a couple of years ago. But is that the sort of thing?

**Mr Woodward**—If it was for regular maintenance—and some of that is quite expensive—you would take it in to the centres where the facilities are actually located. If there are emergency repairs to be done, then there are a range of circumstances, either to get replacement equipment to the vessel or, if that vessel cannot be moved, to get the equipment back to the company and then to get it back to the vessel. So it depends on the nature of the requirement.

**Senator COONEY**—I suppose what we ought to wonder about as a committee is whether or not leasing is better than buying, or whether buying is better than leasing. That is the way the government has arranged it for the Customs Department, I suppose: to have a leased vessel which is then subject to a contract big in size, and no return.

**Mr Woodward**—On each occasion, we have a close look at how the sums come out. On this particular occasion, the view was taken that, if you take into account the funds that are available, the leasing costs and the fact that we have maintenance thrown in as well, that was the most economical decision. But in other circumstances, you may be better off buying.

**Senator LUDWIG**—You said that you have eight boats. How many crew sets do you have?

**Mr Woodward**—As I recall, there is an average of eight per vessel and we are recruiting up to 98 crew members, so that is close to 11 crews.

**Senator LUDWIG**—Yes, but how many do you have right now? Could you put all eight boats to sea with eight per crew?

**Mr Woodward**—Ms Grant will be able to help you. We are in the process of some additional recruitment, but in any case you have plant maintenance which has to be taken into account, so you do not have eight vessels available for 365 days of the year in any case.

**Ms Grant**—At this point in time, we employ 88 crew members and we have a current recruitment process under way to recruit another 12 people to bring that to a total of 100, which would be two over strength in anticipation of our natural attrition that occurs.

**Senator COONEY**—The picture I have is that you fly the crew from ship to ship, depending on where there is a perceived need. Is that how it goes? There must be some sort of guidelines as to where the crews go?

**Mr Woodward**—It is not quite as haphazard as that. We do have sailing programs and we do have an ability to respond quickly in the event of a major operation. But the fact is that most of the work—apart from planned exercises, say, down Western Australia, across to the south, or planned work in the east—is in the north-west in the Torres Strait, and some further work on the east coast. It depends very much whether it is strategic or tactical work that we are involved in.

**Senator COONEY**—There would not be much need for boats around Victoria and Tasmania: they are law-abiding states.

**Mr Woodward**—We do in fact move across the south of Australia as well for a host of reasons, certainly including fisheries and environmental reasons. We get tasks in from something like a dozen agencies.

**Senator McKIERNAN**—Moving on to foot-and-mouth disease, the other area that I started with, there is \$6.692 million for disease and other quarantine risks. What assets will be purchased under this matter? Will indeed any be purchased?

**Mr Woodward**—I will check. X-rays and some additional audio-video equipment which we will be using at the airports in the event of our investigations work being needed, with audio and video work being undertaken. We have video equipment at airports in the event of—

**Senator McKIERNAN**—Video cameras?

**Mr Woodward**—Yes, indeed—to tape both visually and orally evidence provided in relation to alleged offences.

**Senator McKIERNAN**—And is it specific to foot-and-mouth, or general?

**Mr Woodward**—We have them now. We have facilities for a whole range of prohibited imports, not just in relation to narcotics. But there is an expectation that, flowing from the additional work that we will be doing in foot-and-mouth disease, we will probably not only apprehend people carrying salami but also locate other things in bags or articles being carried.

**Senator McKIERNAN**—But the assets that you are talking about will be used for functions other than foot-and-mouth. They will not be foot-and-mouth specific?

**Mr Woodward**—The additional funding flowed from foot-and-mouth, and that is what it is principally directed to. But if in the course of our searches, flowing from the additional capabilities, we come across other articles, obviously we would investigate them and take whatever action is necessary.

**Senator McKIERNAN**—In regard to the budget measure of \$238.8 million over four years—which is the addition of \$60.392 million in 2001—if you read the impact of measures statement on page 322, it appears that all this increased customs activity will require more staff. Can you tell the committee whether any of this budget measure will be allocated to the hiring of staff, the number that will be hired and the staffing costs?

**Mr Woodward**—My recollection is that the total number of additional staff we would have by the end of the four-year period was just under 600—from memory, 598.

**Senator McKIERNAN**—How many will be from this particular allocation of funding—is it possible to identify the number?

**Ms Batman**—Yes, the number that Mr Woodward said is about right. It will grow a little each year over the four-year period but, for example, in 2001-02 the funding is available for just under 600 additional full-time equivalent staff.

**Senator McKIERNAN**—What will these officers be doing? How will they be deployed in our airports and seaports—checking passengers coming in to make sure that they are not carrying the disease into this country?

**Ms Batman**—They will be deployed in predominantly three different areas. The majority will be in airports. There will also be a number looking at air cargo coming in at air cargo depots and at the mail operations. There will also be a number of additional investigations staff. At airports they will be performing a range of functions. There will be a small number of additional primary officers, because questions will still need to be asked of all passengers to try and identify passengers that have come from high risk FMD countries. They need to look at shoes and clothing in bags—things that you do not necessarily pick up by X-ray. We

need to identify which passengers need a full baggage examination rather than an X-ray. There will be additional officers to do the physical baggage examinations and X-rays. There will be a number that will be looking after the marshalling at the red and green exit points, making sure that the passenger flows continue and that the queues do not build up. We are expecting that there will be additional seizures and fines as a result of the increased amount of inspection, so a number will be there to follow up, issue the seizure notices, detain the goods and investigate the more serious offences that arise.

**Senator McKIERNAN**—Without going into specifics, can you indicate the increased number of containers that will be searched as a result of this measure—will it double or treble?

**Ms Batman**—For sea cargo and air cargo containers, AQIS will be examining 100 per cent of the exterior of the containers for soil contamination. For sea cargo containers, I am not sure. It is a question for the quarantine service as to whether their screening and targeting as a result of this will result in any more being searched. In terms of air cargo, it is not so much the number of containers that are being searched; the particular focus will be on documents that come through air cargo that currently do not have much screening or searching. They will be increased to 100 per cent. But it will not be so much the containers themselves.

**Senator McKIERNAN**—What proportion of packages through the mail system will be further scrutinised?

**Ms Batman**—The measure is to get to 100 per cent.

**Senator McKIERNAN**—Is the passenger movement tax, which is increased by 21 per cent from \$30 to \$38, a budget measure to offset the expenditure on the foot-and-mouth measure—FMD, as you call it?

**Ms Batman**—Sorry, it is a shorthand I have fallen into. The passenger movement charge increase will cover the additional costs of passenger processing for both Customs and AQIS.

**Senator McKIERNAN**—What are the additional costs across the sector?

**Mr Woodward**—This is at the airport. It is \$71 million to \$72 million.

**Ms Batman**—Yes, that is right, in the first year.

**Mr Woodward**—For Customs and AQIS.

**Senator McKIERNAN**—There will be a lot more activity at airports then. Your target for clearance for people from the airport will have to be affected by this, will it not—the target time it takes to move from the aircraft to the outside of the baggage hall?

**Mr Woodward**—Australia-wide, we are anticipating about 311 additional staff at airports. I also stress, though, that we need to recruit additional staff. They are not going to be untrained staff. We will have to put them through a training process. What we will be doing initially—and this process has started—will be redeploying staff from elsewhere in Customs and gradually building up our staffing to match the acquisition of X-rays, because there will be a significant number of X-rays required. There will be some changes in structure—not major, but some structure changes in airports will be needed. They will be needed before the full impact is ultimately revealed.

**Senator McKIERNAN**—The passenger movement charge, when it was originally brought in, was supposed to offset the costs of providing customs and quarantine services at airports. Now that charge has been increased by 21 per cent. Was the amount previously collected with

the \$30 tax not enough to cover the costs? Is there a way of breaking down what the costs were of providing those services at airports throughout Australia? Why was there a need for this 21 per cent increase? It is quite significant.

**Mr Woodward**—In round terms, our assessment of the over-recovery—and this is revealed in answers to questions that have been asked before, on notice—is something like an \$80 million collection greater than the actual costs of customs, immigration and quarantine, but the passenger movement charge is a tax. It is not a pure cost recovery arrangement, and that indication of moving away from direct relativity came out when the \$3 increase was made at just about Olympics time. So that is clearly on the public record.

**Senator McKIERNAN**—I do not have all those details with me. I do recall the debate and the associated questions. My recollection now of what you have just said is that there was an \$80 million shortfall in what was collected and what was expended.

**Mr Woodward**—No, not a shortfall. In other words, there is something like \$70 million to \$80 million coming out of the passenger movement charge at the moment more than the total costs of customs, immigration and quarantine services. That came out in a question on notice that was asked some months ago. It was on the public record when the \$3 increase in the passenger movement charge went through, I think, in 1999 associated with the Olympics; at that time, there was a clear acknowledgment that there was no equation between the actual costs for the three and the revenue obtained through what is in effect a tax.

**Senator McKIERNAN**—My colleagues actually tell me that it is a 27 per cent increase rather than 21 per cent, which is the figure I have been given. I will let that speak for itself; it is not my strongest subject. Has any work been done on the expected costs to Customs in providing the services at the airports and seaports for the year 2001-02?

**Mr Woodward**—The increase, which was \$8, was as close as we could get to the assessed costs for Customs and AQIS to handle foot-and-mouth disease at airports; in other words, \$70 million, \$71 million, \$72 million was roughly the cost, and that is roughly what will flow from an \$8 increase in the passenger movement charge.

**Senator McKIERNAN**—Can you again provide on notice the cost of providing customs services at each airport in Australia and the same for each port in Australia? I think you have indicated to us that the cost will be fully recovered by the increase in the movement tax.

**Mr Woodward**—It was certainly done on an aggregate level in answer to the question on notice some time ago. I really cannot remember whether it was done on an airport basis.

**Ms Batman**—It was done on a regional basis because some states, such as Queensland, have two airports—Cairns and Brisbane. We do our costings on a regional basis. Some of the corporate costs are attributed to a region rather than to an airport. We did provide those costs to the Senate a few months ago by region, and I could probably arrange to get that this evening for you.

**Senator McKIERNAN**—If you could, that would be appreciated. I am asking because some of the work has already been done, and it may just require some clicks on the computer to provide an update. It is important in the context of the—

**Ms Batman**—The figures that we provided were the last full financial year that was available, so they would still be the current figures.

**Mr Woodward**—Can I just emphasise: it would depend on whether the information has already been collected because you are talking about customs, immigration and quarantine. If

we do not have it, then we have the problem of going back to immigration and quarantine as well to get it.

**Senator McKIERNAN**—What do you have with you now, Ms Batman?

**Ms Batman**—A question on notice from 3 October 2000 asking for the cost for immigration services, quarantine services and customs services by airport for the last five years. I could provide you with that.

**Senator McKIERNAN**—Okay, and see what you can do in terms of bringing it up to date.

**Ms Batman**—Yes. I think the last financial year is the last whole year for each of those agencies.

**Senator McKIERNAN**—I want to move to another theme on this matter.

**Senator BOLKUS**—Could we have that information?

**CHAIR**—Is that available now, Ms Batman?

**Ms Batman**—It is just a print-out from the Internet.

**CHAIR**—We can make a copy. Thank you very much.

**Senator McKIERNAN**—What negotiations, if any, have occurred with the airlines on this? I ask that in the context that this charge will come into effect on 1 July and many airline tickets would have already been purchased both here and overseas.

**Mr Woodward**—It is a legitimate question. There have been discussions already.

**Ms Batman**—We had a videoconference last Thursday to talk to the airlines about this, and we have another one planned for tomorrow. They have gone away to think about things and bring some issues back. We will have another meeting for most of tomorrow.

**Senator McKIERNAN**—So there were no prior discussions with the airlines?

**Ms Batman**—Not on this issue, no.

**Senator McKIERNAN**—Or with the tourism industry as such?

**Ms Batman**—Not before the budget.

**Senator McKIERNAN**—Did Customs itself weigh up any possible impact on the tourism industry or the airlines?

**Mr Woodward**—I think the potential implications for tourism, at least at a very general level, were in the minds of ministers when they took the decision.

**Senator Ellison**—I can confirm that.

**Senator McKIERNAN**—The airlines collect the tax on behalf of the government. They do that by way of an agreement with the government. Is that agreement currently being renegotiated?

**Ms Batman**—Yes, it is. We have agreements with something like 53 different airlines, and they cover departures that go up to 30 June this year.

**Senator COONEY**—Was that contract done on a word processor?

**Mr Woodward**—I think it was rather slimmer than the ones you are talking about. It was much smaller than that.

**Senator COONEY**—If it is that one, instead of asking, ‘Was it that thick?’ perhaps we can say, ‘It’s as long as a table.’ Somebody wrote a novel on a roll of paper.

**Senator McKIERNAN**—Bearing in mind that there is an agreement with the airlines to collect the tax, what arrangements, if any, are now in place about them collecting the tax, particularly on the tickets that have been presold?

**Mr Woodward**—That issue was raised last week. It is going to be further discussed next week. The airlines that we have spoken to have made the very point that you have made, and we will again be listening to their views and reporting to the minister in the light of those discussions.

**Senator McKIERNAN**—So there have been no agreements as yet about that? Have the airlines given you a cost? If they have to pay it themselves and are not able to recoup it from their customers, what will it cost them?

**Mr Woodward**—There were some ballpark figures given last week, but I am sure they will fill those out tomorrow.

**Senator BOLKUS**—How many millions are we talking about?

**Ms Batman**—About \$8 million to \$9 million, the airlines have said.

**Senator LUDWIG**—There is no agreement in place now to cover that post 1 July?

**Mr Woodward**—No. As I said, we will be listening to them. In the light of the representations they make, we will talk to the minister and, if necessary, he will talk to his colleagues.

**Senator BOLKUS**—If it is \$8 million, they are in a bit of a jam, having to carry that cost for passengers coming in on presold tickets. Minister, was this in the minds of cabinet as well?

**Senator Ellison**—I cannot say what was discussed at cabinet, obviously, but certainly it was envisaged that there would be some transitional aspects of this scheme for tickets that had already been purchased.

**Senator BOLKUS**—But \$8 million worth? That is some transition!

**Senator Ellison**—Mr Woodward makes a fair point in relation to this. The government are listening to the proposals that have been put to us, and we are giving them close consideration.

**Senator BOLKUS**—But the point is really that they can pull the plug on the whole scheme come 1 July. It is a pretty inept negotiating position.

**Senator Ellison**—I think we can work through it.

**Senator McKIERNAN**—Does the government pay the airlines anything for collecting this tax?

**Ms Batman**—Yes, we pay their administration costs.

**Senator LUDWIG**—What proportion of the total fee collected is the administration cost?

**Ms Batman**—I am sorry, I will have to take that one on notice. I do not have that with me.

**Senator LUDWIG**—All right. I think you said the amount of revenue collected was \$70 million.

**Mr Woodward**—Around \$71 million to \$72 million.

**Senator LUDWIG**—Where does that go? Does that go in consolidated revenue or into your budget? Where is that disbursed?

**Mr Woodward**—All of those funds go into consolidated revenue.

**Senator COONEY**—I do not want to go into a long series of questions. I will tell you what I am talking about and then you can answer. I asked earlier in the day about the way Australia protects its intellectual property and I was going to ask you questions in the context of whether or not you pick up things like parallel imports, which are not legal, and what have you. Clearly, you concentrate on drugs, people-smuggling and things like that. What sorts of measures—‘effort’ might be the right word—do we use through Customs to stop the intellectual property of our citizens being affected?

**Mr Woodward**—It is not just our citizens; a lot of effort is put into copyright trademarks work at the border. To do that we cooperate very closely with the copyright trademark holders, heavily dependent on information they get from us. But there is a lot of effort put into it. In fact, there have been massive seizures where breaches of intellectual property have been involved. The Olympics is an example of vast quantities seized.

**Senator COONEY**—I do not want you to go trawling through the stuff, but could the efforts we make in that regard be put down on paper without too much trouble? What I would like to get is an idea of what we have done here.

**Mr Woodward**—There is material we could quite easily put together that would help you, yes.

**Senator McKIERNAN**—I have one final question about the boats that landed some people at Exmouth. Has there been an inquiry into what occurred there and why the boat was not detected prior to it landing the people in it?

**Rear Adm. Shalders**—There has been an inquiry and that inquiry is continuing, in particular as we get a chance to talk to the people that were landed and subsequently recovered. The boat that did land those people was subsequently detected and apprehended and the crew charged on their arrival on the Cocos Islands.

**Senator McKIERNAN**—I have seen the minister’s statement in regard to that.

**Senator COONEY**—Who laid the charges? Did Customs or the police actually lay the charges?

**Rear Adm. Shalders**—The Federal Police.

**CHAIR**—As there are no further questions, Mr Woodward, that completes questions in this set of budget estimates for Customs. I thank you and your officers for assisting us this evening.

**Proceedings suspended from 6.33 p.m. to 7.38 p.m.**

**Federal Magistrates Service**

**CHAIR**—Mr Cornall, you wish to add some more information on previous discussions.

**Mr Cornall**—Yes, Madam Chair. There was one issue that Senator McKiernan raised about the way in which jurisdiction was conferred on the Federal Magistrates Service. Ms Leigh wants to clarify the way that works because we were both right.

**CHAIR**—That is always important.

**Ms Leigh**—Senator McKiernan was asking me about the lack of migration jurisdiction in the Federal Magistrates Service, and I said that jurisdictions are specifically conferred on the Federal Magistrates Service rather than there being a plenary conferral and then areas being taken away. In fact, areas are specifically conferred—for example, bankruptcy, human rights. Among the areas that are specifically conferred are AAT and ADJR jurisdictions. In relation to those jurisdictions, migration matters are exempted. So you were right, Senator, to say that they are exempted, and my explanation related to the overall approach of the legislation.

**Senator McKIERNAN**—I do not think I was disagreeing with you at the time.

**Ms Leigh**—I wanted to make sure that there was no misleading information.

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

**Attorney-General's Department**

Departmental Executive

**Mr Cornall**—Madam Chair, there is just one other matter about drugs that Mr Carnell would like to clarify.

**Mr Carnell**—Senator Ludwig asked about departmental involvement in the campaign that this booklet was a part of.

**CHAIR**—Drugs, yes.

**Mr Carnell**—I checked with my staff. The only involvement we have had in it—we have none of the funding nor any responsibility for it—was that at one point we provided some draft words for the section ‘Stopping Traffic’, although they were not the final edited version that appeared. Other than that, we have had no involvement with it.

**CHAIR**—Thank you. Any further issues?

**Senator Ellison**—Madam Chair, Senator McKiernan asked me a question which I took on notice. It was to do with a statement made by the Attorney-General as to consultations in relation to ART.

**Senator McKIERNAN**—Contained in the DIMA portfolio—was that the one?

**Senator Ellison**—No. Remember the one about ART and AAT?

**CHAIR**—The Attorney-General consulting with interested parties and the references made to the Law Council?

**Senator Ellison**—Yes, and then Senator McKiernan wanted me to take up with the Attorney what he was thinking—who he was contemplating. My advice is that the only interested party, if I could put it that way, that has been consulted is the Law Council. No-one else has been consulted and the Attorney has not yet made up his mind as to whom he will be talking to, so I am unable to advise you as to who it will be, because there has been no decision as to who it will be. That decision still has to be made.

**Senator McKIERNAN**—Okay, but in the DIMA PBS it reads—and I quote again:

The Attorney-General is pursuing discussions with interested parties with a view to securing passage of the legislation.

After that, it talks about the Senate not passing the necessary enabling legislation, and I thought that my party being one of the interested parties—

**CHAIR**—I think that was a small ‘p’.

**Senator Ellison**—I can see how you came to that conclusion when you referred to that DIMA portfolio budget statement.

**CHAIR**—Because it is a small ‘p’ party. What we might do, Minister, when we come to the DIMA estimates on Wednesday and Thursday is perhaps give Senator McKiernan an opportunity to take that up at that time. DIMA can explain what they meant about what the Attorney was thinking.

**Senator Ellison**—Yes.

[7.41 p.m.]

#### **Australian Federal Police**

**CHAIR**—It gives me great pleasure to welcome Commissioner Mick Keelty, in his capacity as commissioner, to these budget estimates, and Ms Fagan and Mr Overland.

**Senator McKIERNAN**—In petitions to the parliament, I noticed that on 22 May the federal minister for territories, Senator Ian Macdonald, presented a petition from 30 petitioners requesting that the Senate undertake an inquiry into certain AFP investigations and the Ombudsman’s role in overseeing AFP investigations generally. I would hope that that has been brought to your attention, Commissioner.

**Mr Keelty**—Yes.

**Senator McKIERNAN**—Can you tell the committee anything about it? When you get a federal minister bringing petitions into the parliament calling for inquiries into a law enforcement organisation, obviously something pretty serious is on foot.

**Mr Keelty**—In answer to your question, yes, I was aware of it. It is currently an Australian Federal Police internal investigation. By way of background, on 9 November 1999 Mr Duncan Kerr wrote to the Minister for Justice and Customs in respect of five complaints made by a Mr Grahame Wheeler. On 23 August 2000, an interim final report was forwarded to the Commonwealth Ombudsman addressing the complaints raised by Mr Wheeler. The report advised that a specific complaint against one of the members was unable to be addressed, as he was performing duties overseas. Then on 22 December 2000, the Commonwealth Ombudsman advised that, although the interim final report was received, it was not possible to finalise the report before the remaining member was interviewed. On 9 March 2001, the final report was forwarded to the Commonwealth Ombudsman and, on 23 May 2001, Mr Graham Wheeler was advised by the Ombudsman that he would be contacted directly by the Ombudsman’s office with the outcome of their review. As the internal investigation is now complete and the material has been forwarded to the Ombudsman, it is inappropriate for us to comment further, other than to confirm the review.

**Senator McKIERNAN**—I will move to more base matters—the budget. There is \$110 million in the budget measures. Does this money go to base funding or is the money tied in any way?

**Mr Keelty**—It goes into base funding.

**Senator McKIERNAN**—There are no ties to it at all?

**Mr Keelty**—That is correct.

**Senator McKIERNAN**—Page 204 of the PBS explains that the money continues the reform program. Was the review undertaken at the end of the three years, which constituted phase 1 of the reform program, recommended by the Ayers report?

**Mr Keelty**—No.

**Senator McKIERNAN**—Is there any intention to carry out such a review?

**Senator Ellison**—Although there was mention of a review, things have gone pretty well in relation to the reform program, and the monitoring committee that we have in place has done a good job in its role. Most importantly has been the success of the AFP itself, and really I do not see the need for a review at this stage as was contemplated by Ayers back then. The further increase in funding by the government is evidence of the government's confidence in the operations of the AFP which have been thoroughly professional. Ayers back then was saying, 'We will have a review to see how it goes,' but really you only have a review if it is warranted. I do not think that review was something that was meant to be cast in stone.

**Senator McKIERNAN**—How was the amount of money contained in the budget measure determined?

**Mr Keelty**—Through a submission that we made in about October last year.

**Senator McKIERNAN**—Was that submission in line with what was recommended by Ayers to devise a phase 2 program?

**Mr Keelty**—Yes, it was, with some additional measures.

**Senator McKIERNAN**—Are you in a position to tell the committee what the additional measures were?

**Mr Keelty**—The additional measures relate to the East Timor adjustment, to the East Timor commitment, to people smuggling and also to the final payment of AFPAS.

**Senator McKIERNAN**—The first three at least would all be measures for which funding had previously been allocated and all of which are tied. Am I correct?

**Mr Keelty**—Yes, you are.

**Senator McKIERNAN**—So where does the Ayers initiative come from then, if that is the case? I would have thought that Ayers would have preceded the East Timor adjustment and certainly the commitment. It certainly would have preceded the people smuggling initiative, as well, I would have thought.

**Mr Keelty**—Sorry. I thought the thrust of your question was about additional funding sought outside of Ayers, which is why I raised the other bids.

**Senator McKIERNAN**—What are the priorities that we will now identify as phase 2, even though it may have a different name. Technically, it would not be phase 2 because it is not directly Ayers. Do you have a word for it within the AFP?

**Mr Keelty**—We call it stage 2 of the AFP reform program, but I guess now that it will be rolled into base we will not have a specific title for it because it will form part of our base.

**Senator McKIERNAN**—What are the priorities identified in that?

**Mr Keelty**—The recruitment of staff, the learning and development strategy, funding of the certified agreement, equipment upgrades and some mobility costs.

**Senator McKIERNAN**—At page 197 of the PBS under 'overview' it says that the budget measure will retain 159 federal agents and provide depreciation to enable re-equipment programs to proceed. That is \$28 million annually. Can you provide a breakdown of that \$28 million? What will be the re-equipment?

**Mr Overland**—\$5.3 million goes to funding the re-equipment program. The bulk of the rest goes to employee expenses.

**Senator McKIERNAN**—Employee expenses? Will that be the salaries of the 159 agents that are going to be retained?

**Mr Overland**—That is a large part of it.

**Senator McKIERNAN**—Why are 159 officers being, as it were, selected out from the rest of the AFP?

**Mr Overland**—That was the number originally funded as part of the first phase of the reform program. If the reform program had not continued, if we had not got the additional funding, we had no funding for 159 people.

**Senator McKIERNAN**—So you are not talking about having a list of 159 named officers?

**Mr Overland**—No, they are positions.

**Senator McKIERNAN**—So 159 positions. Thanks for that explanation. Is there any funding available for additional recruitment to be undertaken?

**Mr Overland**—It is not specifically identified as such. We work to a full-time equivalent, which is largely determined by a number of things—but, at a macro level, by the amount of funding that is available to support a given number of staff. The short answer is: we will be doing some recruiting this year, but that is part of the normal cycle in terms of managing overall staffing numbers in the AFP. It is not specifically sourced back to the money that has been made available through this program, although, as noted, had we not got this money we would have had to lose about 159 staff.

**Senator McKIERNAN**—Will the funding enable the AFP to increase operations in any areas?

**Mr Overland**—I would say it would enable the AFP to maintain the current level of operational capacity.

**Senator McKIERNAN**—On page 204 of the PBS, under ‘Measures Affecting Outcome 1’, there are a number of claims made about the way in which improved efficiency resulting from the AFP reform program has been evidenced by an increased apprehension of offenders, increased seizures of illicit drugs, restraint and recovery of criminal assets and the proportion of finalised AFP cases being referred to the legal system. Can you indicate to the committee exactly how the reform program has led to the increased efficiencies as opposed to what would be a normal expectation of a law enforcement organisation such as the AFP?

**Mr Overland**—That is a very fair question. It is impossible to unthread the various moneys that have been made available to the AFP and source performance back to particular funding arrangements. Those performance measures are a reflection of the overall performance of the AFP and, as you are aware, there are various funding streams that come into the organisation. Suffice to say, though, without the support of the reform program, we would not have been able to achieve anywhere near the order of magnitude of success as reflected in those figures.

**Senator McKIERNAN**—But then, if you had not, you would not have been fulfilling the role that you are tasked and funded to do.

**Mr Overland**—I guess we are in the realms of speculation.

**Senator McKIERNAN**—I guess there were some people speculating when they were putting the words into the PBS in this particular part of the program.

**Mr Overland**—No, we can demonstrate all of those figures.

**Senator McKIERNAN**—And target them to the reform program? This is where the claims have been made. I do not want to spend the rest of the night arguing about it, but the claims are being made specific to the reform program, aren't they?

**Mr Overland**—No, I do not think they are put on that basis. The middle sentence reads: Improved efficiency resulting from the AFP Reform Program is evidenced by the increased apprehension of ...

And it goes on from there. I guess it is capable of being construed as sourced entirely back to the reform program. It is not intended to have that interpretation. We have not put it forward on that basis in other public arenas. Overall, the performance of the organisation goes back to the reform program and other funding that has been made available to the organisation.

**Senator McKIERNAN**—So the results are not just the reform program on its own?

**Mr Overland**—No, and it was never intended to suggest that. If we have, I apologise for that.

**Senator McKIERNAN**—Perhaps I am not impartial on this as I read it at the moment. It is very difficult to be impartial in an estimates committee. We do try, but it would be nice to get somebody else to read it and to see what conclusions they arrive at. Anyway, we will not spend all night on that.

The budget papers indicate that the capture of DNA samples would be funded from within the AFP budget and is expected to cost up to three-quarters of a million dollars. From where in the AFP budget will that money be found?

**Mr Keelty**—That will be found through revenue from interest.

**Senator McKIERNAN**—Has that revenue from interest been previously allocated to any other area?

**Mr Keelty**—No, it has not. There is a total of \$1.5 million estimated interest from revenue, and \$750,000 of that has been put aside for DNA.

**Senator McKIERNAN**—So you are telling the committee that no activities will be cut back in order to find this money?

**Mr Keelty**—That is correct.

**Senator McKIERNAN**—How will that capture be undertaken? How many AFP officers will be involved, and how long is it expected to take?

**Senator LUDWIG**—Whilst we are looking at that, I read somewhere in the newspaper about the states getting their legislation in place. Perhaps you could put that in a frame as to whether that impacts upon your operation as well.

**Senator Ellison**—Perhaps I can deal with that while the other matter is being looked at. I recently wrote to my counterparts in the states and territories pointing to the fact that CrimTrac will be launched on 20 June. There were some comments in the paper today—which I have written to the editor about—that were not entirely accurate. Certainly since I have been minister we always anticipated launching CrimTrac in April, May or 20 June. It has not been a six-month delay as mentioned.

The other thing is that its operation is not to be postponed indefinitely, because we already have states which have legislation in place. They are at varying stages of progress—Western Australia does not have any at the moment, but the others do—and I have asked them to look at regulations which can complement the Commonwealth provisions. Likewise, we would gazette regulations and those regulations, then synchronised, would lead to a national database for DNA. I think that is what you are perhaps getting at with the line of questioning. Another thing is that the launch on the 20th will start the Commonwealth side of things, because the technology will be there. The remaining work will be uploading all the information onto that and, of course, we will start collecting DNA from federal prisoners, not all federal prisoners but those who are undergoing a sentence and who have been convicted of a crime which carries a penalty of five years imprisonment or more.

**Senator LUDWIG**—Thank you, Senator; that shortens the number of questions I might have otherwise asked.

**Mr Keelty**—And the answer to your question, Senator, is that we are still in the process of formulating the detail of how that back capture will take place.

**Senator LUDWIG**—Thank you.

**Senator McKIERNAN**—How are you able to cost it at three-quarters of a million dollars if you have not formulated how it is going to be done?

**Mr Keelty**—Sorry, I thought your question was about the detail of how it would be done.

**Senator McKIERNAN**—Yes.

**Mr Keelty**—In terms of the numbers of police and the estimate that was made, perhaps Mr Overland may have some details.

**Mr Overland**—I do not have the exact number of police who will be engaged in that activity. The costing was done on the basis of the number of Commonwealth prisoners who would be eligible—

**Senator McKIERNAN**—‘Eligible’?

**Mr Overland**—‘Eligible’ is perhaps not quite the right word, but whom we are authorised to test—that is perhaps a better way of describing it. To work out the costings we are in the process of working through the plans of how we go about actually doing that, but it is not a matter of having specific individuals; it is parts of individuals’ time to do this.

**Senator McKIERNAN**—Do you know how many people would be ‘eligible’, to use your words?

**Mr Overland**—Not off the top of my head; I would have to take that on notice.

**Senator McKIERNAN**—If you would do that and get back to us on that matter, thank you. I will move on to the East Timor package and the \$3.1 million adjustment payment. When this sum has been paid out to the 174 AFP officers, will that have covered everybody who has been disadvantaged by what occurred during the first three detachments of peacekeepers to East Timor?

**Mr Keelty**—Yes, it will. The arrangements for people in subsequent contingents or detachments are quite separate from this first group.

**Senator McKIERNAN**—How will the money be passed on or given to them? Will it be part of their salary component; will it be in addition to their salary, which is paid on a

fortnightly basis; will it be something that they will have to claim; or will it be something done separately?

**Mr Keelty**—As I understand it, it will be a one-off payment.

**Mr Overland**—It will take the form of an ex gratia payment to each of the members, so it will be a one-off payment. We believe it will be grossed up to take account of issues like taxation, Medicare levies and things like that. We are still in the process of working through some of that administrative detail with the Australian Taxation Office, but the idea is that the people receive the same monetary entitlement that they would have received if they had not paid tax in the first place.

**Senator McKIERNAN**—How long is it anticipated that it will take for agents to receive the money?

**Mr Overland**—That is another very good question, Senator. We are aiming to do that as quickly as we can, bearing in mind that we will probably need to talk to each and every affected individual to work out in conjunction with them exactly what their entitlements are. I would not like to say. Certainly I would hope that we would have it out of the way within three months. It could be quicker. Hopefully it will not be longer than that. It is a bit hard to say because there is quite a deal of administrative detail that needs to be worked through—suffice to say the minister and the commissioner have both made it very clear they want it done as quickly as possible.

**Senator McKIERNAN**—Knowing the commissioner, I assume that it will be done as quickly as possible. The commissioner made a statement last week that all outstanding claims regarding travel allowance are to be paid. Does this mean that the association and the AFP have agreed on all disputed payments?

**Mr Keelty**—Yes, to my knowledge—and with my discussions with the AFPA—this will now settle all outstanding claims that we are aware of.

**Senator McKIERNAN**—How many agents were in dispute over travel claims?

**Mr Keelty**—The actual number I have not got.

**Mr Overland**—We do not know the answer to that. The AFPA was progressing that claim on behalf of its membership. We understand that a number of members of those contingents are not concerned about the nonpayment of the full amount of MSA, but a number are. The process that the commissioner has put in place will enable us to identify those who are concerned so that they can make a claim.

**Senator McKIERNAN**—How are the claims substantiated?

**Mr Overland**—It is quite easy to determine the amount that is actually payable because the amounts are determined. The amounts are available in terms of things like meal allowance and accommodation allowance. So they are all knowns. We know the period of time that people are away. It is just a matter of calculating the difference between what they have already received and what they were entitled to receive under the full travel allowance entitlements.

**CHAIR**—So, Mr Overland, you do not, post Timor evacuation, have to produce a receipt for accommodation or anything like that.

**Mr Overland**—No, it is an entitlement per se. It is just a matter of us working through and calculating the difference and making that payment.

**Senator McKIERNAN**—Do you have any indication of a ballpark figure of what the total amount would be?

**Mr Overland**—My recollection last time I looked at this is that it is about a quarter of a million dollars, maybe a little less.

**Senator McKIERNAN**—How long is it anticipated—now that we have word from on high—that it will take for agents to receive the moneys?

**Mr Keelty**—I wrote to each of the agents who are affected by this and they received their letters at the end of last week. So it is a matter for them to make their claims. I have already spoken to the AFPA executive on those who may not be able to substantiate by way of receipt or other record, and we are going to come to some middle ground on that. Again, it is like the taxation issue. My view is that as soon as we can deal with the matters, we will deal with them. If we could have had this out of the way earlier, we would have had it out of the way earlier. Firstly, it is incumbent upon the members to make their claim, as Mr Overland said. A lot of members have been in touch with me personally and have made the view that I have expressed to this committee once before—that they viewed it as double dipping and will not proceed with a claim. I have left that entirely up to the individual members. In terms of time frame, it will be dealt with as quickly as we can process it.

**Senator McKIERNAN**—Thank you for that. In the budget financial statements the forward estimate drops by almost \$30 million from 2003-04 to 2004-05. What are the funding programs which end in 2003 which would cause this quite substantial drop in funds?

**Mr Overland**—There are two specific funding items that lapse at that time. The first is funding for unauthorised arrivals, and the second is the peace monitoring funding.

**Senator McKIERNAN**—These are just the two that will cease?

**Mr Overland**—Yes, it is the \$30 million.

**Senator McKIERNAN**—Turning to staffing, page 212 of the PBS says that the average staffing level in 2000-01 was 2,060. We have previously heard evidence that the AFP had achieved the recommendation from the Ayers review of staffing levels of 2,800. Why then do the budget papers show an average staffing level of 2,060?

**Mr Overland**—That relates to only one of the outcomes for the AFP, which is outcome 1. There is also staffing for outcome 2, which is the ACT policing component.

**Senator McKIERNAN**—When you add the ACT policing component, what figure will that bring it to?

**Mr Keelty**—It will bring the number to 770, which is noted on page 219.

**Senator McKIERNAN**—Thank you for that, Commissioner. The estimated staffing level for 2001-02 is 1,978; that is a reduction from the current staffing levels. Is this a reduction of 88 positions and, if so, why?

**Mr Keelty**—The AFP's average full-time employment planning target moves in any year between something like 2,700 and 2,800. For example, in 1998-99, the number was 2,689; in 1999-2000, 2,751; and, in the 2000-01 additional estimates, 2,753. The total average full-time equivalent start point in 2000-01 is unusually high at 2,820 staff. This reflects a planned recruitment strategy to provide a hedge against the risk of higher than normal separations around the time of the Olympics last year. Natural attrition during 2001 and 2002 is expected to bring the 2001-02 average back to 2,748, which is about mid range between the figures I

quoted earlier of 2,700 to 2,800. It is the actual productivity and capacity available to the AFP that really counts, not the year on year variation and FTE average numbers. Contractors employed through outsourcing of commercial activity or when the AFP buys in specialist skills—for example, state police for peacekeeping operations—provide productive capacity, but they are not counted as FTE averages under the guidelines. Actual employee numbers have remained relatively stable, with 2,791 in June 1999; 2,890 in June 2000; and, as at March 2001, 2,851.

I think the answer to the second part of your question is that, for the figure you were quoting, which was the outcome 1 figure, we believe there was a starting overposition of about 20 positions. We had 10 additional positions last year for the Olympics. We have factored in the full year effective outsourcing, which comes to 15 FTE, and the annual efficiency impact for 2001-02, which largely comes about as a result of the certified agreement. This has done away with accrued days off, has also increased staff member availability through reduced recreation leave and makes an annual efficiency impact of about 37 positions, which brings us to the average FTE of 1,978 for 2001-02 for outcome 1. Out of that, the good news is that we are obviously not losing people at the rate we thought we would. In fact, the numbers we recruited as a hedge against losing for the Olympics are actually staying.

**Senator McKIERNAN**—Thank you. On page 222, under the headings ‘Expenses from ordinary activities’ and ‘Employees’ and so forth, the figures show substantial drops through the out years. What is the reason for that, or am I looking at only one component of the whole of the budget figures, which I appear to have done on the earlier questions I asked with regard to staffing?

**Mr Keelty**—Are you asking about the employee expenses, which go from \$226,711,000?

**Senator McKIERNAN**—Yes.

**Mr Keelty**—I think it remains pretty much on average until the final year—\$215,363,000. I stand corrected but that may be reflecting the figures in the lapsing programs that we spoke about earlier—on the first line.

**Senator McKIERNAN**—I still have not got on top of accrual accounting but, looking at the budget papers, it appears that some other people have not either. That is for a different day. I have some other questions apart from the PBS.

**CHAIR**—Do you wish to ask any questions in relation to the PBS, Senator Cooney?

**Senator COONEY**—No, thank you.

**CHAIR**—Senator Ludwig?

**Senator LUDWIG**—In relation to your answer about the \$30 million, you indicated that the peacekeeping and unauthorised arrivals programs would then cease. What will be put in their place? Do you envisage that the peacekeeping role will come to a conclusion at that point, and have you been told that that would occur?

**Mr Keelty**—It may even be up to the minister to answer that but, at this point in time, if we do not have the function then obviously we will not be funded for it. So it is an issue that will have to be decided much closer to the time.

**Senator LUDWIG**—Minister, can you shed any light on that?

**Senator Ellison**—I think that is quite a way out. I could not pre-empt what the government might or might not do at that stage. These other programs are in place for some time to come, and who knows what the needs of the AFP might be in 2004-05?

**Senator LUDWIG**—I thought I would at least mark it for the record. The unauthorised arrivals: is that a separate program? I just remember, at some stage in the past, how that particular funding came about. Was that through DIMA?

**Mr Keelty**—No, we are appropriated for that. It is \$12.2 million for the life of the program—\$4 million in 2001-02.

**Mr Overland**—We do pay for some DIMA staff out of that as well, in terms of the joint task force.

**Senator LUDWIG**—That may be where I got the memory from in relation to DIMA. Thank you.

**Senator COONEY**—We have an inquiry at the moment into parallel importing. We have had authors coming along, and we have been talking about intellectual property. There has been some suggestion that we as a community do not do enough to protect intellectual property. I was just reading, on page 205, that the Australian Federal Police do legwork with illicit drugs, and I take it that 'economic crime' is fraud. Then there is protection of Australian systems and institutions, people smuggling and environmental crime. I asked Customs whether they did much and they said that, yes, they gather a lot of material that has been imported into the country in contravention of people's intellectual property rights. I was just wondering what we do through the Australian Federal Police about that.

**Mr Keelty**—In the period 16 January 1995 to 4 May 2001, we had 91 referrals of intellectual property rights. Following our evaluation, 37 of these matters were accepted for investigation and 49 were rejected. Two matters were under evaluation, and three matters were terminated. The matters were rejected for a range of reasons, including the low priority of defence, the fact that civil remedy was more appropriate and/or a lack of Commonwealth jurisdiction.

With intellectual copyright, one of the difficulties in a prosecution is to prove the original ownership, and that can become very costly and sometimes very difficult. In weighing up whether to pursue through investigation and prosecution, often times the advice that we give to the complainants is to pursue their civil remedy. It is becoming more problematic, of course, with the advent of the Internet.

**Senator COONEY**—And we are now going to become the 'knowledge nation'. We are all going to become brighter and more skilled, which is a bit hard at my age, but for younger people like yourself it is a different matter. I am just wondering whether we are doing enough. I suppose all you can do is say, 'Well, this is what we are doing.'

**Mr Keelty**—We take it seriously, and we do have target figures that we attempt to meet for this type of investigation, but each case has to be weighed up on its individual merits.

**Senator COONEY**—But, if there were a crime to be investigated, would it depend on the amount involved? How much is that a factor?

**Mr Keelty**—To a degree, it does depend on how much is involved. For example, one matter that we have currently under investigation relates to the selling of counterfeit copies of Windows 98. That is something we have taken on, and we are actually looking to see if we can use the proceeds of crime to redeem about \$1 million in assets. But the value of the crime

is only one aspect. I guess the real problem with intellectual property offences is the prospect of a prosecution and the cost of that prosecution and being able to prove ‘beyond reasonable doubt’ in a criminal prosecution as opposed to ‘on the balance of probabilities’ in a civil remedy action.

**Senator COONEY**—Do you fear, in that context, your getting a jury that does not seem to be all that conscious of intellectual property as being a matter to be protected by criminal law at this stage?

**Mr Keelty**—Some might say that the public see it as an advantage to themselves if they can get the same thing cheaper, and that is an issue.

**Senator COONEY**—In the good old days, they used to sell lots of things cheaply in hotels. I should not talk about this, but I remember a fellow who later became a judge almost collapsing when he realised that he had almost bought something in a hotel and suddenly realised what the situation was. In any event, I do not know why I said that.

Perhaps I can ask about Port Hedland and the fact that the Australian Federal Police took part in events occurring there. First of all, I think people were arrested for crimes. I am not sure, as the way they are described in the media is fairly vague. But shouldn't we have proceeded against them on summons? What was the situation? I do not want you to go into operational details, but it just seemed to me that it looked pretty awful on the telly.

**Mr Keelty**—I am happy to go into detail in the public interest, because there has been a lot in the media, and a lot of it has been speculation rather than fact.

**Senator COONEY**—Is this the first time the Federal Police have been into what, in effect, is a jail? The jails are usually run by the state authorities. That is the first thing. Secondly, the media was there. Thirdly, the charges seemed to me to be the sorts of things where, as they had already been locked up, proceedings could have been taken on summons in conformity with the act, and so on. You know all the rest that I am going to say.

**Mr Keelty**—It is probably best if I give you a bit of a briefing on the facts of the matter. The charges arise from offences committed during demonstrations at the Port Hedland detention centre on 11 May 2001. The matter was referred to us on 15 May. On 26 May, 21 males and one female were removed from the Port Hedland centre. The suspects' ages range from 15 to 46. There are three juveniles—one aged 15 and two aged 16—and a woman aged 42. Each has been charged with threatening an officer, pursuant to section 76(1)(b)(ii) of the Crimes Act 1914. In the case of the woman, there is an additional count of inciting the commission of the above offence, under section 76.

The AFP is the lead agency in the joint operation involving the Western Australia Police Service, the Australasian Correctional Management and the Australian Protective Service. Following consultation with the Department of Immigration and Multicultural Affairs, the Australasian Correctional Management and the AFP were agreed that the Western Australian police would take responsibility for the tactical extraction of the detainees. This was primarily for logistical and safety reasons because it is a detention facility and there are, as I understand, about 700 detainees in the facility. Removing a number of the detainees had the potential to incite further riots. The management of the situation inside the correctional centre was one issue that needed to be addressed in the planning. Other issues that needed to be addressed in the planning were the safety of the other detainees, the safety of the Australasian Correctional Management staff and, of course, the safety of the people in Port Hedland as well as the safety of the police officers involved.

Whether it should have been by summons or not, the fact is that these people were already under detention and have committed an offence under detention, which is a serious offence. If nothing had happened, there would have been the potential for further offences to have been committed. There were reports in the media that people were removed from a mosque. That is incorrect. In fact, the planning was specifically designed to take into account when prayers would be finished at the mosque and the Western Australian police went in after the mosque had closed, which was at 5.30 a.m. In fact, the mosque was locked and the detainees were in lock-down phase. The AFP remained in the administration centre of the facility and the Western Australian police, Australasian Correctional Management staff and DIMA staff identified each of the persons individually, and they were brought to the AFP and placed under arrest. The AFP, on my instructions, did not see the first of the detainees until about midday, so again talks of a dawn raid in some respects have been an exaggeration. The Australian Protective Service staff were there as well.

In terms of the numbers of personnel involved, I can only talk about the Commonwealth personnel from this portfolio. There were 20 Australian Protective Service staff, six AFP staff, plus the resident agent from Port Hedland. I guess that description of the events is quite different from what we have heard and seen in the media.

**Senator COONEY**—The police and the protective service people acted on the information they received from ACM and DIMA, I take it. When you went in, this was in respect of an offence having been committed a few days beforehand?

**Mr Keelty**—That is right, Senator. It was on 11 May and there were videotapes and interviews of ACM staff. Regarding my earlier advice on the number of persons in the detention centre, I have just been advised that there were 350. I think I said that there were approximately 700.

**Senator COONEY**—I think that what you are doing now is giving general descriptions. I do not think there is anything precise about what we are saying: it is just for the general thrust of things. It is one of those situations where crimes are almost created—I do not know what you would say about that—by a situation. Was it the ACM officers in respect of whom the alleged offences were committed?

**Mr Keelty**—Yes, that is right.

**Senator COONEY**—They are private contractors and they clearly need protection and what have you, but it always gives you an uncomfortable feeling when this sort of thing happens. Have the Federal Police ever had occasion to go into detention centres or jails in this way before? Who went in at Woomera?

**Mr Keelty**—We went in, again with the South Australian police. And we have been into Port Hedland before. I will stand corrected, but my recollection is that we may have even been into Curtin.

**Senator COONEY**—Right. I was going to say that I had some idea of that. Besides going into centres where they have detained people who have come here unlawfully—or without permission, in any event—the Federal Police haven't been into any jails, I take it, because the Commonwealth does not run the jails; would that be right?

**Mr Keelty**—That is right, except to say that here in the ACT I think we have been into the remand centre. I know from my previous positions that certainly the state police are often called in at times of riots in correctional services facilities, as they are called in the states.

**Mr Cornall**—I would just make a point about Australian Protective Services: it is a guarding service which provides services to a client for a fee, and it provides those services to the department of immigration when requested to do so, and has done so in immigration centres before. So I think it is not right to mix them in with the police on this. The fact that guarding services were required is one issue, and the fact that the police were called in is a separate issue, even if the two things occurred at the one time.

**Senator COONEY**—The police have acted as they should have, but I wonder why they were not called in until some days later. I suppose that you do not know.

**Mr Cornall**—No.

**Senator COONEY**—When the force went in—and I am talking about the combination of the Western Australian police and the Federal Police and the APS—there was nothing actually going on then: you went in there to effect an arrest, I take it.

**Mr Keelty**—I will just go back over it again. The AFP personnel remained at the administration centre and did not actually go in. The detainees were already in custody; so what in fact happened was that, as the detainees were identified from the information provided through either DIMA or ACM, they were extracted—for want of a better word—by the Western Australian police—

**Senator COONEY**—But not by the Federal Police.

**Mr Keelty**—and brought basically to the custody of the Australian Federal Police, who identified them and interviewed them. They were then put into what was eventually a convoy, to go to the South Hedland—I think they call it—police station.

**Senator COONEY**—Who actually charged them? Was it the Federal Police?

**Mr Keelty**—The Federal Police charged them, using the facilities of the state police—as we do in every jurisdiction.

**Senator COONEY**—So they were extracted by people other than the Federal Police, and then all the Federal Police did was to charge them, they having been extracted.

**Mr Keelty**—They charged them under the Crimes Act 1914. You have mentioned that the detainees are managed by a private enterprise company, but I guess there are two issues here. One is that the private enterprise company is acting on behalf of and in contract to the Commonwealth and they therefore are Commonwealth officers for the purposes of the legislation—which makes it appropriate for them to be charged, because the detainees are being held under Commonwealth legislation. You have the detainees held under Commonwealth legislation and the ACM staff as officers of the Commonwealth, and so it is then appropriate for them to be charged under the Crimes Act 1914, which is the Commonwealth crimes act.

**Senator COONEY**—Why were the state police in there?

**Mr Keelty**—If you go back to my earlier comment, to remove people from the detention centre, when there were 350-odd people there, may have incited a riot in itself. As I said before, the principal concerns in the planning for the operation were the welfare and safety of the women and children in the detention centre, the safety of the staff working in the centre and the safety of the community at Port Hedland—remembering what occurred at Woomera, where people broke down the fences and entered into the community. So there were a lot of considerations to be made. Apart from its operations here in the ACT, the AFP is not trained

or skilled in that special type of operation, so we engaged the Western Australian police to assist us.

**Senator COONEY**—Do the state police have jurisdiction? That is Commonwealth land, and they are in Commonwealth custody.

**Mr Keelty**—It is Commonwealth custody but, under the Commonwealth Places (Applications of Laws) Act, the state police can act in that situation.

**Senator COONEY**—They were then taken before a magistrate, I take it?

**Mr Keelty**—Yes, Senator. Because of the time difference between here and Western Australia, there are still some processes taking place. There are 18 males who have been remanded in custody at, I think, the Roebourne regional correctional facility, to appear on 22 June 2001, with three young persons and the woman. I have just been given information that they have all been remanded now to 22 June 2001.

**Senator COONEY**—In custody, I suppose?

**Mr Keelty**—That is correct.

**Senator COONEY**—I suppose they could now apply for bail. That would be interesting.

**Mr Keelty**—I won't go there.

**Senator COONEY**—Fair enough. You should not go there; I was just thinking of that. I take it—it is self-evident, I suppose—that the operation was planned following the alleged offences. Between that time and now, the operation was planned fairly carefully, I suppose?

**Mr Keelty**—That is correct.

**Senator COONEY**—What part did ACM play, if any, in bringing them into custody? They were already in custody; I mean custody for the purposes of bringing them to arrest. Did the ACM take any part in that, or was it just the Western Australian police?

**Mr Keelty**—On my instructions, ACM obviously would have had to facilitate both the identification and any access to each of the detainees—identifying where they were in the actual facility.

**Senator COONEY**—Thanks very much.

**Senator McKIERNAN**—I want to follow up on the matter of Port Hedland. Before I do, I should say that I have a relative who is a member of the police force in police service in Port Hedland. I have not actually spoken with him for a number of weeks now, and I do not know whether he was involved in the actions on Saturday morning, but I should put that on the record anyway. Who decided what charges would be laid against the people? Was that an AFP decision?

**Mr Keelty**—As I understand, on my instructions it was as a result of consultation with the Department of Immigration and Multicultural Affairs, our own people and I think the Commonwealth DPP. I stand corrected on the Commonwealth DPP though.

**Senator McKIERNAN**—I wonder whether you know, with the incidents that occurred in Woomera last year, in particular the August 2000 incident, when a number of people left the centre at Woomera. Some 26 detainees were charged in that instance, and six of them had charges withdrawn. Some were acquitted, some had charges dismissed and some had charges withdrawn. Do you know whether the AFP were making the decisions in regard to charges

after the incident at Woomera? I am quoting from information given to the committee on notice from DIMA from the February hearings.

**Mr Keelty**—There was a difference in the first instance between the two incidents. The Woomera incident—and I am going from my recollection—was not videoed and identification may then have become an issue. I am just not sure when the charges were dropped—whether it was after the matters went before the court. I am sorry; I am relying on memory here. I suspect that was after evidence was given and that it was to do with the evidence before the court. But I do stand corrected, and I might have to take that on notice.

**Senator McKIERNAN**—On that occasion in Woomera, some people were charged under the Public Order (Protection of Persons and Property) Act 1971 and others were charged under the Crimes Act 1914. On the Port Hedland occasion, was any consideration given to making any charges under the Public Order (Protection of Persons and Property) Act?

**Mr Keelty**—I have no briefing on whether the Public Order (Protection of Persons and Property) Act was considered. I can only say that the actual charge here is threatening an officer pursuant to section 76(1) of the Crimes Act. I am presuming that they have been able to identify the individuals and charge each of the individuals, but I will take that on notice, unless there is a possibility that there might have been some communication following the Woomera prosecutions about what actually happened in Port Hedland.

**Senator McKIERNAN**—I notice on the matrix sheet that DIMA provided to me in response to questions in February that some of the charges—I will not say ‘most’, because I have not analysed all of them—under the Public Order (Protection of Persons and Property) Act were for throwing ‘numerous rocks’. It happened on a number of occasions. I have a memory of the video of Port Hedland that was released and what was clearly identified was the throwing of rocks. You have said that there was a reliance on the video to identify people. If that was taken into account in the Woomera incident, why wasn’t it taken into account in the Port Hedland incident?

**Mr Keelty**—Mr Paul Usher of the DPP provided a five-page advice discussing issues which had arisen in relation to the charging of offenders at Port Hedland. In summary, section 7A, which is the incitement section, and section 76, which is the ‘threatening of the officer’ section, of the Crimes Act were considered the most appropriate offences to be used to cover the offences being committed by those who were identified. The Public Order (Protection of Persons and Property) Act 1971 was considered. Although covering behaviour that takes place in assemblies, the DPP thought it should not be used in this case. This was because it was the view of the DPP that the original intent of the act was not for activities such as those occurring in the detention centre; it was more for demonstrations in the open.

**Senator McKIERNAN**—S11 type events?

**Mr Keelty**—Exactly.

**Senator McKIERNAN**—I want to ask one final question on this matter for the moment. We will obviously come back to it during the appearance of DIMA. I believe you said in your opening comments, Commissioner, that the AFP was the lead agency. Then you said later in your dialogue that your agents did not actually meet the detainees until much later in the process. If the AFP were the lead agency, should the lead agency not have been in control of the whole operation and, as such, have had a supervisory role inside the centre when the state police service was securing the buildings? Were your officers absent from that process?

**Mr Keelty**—The term ‘lead agency’ refers to the leading investigative agency. In other words, it was always anticipated that the AFP would actually conduct the charges and then present the evidence before the court. I apologise if I misled you. In terms of the lead agency and the extraction, for that aspect of the operation, it was the Western Australian police, because they are trained and skilled to do that.

**Senator McKIERNAN**—I am sure you did not seek to mislead me deliberately.

**Mr Keelty**—I hope I did not mislead.

**Senator McKIERNAN**—I perhaps got it the wrong way round. The ‘leading’ bit gave me the impression of being in a command situation, if you like, and that is how I understood it. Thank you for that clarification. That is all I have on Port Hedland.

**Senator LUDWIG**—I do not have any questions on Port Hedland.

**Senator COONEY**—I am sorry about this, but I want to follow this through. Are the people that were arrested in lockups or remand yards? I do not know what they are like now, but in my day lockups were little boxes with a ventilator in the roof.

**Mr Keelty**—I have not been there, so I cannot describe it to you, but in the briefing that I received I was told that the detention centre was in lock-down mode, and in the normal course of events that would mean that people were located in, for want of a better word, cells. I assume that there are facilities there. I am starting to speculate, but I assume there are facilities there for families.

**Senator COONEY**—Were warrants sworn out for the arrests?

**Mr Keelty**—No, they were not arrested by warrant. It was physical arrest.

**Senator COONEY**—And I take it that DIMA or somebody got in touch with the Australian Federal Police and said they wanted to arrest these people because of what they were doing.

**Mr Keelty**—DIMA referred the matter to us on 15 May. We have had a team of investigators reviewing the material and interviewing witnesses since shortly after that time.

**Senator COONEY**—Presumably most of the evidence came from DIMA people and from the ACM.

**Mr Keelty**—That is correct.

**Senator COONEY**—None of that was sworn to? That was just information given to you?

**Mr Keelty**—No. On my instructions, statements had been obtained from the ACM staff. The time for sworn evidence, of course, is before the court.

**Senator COONEY**—That is why I was asking about warrants. I was just interested to see what sworn evidence would be given. I suppose it is up to the DPP. Do you know whether the proceedings are going to be summary?

**Mr Keelty**—They have been remanded in custody. As I say, all have been remanded in custody until 22 June. In the normal course of events, what would happen is that there would be a mention on that day and then the proceedings would take place from there on.

**Senator Ellison**—Two years is not summary; 12 months is but I think the matter can only be dealt with summarily with the consent of the defendant. I am open to correction on that.

**Senator COONEY**—How many magistrates are up there? Just one?

**Senator Ellison**—Just the one.

**Senator COONEY**—And he or she looks after that whole area?

**Senator Ellison**—Yes. Some of the magistrates in Western Australia have huge circuits.

**Senator COONEY**—Were any statements taken from the inmates at all?

**Mr Keelty**—Inmates were interviewed as part of the process. I do not know that any inmates form witnesses for the prosecution. I do not have advice on that. I am just told that the answer is no.

**Senator LUDWIG**—It is not that I wanted to jump in on the Port Hedland matter, but it begs this question. When the arrest was made, it was a physical arrest, as I think you have said. Were you aware of whether rights were read to the people, whether they could understand English and whether they requested legal aid? What facilities were then made available to them to understand what was going on?

**Mr Keelty**—There were interpreters with the AFP personnel, on my instructions, and the interpreters interpreted with the normal process for arrest. That normal process for arrest has a mandatory reading of rights to any person who is arrested under the Crimes Act 1914. I do not have an answer to the question about whether anyone sought legal aid, but there is an offer, as part of the reading of those rights, to have a legal practitioner present.

**Senator LUDWIG**—That is right. That is why I asked the question. Perhaps you could take that on notice and find out.

**Senator COONEY**—Has anybody been charged with resisting arrest?

**Mr Keelty**—Not on my instructions, no.

**Senator LUDWIG**—Perhaps we could go to a more general matter—back to the mundane, I suspect. The *Sydney Morning Herald* on Wednesday, 11 April 2001 has the stunning headline ‘PM sets sights on shonky tax promoters’. In the introduction, it says:

People who mass-market aggressive tax minimisation schemes should be vigorously pursued and prosecuted, the Prime Minister said yesterday.

Mr Howard said the 60,000 Australians who had invested in these schemes, on the promise of big tax breaks, had been duped.

“We would certainly like to see the promoters prosecuted to the full rigour of the law for misleading people,” he said.

Before I quote another piece, I am wondering if there has been a reference—I am not sure if I am getting the language right, but whether the matter is being referred—to the AFP for investigation. Perhaps we could go through it slowly or you could tell me what you can before we start one-on-one questions.

**Mr Keelty**—I am not sure that I know the specific investigation you are speaking about, but the usual course of events with a matter such as that is that the lead agency, if you like, would be the Australian Securities and Investments Commission. They would ask us to assist them in the investigation or they could do the investigation in their own right.

**Senator LUDWIG**—Before we go too much further, perhaps you would like to take it on notice. The article goes on to say:

“The Tax Office has said [prosecuting the promoters] wasn’t a matter for them but a matter for Attorney-General’s Department. There’s a public interest fund that sits within the [Attorney-General’s] department and his department can make a decision on public interest cases,” Senator Murphy said.

I do not know if that has any relevance to it, because it seems to be disjuncted from the prosecution. There seems to be a compensatory element that has been mixed up in it. What I was trying to ascertain more broadly is whether the matter has been referred to the AFP. If so, when was it referred and what is the AFP doing about it in terms of resources? In other words, has it chosen to investigate it if there has been a referral, and by whom? Or, if you picked it up independently, has Mr Howard or the Prime Minister's office referred it to you? Secondly, if it is a matter that you cannot investigate or you have not picked up because it is a matter that might be too difficult or outside your jurisdiction, it is an area that the Attorney-General's Department might like to comment on in relation to public interest funds—it seems to be a compensatory fund. We can do that in general questions or now, whichever is easier. That is the gamut of what I was seeking.

**Mr Keelty**—In the normal course, I would be able to answer most of those questions, but I am not familiar with the name of the case.

**Senator LUDWIG**—It is about mass marketing and aggressive tax minimisation schemes. I think there are thousands of them.

**Senator Ellison**—The issue of tax schemes has recently been in the paper.

**Senator LUDWIG**—They have been quite consistently in the paper.

**Mr Keelty**—I can give you details of specific referrals. I will be happy to do that as a follow-up. I did not realise the Taxation Office was also involved in this. Oftentimes, if it is not the Securities and Investments Commission, it will be the tax office. We do those investigations jointly. I will give you some statistics on that.

**Senator LUDWIG**—I think the corporate watchdog also gets a mention in the article. Perhaps you would also like to see what they are doing about it or whether you have got a referral from them. The other matter I noticed that you might want to comment on relates to travel I suspect you have undertaken. An article on Saturday, 12 May 2001 in the *Canberra Times* said:

A Burmese lobby group has accused the Australian Federal Police of siding with the Burmese Government after claiming AFP Commissioner Mick Keelty visited Rangoon on the same day as a protest outside the Burmese Embassy in Canberra.

Could you just explain as much as you can in relation to that allegation?

**Mr Keelty**—The allegation, as outlined in the newspaper, is a copy of a media release that was released by a Burmese action group who put out a statement about a week after my visit to Rangoon. There were a couple of things about the statement. The first is that I had no knowledge of the demonstration at the Burmese Embassy here in Canberra on the day that I happened to be in Rangoon. That was quite by accident. I did not find out about the demonstration until the next day, when I found it on the Internet, looking up ABC Online. The trip to Burma was part of a trip I did to Vietnam, Cambodia, Thailand and Burma. The purpose of the travel was to review the work of the AFP on transnational and organised crime. I also engaged in discussions with the Cambodians about opening up an AFP office there, which they have agreed to allow us to do.

The press report that talked about me being transported or escorted by the military junta is absolutely incorrect. The transport that I had provided to me in Burma was from the Myanmar national police. Burma is responsible for 80 per cent of the heroin that arrives here in Australia. We are the first Western police agency to engage the Myanmar national police, and it is my view that if we are to be effective in understanding, dismantling and disrupting

heroin—and, I should flag now, methamphetamine—from coming to Australia, it is important that we have some relations at the police to police level with the agency in whose region most of the narcotics that reach this country are produced. In fact, by way of record, the 357 kilograms of heroin that was seized in Fiji in September last year as part of our joint operation with the New Zealand police, the US DEA and the Hong Kong police came from Myanmar. It is a good indication of the trend that we are now seeing in this country.

**Senator LUDWIG**—Thank you. That is certainly enlightening in respect of what the article might have said otherwise. If you recall, last time I mentioned that the Barton college was up for sale. I think I was under the mistaken impression that the AFP own it, but in fact they now lease it, as we subsequently found out. The AFP have invested a number of millions over a period to upgrade the facilities at the Barton centre or whatever you now call it. I do not know if you are familiar with the article, but on Tuesday, 8 May, the *Canberra Times* said: Ambiguous documents on the Australian Federal Police College's heritage status had deterred would-be investors and could cut up to \$2 million off the sale price ...

Effectively, the article is saying that the Department of Finance and Administration is selling the Barton college in terms of the property. Your lease, as I understand it—and please correct me if I am wrong—certainly goes for another number of years after that point. Perhaps you could tell me for how long and whether there is an option. The main thrust of the question is to ensure that the investment you have made in relation to the DNA laboratory that you took us to is secure for however many years you would like to tell me in relation to the lease and any option for the lease. The implication seems to be that the site will be sold out from under you. Perhaps you would like to comment on that.

**Mr Keelty**—By way of clarification, the DNA laboratory is at Weston Creek.

**Senator LUDWIG**—Yes. I will get it right one day.

**Mr Keelty**—The leases for Weston and Barton happen to expire on the same day, on 30 June 2009, with optional periods of a further two three-year terms to 30 June 2015. So there is a possible 15-year term. Barton, as I understand it, has been sold and is due to settle.

**Mr Cornall**—The senator was referring to an earlier article. There is a subsequent article saying that the Barton property had been sold.

**Senator LUDWIG**—Yes. A matter was mentioned earlier today; it was aired in relation to the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund. It is an allegation Mrs Sharon Firebrace made at a hearing of the Joint Committee on Native Title and the ATSI Land Fund last week. She alleged that Senator Herron was under investigation by the AFP. Mr McMullan was trying to qualify what the allegation was. He said:

There were serious allegations about some improper ministerial involvement. Because of the context, I could not fully follow it, but that is for the moment not a problem.

They were looking for the source as to what it was about. It was about an improper overture by the minister to a board member at the time in relation to Mount Tabor. I understand the sensitivity involved, but what can you tell me about that? Was an allegation referred to you from Mrs Firebrace; if so, when?

**Mr Keelty**—On 18 October 2000, Mrs Firebrace, who is the Chairman of the Indigenous Land Corporation, contacted the AFP and advised of possible criminal conduct occurring within the Indigenous Land Corporation and also of the alleged inappropriate conduct of ILC

members and the former Minister for Aboriginal and Torres Strait Islander Affairs, Senator Herron. The matter is not being currently investigated by the AFP. The complaint from Mrs Firebrace outlined three separate matters, which you have correctly referred to.

Difficulty was faced because the AFP, in evaluating the referrals, relied upon the findings of two current inquiries being undertaken into two aspects of the property transactions. Senator Herron requested a ministerial inquiry into the Roebuck Plains property purchase by ILC. Mr Andrew Rogers QC had been appointed to carry out that inquiry. The inquiry has been completed but the final report, as I understand it, is yet to be released. *Sydney Morning Herald* journalist Mr Gerard Ryle has written numerous articles over the past six months about the suspect purchase of the Roebuck Plains property. An internal ILC inquiry, headed by the former head of the Attorney-General's Department, Mr Stephen Skehill, has been conducted. This inquiry relates to a number of allegations against Mrs Firebrace and a number of other ILC directors. The results of this inquiry are yet to be released. The AFP has sought access to these reports, but this has not yet been forthcoming.

**Senator LUDWIG**—I take it that the matter I have referred to is now closed.

**Mr Keelty**—From an AFP perspective, on my instructions, yes.

**Senator LUDWIG**—Are you still awaiting the Skehill report to determine whether there are any matters that may arise out of that that you might want to have a look at? Is that correct?

**Mr Keelty**—That is correct.

**Senator LUDWIG**—And you have no idea when that will be provided to you?

**Mr Keelty**—I cannot give you a date. I can only update you by way of saying that one of the reports has been submitted in draft form and directly relates to the allegations.

**Senator LUDWIG**—You mentioned Roebuck Plains. Does that also include Cardabia Station, or is that a matter that is not before you?

**Mr Keelty**—Yes, it does, Senator.

**Senator LUDWIG**—And the same answer goes for that as the earlier one?

**Mr Keelty**—That is right.

**Senator LUDWIG**—They are all tied up.

**Mr Keelty**—They are—Cardabia Station, Mount Tabor property, Roebuck Plains Station.

**Senator LUDWIG**—In relation to HIH, can you tell me—perhaps we will deal with this very carefully—whether or not you believe that you have secured sufficient passports from all those persons that might interest you.

**Mr Keelty**—That is an ASIC investigation, Senator.

**Senator LUDWIG**—I will go back to square one. Have you been contacted or has a referral made in relation to the HIH matter?

**Mr Keelty**—On my instructions, no.

**Senator LUDWIG**—Have you decided to conduct an investigation internally, or has a reference been internally generated, into the HIH matter?

**Mr Keelty**—No, Senator, given that ASIC would be the lead agency and I would expect ASIC to refer it to us or seek our assistance.

**Senator LUDWIG**—They have not at this point in time?

**Mr Keelty**—Not on my instructions, no, Senator.

**Senator LUDWIG**—So the allegation that passports have been seized or are to be seized by the AFP is incorrect?

**Mr Keelty**—On my instructions, that is something that has been conducted by the ASIC investigator.

**Senator LUDWIG**—You would not know if they have the power to do that, would you?

**Mr Keelty**—I think they do, Senator, under their legislation.

**Senator LUDWIG**—I will have a look at that separately, but thank you. In relation to the Fiji matter, congratulations are in order. That was a successful matter. I think you did advise on it some time ago. At least I certainly read a report about it, or the minister might have even told us in the House about that operation. In any event, on my recollection of the matter, it seems to have gone very well for you.

**Mr Keelty**—Thank you, Senator.

**Senator LUDWIG**—As I understand it, the operation was conducted in Fiji by AFP officers. Is that correct?

**Mr Keelty**—Given the jurisdiction of Fiji and the lack of jurisdiction of AFP officers operating at Fiji, the operation was conducted by the Fiji police. The AFP assisted in the operation, as did the Royal Canadian Mounted Police, the New Zealand Police and the United States DEA or Customs. I am just not sure; I think it was the DEA.

**Senator LUDWIG**—Perhaps we will put it in the positive. Were any AFP officers sworn in under what was then existing Fijian law to assist in the operation in Fiji?

**Mr Keelty**—I am not briefed on that. It may have happened. I am not sure. I do know that telephone intercepts were used. If that legislation is like our legislation, they would have had to have been sworn in to receive that product.

**Senator LUDWIG**—I was going there as well. Perhaps when you are having a look at that you could also determine whether or not they were sworn in under Fijian law—when and by whom? Is it permissible under Australian law for an AFP officer to be sworn in under Fijian law? The corollary of that, which goes a little bit further, is, ‘What was the Fijian law existing at the time?’ which might be a more interesting question to examine. My understanding is that Australian law does not allow or does not empower AFP officers to be sworn in under Fijian law or, for that matter, the law of any other nation state. Perhaps you could enlighten me on whether that is correct or not. I am happy for you to take that on notice and correct me if I am wrong.

**Mr Keelty**—I am cautious here because I am surrounded by a number of lawyers.

**Senator LUDWIG**—I am not a lawyer either. We are on good ground together.

**Mr Keelty**—Very good ground. From a layperson’s point of view, from my knowledge of the law, I am unaware of any law that specifically precludes any police officer from acting as a special constable or a law enforcement officer in another country if the law in that other country has a provision that would actually allow them to be sworn in. Our extraterritorial law, in my lay opinion, would not be able to preclude that from occurring.

**Senator LUDWIG**—I just needed to rule it out in any event. Perhaps you could have a look at it. In relation to the telephone taps, how were they so authorised?

**Mr Keelty**—They were authorised by the President of Fiji, if I have the title right.

**Senator LUDWIG**—Is that under their particular interception legislation? By whom would that have been and when? I am happy for you to take that on notice.

**Mr Keelty**—I will take it on notice but I do know that it was the first time that telephone intercepts have ever been used in Fiji. They received advice from the Fiji DPP which created the chain of events leading to the telephone intercepts being put in place. I will take on notice as to who that was.

**Senator LUDWIG**—What other, if any, authorisations were obtained from Fiji in relation to that operation? By whom and for what purpose?

**Mr Keelty**—Yes, Senator.

**Senator LUDWIG**—What happened since? For argument's sake or at least for clarity, how many prosecutions were there and what was the outcome of the operation in conclusion?

**Mr Keelty**—There has been no outcome. I dare say that by the date that I need to give you some replies to this there may still be no outcome. We are in constant communication with Fiji and New Zealand in trying to mount the successful prosecutions.

**Senator LUDWIG**—I understand the time constraints Senator McKiernan will put on you. Can you at least take it to the point of where we have got to at that point, without delaying it past the time for return?

**Senator McKIERNAN**—You have doxed me in to the federal cops. I have just become a new grandfather as well.

**Senator LUDWIG**—You are Irish; what can I say? The other matter of course goes to what is generally called the Stone letter. Do you understand what that is? It has been in the media for some time. Memo might be better. I did not want to go through the three or four words we used to describe it.

The question is not so much about the content of that letter; rather, it is about the allegation that it was a leak out of the PM's department, as I understand it. Before I turn to that particular point, I wanted to take you back to a line of questioning that Senator Bolkus followed with you in relation to the Attorney-General's portfolio at the last estimates hearings. Just to remind you, Senator Bolkus asked this question:

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.

That was a line of questioning that commenced in relation to an alleged leak from the ABC. A number of questions were directed by Senator Bolkus to, it appears, both the previous commissioner and you, Mr Keelty, in and about those ABC matters. Having that in your mind, do you broadly recall that line of questioning?

**Mr Keelty**—Yes, I do.

**Senator LUDWIG**—In relation to the Stone memo and the allegation that it has been leaked out of the PM's department, has an investigation been referred to you from the PM's department—

**Mr Keelty**—No, there has not.

**Senator LUDWIG**—or a referral?

**Mr Keelty**—No, there has not.

**Senator LUDWIG**—Has an investigation been initiated by yourselves in relation to that memo?

**Mr Keelty**—No.

**Senator LUDWIG**—I take you to a question that Senator Bolkus asked and that you answered. The question was:

Can you tell us what the alleged offence that is being investigated is?

That is in relation to the ABC leak. Mr Keelty, you answered:

Alleged unlawful disclosure under the Crimes Act 1914.

Would that be the same case in relation to the Stone memo or the allegation that it was leaked from the PM's department? Would that be the same offence that would be likely to have been committed?

**Mr Keelty**—It has not been referred, Senator; so I would only be speculating.

**Senator LUDWIG**—Why haven't you investigated it?

**Mr Keelty**—There is no complaint to—

**Senator LUDWIG**—So you only investigate complaints; is that what you are telling me?

**Mr Keelty**—No. We do investigate other matters but there has been no complaint in this matter, and it would have to involve the unlawful disclosure of Commonwealth information. I have to say that I am not quite sure what the information is that was alleged to have been leaked in these circumstances.

**Senator COONEY**—If you have not got such material, you are not entitled to go forward, I would not have thought. Would that be right?

**Senator Ellison**—That is right.

**Senator COONEY**—You have got no material available to you which would indicate that you should investigate?

**Mr Keelty**—That is right.

**CHAIR**—Senator Ludwig, do you have further questions?

**Senator LUDWIG**—Not in relation to that matter.

**Senator McKIERNAN**—I just find it extraordinary in the circumstances that a leak within the ABC was enough to institute an AFP inquiry which used up a considerable amount of resources—the information was given to us on the last occasion—for what was, quite frankly, an internal reshuffling of positions within the ABC, as I recall, whereas the Shane Stone matter had larger political consequences, might I suggest. No complaint has been made about a leak in regard to that. Also, I am astounded that there was a statement by the Prime Minister, no less, that he would leave no stone unturned until he could get to the bottom of who had leaked this particular piece of information which brought embarrassment, to say the least, upon the Prime Minister's office, the President of the Liberal Party of Australia and, indeed, the government as a whole.

Because of the precedent that has been set in the ABC case, in which the AFP were asked to investigate whether or not a criminal offence had been committed—that is, the leaking of

confidential information to the public—would it be possible, if the Prime Minister does not make such a complaint, for anybody else to make that complaint? For example, could a minister for justice make a complaint and have the AFP investigate this matter and perhaps put it to bed?

**CHAIR**—Senator McKiernan, the minister is going to respond.

**Senator Ellison**—You cannot compare the ABC matter to this at all because that was Commonwealth information, this is not—this is party information, which is entirely different. I think that has absolutely no relevance to the section that Commissioner Keelty referred to when we were here at the last estimates sittings. That is the problem, Senator McKiernan, that this matter is a party matter and not a government one. They are totally different.

**Senator McKIERNAN**—I thought the government at least took some collateral damage as a result of the leak.

**Senator Ellison**—That is your assessment; it is not mine.

**Senator McKIERNAN**—Commissioner, bearing in mind that Mr Stone was writing about a meeting of Commonwealth members of parliament, albeit—I accept what Minister Ellison is saying—a meeting of Liberal members of parliament, would it be possible that another member of the Commonwealth parliament could make a complaint about the leaking of this information and that the AFP might investigate whether or not a criminal offence had been committed?

**Senator Ellison**—I will answer that. It does not come under the Crimes Act. Party meetings are not protected by the Crimes Act, I can assure you, Senator McKiernan—just as well for all of us!

**Senator McKIERNAN**—So probably forever, if there is no investigation going to take place, the leaker will remain known as ‘John Doe’.

**Senator Ellison**—I would say if your caucus leaked or if my party room meeting leaked, that is a matter for our respective parties.

**CHAIR**—Heaven forbid, Senator Ellison, that this would transpire, of course.

**Senator COONEY**—We ought to at least make Mr Keelty’s position clear. He has got no information before him at this stage that would entitle him in any way to go ahead with an investigation.

**Senator Ellison**—Exactly.

**Senator COONEY**—That ought to be put on the record.

**CHAIR**—The commissioner has stated that quite clearly on the record.

**Mr Keelty**—Thank you.

**Senator McKIERNAN**—There is a distinction between our parties, Minister. We do have some official leaks from our caucus meetings, as well as unofficial ones.

**CHAIR**—Thank you for that information, Senator McKiernan.

**Senator Ellison**—Senator McKiernan, I think we could teach each other a lot!

**Senator McKIERNAN**—I did indicate, Chair, that I would finish in five minutes, and I will press on.

**CHAIR**—Please do.

**Senator McKIERNAN**—The other leak that we talked about in previous estimates hearings was the alleged leaking of classified intelligence information concerning Indonesia and East Timor in 1999 and the investigation into that. Is that investigation continuing and, if not, what has been outcome of the investigation?

**Mr Keelty**—According to my instructions, Senator, the investigation is still ongoing.

**Senator McKIERNAN**—So you have no outcome yet, which was the second part of the question. How many AFP personnel are presently working on the investigation?

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

**Senator McKIERNAN**—If you are not able to tell me that, would you have an indication at this time—albeit a ballpark figure—of the total cost of the investigation to the AFP?

**Mr Keelty**—No, I do not. Probably the most appropriate time to give you a figure would be at the conclusion of the investigation when all associated costs can be attributed to the investigation. At this point in time I can indicate that, in terms of investigation hours, it has had about 3,000 hours.

**Senator McKIERNAN**—That is AFP hours?

**Mr Keelty**—That is correct.

**Senator McKIERNAN**—How many personnel from other departments or agencies—for example, the Defence Security Branch—are also engaged in the investigation?

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

**Senator McKIERNAN**—If you would, thank you very much. Do you have any understanding of when the inquiry or the investigations might conclude?

**Mr Keelty**—On my advice, Senator, we are in the process of concluding our role in the investigation, but we also are in consultation with the Department of Defence, which have indicated that they wish to consider administrative action in relation to the matter.

**Senator McKIERNAN**—I was going to ask for a further costing breakdown, but it is probably an unfair question at this time. I will leave that matter for now.

**CHAIR**—Senator Cooney, I believe you have another question.

**Senator COONEY**—Yes, I do. One thing that worries me—and I want to say this while we are still in opposition—is where you have a line of examination which says, ‘Has a complaint been made against so and so?’ and you say yes and then nothing eventuates from that. Is there anything in your proceedings which seeks to protect people’s names, particularly when there is no merit in the allegations being made against them? I could turn up and say, ‘I want to put a complaint against Mr Cornall. He hit me in the lounge at Melbourne airport,’ or something like that. The investigators would find there is no merit in what I have said, yet his name can be floated far and wide as a person who has been complained about to the police. Do you ever think about that? Are there any procedures in the force that protect against that sort of thing?

**Mr Keelty**—There are, Senator, in the sense that we are very careful about what becomes public from us. I guess one of the features or characteristics of the AFP is that a lot of the investigations we undertake are so notorious or so well known before they are even referred to us that it does result in significant speculation in the media. We are very careful to protect innocent parties, and we would be liable for not protecting innocent parties, particularly where spurious allegations are made or allegations of convenience are made. Although I have

to say that my view has always been to try to assist this committee as much as possible and not take a position where I hide behind not being able to reveal information to this committee—

**Senator COONEY**—I suppose the only trouble is when you give it not to this committee in particular but to the parliament generally, because it then becomes privilege.

**Mr Keelty**—That is correct.

**Senator COONEY**—You were asked about your investigations overseas. I wondered whether they are as intense as they could be. I am pleased to hear that you have been overseas, but have we ever caught, for example, a major people smuggler through investigations conducted overseas? I wondered whether our investigations overseas are intense enough—not only for people smugglers but for drugs, fraud and just generally.

**Mr Keelty**—Yes, Senator. I will start with people smuggling. As a direct result of our engagement of the Indonesian National Police, I can tell you that we have recently stopped something in the order of 461 people from leaving Indonesia to come to Australia. In relation to prosecutions—

**Senator COONEY**—Of the masterminds.

**Mr Keelty**—and identifying masterminds, we have outstanding warrants for persons in Indonesia. Through the Attorney-General's Department we are seeking the extradition of some very key figures. And that is just one country and one example. In fact, the mastermind of the Fijian operation that Senator Ludwig was asking me about was arrested in Canada. One of the things that we have been able to do through engagement of law enforcement agencies at my level in the region and beyond has been to seek agreement on targets. We are now aiming our resources at the instigators and the organisers, as opposed to the people in Australia who either inadvertently or otherwise become engaged in the activities.

**Senator COONEY**—Do you intend to visit overseas often—you have almost become the papal commissioner?

**Mr Keelty**—There are a couple of things about this. One is that it is important to work within my own organisation first and provide a lot of attention to the people in my organisation who do an outstanding job. A lot of them put their lives on the line. It is never publicised. We often cannot talk about it, but as I speak there are people who have put their lives on the line. Of course, we know of other operations that have more notoriety, such as East Timor, where it has been more obvious about what has happened. But they do it each and every day. In fact, as I speak I have an officer in Bogota, Colombia, where there is no Australian mission. In every other newspaper we see a bombing in Bogota in Colombia because the country is controlled by drug cartels.

So it is a matter of balance and looking after the people in the organisation. It is also a matter of balance in trying to engage the other law enforcement agencies, because transnational crime and organised crime will not be defeated by any single law enforcement agency in the world. In order to achieve the results that we have achieved in recent times that are outlined in the PBS, it has required significant engagement of other law enforcement agencies. We would have been able to do it ourselves. The short answer is that I will be trying to get a balance between both.

**Senator COONEY**—It disturbs me that we are arresting people in Port Hedland for the crime that you have spoken of—threatening a Commonwealth officer—and the people who

arrange to get them here are living overseas, not in a lockup or in a remand centre. No doubt they are living the high life in overseas capitals. It just does not seem right.

**Mr Keelty**—That is a good point. One of the things that we have always said—and I think I have even said it in this committee—is that many of the people in the detention centres are the victims of the crime. In a sense, it is almost like prostitution. They have paid money to beat the system. So in many ways they are not the criminals who we are seeking, and certainly I do not think they are the criminals who were intended to be targeted by the additional penalties that were put into the legislation to deal with the organised crime figures who are actually behind all of this.

**CHAIR**—Are there any further questions in this area?

**Senator LUDWIG**—Yes. I will preface my remarks, because I actually do not want a specific answer. Mr Frank Day seems to have taken it upon himself to email everything he can to my office and anywhere else, which appears to be the *Queensland Independent*, the *Newcastle Herald* and federal members of parliament. Do I understand that that matter has been seized by your section and that you are dealing with it?

**Mr Keelty**—Yes. Perhaps Mr Overland, who has tried to personally resolve this matter, can fill you in on some details.

**Senator LUDWIG**—I did not particularly want to go into details. My view is that they are operational in the sense that there is an internal process that a person can go through. If a person is separated from an agency, there is an internal appeals mechanism. I would understand from there they can take it to an industrial relations commission and so on. Those matters of relief are all available to the person. The last port of call is to raise the matter through their local member. I am not Mr Day's local member. All I am seeking to understand from you is that that process is being dealt with in an appropriate way from your perspective.

**Mr Overland**—There has been an internal process in place. That process has run its course. We are more than satisfied with the appropriateness and fairness of that process. Suffice to say, if Mr Day—or anyone else in his position—wants to progress the issues that are of concern to him, there are legal remedies available to him. That would be the appropriate way for him to deal with the matter.

**Senator LUDWIG**—Thank you.

**CHAIR**—I thank the Commissioner and his officers. There have been wide-ranging questions and we thank you for your assistance.

**Mr Keelty**—Thank you, Senator, and congratulations, grandfather.

**Senator McKIERNAN**—Thank you, Mr Keelty.

**CHAIR**—Quite frankly, that is enough times on the record! We will now proceed with the order in the program and deal with ASIO, OPC and ITSA before we move to the department.

[9.38 p.m.]

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

**CHAIR**—Senator Cooney, do you have any questions for ASIO?

**Senator COONEY**—Mr Richardson, have we seen you since the Olympics?

**Mr Richardson**—Yes, in February.

**CHAIR**—Believe me, we have had estimates hearings since then.

**Mr Richardson**—I clearly made an impact.

**Senator COONEY**—We said that was a great effort. You saved the Games. Watching *Four Corners* the other night, I don't know whether we needed protection against the administrators. In any event, they were very successful Games.

**Senator McKIERNAN**—Mr Richardson, what can you tell us about the additional funding that has been allocated to ASIO?

**Mr Richardson**—What page are you referring to, Senator?

**Senator McKIERNAN**—Page 454—the \$62 million up to \$64.7 million.

**Mr Richardson**—That relates, firstly, to some moneys in last year's budget which have been carried forward to this year's budget, relating to new capabilities flowing from the amendments to the ASIO Act in 1992; and, secondly, it relates to moneys allocated to ASIO and other agencies this year to implement the recommendations of the Blick review of security measures following the Wispelaere case in 1999.

**Senator McKIERNAN**—Sales of goods and services is reduced considerably; it is almost halved. Is that Olympic related? I suspect all the memorabilia has gone.

**Mr Richardson**—No. Primarily, that relates to protective security advice.

**Senator McKIERNAN**—Advice?

**Mr Richardson**—Yes, and cost recovery.

**Senator McKIERNAN**—The organisation seems to be doing all right in the out years as well, going through a slight dip next year but then going back up again in 2003-04 and up further in 2004-05. Is there any particular reason for that? Are there any major events happening in Australia around that time?

**Mr Richardson**—No. Again, that relates to the investment decision taken in last year's budget, which flows through into the out years, relating to the implementation of new capabilities in ASIO flowing from the amendments to the ASIO Act in 1999.

**Senator McKIERNAN**—The next major international event in Australia will be CHOGM in October. Did ASIO receive any additional funding for protection purposes during CHOGM?

**Mr Richardson**—Yes, we did, and that is reflected in revenue from other sources. We are receiving moneys via the Department of the Prime Minister and Cabinet for that, and on page 454 you will see total revenue from other sources. Most of that is in respect of CHOGM.

**Senator McKIERNAN**—Thank you.

**CHAIR**—Senator Ludwig, do you have any questions?

**Senator LUDWIG**—No.

**CHAIR**—Senator Cooney, have you completed your questions?

**Senator COONEY**—Yes.

**CHAIR**—Thank you for your assistance this evening, Mr Richardson.

[9.43 p.m.]

**Office of Parliamentary Counsel**

**CHAIR**—Ms Penfold, I understand congratulations are in order on your appointment as a QC.

**Ms Penfold**—Thank you.

**CHAIR**—Are you being joined by Mr Perkins or anyone?

**Ms Penfold**—No, I think I am on my own tonight.

**Senator COONEY**—We must embarrass Ms Penfold.

**CHAIR**—We will continue to do that as long as we can!

**Senator COONEY**—It is still QC in the ACT?

**Ms Penfold**—I am a Commonwealth QC.

**Senator COONEY**—That is what I meant, of course! But it is still QC in this part of the world. I wonder why that is. That is the only thing I need to take up with this witness.

**CHAIR**—You are not expecting Ms Penfold to comment, are you?

**Senator COONEY**—No, I am not, but I think we ought to note the achievement. Is this the first time that this has happened?

**Ms Penfold**—To me, it is.

**CHAIR**—That is very good for 9.45 p.m.! I am impressed.

**Ms Penfold**—There are other Commonwealth silks.

**Senator COONEY**—But are there parliamentary counsels who have been silks before?

**Ms Penfold**—Previous parliamentary counsels have been ACT silks.

**CHAIR**—Therein lies the distinction.

**Senator COONEY**—But no previous parliamentary counsel has been a Commonwealth silk?

**Ms Penfold**—No. That is right.

**Senator COONEY**—There are very few Commonwealth silks, aren't there? How many are there?

**Ms Penfold**—There are four left alive, I understand. That is not as scary as it sounds. There have only been five.

**Senator COONEY**—Who are they?

**Ms Penfold**—Dennis Rose—

**Senator COONEY**—He is no longer with the service?

**Ms Penfold**—He is no longer with the service, but he is still with us!

**CHAIR**—I hope so.

**Ms Penfold**—Henry Burmester and Robert Orr. They are both still with AGS.

**Senator COONEY**—And you form the trinity. I was going to say you were almost the father of the trinity! I think we ought to put this down in *Hansard* as a wonderful thing.

**Ms Penfold**—Thank you, Senator.

**CHAIR**—Thank you. Senator Cooney, did you have any further questions, or in fact a question?

**Senator COONEY**—I thought that there were a lot more strict liability offences coming through, but we are told that is not the situation. What do you think? What have you noticed? They just seem to keep coming up in legislation. But somebody said that is because they have to say that if an offence is going to be strict liability it has to be stated as such.

**Ms Penfold**—I believe that is the effect of the criminal code. And the reason you are seeing a particularly large number at the moment is because of all the bills that we drafting to bring existing Commonwealth offences into line with the criminal code provisions. So in the last 12 months and the next six months every portfolio will redo all of its offences and a lot of them will then be specified as strict liability.

**Senator COONEY**—I notice that page 352 states:

The Office has no plans to apply competitive tendering and contracting to the production of outputs. A process of market testing the outsourcing of personnel processing is currently in progress.

I take it that people outside the service do drafting. Are you testing whether they can or cannot?

**Ms Penfold**—They are a number of people outside the service who do drafting for the Commonwealth. All the ones that I am aware of are former members of either my office or the Office of Legislative Drafting. So we tend to take their abilities on trust.

**Senator COONEY**—Because you know that they have the quality of work that you want.

**Ms Penfold**—That is right. We certainly do not have any plans at this stage to go out and test the broader legal market.

**Senator COONAN**—Thank you.

**CHAIR**—Thank you, Senator Cooney. Senator McKiernan.

**Senator McKIERNAN**—I only have a couple of questions, and congratulations as well. I wonder what would happen if there were a universal move away from Queens Counsel in support of senior counsel. Would it still count at a common law level?

**Ms Penfold**—I understand that that move has been happening state by state, jurisdiction by jurisdiction.

**Senator McKIERNAN**—One of the roles of the Office of Parliamentary Counsel is to assist private members with their legislative requirements as subject to government priorities. Has any private member been assisted in the development of a bill, a private member's bill or a private senator's bill, in the last financial year, for example?

**Ms Penfold**—I do not believe so. But I would just like to qualify that by saying that there were several stages of airport curfew regulation.

**Senator McKIERNAN**—In Adelaide?

**Ms Penfold**—That is right. There was the Sydney one first I think and then the Adelaide one, and I honestly cannot say off the top of my head whether that was in the last reporting period, or in the previous one.

**Senator McKIERNAN**—I think it was the previous one.

**Ms Penfold**—We are not infrequently involved in either reworking nongovernment amendments or sometimes drafting amendments put up by our instructors, by public servants, which are then either handed back or handed on to nongovernment members. But we certainly do not generally act directly for nongovernment members in that situation.

**Senator McKIERNAN**—Have any senators or members made direct requests to the office for assistance and had those requests denied because the requests were not a government priority?

**Ms Penfold**—Not to my knowledge in the reporting period.

**Senator McKIERNAN**—Thank you. Is your office under pressure to produce bills? I will tell you my reason for asking that. We, on the left side of both chambers, have been waiting for Minister Ellison's bill on the proceeds of crime, which I think he announced in February, to come forward. We are actually still waiting for that to come forward. Has that been held up in your office or is it held up in other places?

**Ms Penfold**—It is being worked on in my office at the moment. It is a fairly high priority bill, and I do not think there was any significant delay with the instructions. We are still getting instructions and working through the policy.

**Senator McKIERNAN**—It has been announced on two occasions now—two to my knowledge via media release; it may have been announced on other occasions which did not necessitate a media release—that it is coming, and it still has not arrived.

**Senator Ellison**—No. Just to correct what you said, I think I announced in late February that I would be taking it to cabinet. It subsequently went to cabinet and was approved. I think that was in March or April. The two statements I made were (a) that I was taking it to cabinet; and (b) that cabinet had approved what I had taken to it. Those were the two announcements I made, and of course the drafting is now in process. It is a complex bill and, in part, adopts the New South Wales regime. That is all very well for a state, but we have other considerations in relation to the Commonwealth. I also added some other aspects to the bill which I thought were appropriate, such as the repatriation of assets where assets are shifted offshore and an action which relates to the confiscation of an asset where the suspected owner could not be located. There are a number of differences which we thought were important to bring in. So, for all those reasons—and the fact that we consulted with all the law enforcement agencies at a Commonwealth level like A-G's and the DPP—it has been three months from late February to May, and hopefully we will have it soon.

**Senator McKIERNAN**—The press release was dated 22 February and titled 'Hitting criminals in the hip pocket'. The first line states:

Hitting criminals where it hurt most, in their hip pocket, will be one of the Howard Government's top legislative priorities in 2001, the Minister for Justice and Customs, Senator Chris Ellison said today.

The press release went on to say that it was about taking the matter to cabinet, so thanks for that clarification. Is there any chance—and I am not going to press it any further than this question—that we will see this bill before this committee reviews the serious crimes bill which we have got to do in the next few weeks?

**Senator Ellison**—I am aware of that bill. Ms Penfold could perhaps help us as to where we are at with the drafting. As I said, it is complex and, in any event, I will still have to review that draft when it is finalised and take it through the normal government processes. I think you will be dealing with the serious crimes bill before you get to the proceeds of crime bill. But my wish is that as soon as we have introduced the bill it go to your committee as soon as

possible, because it is a complex bill and I am sure that you will need some time to have a look at it.

**CHAIR**—We have been discussing possible timetables. There are no further questions, Ms Penfold. Thank you for your assistance.

[9.54 p.m.]

### **Insolvency and Trustee Service Australia**

**Senator McKIERNAN**—Mr Gallagher, can you confirm that the latest bankruptcy figures for the March quarter 2001 show a 25 per cent increase compared with the December quarter and a 13.6 per cent increase compared with the corresponding quarter of last year?

**Mr Gallagher**—Yes, those figures are correct.

**Senator McKIERNAN**—Noting that four-fifths—80 per cent—of the bankruptcies were not business related and that 20 per cent were business related, do you have any views on the causes of this large increase in bankruptcies? Could the GST, the new tax system, be part of that explanation and, if so, how big a part?

**Mr Gallagher**—We do gather information on causes of bankruptcies and report them annually. Generic causes are not causes that go to individual creditors of one kind or another, so we actually do not collect information that is specific to creditors such as tax of the creditor. Therefore, it is not possible to make any comment about GST or any other creditor related cause being a contributing factor.

The information, however, that may be relevant to that is that, while bankruptcies increased in the March quarter by the numbers you referred to, the proportion of total bankruptcies that were business related was no higher than it was last year—that is, around 17 per cent of total bankruptcies. Indeed, that figure was lower than in the previous year in relation to the proportion of total bankruptcies that were business related.

**Senator McKIERNAN**—You do not collect information as to the reasons why there are bankruptcies. Therefore, it is not possible to do an analysis of that dramatic increase. I accept that it is only a quarter increase but, if that were to be a trend over the year, it would be a dramatic increase and cause for concern in a number of areas of the economy.

**Mr Gallagher**—Bankruptcies in the nine months up to the end of March were in fact slightly lower than in the nine months of the previous year. We do report causes of bankruptcy annually at the end of the year but, as I say, they are generic causes that go to factors such as, for nonbusiness bankruptcies, unemployment, domestic discord and excessive use of credit; and, for business bankruptcies, economic conditions, lack of business ability and excessive interest. There is a series of generic causes that have been developed over a period of time.

**Senator McKIERNAN**—What are those generic causes, again? When you were quoting those upward trends and downward trends, I was remembering a media release by the Attorney accepting that there was an upward trend in bankruptcies, so I missed what you were saying about generic causes. Could you repeat them to me?

**Mr Gallagher**—We record bankruptcies in relation to whether they are business related or nonbusiness related. But, for each of those categories, we collect information on the causes attributed to the bankruptcy by the bankrupt when they file their petition. Those causes are generic in nature, and I am just listing the top three. They are reported in the annual report. In relation to nonbusiness bankruptcies, the three with the highest incidence are unemployment, domestic discord and excessive use of credit—as attributed by the bankrupt.

**Senator McKIERNAN**—I am sorry to have to ask you to repeat that; I did get distracted. Can you confirm that there was a 74 per cent increase in debt agreements compared with the corresponding quarter of the previous year?

**Mr Gallagher**—I do not have that figure on me now, but I know it was a very substantial increase. For the nine months to the end of the March quarter, we had already achieved an equal number of debt agreements compared to that of the previous year.

**Senator McKIERNAN**—Can you explain to the committee what debt agreements are? Have any preliminary views been formed on the causes for the large increase? I accept that you have not confirmed the 74 per cent that I indicated; I assume you will take that on notice to check the percentage?

**Mr Gallagher**—I can take that on notice, yes. It is the case that debt agreements were introduced in December 1996. I think in one of your questions you asked for an explanation of debt agreements. They were introduced as a low cost alternative to bankruptcy for people with low levels of debt and low incomes. Since their introduction in December 1996, the take-up has been gradually increasing. That has been the case each year since their introduction. This year has seen a continuation of that trend.

We believe that it reflects a growing level of acceptance and a growing level of awareness of them by people who advise people in financial difficulty. There is a greater level of acceptance of them by creditors, who were cautious in the early stages. However, through some education that we carry out and that people like financial counsellors carry out in the industry, there is a greater level of acceptance of them as a genuine alternative. The other thing about them is that the return to creditors is significantly higher under debt agreements than it is under bankruptcy. Statistics that we have collected show that the return is, on average, slightly more than 50 cents in the dollar, which is significantly more than a person would expect under a bankruptcy.

**Senator McKIERNAN**—Would I be right in having an expectation—subject to what you have just explained on what debt agreements are—that, if there was a measurable increase in the number of debt agreements entered into, there should be a fall in the number of bankruptcies? In many respects, as you have just told us, a debt agreement is an alternative to bankruptcy. Or have I misheard you or misunderstood you; indeed, am I misrepresenting you, which I do not intend to do?

**Mr Gallagher**—No, it is correct to say that they were introduced as an alternative to bankruptcy. So people in financial difficulty are now given an alternative such as a debt agreement in order to avoid bankruptcy. In the end, it is very difficult to say categorically whether that has caused a reduction in the number of bankruptcies. You would expect that to be the case but it is not possible to be categorical about that.

**Senator McKIERNAN**—Have any measurements been done since the introduction of debt agreements on the impact that debt agreements have had on the number of bankruptcies? Is there any way that we can measure one against the other? I know that, to a certain extent, one is not comparing apples with apples; nonetheless there is a correlation which must be able to be measured in some way.

**Mr Gallagher**—We can certainly do a correlation between debt agreement numbers and bankruptcy numbers. Indeed, in the last financial year—that is, the financial year before the current one—bankruptcy numbers fell for the first time for a number of years. But it is too much of an extension of logic to say that that may be because of the introduction of debt

agreements. Indeed, as you noted, for this most recent quarter, both bankruptcy numbers and debt agreement numbers increased.

**Senator McKIERNAN**—Was there a bar chart given to us by the National Native Title Tribunal?

**CHAIR**—There was a graph.

**Senator McKIERNAN**—It was in wonderful colours. I am wondering whether something along those lines could be done. If there are some measurements, it is probably an appropriate time for an evaluation to be done of the debt agreement scheme in any case. Has the increase in the number of bankruptcies had any impact on the ability of the service to meet demand?

**Mr Gallagher**—ITSA as an organisation administers the vast majority of bankruptcies, although generally speaking we administer those with very few or no assets in them. Bankruptcies can be administered by private trustees as well. Naturally, those with assets and money in them are more inclined to be administered by registered trustees. So the processing of assetless bankruptcies or bankruptcies with very small amounts of money in them is able to be done pretty efficiently. ITSA over the years has increased its ability to process those in a more efficient way. That has enabled us to cater for the demand that has occurred.

**Senator McKIERNAN**—Have you had to hire any additional staff on a permanent, temporary or casual basis during the March quarter to cope with the numbers?

**Mr Gallagher**—ITSA overall does not have any additional staff to allocate specifically for that. Within the ITSA organisation we have the capacity to direct resources to areas where the pressing demand is. To the extent that we are required to process the volume of bankruptcies we allocate resources to that within our current budget. In the end we have a capacity if need be to pass work out to private trustees, particularly in those bankruptcies where there are assets in them and a private trustee would be interested in doing it on a commercial basis. We can arrange to call a creditors meeting and have another trustee appointed.

**Senator McKIERNAN**—What is the status of the Bankruptcy Legislation Amendment Bill 2001?

**Mr Gallagher**—The bill is in an advanced stage of drafting. During February an exposure draft was released. During March consultations with industry representatives were held. As a result of that some refinements have been made. It is in an advanced stage of drafting.

**Senator McKIERNAN**—I have a question to the minister. Are you able to give the committee an up-to-date briefing on what is happening about compulsory reporting of bankrupt lawyers or barristers? There was some controversy about this subject earlier in the year.

**Senator Ellison**—I think Mr Gallagher will pass this one on.

**Ms Lynch**—There are three aspects to your question. There is a SCAG working party under the Standing Committee of Attorneys-General looking at the issue of reporting of matters to legal professional organisations and showing cause why barristers should not be struck off. There is some work that we have been doing developing policy to ensure that the Commonwealth does not brief counsel who have used bankruptcy proceedings to avoid taxation obligations. There is also the task force that the Attorney-General and Senator Kemp announced a short while ago in relation to looking at misuse of bankruptcy law to avoid taxation obligations. That extends beyond the legal profession as well.

**Senator McKIERNAN**—How far advanced is the SCAG subcommittee? I assume it will be reporting back to the next meeting of the Attorneys-General. When will that meeting be taking place?

**Ms Lynch**—They hope to be reporting back to the next meeting in July.

**CHAIR**—Any further questions?

**Senator COONEY**—Over the same period, do you know what has happened with company liquidations? Do you have any contact with people who liquidate companies? Do you follow your own path and that is that?

**Mr Gallagher**—Essentially the latter. Corporate insolvency is a matter for ASIC. Whilst we have a dialogue with them on a range of issues, it is not our role.

**Senator COONEY**—You do not have a regular cup of tea with them and see where you are going with liquidations and bankruptcies?

**Mr Gallagher**—No.

**Senator COONEY**—What sort of fees do trustees take from estates—not a good trustee like you but the private trustees?

**Mr Gallagher**—Generally speaking, trustees charge an hourly rate. The exact nature of the fees is a commercial arrangement between the trustee and their creditors.

**Senator COONEY**—Do you have any thoughts on that constituting ITSA? I suppose I should ask whether ITSA has any thoughts on that.

**Mr Gallagher**—We have an interest insofar as we are a regulator in the industry, and therefore we are concerned that trustees abide by the requirements of the act in this area. Trustees are required to give indications to creditors of the impact of their administration in relation to the payment of dividends. There are instances of complaints against trustee fee taking, and we would investigate those complaints to make sure that they were up front with creditors during the administration about the fees that they were taking.

**Senator COONEY**—Do the trustees get the first picking and then the tax department the next?

**Mr Gallagher**—The first is correct. That is, the first call on money in the estate is the remuneration or the expenses associated with the administration. The Commonwealth—that is, Tax or any other Commonwealth creditor—is not a priority creditor any longer.

**Senator COONEY**—Who comes first now? Are the employees tops yet? It does not matter.

**Mr Gallagher**—I do not have the act in front of me. There are a series of priorities, and the costs of the administration are first. I do not recall the order of them offhand. I can get that information.

**Senator COONEY**—Thanks very much.

**Senator McKIERNAN**—I follow on from Ms Lynch's earlier response to one of my questions. Has the department looked at any briefs that are now outward barristers? Has the department had to withdraw any briefs from persons who may be in a bankrupt state?

**Mr Govey**—There has been at least one brief that has been withdrawn.

**Senator McKIERNAN**—Are you in a position to provide the committee with the name of that person?

**Mr Govey**—It might be better if we took that on notice because there are questions of who the client was in the matter and whether or not it is appropriate to disclose the name of the barrister.

**Senator LUDWIG**—Has any proceeding been prejudiced because of that action?

**Mr Govey**—No. I think we can safely say that it has certainly been the case that no proceedings have been prejudiced.

**Senator COONEY**—On what basis was it taken? Was it on a moral basis or was the person incompetent? Why was it withdrawn? I am very interested in this.

**Mr Govey**—It was in response to the concern expressed about the situation in New South Wales.

**Senator COONEY**—Do you mean the moral situation that he or she was in?

**Mr Govey**—Yes, I think that is a fair comment.

**Senator COONEY**—Thank you. Please take it on notice and see what you can provide.

[10.13 p.m.]

#### **Attorney-General's Department**

**Senator McKIERNAN**—On the subject of money and allocations and deferrals, on page 65, in appendix 6, for outputs 1.1, 2.1, 2.1, 2.1 and 2.2 there are deferral amounts, including an amount of \$1.5 million for the establishment of the ART. I am going to be asking questions on each of those amounts, so perhaps we could have an explanation on all five and what they mean.

**Mr Hine**—In terms of the background to that, I can answer from a funding point of view. Those funds represent money that was made available in the current budget and that, when preparing the budget papers at the end of February, we did not anticipate spending in the current financial year. Therefore, we are rolling those funds over for expenditure in 2001-02. The first figure relates to money that was made available in the last budget for funding the establishment of the ART—in other words, the appointment of the president and support staff and for the support functions—so that all the preparatory work could be done before the ART actually became operational. Obviously, with the deferral of the legislation that funding has not been spent in the current financial year and we are proposing to roll it over.

I am not sure of the details with respect to the proposed privacy conference, but I would assume that the same background would apply as for the National Crime Prevention program and CrimTrac. With respect to both those programs, money that it was originally thought we would spend this financial year will now possibly not be spent and therefore we are seeking that those funds be carried over to 2001-02. There is no change in the level of funding made available to the programs over the period; it is just that there is a different time when the actual expenditure will be incurred.

**Senator McKIERNAN**—Okay. We have got detailed questions coming up on the National Crime Prevention program which we will be dealing with at a later time. Are you not in a position, Mr Hine, to give us any information on the privacy conference?

**Mr Hine**—I am sorry, I do not have that background; Mr Holland may. I can only speak on the timing of the funding.

**Mr Cornall**—I just make the point, Senator, that there are three elements in that item. There is the privacy conference, the proof of identity project and the law enforcement planning project.

**Senator McKIERNAN**—Yes.

**Mr Holland**—The reference to the privacy conference is to a privacy and security conference that is to be held on 16 and 17 August this year. The funding was allocated and at the time we were not sure whether the conference was going to be held in June or July. As it has turned out, it is now going to be held in August.

**Senator McKIERNAN**—The proof of identity project?

**Mr Carnell**—That is a scoping study of what sorts of options the Commonwealth might pursue about tightening up on the proof of identity requirements across Commonwealth agencies.

**Senator McKIERNAN**—Was the \$810,000 on the protective security measures for official establishments Olympics related?

**Mr Carnell**—No. We were given an amount this year for works on official establishments, particularly Kirribilli House and Admiralty House. Some have been completed this year; not all will be. Some will have to be paid for next year.

**Senator McKIERNAN**—That is not capital works on those buildings?

**Mr Carnell**—It is for things like fences and so forth. I will ask Mr Tyrie to give you some more detail if you wish.

**Mr Tyrie**—In last year's budget the department, through the PSCC, put in place a program to increase physical security at some of the official establishments. They included Commonwealth parliamentary offices, the Lodge, Kirribilli House and Admiralty House. Some of those have not been finished this year. We are paying for the continuation of those projects over the next few months until they are finished.

**Senator McKIERNAN**—At one of those establishments there was an intrusion, wasn't there?

**Mr Tyrie**—That is right. It was probably about two years ago. The Greenpeace organisation breached the outer security perimeter of Kirribilli House.

**Senator McKIERNAN**—Yes. If it had been the Lodge it would not have mattered because it is empty most of the time, but Kirribilli House is much different. Why has the work not been completed, or has it been completed at that particular establishment? It seems to me that if there has been a breach of security that should be addressed.

**Mr Tyrie**—Most of the upgrades at Kirribilli House have been finished. Most of the delays are due to the fact that, in order to get the work done, we have to consult with organisations like the Heritage Commission and the National Trust. That takes a period of time to move the plans and assessments through the system and eventually to get the work done. That is the cause of the delays at Admiralty House and Kirribilli.

**Senator McKIERNAN**—Is there any additional expenditure required by additional policing, for example, in the vicinity of the establishment because the security work has not been done? If a breach had been found, one would imagine that there would be increased surveillance of the home, the establishment, and pending additional security matters—fences or whatever.

**Mr Tyrie**—The APS guard both places. The upgrades in security have increased the security. These are extra measures in terms of an outer perimeter fence which changes the environment of Kirribilli and Admiralty House. We are waiting for advice from the Heritage Commission and the other organisations before we can proceed with it.

**Senator McKIERNAN**—The largest of the amounts there is \$15 million for the implementation of elements of the CrimTrac initiative.

**Mr Carnell**—CrimTrac originally involved \$50 million over three years. When the estimates were done at the start of 1999, the figure was \$20 million for each of the first two years and \$10 million in the third year. In the event, in the first year the expenditure was a touch over \$9 million. This year, when these figures were prepared, the estimated expenditure was \$16 million. From the \$40 million in the first two years there is this element of \$15 million to be carried over.

The key reason for the deferral relates to the national fingerprint system, which was the first key deliverable. Obviously, when we did those original estimates we were too optimistic about when suppliers would be able to do the system. When we did the tender process in the second half of 1999, we found that a longer implementation time was required. It was also desirable to defer its implementation until after the Olympics. That caused some delay. So the moneys are still there to be spent on the CrimTrac project, but we have not spent as much in the first two years as was originally estimated.

**Senator LUDWIG**—While you are searching, could I ask a question on output 1. In relation to Professor Weisbrot from the ALRC, I asked about the judicial college. I said I would re-raise it in this context now. It is a matter that I think is before SCAG. Have any moneys been set aside for the effective implementation of a judicial college in the next financial year? The report seemed to suggest that the report will deal with options for the establishment of a judicial college—including its role, nature, structure and arrangements for funding. That is the relevant part—I was trying to ascertain where that is coming from.

**Mr Cornall**—The judicial college working party has completed its report and given the report to the Attorney-General to present to SCAG, presumably at the July meeting—that would be our expectation. One of the appendices to the report is a suggested budget for the establishment of the college. One of the issues for SCAG would be to determine how that budget was to be allocated between the states and the Commonwealth. But it is not a very large budget and so, while there is no funding set aside in our departmental budget for 2001-02, one way or another one would expect that we could find some funding for it if we had to, given that it is not going to be operational until the later part of the financial year in any event, one would think.

**Senator McKIERNAN**—There has been a reordering of PBS again. I have just been frantically searching for output 1.3 and I still have not found it. Does output 1.3 still exist—or is it just too late in the day for me?

**Mr Carnell**—There is a description on page 36. I am not sure whether that is the sort of page you want.

**Senator McKIERNAN**—I am looking for details on financial assistance to the states and territories under section 200 of the Native Title Act 1993. Where would that appear now, or does it continue to appear within output 1.3?

**Mr Hine**—On page 30 you will see under note 5 an amount of \$11 million included in the budget estimate for 2001-02. That relates to expenditure under part 9 of the Native Title Act.

**Senator McKIERNAN**—Is that the same as section 200 of the Native Title Act?

**Mr Hine**—Yes it is, I have been advised.

**Senator McKIERNAN**—Why is there nothing there for this year?

**Mr Hine**—Because we do not expect any expenditure to occur this year.

**Senator McKIERNAN**—Does that relate to the—

**Senator LUDWIG**—Why is that?

**Mr Hine**—I cannot answer that question. I defer to Mr Meaney on the policy issues. Hopefully, I can advise you where the money is.

**CHAIR**—We are always grateful for that advice, Mr Hine.

**Mr Meaney**—Those provisions relate to financial assistance to the states that are predicated on there being agreements in place. The agreements are to cover reimbursements to the states for compensation and for administrative expenses in regard to setting up state tribunals to do with native title matters. At present, no agreements are in place and, therefore, no payments have been made.

**Senator LUDWIG**—Is it predicated only on an agreement being made or on the tribunal being set up?

**Mr Meaney**—There must be an agreement in place, and to date, whilst there have been some initial discussions with the states, no agreements have been concluded. However, that process is to be taken forward in the next financial year to see whether we can reach some agreements. One problem is that the principal purpose relates to native title compensation, and of course no cases in relation to compensation have yet come forward, so the states have not felt the need or the pressure to pursue the arrangements with the Commonwealth for the reimbursement of part of that.

**Senator LUDWIG**—So that table on page 30 is telling us that no agreements were contemplated in 2000-01 but that there possibly are in 2001-02?

**Mr Meaney**—That is right. Negotiations are set down, I believe, in July. There is to be a round of discussions with the various states.

**Senator LUDWIG**—If that is not met, there will be a rephasing of any—I am not sure how you call it—

**Mr Meaney**—I would not want to engage in the debate on rephasing.

**Senator LUDWIG**—I am not sure whether I understand the word.

**Mr Meaney**—My understanding is that the funds lapse if they are not spent in that financial year.

**Mr Hind**—Then they would be appropriated next year.

**Senator LUDWIG**—Is that what you call rephasing?

**Mr Hind**—In this case, it would be, yes, for those ones, because it is administered appropriation. The funds lapse, but they would automatically be reappropriated. The technical rephasing relates to the departmental funds where they automatically roll over.

**Senator LUDWIG**—I think I am getting better at this!

**Senator McKIERNAN**—I have a general question on the PBS. You people have to work with it day by day. Do you find this formula better to work with than what we did last year or indeed the year before? I think this is the third change since accrual accounting came in.

**Mr Hind**—We have not really changed the formula much. We have gone through it as we have worked through, and the changes we have made are to try to make it a little bit clearer to the committee. As the chair said at the start, the JCPAA, or the finance administration committee, is looking for feedback. We are going through the process. We picked up the comments that you made last time and, hopefully, we have reflected them in this.

It is part of an exchange of views and dialogue as we go through the process. We are providing a lot more information than we provided before, but it is in a different format. Therefore, it makes it a little difficult to say, ‘This amount of money used to go here, and now it is amalgamated a lot more into bigger figures,’ but the whole basis of the appropriation system has changed. We now appropriate on outcomes. Outputs are how we would organise ourselves internally to meet those outcomes, and those are the issues that are discussed in these sorts of forums. It was a combination of the outputs-outcome framework and the accrual framework at the same time, and that has made it a little difficult to match like with like so that people can understand where the change is and whether it reflects government policy.

From a technical point of view, we are still going through the process, looking at systems and improving them, and issues that are raised here help us to focus on that as well. In another 12 or 18 months, hopefully, there will be some stability and we can look at some time series changes, but when money lapses in one year or is rephased, different terminology comes in, and that has not helped much either.

**Senator McKIERNAN**—I have been putting it down to the compression of time on this occasion to look at the budget estimates. The fact of the matter is that the budget is not yet a week old, and here we are going through this detailed, line by line scrutiny of it. Some other committees are in a worse position, but I have found it a little difficult to keep track of everything and even more difficult to backtrack. I will have to do some work on this next weekend. Other things were happening last week that we had to keep in touch with. In a sense, I am critical of myself for not being fully on top of it, but just a moment ago I could not find the particular point that I was after—it did not jump out at me, but it is late at night—and that led to some confusion. How do things look from your perspective? Maybe this is the optimum, but again maybe it is not; I am just not sure at this particular moment in time.

**Mr Hine**—I think it is getting pretty close and we would appreciate feedback from this. At the additional estimates last time, there were concerns that funding had been reduced whereas in actual fact it had not. I think this is part of the complication as well. These figures that you see in here with respect to 2000-01 are our best estimate, as at the end of February, so things will change. Where we thought we would have a full spend this year so therefore we will not need to rephrase anything, there is nothing there; if we do not spend it we will have to get the money next year.

We just spoke about the figures in appendix 6. If we do increase the level of expenditure on CrimTrac so that we do not need to rephrase the \$15 million, then those figures will change in the additional estimates, which will look like a reduction whereas in actual fact it is not. I think that is part of the complication as well. We are trying to anticipate what will happen at 30 June, have that reflected in changes which will be included in the budget appropriations for the future financial year and then make further adjustments again when the actual figures become available in June. I think there are timing issues, but we are working through and on

any feedback that we can get or any assistance we can provide to the committee I am more than willing to participate in those discussions.

**CHAIR**—The committee is trying to provide that feedback in a helpful process, Mr Hine. I think that by and large we are achieving that.

**Mr Hine**—We appreciate that as well.

**Senator McKIERNAN**—Thank you very much for that explanation. It just seemed timely that I asked that particular question. Were there any amounts appropriated under section 200 from last year's budget? They are not reflected here, as you say, and you have given the explanation where there were no estimated actual expenditures, but was there any appropriation at this time last year for this?

**Mr Hine**—I am advised that there were, but I can get the actual figures for you. They will be in last year's portfolio budget statement.

**Senator McKIERNAN**—Do not go back to it. My problem over the weekend was that I did most of my research in the unit that I live in while I am in Canberra. I did not have last year's material with me and I did not want to lose an hour by coming in here to get the information. It was a little bit difficult in tracking things through. I am not advocating that last year's PBS be appropriated here. That particular element did stand out on this page and hence you got questions on it because the information was not immediately apparent. I am not putting that up in a critical way.

**Mr Hine**—There was \$14 million appropriated last year. That is disclosed in actual fact on page 31 of the 2000-01 portfolio budget statement, so there was \$14 million appropriated last financial year for this activity. The corresponding figure this year is \$11 million.

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

[10.38 p.m.]

**Senator COONEY**—Where does legal aid and sexual harassment come in?

**CHAIR**—Together or separately?

**Senator COONEY**—Separately. It could seem to come in in a couple of places. If you are talking about the maintenance and development of the federal system of justice it should come in there. I notice output 1.3 is the administration of payments for and the delivery of government programs including legal assistance. I think 1.1 is the appropriate place.

**CHAIR**—I am sure that we can have the questions.

**Mr Cornall**—The administration of the funds is in output 1.3 but the funding is set out on page 30 of the portfolio budget statement.

**Senator COONEY**—What I was going to do was put a proposition, while Senator McKiernan is getting his next wind, to explain what I was trying to get at and then you can think about it overnight. The proposition I was going to put was that legal assistance generally—whether you take pro bono work and whether it is the pro bono work that the Federal Court suggests or that the Bar gives or the PILCH gives or whatever—does not seem to be as well marshalled as it might have been. I think that is the reason, Mr Cornall, that there is an amount set out here to try to get a secretariat for that. I presume that is the position.

**Mr Cornall**—That is correct.

**Senator COONEY**—But then there is no correlation between that and the other services which you are so familiar with—Legal Aid itself, the community legal centres and just the plain work that people do through no organised structure. I think there is a noble ambition on the Commonwealth's part to see if they can get all this working well. There have been a series of tests put forward and inquiries made and numerous pages written by community legal centres and other bodies to try to get some sort of purchase on all this. It just seems to me—and again think of this overnight—that there has been a failure; I am not saying a miserable failure but nevertheless a failure in the sense that the tests that have been taken are wrong. If I could just read out, for example, the implementation advisory group's terms of reference, it uses vague terms like 'Consistent and equitable distribution of Community Legal Centre service resources throughout Victoria including consideration of : a regional model of general CLC services.'

I take it that what that means is that people have to look at various regions in Victoria, New South Wales or South Australia and see how far the CLCs are apart. It is like dropping marbles into the old Chinese checkers—just stick them here without any particular rhyme and reason except in terms of the geography of the place. Then there is the 'optimal location', whatever that may mean, 'of metropolitan CLC services to enhance equity of access to CLC services'. Nobody could disagree with that but the terms are hardly precise and certainly not the sort of criteria that you would want to set up a justice system on.

'Ensuring CLC services are accessible to persons most in need,'—nobody could argue with that but there are no criteria here of what persons are most in need. Then it says identification of core CLC services and eligibility criteria including consideration of 'consistency in the provision of core services', without there being any definition of what core services are. Are the core services the provision of representation in court, the education of the local community, giving advice or putting people on to other services such as PILCH? That is a very vague term. Then the next dot point is 'local, statewide and regional factors in the provision of core services'. What that means I am not sure and I would not be too sure that anybody would quite know what it means other than that it is a term that might be used to justify the provision of services anywhere.

'The role of CLC services in contributing to public discussion in the development of reform proposals,' I think is really saying, 'Let's discuss what part they can play' and I think that is a fair enough point. It then goes on to a reference to the Impact Consulting Group which I thought we had fixed up in one of these committee meetings a while back and it has reappeared. So it was in that sort of setting that I was going to ask some questions and I thought if I put those on the record now it might save a lot of time tomorrow.

**Mr Cornall**—Yes.

**CHAIR**—Thank you, Senator Cooney.

**Senator COONEY**—The other point I was going to raise now is on your *A diverse workplace free from harassment*, which is on a different point. This seems a pretty slender document for somebody really intent upon keeping the workplace free from harassment and from discrimination. The reason I say that is that there is nothing in this document—and again you might think about this overnight—that in any way talks about a disciplined education of people, taking the people away and telling them what this is all about. It seems rather to be a document which sets out a purpose—and a good purpose at that—then sets out what the law is and then gives some advice. It is not the sort of thing I would have thought that a body as big as Attorney-General's would be satisfied with. There are some decisions about this sort of

thing. In Victoria there are some decisions about what is appropriate for departments like this to do. There is one with the education department that the VCAT, the Victorian Civil and—

**Mr Cornall**—Administrative Tribunal.

**Senator COONEY**—Yes, that one. I am particularly worried about the advice given about the harassment of people engaged as contractors, which in large part says, ‘Look, there is not terribly much we can do because they are not members of staff. What you should do is notify management.’

**Mr Cornall**—I would like to respond to some of those remarks. This document is intended to lay out a framework for advising staff about their obligations and procedures that they can follow if they believe they are subject to harassment. It is in the context of quite an existing and quite extensive legal framework, which we have not sought to repeat. In addition, we also have our workplace diversity program, which was just launched last week. It has its own publication, encouraging staff to fully understand the need to have workplace diversity and a safe workplace which respects people’s differences and so forth and is free from all sorts of discrimination. It has to be seen in the total picture. In the total picture the document is quite adequate for its purpose.

**Senator COONEY**—There does not seem to be any move to say that we ought to have a system whereby people come along and explain to the staff exactly what is involved in all of this. It seems to me to be a legal document setting out what ought to happen rather than trying to inculcate a culture into it.

**Mr Cornall**—That is because it is not trying to deal with all of those issues in the one document. We have other ways we address those other concerns, such as our workplace diversity program. The second program was launched last week.

**Senator LUDWIG**—In relation to rephasing, if we could use the native title part 9 as an example, on page 30, I have got thus far that the \$11 million is not spent and is rephased.

**Mr Hine**—With respect to administrative appropriations, if the money is not spent, it lapses and is reappropriated. It is not rephased.

**Senator LUDWIG**—So administrative expenses lapse.

**Mr Hine**—It lapses. With respect to departmental expenditure or departmental appropriations, money not spent in one year is then rephased to the next year.

**Senator LUDWIG**—So you have to go back to the portfolio budget statement for last year to find the \$14 million that was allocated for under part 9?

**Mr Hine**—That is correct.

**Senator LUDWIG**—What was then spent was nothing?

**Mr Hine**—That is correct.

**Senator LUDWIG**—The \$14 million has then been rephased to \$11 million.

**Mr Hine**—No. The \$14 million has lapsed. It has gone and a decision has been taken. It is possible that a more appropriate figure for 2000-01 could be \$11 million. As Mr Meaney indicated, we will not know the firm figure until agreements are in place.

**Senator LUDWIG**—And if that is not spent, it then lapses?

**Mr Hine**—It lapses and another figure will be appropriated as part of the 2002-03 budget process.

**Senator LUDWIG**—So the \$14 million did not disappear as such. It has simply been rebudgeted or redistributed?

**Mr Hine**—Yes. It is no longer required.

**Senator LUDWIG**—Where is that then shown? Does it get put elsewhere as what is available in the budget?

**Mr Hine**—It has gone back into consolidated revenue. It has been replaced by the \$11 million.

**Senator LUDWIG**—So consolidated revenue get it in the end?

**Mr Hine**—It was never spent.

**Senator LUDWIG**—I have got other questions, but I will leave it at that point. You might have to remind me every time about this, but never mind.

**CHAIR**—We might take this opportunity to stop for the evening. We will reconvene at 9 o'clock tomorrow morning.

**Senator Ellison**—Where did we actually get to? I think we ranged over a—

**CHAIR**—I believe we are still on 1.1, Minister. I will seek Senator McKiernan's advice there.

**Senator McKIERNAN**—I would have thought that that would complete 1.1.

**Senator COONEY**—I am still on legal aid.

**Senator McKIERNAN**—Which is 2.1.

**CHAIR**—No, it is 1.3.

**Senator COONEY**—But I want to look at it in terms of the justice system. That is the other thing I am a bit worried about—and it is typical of what is happening. Instead of seeing this as part of the justice system, the system seems to see it as part of the social security system, which I think is the wrong way to see it, so I would like it put in this area if nobody else worries about it.

**CHAIR**—You would like to put it in this area?

**Senator COONEY**—Yes.

**CHAIR**—Tonight?

**Senator COONEY**—No, not tonight—tomorrow.

**CHAIR**—I am in the hands of the committee.

**Senator Ellison**—I think if 1.3 has the legal aid aspect in it and Senator Cooney—

**Senator COONEY**—At 1.3 you might say you are now starting to talk about the justice system, and this is—

**CHAIR**—No, Senator Cooney, we will handle it in 1.3.

**Senator COONEY**—Would you look after me, Chair?

**CHAIR**—Yes, Senator Cooney.

**Senator COONEY**—Because I need to be looked after.

**Senator Ellison**—It is just handy if we have done 1.1, as some officers may be free to go.

**CHAIR**—Yes.

**Senator Ellison**—Probably not. I do not think I have advanced anything.

**CHAIR**—May I go back to, in fact, where I started? I am sorry, Senator Ludwig, you were trying to attract my attention, I gather.

**Senator LUDWIG**—I am trying, in more than ways than one.

**CHAIR**—I am concentrating on you.

**Senator LUDWIG**—In output 1.1 there are also matters under human rights, and there are questions that I do want to raise.

**Senator Ellison**—You will not finish 1.1.

**CHAIR**—I understand you have a couple of matters to raise in that area. I also understand that Senator McKiernan has some questions to place on notice. Did you want to read those in or just do that?

**Senator McKIERNAN**—They are dealing with travel allowances and travel of staff in the offices of the Attorney and the Minister for Justice. There are five questions in each category. I will put them on notice.

**CHAIR**—Thank you, Senator McKiernan. We will resume in the morning to complete 1.1. I thank the committee, the minister, Mr Cornall and officers, Hansard, Broadcasting and the secretariat.

**Committee adjourned at 10.53 p.m.**